

July 14, 2008

IRS Issues Favorable Tax Guidance for Leasing Income from Aircraft and Vessels Engaged in International Commerce

The Internal Revenue Service (IRS) issued regulations effective July 3 providing the equipment finance industry with favorable tax guidance on leasing income from aircraft and vessels in international commerce as a result of statutory changes in the JOBS Act of 2004.

The JOBS Act of 2004 modified the tax treatment of aircraft leasing and shipping income in international commerce as part of a larger effort to ensure compliance with a World Trade Organization (WTO) ruling on export subsidies. During the consideration of the JOBS Act, the ELFA supported the enactment of a new regime providing for a safe harbor or exclusion of income for rents derived from leasing an aircraft or vessel in foreign commerce.

In its July 2008 regulatory guidance, the IRS provides specific standards for an exclusion for leasing income derived in international commerce from aircraft and vessels - as well as the component parts that are leased separately -such as engines. This exclusion applies regardless of whether the lease is classified as a finance lease or an operating lease for financial accounting purposes and in certain circumstances also applies to an existing lease acquired by a lessor.

These regulations entitled Modifications to Subpart F Treatment of Aircraft and Vessel Leasing Income were published in the July 3, 2008 Federal Register Vol .73 No.129 pages 38113-38117.

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