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Federal Excise Tax on Fractional Aircraft. On January 26, 2015, the United States District Court for the Southern District of Ohio Eastern Division granted summary judgment to Net Jets Large Aircraft, Inc. and certain of its affiliated companies, including Executive Jet Management (“EJM”, collectively “Net Jets”) on the issue of whether federal excise tax under IRS Sec. 4261 applies to fractional aircraft. The court held that Net Jets provides taxable transportation under IRS Sec. 4261, but that the IRS cannot retroactively claim that FET applied to the management fees and variable rate fees collected as part of the fractional aircraft program.

The Court did not extend its holding to whole aircraft management, however. It refused to grant either party’s motion for summary judgment on the issue of whether FET applies to owner flights on managed aircraft that are also used for third party charter, which were the only types of whole aircraft management arrangements that were presented to the Court in this particular case. On the whole aircraft management issue, the Court confirmed that the IRS’ standard of “possession, command and control” applies and that the facts and circumstances test is an appropriate test to determine whether the management company is providing transportation service to the owner.

It is unclear whether either party plans on filing an appeal. A copy of the order can be found on our website at: <http://www.bwaerolaw.com/resources.html>.

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