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SUBJECT: Taxable Fringe Benefit
of Airplane Travel
CC:



INTERNAL

CORRESPONDENCE

An employee receives a taxable fringe benefit when the employer provides another person with a flight on a company airplane. The value of a non-commercial flight used in determining a taxable fringe benefit is based on the fair market value of the flight or a special valuation method.

If the employer decides to value the flight based on the fair market value, the employer must base the value on objective facts and circumstances. Under this principle, the value of a person's flight would be the cost to a hypothetical person to charter the same or a comparable aircraft from an independent charterer for the same or a comparable flight. The value of the flight must be reasonably allocated among all the persons on board the aircraft, except those for whom the value of the flight is computed under the special valuation rule.

The employer may wish to value all personal flights with a special valuation rule. If the employer uses the special rule, it must be used to value all flights taken by employees in the same calendar year. One such valuation determines the value of the fringe benefit by multiplying the base aircraft valuation formula at the time of the flight by the appropriate aircraft multiple. A terminal charge is also added to this amount.

The special valuation formula treats "control employees" differently than "non-control" employees. A "control employee" includes employees whose annual compensation is at least \$50,000, and whose compensation equals or exceeds that paid to the one percent most highly paid employees of the employer. "Compensation" means the amount reported on a Form W-2 as income for the prior calendar year. In addition, brothers and sisters, spouse, and lineal descendants of a "control employee" are also considered "controlled employees". The formula increases the amount of the taxable fringe benefit if a person is classified as a "control employee".

An exception exists whereby the value of non-commercial flight

taken by an employee not flying for business purposes will not be included as a taxable fringe benefit. The exception, called the "seating capacity" rule, states that if at least 50% of the passenger seating on a flight is occupied by employees whose flight is primarily for the employer's business, and the value of the flight is an excludable fringe benefit, the flight is not a taxable fringe benefit for the employees who are not flying for business purposes. The "seating capacity" rule may be used for the following:

- 1) current employees;
- 2) individuals formerly employed with the employer who separated from service by reason of retirement or disability;
- 3) widows or widowers of persons who died while current employees of the employer, or after separating from service of the employer due to retirement or disability
- 4) the spouses and dependent children of any persons falling within the above categories.

It is important to note that flights provided to members of the Board of Directors are not eligible for the "seating capacity" rule.

The "seating capacity" rule states that 50% of the regular passenger seating must be used by employees on the flight for business purposes. The regular passenger seating capacity of an aircraft is defined as the maximum number of seats that have at any time been on the aircraft while owned or leased by the employer, except for seats that may not be legally used during takeoff and which are not actually used during takeoff. As a result, if the employer plane seats six people but only two people are on the flight, the flight automatically fails to meet the 50% test. In addition, the rule prohibits the Company pilot as being counted as an employee for the 50% test if his sole purpose is to fly the plane.