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- Federal Excise Tax on Fractional Aircraft. On March 20, 2015, the United States District Court for the Northern District of Texas Dallas Division granted summary judgment to the government on the issue of whether federal excise tax under IRS Sec. 4261 applies to the monthly management fees for fractional aircraft in Bombardier Aerospace Corporation's (BAC) fractional aircraft program. The court held that the Federal Aviation Regulations do not impact whether federal excise tax applies, concluded that BAC had possession, command and control of the program aircraft, and thus federal excise tax was due on the management fees. The court also distinguished whole aircraft management from fractional aircraft ownership with respect to the IRS suspension of assessment of federal excise tax on whole owned aircraft management arrangements. The court further dismissed BAC's claim for a refund of variable rate fees and fuel surcharge fees due to a lack of standing with respect to such refund claim. A copy of the decision can be found on our website at: <http://www.bwaerolaw.com/resources.html>.

Please note that the BAC case (and the NetJets case that we reported on in February 2015) relate to tax periods prior to March 31, 2012, when Congress increased the fuel tax rate for fractional program aircraft in lieu of the federal excise tax on passenger air transportation. Under the statute, the fractional fuel tax applies until September 30, 2021. However, the federal excise tax exemption when fractional fuel tax is imposed expires on September 30, 2015. Therefore, unless the exemption is extended, fractional program aircraft may be subject to the fractional fuel tax without the protection of the federal excise tax exemption. See IRC 4261(j) and 4043(d).

- New York Sales and Use Tax. The 2015-2016 New York State Budget in Part TT includes an exemption from sales and use tax for general aviation aircraft, which will take effect on September 1, 2015. Please talk with your New York state sales and use tax advisors regarding the application of this exemption. An NBAA press release regarding the anticipated new law may be found at: <http://www.nbaa.org/news/pr/2015/20150401-035.php>.
- For Unmanned Aircraft Systems (UAS), FAA Simplifies Access to Airspace for Recipients of Section 333 Exemptions. The FAA recently announced that it will grant a general Certificate of Waiver or Authorization (COA) with each Section 333 exemption. The "blanket" 200-foot COA will allow flights anywhere in the country except in restricted airspace and other areas where the FAA prohibits UAS operations. Although a commercial operator of UAS must still apply for and receive an exemption under Section 333, the new policy eliminates the need to apply for and receive a COA for a particular block of airspace for each UAS operation, a process that can take 60 days. The new policy and specific restrictions on the blanket 200-foot COA can be found at: <https://www.faa.gov/news/updates/?newsId=82245>.

4/6/2015