PLUNKETT & COONEY
Professional Corporation
Attorneys and Counsellors at Law
38505 Woodward Ave.
Suite 2000
Bloomfield Hills, MI 48304
(248) 901-4000
Fax (248) 901-4040
www.plunkettcooney.com

BALANCING FAA AND IRS REQUIREMENTS

Personal Use of Business Aircraft

By Jack S. Levey

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Two important sets of regulations conflict when an employee takes a personal, non-business flight on the employer's corporate aircraft. The Internal Revenue Service (IRS) and the Federal Aviation Administration (FAA) take directly opposing views of the employer's responsibility. Fortunately, there is a solution.

The IRS treats the flight as a fringe benefit. In most cases, the employer must either be reimbursed by the employee for the value of the flight, or else report the value of the flight as taxable compensation to the employee. The IRS offers two options for valuing the flight. The Standard Industry Fare Level (SIFL) rate is usually the less expensive. The SIFL rate is based on the cost of a commercial airline ticket for a comparable flight.

Unfortunately, FAA regulations often preclude the employer from accepting reimbursement. However, if the employer operates its aircraft as a charter operator under Part 135 of the FAA regulations, the employer is permitted to accept the reimbursement. Many employers operate their business aircraft under Part 91 of the FAA regulations. Part 91 restricts the operator from accepting reimbursement for a flight, except under very limited circumstances. Ignoring those restrictions can result in fines, or in being forced to operate under the more burdensome and expensive Part 135.

Fortunately, with a little planning, the employer can take advantage of one of those exceptions. Part 91 allows the operator of an aircraft to accept reimbursement of certain limited expenses if the flight is conducted under a written time-sharing agreement.

Under a time-sharing agreement, the operator leases the airplane with flight crew to another person - in this case, the employee. Charges for the flight cannot exceed certain out-of-pocket expenses listed in the regulations, plus double the cost for fuel, oil, lubricants and other additives. This limit is usually high enough to let the employer-operator accept reimbursement at the SIFL rate.

Time-sharing agreements must comply with FAA regulations. A copy of the agreement must be carried on board the aircraft, and another copy must be mailed to a particular section of the FAA within 24 hours after execution. (The FAA must treat the agreement as privileged and confidential commercial or financial information, which is not subject to public inspection and copying). The parties must give the local FAA Flight Standards District Office telephonic notice of the first flight under the time sharing agreement at least 48 hours in advance.

Time-sharing agreements can also be used to comply with state and federal election requirements governing use of a corporate owned aircraft by a political candidate, and to permit accepting reimbursement for the cost of demonstration flights from potential buyers or lessees.

For more information about time-sharing agreements, or other aspects of buying, selling or operating business aircraft, please call Jack Levey in our Columbus office at 614-629-3002.

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