WINSTON & STRAWN LLP

CLIENT ALERT

Favorable Aircraft SIFL Calculations 2019 – Is Your Company Ready?

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The most successful, companies often have a corporate jet to transport executives for business purposes for efficiency and security reasons. Most permit guest travel on such trips and many also permit purely personal flights. Companies should consider acting now to support the executives' not paying more in tax later, by using long-blessed special tax rates rather than much higher market rates.

The IRS requires imputing income on the Form W-2 for executives, Form 1099 for directors, and as guaranteed payments for partners, for personal travel on aircraft provided by a company regardless of whether the aircraft is owned, leased, or chartered. The IRS permits the use of the very favorable Standard Industry Fare Level "SIFL" rates, which can be a small fraction of the full costs of the trip incurred by the employer company. (The SIFL rates are published twice per year and are comprised of a low cents-per-mile and terminal charge.) However, if a company does not use these favorable rates *on a timely basis*, it will be forced to use much higher rates for computing taxable income on an amended return.

Example:

- Executive travels for business on a company-provided aircraft. Occasionally, the executive travels for personal purposes and also brings a spouse and adult child on business trips. On the Executive's facts, the SIFL imputed income for the travel in 2018, is calculated to be $22,000 if reported timely on the 2018 Form W-2.
- If, in the example above, the amount is not reported timely on an *original* Form W-2, then the amount that will need to be reported will be $300,000 based on IRS general rules which require reference to comparable charter rates.

The IRS also has special favorable rules for *withholding* on fringe benefits, including for personal travel on employer-provided aircraft. Announcement 85-113 allows the income and Social Security taxes to be withheld as infrequently as once per year, rather than at the exact time the fringe benefit is provided*, e.g.*, when the flight is taken. Furthermore, the company can choose to calculate the imputed income on a fiscal year basis of November 1 to November 1, which makes administration easier and allows time to submit for reporting on the Form W-2 issued in January.

Use of the IRS SIFL rates is very favorable, but requires attention and expertise in judging which travel by the executive is personal and also how to apply special rules to calculate the mileage that is personal for flights with multiple legs, foreign travel, and travel for safety purposes.

Take Away: Companies should begin the process of quantifying the amount of imputed income for Form W-2 purposes now, for all fringe benefits, especially travel on aircraft, so as to *minimize* the amount included. This also saves on the employer's portion of required employment tax as well as being less of a tax burden to the executive.

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