

## Paying for Personal Use of the Company Aircraft



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On December 30, 2010, the FAA issued an interpretation which allows a limited exception to the FAA's decades-long broad prohibition on employees reimbursing the company for personal travel on the company aircraft. This new approach to reimbursement has generated much industry excitement, and for good reason; it may simplify aircraft operations for a significant number of corporations.

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As important as what this interpretation allows is what it does *not* allow. It is *not* a blanket authorization for reimbursement by employees for personal use of the company plane. The exception is restricted specifically to personal flights by employees over which the company has such control that the company can recall them at any time. It also seems to be further limited to exclude certain flights, such as flights for weddings, funerals, or medical treatment.

The amount that can be reimbursed is also restricted to the cost of owning, operating and

maintaining the airplane. No specific definition of these terms was provided, but the FAA has historically utilized very conservative parameters for defining such costs. Tie-down fees: probably included. Lift tickets in Aspen: we'd suggest not.

Unfortunately, like all aircraft issues, the analysis does not stop with the FAA. State and federal tax issues, SEC regulatory concerns, and a company's other aircraft operations must all be re-evaluated.

In order to utilize this exemption, there are specific steps that the company must take:

First, the company must create, maintain and regularly update a list of those lucky employees that the company deems to have given up their individual right to control their own schedule. While most of us would count ourselves in that number, the FAA rejected the idea that officers and directors would automatically be included, and also rejected the concept of "specified individuals" utilized by the IRS. The FAA will require the company to be able to

promptly provide the list of covered individuals as determined by the company's board.

Second, the company must keep records of the determination of each flight in question, indicating that it was of a routine personal nature subject to cancellation up to the last moment because of compelling business concerns.

While the FAA has provided a means that may help simplify operations for some, remember that this is not an open invitation for employee reimbursement of personal use of the company aircraft. Very specific policies must be implemented, and the effect of those policies on several other legal and operational issues must be addressed as well.

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