



## PERSONAL USE OF BUSINESS AIRCRAFT CHECKLIST

by Joanne Barbera

### Documentation

- Keep contemporaneous, detailed and consistent records

### Characterization of Flights - For each passenger on each flight

- Personal Entertainment (PE)?
- Personal Non-Entertainment (PNE)?
- Core Business?
- Business Lobbying? (special rules)
- Business Charitable? (special rules)

### If Personal (PE or PNE):

#### 1. FAA Issues

- Is reimbursement allowed?
  - FAR Part 91
    - Time sharing?
    - Nichols opinion?
  - FAR Part 135

#### 2. Tax Issues

##### a. IRS Fringe Benefit (Employee Income)

- Applies, except for sole proprietors
- Determine employees and allocate guests
- Does general valuation or SIFL apply?
- If SIFL:
  - Determine mileage (ignore deadheads)
  - Determine applicable rate
  - Determine aircraft multiple
  - Control or non-control employee?
  - Bona fide security plan?
  - Do business pax fill 50% seating capacity?
  - Calculate:  
[www.nbaa.org/admin/taxes/personal-use/calculator](http://www.nbaa.org/admin/taxes/personal-use/calculator)

- Include amount in employee income to the extent not reimbursed

##### b. IRS Entertainment (Company Disallowance)

- Applies if company takes deductions

- Applies to specified individuals' PE
- Determine total aircraft expenses
- Determine aggregation of aircraft and applicable depreciation method
- Determine total, per flight, and per passenger per flight hours and miles (include deadheads)
- Calculate using one of 4 methods:
  - Occupied seat hours
  - Occupied seat miles
  - Flight by flight (hours)
  - Flight by flight (miles)
- Subtract applicable fringe benefit or reimbursement for net disallowance

##### c. Federal Excise Tax

- Applies if there is taxable transportation and reimbursement:
  - 7.5% of amount paid, plus segment fee

##### d. Other Tax Issues

- IRC Section 280F implications?
- State tax implications?

#### 3. Insurance Policy Issue

- Does policy allow reimbursement?

#### 4. SEC Reporting Issues

- Generally applies to public companies
- Potential disclosures:
  - "Other compensation" on Executive or Director compensation tables?
    - Aggregate incremental cost of flights to the extent not reimbursed
    - Footnote, if applicable
  - Material Definitive Agreement?
  - Related Party Transaction?
- Sarbanes-Oxley, NYSE or NASD issues?

#### 5. Company Policy Issues

- Does policy allow use?
- Is reimbursement required?

THIS INFORMATION IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE.

COPYRIGHT © BARBERA & WATKINS, LLC 2012-2017 ALL RIGHTS RESERVED