Presenters

**Alan Burnett**
CenterPoint Aviation Law
Seattle, WA

**Scott O’Brien**
NBAA
Washington, DC

**Sharon Martin**
ACE Flight Operations
Philadelphia, PA
What is SIFL?

- Stuff I’ll Finish Later
- Southern Indoor Football League
- SIFL & OLLY

So….. SIFL is easy, right?

<table>
<thead>
<tr>
<th>MILEAGE RANGE</th>
<th>AMOUNT PER MILE</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-500 miles</td>
<td>$0.2654</td>
</tr>
<tr>
<td>501-1,500 miles</td>
<td>$0.2024</td>
</tr>
<tr>
<td>over 1,500 miles</td>
<td>$0.1946</td>
</tr>
<tr>
<td>Terminal Charge</td>
<td>$48.53</td>
</tr>
</tbody>
</table>
FL30 Perspective

• The FAA limits the ability of an employee to reimburse the company for non-business use of the company aircraft

• The unreimbursed cost of an employee’s non-business use of the company aircraft must be included as income for federal income tax purposes

• SIFL (Standard Industry Fare Level) is a formula accepted by the IRS as a method of valuing the flight(s)

• The IRS disallows certain deductions based on the non-business entertainment use that is not: a) imputed as income under SIFL or the charter approach, or b) reimbursed by the employee

• Many of the variables used in the formula are often collected by schedulers and dispatchers
FL30 Perspective

FAA

IRS

DOR
FAA Considerations
FAA Limits to Reimbursement for Non-Business Flights

• FAR 91.501(b)(5)
  – See FAA v. IRS Slide
  – May or may not be 7.5% Federal Excise Tax

• Time Sharing Agreements
  – Limited costs → Twice the cost of fuel plus incidentals as permitted by FAR 91.501(d)
  – 7.5% Federal Excise Tax

• Nichols Interpretation (Schwab Re-Interpretation)
  – Full cost reimbursement for pro rata cost of owning, operating and maintaining the aircraft may be allowed for flights by certain approved executives for “routine personal travel”
  – 7.5% Federal Excise Tax

• Other FAR 91.501 Options
IRS Considerations
What Is Non-Business Use?

• Non-Business use
  – Flight is not for the business of the company
  – Can include flights that are business for the pax (i.e. charitable board meeting), but not for the company’s business
  – Vacation, entertainment, recreation
  – Not a dry lease

• On any aircraft the employer provides
  – Chartered aircraft, fractional aircraft share, wholly-owned aircraft

• Employee includes:
  – Employees, partners, directors, independent contractors, certain former employees
  – Guest of employee (even if employee is not on board/recipient of flight)
What is “Entertainment Use”?

• Definition of entertainment
  – Activity generally considered to constitute entertainment, amusement or recreation

• Examples of entertainment activities
  – Country clubs, golf and athletic clubs, sporting events, hunting, fishing, vacation, sailing, sightseeing, parties

• Examples of non-entertainment activities
  – Commuting to/from work or between homes, attend director meetings (unrelated company), medical doctor visit, funeral
Three Buckets of Flights With No Reimbursement

Two Buckets Generate All of the Reporting

Business and Business Entertainment
- No SIFL
- Deductible

Entertainment
- Report SIFL
- Disallowed

Personal Non-Entertainment
- Report SIFL
- Deductible
Who Does This Affect?

Employee

- The value of unreimbursed non-business flights must be included as taxable income to the employee as a fringe benefit.

Company (assuming the company owns the aircraft for tax purposes)

- The IRS limits the company’s deductions (expenses) for the cost of non-business flights not imputed as income or reimbursed.
- The IRS limits the company’s deductions (depreciation) for the aggregate unreimbursed cost of non-business flights not imputed as income or reimbursed.
Non-Business Flights as a Fringe Benefit

• Since the IRS views non-business flights on the company aircraft as a taxable fringe benefit, employee pays payroll tax and income tax on the value of the flight
  - W-2
  - 1099

• One of two methods may be used to determine the value:
  - Fair Market Value (the charter rate)
  - Standard Industry Fare Level (SIFL)
Valuation - SIFL

• SIFL:
  – Designed to equate first class airfare
  – Calculated per person
  – Based on statute miles flown
    • 1 nautical mile = 1.15 statute miles
  – Employee status is a factor
    • Control employee vs. non-control employee
  – Aircraft weight is a factor
• SIFL amount is *imputed* to employee, NOT amount paid to company by traveler
Valuation - Fair Market Valuation

• Fair Market Value:
  – Charter rate used for the flight – one rate no matter how many people are on board the aircraft
  – Don’t fudge the numbers
  – Keep a record of the charter quote
  – Obtain a charter quote from a 3rd party charter operator local to where the flight originates
  – Usually (not always) more expensive for the employee
Focus on Non-Business Guests

- Guests will require additional SIFL imputation
- Guests receive same multiplier as employee
Non-Business Entertainment Use Deductions Disallowed For the Company

General Rule: The costs of operating non-business entertainment flights on behalf of “specified individuals” are not deductible to the extent the employee does not reimburse the company or take imputed income.

• “Specified Individual” is defined by SEC regs
  – Officer
  – Director, or
  – 10% or more owner
  – See NBAA Personal Use Handbook, page 21

• Different than “Control Employee”
  – Control Employee – 5% or more ownership
Calculating SIFL
Non-Business Use of Employer-Provided Aircraft

Member Resource

NBAO Releases New Resource on Reimbursement for Personal Flights
August 29, 2011

Last year, NBAO asked the Federal Aviation Administration (FAA) to reconsider a long-standing legal interpretation, known as the "Schwabe interpretation," regarding reimbursement for certain personal flights, and in December 2010, the agency issued a modified interpretation that has the effect of allowing some companies up to full reimbursement for such trips. NBAO's Tax Committee has created a new resource explaining the requirements and issues to be considered before reimbursement can be made, and provides frequently asked questions.

- Download NBAO Member Resource: "FAA Legal Interpretation Concerning Reimbursements for Certain Personal Flights" (PDF, 940 KB)
- View NBAO's Request for FAA Interpretation (copy of original letter dated March 2010)
- View FAA Interpretation (copy of original letter dated December 2010)

Other Resources

Occasionally a company airplane might be made available to employees for reasons not directly related to the business of the company. Businesses must be familiar with applicable rules, such as FAA, IRS and SEC regulations when conducting these flights.

Related Links

NBAO Personal Use of Business Aircraft Handbook
Explains the restrictions on payments for personal use, income tax requirements, deduction disallowances and SEC reporting

NBAO Personal Use (SIFL) Calculator
Uses Standard Industry Fare Level (SIFL) rates to calculate the value of a flight deemed taxable

American Jobs Creation Act of 2004
Information on IRS Notice 2005-45 and proposed regulations under IRC Section 274 that limit allowable deductions for personal entertainment flights

NBAO On-Demand Education
View video of presentations on IRS, SEC, and FAA perspectives on personal use from the NBAO Tax, Regulatory, and Risk Management Conference
Standard Industry Fare Level (SIFL)

• SIFL Formula

\[
SIFL = \left[ (\text{Mile } \$) \times (\text{Aircraft Multiplier}) + \text{Terminal Charge} \right] \times \# \text{ Pax}
\]

([For multi-leg trips]

(mileage 1 x $) + (mileage 2 x $) + (mileage 3 x $))
Calculating SIFL

Current SIFL Rates

- SIFL rates for the six-month period from July 1, 2013, to December 31, 2013, are:

<table>
<thead>
<tr>
<th>MILEAGE RANGE</th>
<th>AMOUNT PER MILE</th>
</tr>
</thead>
<tbody>
<tr>
<td>0–500 miles</td>
<td>$0.2654</td>
</tr>
<tr>
<td>501–1,500 miles</td>
<td>$0.2024</td>
</tr>
<tr>
<td>over 1,500 miles</td>
<td>$0.1946</td>
</tr>
<tr>
<td>Terminal Charge</td>
<td>$48.53</td>
</tr>
</tbody>
</table>
## Calculating SIFL

### Aircraft Multiples Chart

<table>
<thead>
<tr>
<th>MCTOW</th>
<th>Ctrl Employee</th>
<th>Non-Ctrl Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>6,000 lbs or less</td>
<td>62.5</td>
<td>15.6</td>
</tr>
<tr>
<td>6,001 – 10,000 lbs</td>
<td>125</td>
<td>23.4</td>
</tr>
<tr>
<td>10,001 – 25,000 lbs</td>
<td>300</td>
<td>31.3</td>
</tr>
<tr>
<td>25,001 lbs or more</td>
<td>400</td>
<td>31.3</td>
</tr>
</tbody>
</table>
Sample Calculation

- HPN → VNY
- 2,149 nautical miles
- 1 control employee
- Aircraft multiple: 400%
PERSONAL USE CALCULATOR

This Personal Use Calculator only applies to flights completed during the relevant time period noted below. Use and retain data from the Report of Personal Travelon Company Aircraft form to fill out this Web page. For information on how to apply IRS rules to this calculator, see the NBAA Personal Use of Employer Provided Aircraft Handbook.

Rates Apply Only to the Time Period: July 1 – December 31, 2013

Enter your name: 

Enter your destination: 

From: HPN
To: VNY

Date: Nov 12

Aircraft: N12345
Nautical Miles: 2,149
Statute Miles: 2,471.35

0-500 Miles (0.2654): $132.7
501-1500 Miles (0.2024): $202.4
1500+ Miles (0.1946): $189.02
Subtotal: $524.12

Aircraft Multiple (chart): 400
Subtotal: $2,096.48

Terminal Charge: $48.53
Subtotal: $2,145.01

# Passengers: 1
Total: $2,145.01

Submit Leg 1 Submit Leg 1 & Finish

© 2013 National Business Aviation Association, Inc.
Calculating SIFL

- “Flight” means each time the employee boards and deplanes
  - A round trip includes at least two flights.
  - If no employee is on board, no benefit received. (No charge for repositioning flights)

- Landings for fuel, weather, or emergencies are “intermediate stops”
  - “Ignore” these intermediate stops when calculating the employee’s flight distances
Calculating SIFL

Control vs. Non-control Employee

- Control employee – see NBAA PUHB, page 11
  - Most officers
  - Paid in the top 1% of the company
  - Owns 5% or more of company
  - Directors
  - Retired former control employees (see IRS regulations)

- Non-control employee
  - Everyone else

- Flights for control employees are valued at a higher valuation multiple than non-control employees
Other SIFL Considerations

• Mixing business with pleasure
  – One destination; two purposes for the employee
• What was the primary purpose of the passenger?
  – How much time was spent on business? On personal?
  – Who was on the trip (employee alone or with spouse, kids)?
  – Not up to S&D to decide purpose of the trip
    • Can help inform employees how these flights could be viewed
    • Provide trip form where employee characterizes purpose of the trip and is on the hook via their signature
Other SIFL Considerations

• Mixed use flights – primarily business
  – Multiple destinations; some for business, some for pleasure
  – If trip primarily for employer’s business – include in income value of total trip less business flights

• Mixed use flights – primarily personal
  – Multiple destinations; some for business, some for pleasure
  – If trip primarily personal – include in income value of personal flights that would have been taken if no business
Mixed Use- Primarily Business

- TEB→JAX→FXE→TEB
- Primary purpose is business meeting in JAX
  - TEB-JAX: 832
  - JAX-FXE: 311
  - FXE-TEB: 1070
  - Total: 2213 statute miles
- TEB→JAX→TEB
  - 1665 statute miles
- Detour Miles for FXE Stop
  - 2213-1665= 548 statute miles
- Only SIFL Non-Business Pax for the 548 miles
Mixed Use- Primarily Personal

- TEB→ORL→JAX→TEB
- Primary purpose is personal stop in ORL
- TEB→JAX→TEB
  - 1887 statute miles
- SIFL Non-Business pax for the 1887 miles
- Ignore the business stop in JAX
Documentation

• Initial collection of relevant data
  – What information is needed?
  – Who collects it?
  – In what format is the information documented and stored?

• Classification (business, personal business or entertainment) PER PASSENGER
  – Who makes classification decision?
  – Leg by leg

• Consistency
FL 10 Perspective

**FAA**

No reimbursement for non-business use except for:

- FAR 91.501
  - “Carriage of officials, employees, guests and property of a company on an airplane operated by that company, or the parent or subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating and maintaining the airplane…” FAR 91.501(b)(5)
  - Time Sharing Agreement - 2xfuel + certain incidental costs FAR 91.501(b)(6) FAR 91.501(c)(1), and (d) (1-10)
  - Other FAR 91.501 exceptions
- Nichols Opinion (Schwab Re-Interpretation)
  - List of “high-level employees” and officials” designated by the company’s board
  - “Routine” travel
  - Pro rata cost of owning, operating and maintaining the aircraft
  - Recordkeeping

**IRS**

If no reimbursement for non-business use:

- Treated as a fringe benefit
- Value taxed as income
- Value determined under SIFL formula or charter approach
- For non-business entertainment flights, the difference between the cost of the flight and SIFL or the charter rate causes the disallowance of depreciation and other deductions

If reimbursement for non-business use:

- Subject to FAA limitations
- For non-business entertainment flights, the difference between the cost of the flight and the reimbursement causes the disallowance of depreciation and other deductions
- 7.5% Federal Excise Tax
SIFL: Special Rules & Exceptions

Spousal Travel

• General rule: In most cases, spousal travel is non-business

• Requirements for spouse to be treated as a business flight:
  – Must be an employee of the employer
  – Must travel on bona fide business purpose
  – The travel expense must be otherwise deductible

• The mere expectation of the employer company that a spouse will attend a function requiring travel does not constitute employment
SIFL: Special Rules & Exceptions

• Age – it helps to be young!
  – Children under 2 years of age are not included in valuation
  – Be certain to document the age of the child in your paperwork
SIFL: Special Rules & Exceptions

• 50% Seating Capacity Rule:
  – If 50% of the seating capacity is filled with employees traveling on business when the employee or family member boards and deplanes, then no fringe benefit is imputed
  – Seating capacity: Max number of seats installed on the aircraft at any time on or prior to the date of the flight within 24 months
  – Seats not legal & not used for takeoff not counted
SIFL: Special Rules & Exceptions

• “Bona Fide Business-Oriented Security Concerns:”
  – Must have a study done
  – Must be part of a complete program
    • But may be limited to certain areas
  – Specific study for family members if they travel without employee
  – Use a 200% multiplier regardless of aircraft weight and control status of employee
  – For control employees in aircraft over 10,000 pounds, this is a significant savings
SIFL: Special Rules & Exceptions

Foreign travel

• Disallowance rule applies only to individuals – see NBAA Personal Use Handbook, page 12, 13
• Does not apply to employer company
• SIFL calculation for business trip greater than 7 days uses this methodology
Learn More about Entertainment Use

• *Beyond SIFL: Advanced Personal Use Considerations*
  – Today from 10:30am – 11:45am
For More Information:

• NBAA’s aviation taxes website:
  – http://www.NBAA.org/taxes
    • NBAA Personal Use Handbook
    • Current and historical SIFL Rates
    • Personal Use Calculator
• NBAA’s Ops Service Group
  – info@nbaa.org or 202.783.9250
• NBAA Tax Forums / Tax Conference
  http://www.NBAA.org/seminars

• Scott O’Brien – National Business Aviation Association
  1200 G Street NW Suite 1100
  Washington, DC 20005
  Telephone: (202) 783 – 9451
  Email: sobrien@nbaa.org

• Alan Burnett – CenterPoint Aviation Law PLLC
  2624 Eastlake Ave E
  Seattle, WA 98102
  Telephone: (206) 805 – 5700
  Email: alan@centerpointaviationlaw.com

• Sharon Martin - Flight Coordinator/FAA Dispatcher
  Northeast Philadelphia Airport
  1 ACE Way
  Philadelphia, PA 19114
  Telephone: (215) 602-2965
  Email: Sharon.Martin@acegroup.com