

Cessna Pilots Association™



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# CESSNA PILOTS ASSOCIATION



David Budd's  
1968 180H

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# Risk

*By Jim Baloun*



In the eyes of persons outside the pilot community, aviation is the epitome of risk. Our family members often fear our planes, and our trusted advisors are leery of them as well.

Our pilot training teaches us how to deal with risk. We learn to identify risky situations. Most of us readily accepted early warnings from our instructors who shared the wisdom of lessons learned by those who went before them. As eager students, we listened intently and quickly absorbed the obvious. Each lesson brought a new “risk” to the table, and we practiced how we should behave in reaction to the situations presented.

We repeated the muscle memory exercises until our instructor was satisfied we would not hurt ourselves (or the aircraft) when left alone to solo. Sometimes our passion overruled skeptical warnings, but the reality is we need to assess financial risks to protect our families and estates from monetary risks, just as we learned to protect ourselves in flight from the physical risks.

Most of us continued to practice progressively more challenging feats of accomplishment, (some even amazing ourselves at survival). We learned a new skill set on every flight. Some of us were lucky to have an instructor who lived and breathed aviation, strove to be the best, and to make a living helping other pilots find their way to the left seat of heavy metal or to be aerobatic performers displaying a mastery of risk by pushing the envelope a little farther as they built hours. Who mentors your aviation finances and taxes? What risks lurk just ahead?

As much as a student pilot initially believes the movement of air over the wing is what makes an aircraft fly, we later confronted reality again: an engine is required to gain altitude, and we all eventually learn we need to buy fuel to feed the aircraft. The bottom line is what really keeps an aircraft aloft is money.

Our training included about leaning the mixture to save fuel. We were told leaning was a compromise with risks attached. Back then we were encouraged to run “full-rich” to avoid risk of damaging the engine. If we were buying training time on a “wet” basis, that meant we were spending someone else’s money. We could say, only semi-joking, we are applying current political philosophy by running rich, because we’re spending more of someone else’s money! What is the risk of not planning enough?

Our aircraft were robust and reliable. Our instructors and mentors were constantly doling out supportive informative pearls of wisdom and never hesitated to give a good answer to our every question. Even FAA personnel were helpful from ground control to tower operators to center personnel. Flight Service was a valuable service provided by psychic individuals who knew how to read between the lines to tell us just what we needed to know to make a “go or no-go” decision, and how to change our plans to deal with weather risks.

Slowly but surely, we became masters of the risks of flying activities with the help of a growing group of friends. Do you have a similar group of aviation professionals? Do your financial and tax preparers keep up with their training in aviation matters?

Most of the readers of this magazine have gone beyond being “renters” and have ventured into being owners. However, owners have the responsibility to maintain their aircraft. Some “owners” are businesses, or professionals running a business. As a result, we expect the source of the capital to acquire the aircraft came with some practical business sense and an awareness of regulation and taxation to survive and prosper. But basic business common sense and skills do not transition smoothly to aviation any more than a 152 owner can step into a 421 and expect to survive an emergency.

Every business owner executive knows that we have “helpers.” Unfortunately, “I’m from the IRS and here to help you” is a familiar joke. More seriously, some of us have dealt with tax audits aimed at us to pay a larger share; the rest of us are looking forward to one.

We also learn the less friendly side of the FAA as we navigate the alphabet soup air space. We can’t get a license without studying the FAR’s, and we know what has happened to some of our fellow pilots. However, as a rule, pilots don’t hear hangar stories about bad experiences with the IRS or state tax authorities or the courts.

As an aircraft owner/operator, you now have two new “partners” flying everywhere you go. State and federal agencies want to exercise increasing control over how we operate our aircraft and our businesses. Our local state now has their hand out looking for Use Tax which we will address next month.

In the May issue we discussed Entity Selection options. Today we are discussing the “risk” of not selecting the correct type of organization. It is appropriate to probe a little deeper into how our selection of the appropriate type of entity can mitigate some of this risk of ownership and operation.

It is important to note there are two types of risk, with the first being from the type of event we cannot do anything about. The other risks can be avoided, mitigated or shared.

In today’s litigious society, rest assured you will be a defendant personally related to any aircraft accident in which you were the pilot, co-pilot or person responsible for the decision to launch, regardless of who or what entity owns the aircraft.

You cannot avoid personal liability for your actions regardless of how many layers of corporations and limited liability companies you put in place. You will be sued in the state where the accident happens, and you will be sued wherever you or your entity do business. So unless you actually live in Delaware, Wyoming or Nevada, you can forget about having the mythical magical shield to protect you as a resident. You can, however, share liability with your insurance company.

There are some risks for which “an entity” might protect you. If your aircraft is moved into the big hangar by the FBO moments before the big storm hits, and your aircraft all on its own starts a fire that destroys a few corporate jets, a turbo prop or two, and a few war birds as well as the hangar, you may stop judgment creditors for coming after you personally (unless they can prove it was your personal negligence that caused the spontaneous combustion).

Also, there may be accidents for which you are not liable. For example, if your aircraft was left on the ramp after you left the airport, and it was later flipped over onto other aircraft, you may avoid being sued personally.

So, how do you minimize your risks? Address both risk of tax consequences and personal liability with your TEAM of legal and tax advisors before making an offer to purchase. Your trusted professionals who have been around you for a long time should be willing to invite any specialists necessary to the table. To minimize your risks, you must do your planning exercises with AVIATION specialists before making a decision on entity selection and structure, or tax savings may not be realized. We frequently meet or phone conference with trusted advisors, and we can bring your team up to speed.

For example, before CPAaviation.com offers a solution to a prospective or existing aircraft owner, we perform a series of surveys of the client who intends to purchase another aircraft. We need to know how the aircraft will be operated, and who will be piloting and maintaining the aircraft. Many serious technical problems may be identified, and we steer clients away from regulatory conflicts (FAA vs. IRS) and bad plans. We confirm the client has a clear understanding of operating limitations. We address how the aircraft fits into the life of the new owner and his existing or intended business or employment situation. We may verify the tax savings and risks of audits. We strive to include all stakeholders and advisors whose lives will change when you take delivery of your new aircraft.

Before you panic, and move the title to your aircraft, you need to be sure that your state will not consider the transfer to be a taxable event. Illinois aggressively considers ANY

and all transfers to be taxable, even between an owner and his wholly owned entity. Every state is in the process of changing rules, and stepping up enforcement activities.

The next category of risk relates to tax treatment of your aircraft. The IRS has rules for businesses which every business owner, CPA and Tax Preparer deals with on a daily basis. While we usually feel comfortable navigating around the clouds and terrain in VFR near our base airport, things get exciting and dangerous when we are forced to proceed into IFR conditions in the mountains without preparation and all available help. Failure to adequately plan for compliance with all of the IRS and FAA rules will result in your taking unknown risks, and unintended consequences. We will address IRS, state and other tax issues in next month's article.

Do not go into a purchase without the right co-pilot and a thorough discussion with your entire team. Be sure that your AVIATION TEAM is qualified to work with your ground crew. Start "planning" early!

In summary, you cannot afford to take risks you cannot identify, in the same way that flying IFR in the mountains without being

properly equipped and planning for all contingencies means taking unknown risks.

For you, it's vitally important that you select an attorney who specializes in your type of situation, and who will become part of the "acquisition team". Do not expect a "contract" guy or a "personal injury" guy to know anything about the tax laws which apply to you once you become an owner, even if he or she also owns an aircraft. I have met a few lawyers who practice in more than one of the above. We know many of each type, and can help you be sure you made a good choice.

By now you might suspect that General Aviation is anything but "General" when it comes to legal and tax matters.

*CPAAviation.com is an affiliate of BALOUN & COMPANY Certified Public Accountants since 1978 Consultants to Small Businesses and the Entrepreneurs who own them. Jim can be contacted at:*


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