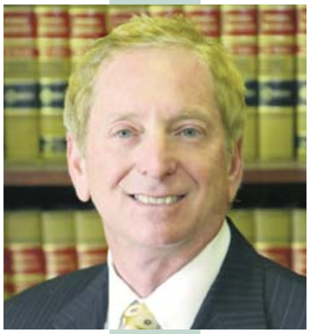

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Acquiring A Business Aircraft 101

(Part 2)

In this concluding article on the basics of aircraft acquisition, attorney Keith Swirsky discusses tax planning, ownership structures and considerations of Federal Aviation Regulations.

Once the purchase agreement for acquiring a business aircraft is executed, the inspection should commence. An inspection timetable takes one to four weeks, depending on the age and condition of the aircraft, the level of inspection to be performed, and the discrepancies discovered during the course of the inspection.

While the inspection is ongoing, most parties will engage aviation counsel to provide advice and planning related to federal income and excise tax, state sales tax and use taxes. While the tax planning process can be undertaken during the conduct of the inspection, at that juncture some planning opportunities will no longer be available since they directly pertain to state sales and use tax (e.g., the ability to identify an aircraft that would have qualified for an occasional sales and use tax exemption).

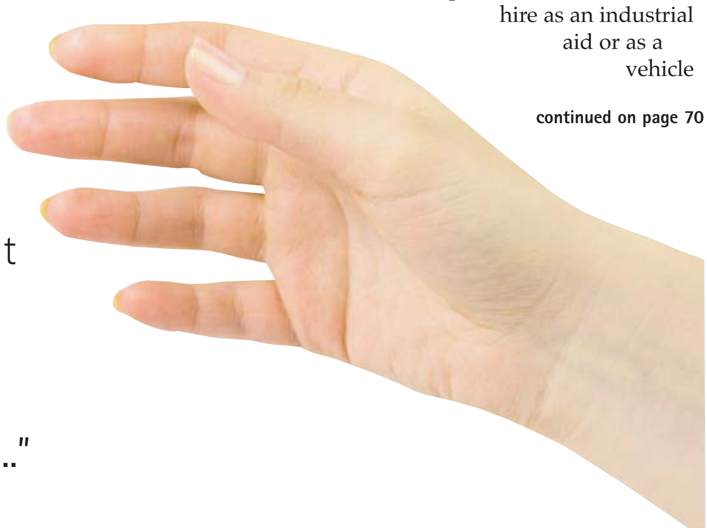
Additionally, the most common acquisition structure created prior to engaging aviation counsel, is for the buyer or its consultant to assume the aircraft will be acquired by a newly formed special purpose entity. When determining whether to set up a new LLC, or any other corporate entity to accept title to the aircraft, federal aviation regulations (FARs) play a role insofar as the so-called "flight department company rule" prohibits the operation of an aircraft under FAR Part 91 by such special purpose entity.

AVOIDING THE FLIGHT DEPARTMENT COMPANY TRAP

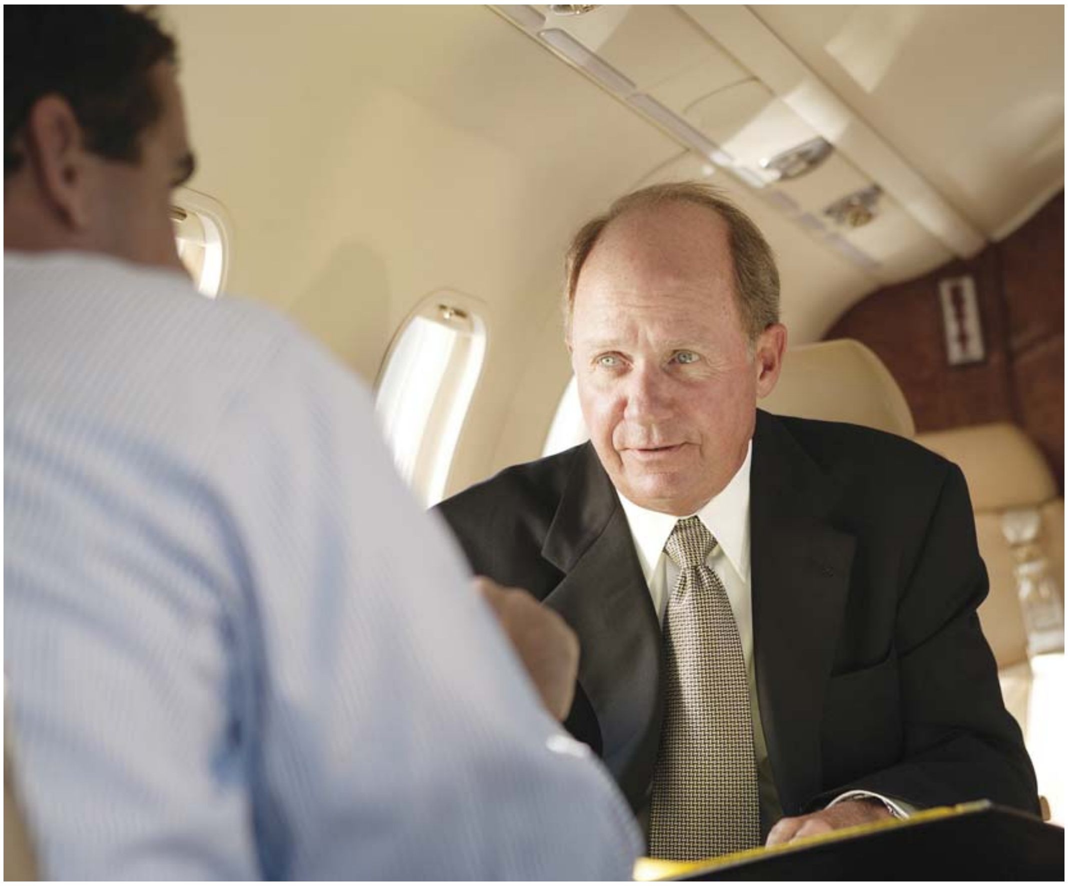
While it is acceptable to take title through a special purpose entity, further structuring is necessary in order to ensure compliance with FAR Part 91. This planning needs to be done in the early stages of the acquisition process, and in coordination with the federal income and excise tax, and state sales and use tax planning.

FAR Part 91 allows an owner to operate an aircraft not for hire as an industrial aid or as a vehicle ›

continued on page 70



"While the tax planning process can be undertaken during the conduct of the inspection, at that juncture some planning opportunities will no longer be available since they directly pertain to state sales and use tax..."



for personal transportation and enjoyment. No funds can be exchanged in return for transportation unless the operator is certified for commercial flights in accordance with FAR Part 135. Failure to abide by this requirement is not tolerated by the Federal Aviation Administration. Under all circumstances, it is absolutely necessary to conduct detailed planning related to the structure of your flight operation prior to title transfer at closing.

AIRCRAFT MANAGEMENT BY AN EXTERNAL COMPANY

In addition, during the early stages of the acquisition process, a first-time buyer, and perhaps a seasoned aircraft owner, will need to determine whether the aircraft will be managed in-house or by an external management company. Aviation counsel should be familiar with numerous management companies, as well as commercially competitive terms, and should be involved in selecting an external management company.

A minimum of two weeks is necessary to select the management company, and it can take up to two additional weeks to finalize all related documentation.

If the aircraft will be added to the aircraft management company's air carrier operating certificate and flown in Part 135 commercial operations, it is also ideal to involve the management company in the inspection process for the purpose of identifying all equipment requirements and to conform the aircraft for purposes of Part 135 operations.

A careful balance among all of the planning objectives is necessary to address the aircraft owner's tolerance for risk and aggressiveness and to prioritize objectives. Skilled aviation and tax counsel can support all of these planning and implementation areas.

Note: This article should not be construed as legal advice or legal opinion on any specific facts or circumstances. The reader is urged to consult legal counsel or other advisors concerning his/her own situation and specific legal questions.

Do you have any questions or opinions on the above topic? Get them answered/published in World Aircraft Sales Magazine. Email feedback to: Jack@avbuyer.com

Business Aviation and the Boardroom continues on Page 72

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