

BUSINESS AVIATION AND THE BOARDROOM



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Knowing The Difference: Distinguishing between business travel and commuting.

While simply commuting between home and office is not considered a business expense, there are circumstances where travel between a place of residence and work locations can be deemed deductible, observes Troy Rolf.

An issue that commonly arises when establishing policies governing use of a corporate aircraft is whether or not to allow executives to use it to travel between their residences and their work locations, and how to account for such aircraft use for income tax purposes. The issue becomes particularly complex when an executive has a primary or secondary residence in a part of the country other than the executive's principal place of business, or when the executive frequently travels to other cities for business purposes. This article discusses how to determine when such aircraft use is

deductible as a business expense, and when such use is considered personal use of the corporate aircraft.

IRS regulations provide that commuting expenses are generally non-deductible personal expenses rather than business expenses. However, as discussed in prior *Business Aviation and the Boardroom* editions, expenses incurred by an employer to provide air transportation to an employee for the employee's personal benefit are deductible (subject to the limitations imposed by IRC § 274 with respect to Entertainment Flights) if the employer imputes income to the employee for the value of the flight. This includes costs of employer provided that air transportation constitutes commuting.

WHEN TRAVEL IS NOT COMMUTING

Not all travel between an executive's residence and places where business is being conducted is commuting, however. Most travel to or from business locations other than an executive's primary place of business is not considered commuting, even when such travel originates or terminates at the executive's residence. In such cases, the flights are considered business travel, not personal, and no income should be imputed to the executive.

For income tax purposes, the word "home" refers not to a person's primary residence, but rather, (somewhat counter-intuitively) to the person's regular or principal place of business. Where there is a question as to which of two or more areas is a taxpayer's "home", all the facts and circumstances of the particular situation will be considered. In *Francis J. Markey v. Commissioner*, the 6th Circuit indicated that some of the more important factors to be used in determining which area is the taxpayer's "home" for tax purposes are:

- (1) The total time ordinarily spent in performing duties in each area;

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What the Boardroom needs to know about Business Aviation



- (2) The degree of the individual's business activity in each area; and
- (3) The relative significance of the financial return from each area.

Generally speaking, if an employee's residence (whether primary or secondary) is located in a city or general area other than the city or general area in which the employee's tax home is located (i.e., the city or general area in which the employee's regular or principal place of business is located), flights between the employee's residence and his or her regular or principal place of business constitute commuting (and therefore personal) travel, not business travel.

Conversely, travel between an employee's residence and a temporary work location (such as travel to attend a business meeting) will be considered business travel, not commuting, and therefore not personal.

Similarly, when an employee's work requires the employee to travel between two or more places of business, travel between the two places of business is generally considered business travel. This can be true even when the employee's residence is located in the same city or general area as the employee's secondary place of business, but

only if the employee travels directly between the principal place of business and the secondary place of business without intervening travel to/from the employee's primary residence, and there is a legitimate business purpose for the travel between the principal and secondary places of business other than tax avoidance.

In other words, one cannot maintain, and/or travel to or from a secondary place of business principally to convert commuting travel to business travel.

This article provides a very brief introduction to the issues related to when travel between a residence and a work location is considered personal commuting and when such travel is considered deductible business travel. The tax rules governing whether such travel is personal commuting or business are indeed complex.

Boards of directors should consult experienced aviation tax counsel for a more thorough explanation of the rules and the tax consequences of such use.

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