

# ***IRS Hot Topics***

A Washington National Tax Services (WNTS)  
Publication

April 16, 2012

## *IRS issues guidance on new surtax on fuel used in fractional ownership programs*

The IRS recently issued Notice 2012-27 providing guidance relating to the application of the new surtax imposed by Section 4043 on fuel used in fractional ownership aircraft. Section 4043, created by the FAA Modernization and Reform Act of 2012, imposes a new 14.1¢ per gallon surtax on general aviation jet fuel purchased and used in certain fractionally owned aircraft. In general terms, a fractional ownership aircraft program is a system of aircraft ownership and exchange involving a single program manager that manages the fleet of aircraft on behalf of the fractional owners.

For a more detailed discussion, including explanation of new Section 4043 imposing the surtax, see [IRS Hot Topics: FAA Modernization and Reform Act of 2012 adds surtax for fuel used in fractional ownership programs](#).

The Notice clarifies that the fractional ownership manager, rather than the fractional owners, is liable for the new surtax. Fractional ownership program managers must report the Section 4043 surtax on Form 720, *Quarterly Federal Excise Tax Return*, and are required to make semi-monthly deposits of the tax. This is different from the liability for air transportation tax imposed by Section 4261, as this tax is the liability of the owner not the manager, but the manager bears liability for the collection and remittance of the tax.

The Notice summarizes Section 4043, providing that if the Section 4043 surtax is imposed on fuel used in a flight, air transportation excise taxes imposed by Sections 4261 and 4271 do not apply to that flight. Likewise, if the new surtax is imposed on fuel used in a flight, the flight is not considered commercial aviation for purposes of the fuel tax imposed by Section 4081.



The Notice reiterates that the Section 4043 surtax applies in addition to any other taxes imposed on the removal, entry, use, or sale of the fuel. The surtax does not apply when fractional

program aircraft are used for flight demonstration, maintenance, or crew training.

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