WASHINGTON DEPARTMENT OF REVENUE TREATMENT OF TRADITIONAL OWNERSHIP STRUCTURES AS TAX AVOIDANCE

PROBLEM:

The Washington Department of Revenue (DOR) recently expanded the State Legislature's 2010 tax avoidance legislation beyond its legislative scope and is targeting leasing structures that have long been accepted practice in Washington and many other states. This results in a potential for double taxation on aircraft and equipment lease transactions and is prompting business aircraft owners to move their aircraft to other states. This will deprive Washington businesses of revenues, Washington citizens of high-quality well-paying jobs, and the State of Washington of needed tax revenue.

Further, the new rules as written and issued by the DOR grant the DOR with tremendous discretion in determining what constitutes tax avoidance, contain no useful safe harbors for planning purposes, and ignore every comment submitted to the DOR by industry. Given these conditions and the lack of clarity on how the rules will be administered by the DOR, it is now impossible to advise aircraft purchasers on how to structure their aircraft ownership and operations in Washington and at the same time comply with both long-standing FAA regulations; leading advisors to counsel against business aircraft ownership and operation in Washington altogether.

BACKGROUND:

In 2010, Washington enacted legislation that outlawed structures created for the **sole purpose** of tax avoidance. The DOR then waited five years before issuing the implementing rules on April 19, 2015. These new rules go well beyond the legislative mandate, and target aircraft leasing structures that had been approved by the DOR for decades. These leasing structures are between owners and operators of aircraft and are intended to achieve liability protection and compliance with FAA regulations. Under these structures, Washington sales tax was previously paid on the aircraft lease payments, at fair market rates.

The Washington DOR has now declared these previously-approved structures to be tax avoidance (in substantially all instances) and as such will impose a sales tax on the original purchase (along with severe penalties (35%) and interest), while still maintaining the sales tax on the lease payment stream; resulting in double taxation. Further, the new tax avoidance rule purports to be **retroactive to January 1, 2006**.

The DOR exempted large corporations that lease aircraft, such as GE and Bank of America, who utilize identical structures in their leasing business, but instead seeks to impose this rule on small businesses and individuals.

SOLUTION:

Return to the traditional approach (previously approved by the DOR and in place for decades) of taxing aircraft leases on the lease payment stream, or give the lessor the option of paying the tax up front or on the lease payment stream; but the DOR should not be allowed to tax both. That was never the legislature's intention.

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