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Business Aircraft Entertainment Use: Final IRS Regulations on Disallowed Deductions

On August 1, 2012, the Internal Revenue Service (IRS) released final regulations addressing the tax treatment associated with the use of business aircraft for entertainment purposes. The final regulations, designed to implement provisions of the American Jobs Creation Act of 2004, generally disallow the deduction of the difference between the actual cost of personal entertainment flight by "specified individuals" (e.g., directors, officers, etc.) and the value of those flights included as income by the individuals (under Standard Industry Fare Level or fair market value calculations) or to the extent the individual reimburses the company.

A company must include all expenses of owning and operating the aircraft in determining the disallowance and allocate these expenses on a person-by-person or flight-by-flight basis using either the "occupied-seat-hours" or "occupied-seat-miles" method.

Although the final regulations are substantially similar to the proposed regulations, the IRS did clarify a few positions and offer a number of examples in the final rules. One of those changes relates to the treatment of depreciation. Under the final regulations, a taxpayer may elect to use straight-line depreciation to determine the disallowance. Additionally, the final regulations provide that interest expense on an obligation of the taxpayer secured by or allocated to an aircraft is subject to the disallowance.

What This Means to You

If your company provides its executives with air travel for personal use, including entertainment, the deductibility of all costs attributable to the entertainment use will be limited. Although this outcome is not significantly

different under the final regulations, tactical solutions for operating under the final entertainment use rules are available.

Contact Info

If you have any questions concerning these entertainment use rules or any other questions concerning aviation or tax laws, please contact your Husch Blackwell attorney or one of the aviation attorneys listed below.

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