Part III - Administrative, Procedural, and Miscellaneous

Rent Holidays for Qualified Aircraft Leases

Notice 01-79

PURPOSE

This notice provides tax relief under § 467 of the Internal Revenue Code for certain aircraft leases entered into or modified during the period beginning on September 11, 2001, and ending on June 28, 2002. On September 11, 2001, terrorists used commercial airliners to damage the Pentagon and to destroy the two World Trade Center towers and other buildings in the World Trade Center complex. They also caused the crash of a commercial airliner in Pennsylvania. In response to dislocations in the aviation industry resulting from these attacks, the Air Transportation Safety and System Stabilization Act (the Act), Pub. L. No. 107-42, established a loan guarantee program for air carriers. The purpose of the program is to assist air carriers who suffered losses due to the terrorist attacks and to whom credit is not otherwise reasonably available, in order to facilitate a safe, efficient, and viable commercial aviation system. Office of Management and Budget regulations implementing the loan guarantee program provide that applications to be included in the program must be received on or before June 28, 2002. The regulations specify a number of factors to be considered in evaluating applications, including whether the applicant's creditors have made concessions that will improve the financial condition of the applicant in a manner that will enable the applicant to repay its Federally guaranteed loan and provide commercial air service on a financially sound basis after repayment.

The Internal Revenue Service has determined that it is appropriate, for the period beginning on September 11, 2001, and ending on June 28, 2002, to modify the manner in which the regulations under § 467 are applied so as not to inhibit the ability of lessors to provide favorable financing terms to air carriers.

BACKGROUND

Section 467(a) provides that in the case of a lessor or lessee under any § 467 rental agreement, there shall be taken into account for any taxable year the sum of (1) the amount of rent that accrues during such taxable year as determined under § 467(b), and (2) the interest for the year on unpaid amounts taken into account as rent or interest on rent for prior taxable years. Under § 467(b)(2), constant rental accrual applies in the case of any rental agreement that is a disqualified leaseback or long-term agreement. Section 467(b)(4) provides that an agreement is a leaseback if it is part of a leaseback transaction, or a long-term

agreement if it is for a term in excess of 75 percent of the statutory recovery period for the property.

Section 1.467-3 of the Income Tax Regulations provides that a leaseback or long-term agreement will not be subject to constant rental accrual unless (1) a principal purpose for providing increasing or decreasing rents is the avoidance of tax and (2) the Commissioner determines that, because of the tax avoidance purpose, the agreement should be treated as a disqualified leaseback or long-term agreement. Under § 1.467-3(a), the Commissioner has the authority to determine, either on a case-by-case basis or in published guidance relating to a certain type or class of agreements, whether an agreement is disqualified and thus subject to constant rental accrual.

Under § 1.467-3(c)(4), tax avoidance will not be considered to be a principal purpose for providing increasing or decreasing rents if the annualized rents allocable to each calendar year of the rental agreement do not vary from the average annual rents over the entire lease term by more than 10 percent (the uneven rent test). If this test is met, the leaseback or long-term agreement will not be considered disqualified and will not be subject to constant rental accrual. In applying the uneven rent test, certain rent holiday periods are ignored.

GRANT OF RELIEF

In the case of a qualified aircraft lease that does not meet the uneven rent test and is entered into after September 10, 2001, and before June 29, 2002, the Commissioner, under the authority set forth in § 1.467-3(a), will not treat the agreement as a disqualified leaseback or long-term agreement if, disregarding one aviation stabilization rent holiday period and any rent allocated to such period, the agreement meets the test set forth in § 1.467-3(c)(4). For purposes of this notice--

> A rental agreement is a qualified aircraft lease if the lessee is an air carrier (within the meaning of 49 U.S.C. § 40102(a)(2)) and at least 90 percent of the property subject to the agreement (determined on the basis of fair market value as of the agreement date) consists of aircraft (within the meaning of 49 U.S.C. § 40102(a)(6)) and replacement components; and
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> An aviation stabilization rent holiday period is a consecutive period that meets the following conditions: (1) the period does not exceed six months; (2) the period ends before January 1, 2003; and (3) annualized fixed rent during the period (determined by treating such period as a rental period for purposes of § 1.467-1(j)(3)) is less than the average rent allocated to all calendar years in the lease term (determined by taking into account the rent allocated to the rent holiday period).

If a substantial modification of a rental agreement occurs after September 10, 2001, and before June 29, 2002, and the post-modification agreement is a qualified aircraft lease, the relief granted in this notice applies to the post-modification agreement. For this purpose, a modification is treated as a substantial modification if the agreement (as in effect before its modification) meets the test set forth in § 1.467-3(c)(4) and the entire agreement (as modified) does not meet that test.

The relief granted in this notice does not affect whether an agreement (as in effect before its modification) is a disqualified leaseback or long-term agreement, and, if so, whether the carryover rule set forth in § 1.467-1(f)(4)(iii) applies.

The principal author of this notice is Forest Boone of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Boone at 202-622-4960 (not a toll-free call).