Proposed Amendment to IRC § 280F(b)

The United States business and general aviation industry, which includes all operations other than scheduled airline flights and the military, supports 1.2 million jobs and $247 billion in economic impact. Across the country, thousands of small and mid-size businesses that generate $77 billion in labor income are facing unprecedented challenges due to the COVID-19 pandemic and require additional relief.

On behalf of the entire industry, we applaud your efforts to provide near and mid-term relief for air carriers and small businesses under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). As the impacts of the pandemic have progressed, our industry has identified a risk of significant tax assessments in 2020/2021 for depreciation recapture provisions. The resulting tax effect will essentially reverse the prior-year tax benefits recognized from accelerated depreciation methods, including immediate expensing (i.e., bonus depreciation).

The Tax Cuts and Jobs Act (TCJA) modified and extended immediate expensing to support capital investment in business assets, including aircraft. Forcing businesses to face recapture of these depreciation deductions due to COVID-19 impacts will reduce the pro-growth economic benefits of this policy. We respectfully request that temporary relief from the depreciation recapture provisions outlined in IRC § 280F be provided. This relief would apply to businesses that are unable to meet the business use requirements for listed property due to COVID-19 related closures and travel restrictions.

Current Law

Under IRC § 280F(b) there are limits on the use of accelerated depreciation methods, including bonus depreciation, for listed property such as non-commercial aircraft and certain trucks, and cars. Further, IRC § 280F(b) provides that accelerated or bonus depreciation can only be used for listed property if the listed property meets the predominant business use test. The predominant business use test generally requires that more than 50 percent of the use of the property during the tax year must be for business. If the predominant business use test is not met in a year subsequent to the year in which the property is placed in service, the taxpayer must recapture the accelerated or bonus depreciation deducted in excess of the depreciation that would have been allowed under the alternative depreciation system in IRC § 168(g) (generally the straight-line depreciation method).

Potential Depreciation Recapture Resulting from COVID-19

Due to the decline in business activity and government-imposed lockdowns caused by COVID-19, there is a dramatic reduction in business travel. This decline in business travel is causing many companies operating non-commercial aircraft to fail to meet the predominant business use test in 2020. Failing the predominant business use test will trigger depreciation recapture income resulting in large tax obligations at the height of the economic crisis caused by the pandemic. These unnecessary tax obligations will reduce the amount of capital that small and mid-sized businesses can deploy during these challenging times.

Proposed Solution and Relief Provision

To avoid this unnecessary tax burden, IRC § 280F(b) should be amended to allow temporary relief from the limitation on the use of accelerated or bonus depreciation during 2020 and 2021. This relief should include temporarily eliminating the requirement to recapture excess depreciation on assets for which the predominant business use test is not met during these years.

The depreciation limitations in § 280F(b) are intended to prevent accelerated depreciation from applying to property used to an excessive extent for personal use. With the effects of COVID-19 on business activity and public health, the failure of an asset to meet the predominant business use test in 2020 or 2021 should not mean that the asset is deemed to be used excessively for personal use. Instead, it reflects the severe, unexpected, and temporary business impact of COVID-19. Therefore, it would be inconsistent with the purposes behind § 280F(b) to impose depreciation recapture during 2020 or 2021.

Bonus depreciation is a proven policy to stimulate the economy. The Tax Foundation found that the TCJA bonus depreciation provisions have the potential to create nearly 200,000 jobs and boost long-term GDP by almost 1-percent. In contrast, imposing depreciation recapture during 2020 and 2021 would result in a significant and unnecessary tax burden on businesses at precisely the time that economic stimulus is needed.

Thank you for your continued efforts to help small businesses and our economy and hope that you will consider this request in a future relief package.