

## **An Aviation Law Update**

**02/12/2010**

### **Washington State Considering New Aircraft Tax**

Your aircraft may soon be subject to a new annual Washington State tax based on the aircraft's fair market value. This new tax is part of House Bill 3176, which is scheduled for a public hearing before the House Finance Committee this Saturday, February 13, at 9 a.m. If passed, this bill will result in the imposition of an annual excise tax on the privilege of using an aircraft within Washington State, equal to one half of one percent of the aircraft's taxable value, as determined under a depreciation schedule to be published annually by Washington State Department of Transportation ("WSDOT"). Accordingly, the owner of a Washington registered aircraft with a taxable value of \$20 million, would owe \$100,000 per year. Under the bill, WSDOT would be responsible for collecting and administering the tax.

Generally, the tax would apply to any Washington-based aircraft and any aircraft otherwise required to be registered in Washington, subject to certain exemptions such as aircraft operated by interstate carriers and the temporary use of an aircraft owned by a non-resident and registered in another state. See RCW 82.48.100. The bill specifies that persons who are required to register their aircraft in Washington but register the aircraft in another state or foreign country, avoiding the aircraft excise tax, are nonetheless liable for the unpaid excise tax. A violation of this requirement would constitute a gross misdemeanor, and the Department of Revenue ("DOR") may assess and collect the unpaid taxes including certain penalties and interest.

An aircraft owner's initial reaction may be, "I need to move my aircraft outside of Washington to avoid the tax!" However, this strategy could pose various challenges. First, if an aircraft ends up spending a significant amount of time in Washington even though it is "based" in another state, the DOR may still attempt to collect the tax or a portion thereof from the owner. Moreover, attempting to avoid the tax in this manner could potentially subject the owner to the civil and criminal penalties noted above if the aircraft is owned by a Washington resident or otherwise required to be registered in Washington. Second, if a person resides in Washington but bases their aircraft in another state, the additional fuel consumption and engine cycle costs for flying the additional leg into Washington to be picked up each time could result in significant expenses, not to mention an inconvenience to the owner.

Further, aircraft fractional share owners should be aware that the DOR may take the position that their aircraft shares are also subject to the new excise tax. Accordingly, the DOR would assess the tax based on the fair market value of the percentage of the aircraft owned by the fractional share owner.

Not surprisingly, news of the tax has created anxiety among Washington aircraft owners and

operators. Some fear that the new tax would cause Washingtonians to relocate, scale back their businesses or lose their jobs. Accordingly, some individuals plan to voice their concerns about the tax and how they believe it will impact their livelihood at the House Finance Committee hearing in Olympia this Saturday.

We will be monitoring the status of House Bill 3176, and are interested in hearing your thoughts and/or concerns on the new tax and how it may impact your operations. Please feel free to contact us if you have any questions. The complete text of the bill may be found online at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=3176>. The aviation provisions are in Part X.

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