



Troy A. Rolf, a business aviation and tax attorney, manages the Minnesota office of GKG Law, P.C. Contact him via email at trolf@gkglaw.com.

Corporate Aviation: *What Tax Breaks for Billionaires?*

IRS treatment of business aircraft is similar to other corporate assets, notes attorney Troy A. Rolf.

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In recent years, numerous articles and op-ed pieces have appeared in newspapers and magazines decrying government subsidies in the form of tax breaks for wealthy owners of corporate jets.



From their tenor, the reader could get the impression that Congress enacted a whole slew of welfare programs intended to benefit corporate jet owners specifically and exclusively.

Not only are such articles misleading, they fail to mention that operating cost and depreciation deductions for corporate aircraft are subject to the same rules and regulations as any other business asset.

In order for any business to deduct the expenses of operating and maintaining any business asset, whether that asset is a factory, a computer system, a delivery truck or an aircraft, the Internal Revenue Code requires that such expenses must be ordinary, necessary and reasonable. This standard requires that the expense be "appropriate" and "helpful" in conducting the taxpayer's business; that it be a common and accepted practice; and that it be reasonable in amount.

The courts have recognized that it is common and accepted practice in some situations for executives to use a private aircraft for business transportation. Why? Because in business time is money, and use of a private aircraft often saves a great deal of time by substantially reducing travel times compared to airlines, which often do not go where executives need to go or when they need to go. Tax courts accept that reducing travel time allows busy executives to devote more time to conducting business and managing their organization, and, in theory, increase the profitability of their businesses.

Under the Internal Revenue Code rules, if the aircraft is not used for business purposes and does not help to make the business more profitable, the expenses of operating and maintaining the aircraft are not deductible.

Note: Businesses that claim deductions related to the cost of operating and

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maintaining an aircraft frequently receive far more audit scrutiny that otherwise might be the case and must satisfy the IRS that the expenses are in fact ordinary, necessary and reasonable. A company must be able to document its business use of a corporate aircraft.

DEPRECIATION DEDUCTIONS

Many articles and op-ed pieces would have their readers believe there are special depreciation rules granting tax breaks to aircraft owners. Once again, the tax rules that apply to corporate aircraft depreciation are the same tax rules that apply to other types of business assets; they are not loopholes designed for corporate aircraft owners. The Internal Revenue Code allows accelerated depreciation deductions for most capital assets used in business, so when an aircraft is used for business purposes, it is hardly a loophole for the aircraft to be subject to the same depreciation rules as other types of capital assets.

Much has also been written about so-called "bonus" depreciation deductions for aircraft, which, until recently, allowed businesses that purchased new aircraft (or many other assets) to expense all or part of the price of the aircraft in the year it was purchased.

Once more, many articles and op-ed pieces would have their readers believe that bonus depreciation was a special perk just for rich executives who bought aircraft. In reality, however, bonus depreciation, like all depreciation rules, apply generally to many types of capital assets used by businesses, not just aircraft. For example, a company car is subject to bonus depreciation. And despite the unfortunately misleading use of the term "bonus", the rules do not provide businesses any additional

depreciation. Rather, the rules simply allowed depreciation deductions attributable to a particular capital asset to be claimed in the year the asset was placed in service – the total amount of depreciation deductions for any such asset over time remains the same.

Furthermore, the articles and op-ed pieces decrying bonus depreciation for corporate aircraft often fail to mention the purpose for which bonus depreciation was enacted by Congress in the first place, which was to stimulate the economy by encouraging manufacturing following 9/11 initially, and later the economic crash precipitated by the housing bubble's collapse. In the USA, aircraft manufacturing is a very large industry that employs tens of thousands, if not hundreds of thousands of workers.

In recent years, it has become increasingly popular and politically correct to bash corporate aviation and to portray corporate aircraft as nothing more than playthings for the rich. In reality, corporate aviation is far more than that. Business aircraft are business tools that allow a corporation to operate more efficiently and be more profitable.

The Internal Revenue Code currently treats corporate jets as the tools that they are. Proposals to change the rules to eliminate operating expense and depreciation deductions for corporate aircraft when such aircraft are used for legitimate business purposes may play well in the court of popular opinion and earn cheap political points for politicians, but actually changing the rules could cause considerable harm to the national economy.

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