

# Personal Flights in Corporate Aircraft

The FAA changes personal-use policy.

**SINCE 1993, THE FAA HAS PROHIBITED EXECUTIVES FROM REIMBURSING** their companies for personal use of company aircraft. The genesis of this policy was a legal interpretation requested on behalf of Charles Schwab. The FAA took a very narrow view of FAR Part 91.501(b)(5), concluding that the rule was designed to allow reimbursement for business flights, and therefore personal flights were not covered.

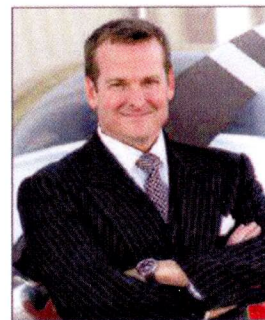
Simply stated, the man named Charles Schwab could not write a check to Charles Schwab & Co. Inc. for a personal flight in the company airplane.

In denying the Schwab request in 1993, the FAA noted that IRS considerations were mentioned as a basis for allowing Schwab to pay for a flight in the company airplane but went on to note "that interpretation and application of aviation safety regulations is not dependent on, or affected by, what may be consistent with IRS regulations."

Generally, executives are eager to reimburse because they want to use the airplane for personal trips. And failing to reimburse can have repercussions. The IRS is one source of pressure on executives to pay for their flying "perquisites." The press can be brutal on private aircraft perks. Shareholders and the SEC take a keen interest in whether use of the company airplane is part of an executive compensation package. The NBAA tried numerous approaches over the last 17 years to persuade the FAA that a change in this policy would provide enormous benefit without any downside.

On Dec. 30, 2010, the FAA Office of Chief Counsel issued a change to the "Schwab Interpretation."

Mind you, the agency didn't exactly open the floodgates. The NBAA made the business case that some executives should be able to reimburse because using the aircraft for personal flights gives the company more control over those executives' schedules. The NBAA made other arguments as well, but those did not persuade the FAA, which wasn't ready to consider a



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complete reversal of the 1993 interpretation, either.

The FAA did recognize that high-level executives may be unable to reliably schedule personal travel due to the nature of their employment. The agency recognized that routine personal travel, such as vacations, could be canceled or altered up to the last moment because of compelling business concerns. As such, the company may determine that it is more efficient to provide the company aircraft for the entire trip, rather than reimburse the individual for the cost of canceled commercial airfare. Likewise, the company may accommodate the individual's altered plans by providing the company aircraft when the compelling business concern has been resolved.

The company's ability to alter an individual's travel plans on short notice may render a flight both within the scope of, and incidental to, the company's business. This is the heart of the argument. "Within the scope of, and incidental to" is the trigger phrase for making a personal flight part of the "business" of the company. The NBAA was the right voice to explain that the company airplane is the right tool to deal with last-minute changes to an executive's vacation schedule.

By keying into the correct language in Part 91.501, the FAA concluded that a company could be reimbursed for the pro rata cost of owning, operating and maintaining the aircraft when used for routine personal travel by an individual whose position merits such a high level of company interference into his or her personal plans. Note that this policy does not carry the "2 x fuel" reimbursement limitation of other sections of Part 91.501.

The FAA noted that not all personal travel would meet the conditions for reimbursement. The FAA suggested that weddings, funerals and medical treatment are events that the company would not interfere with.

However, the FAA went on to explain that these examples are not a strict prohibition on the reimbursement for specific types of personal travel in all instances. Rather, they are provided as guidance to companies as they develop their policies and determine whether the personal travel in question would qualify for reimbursement.

The bottom line is that a company should keep records indicating that it has made a determination on a person-by-person, flight-by-flight basis whether or not an executive's schedule was subject to last-minute changes. If an executive planned to leave for a Saturday wedding on Wednesday, but the company delayed departure until Thursday or Friday, then the new policy would apply, and the executive could be allowed to use the company aircraft for the personal flight and reimburse the company for the privilege, even though the flight was operated under Part 91. **BCA**