

## **Taking Tax Deductions for Aircraft Operations**

By John Alan Cohan, Attorney at Law

A recent Tax Court case affirmed deducting the aircraft costs claimed by E.W. Richardson of Albuquerque, New Mexico, used in connection with transporting employees to sites where they were to provide management services.

If you are audited by the I.R.S., your business deductions for private aircraft will be scrutinized. The I.R.S. Restructuring Act of 1998 shifted the “burden of proof” away from the taxpayer, which means that the I.R.S. has the burden of producing evidence if they want to show that your aircraft isn’t primarily associated with profit-making purposes. If you are audited by the I.R.S., it’s crucial to be armed with documentary evidence, including a tax opinion from a lawyer, showing that the aircraft is maintained primarily in connection with your trade or business, and that it meets other tax criteria.

For instance, often there are both personal and business motives in maintaining an aircraft. If so, it’s important to be able to show that the principal use of the craft is business and that there’s a proper allocation of personal vs. business usage.

Tax Court cases typically involve a dispute as to whether the aircraft is an “ordinary and necessary” expense in the taxpayer’s business. Courts have interpreted this to mean that it should be “helpful” or “normal” or “common” to use a private aircraft in your trade or business.

The tax laws also require that the expense be reasonable in amount in view of the facts and circumstances of your particular case. This was the issue in a recent Tax Court case which disallowed costs associated with operating a Lear jet. The taxpayer, Stanley Kurzet of Orange County, California, a successful inventor and businessman, used his plane partly for pleasure and partly for flying to his timber business in Oregon. The Tax Court held this timber activity was a business, not a hobby, but that use of the private jet to go there was extravagant under the circumstances. The Court said that flying by commercial air carrier is an ordinary and common inconvenience--“minimal both for individuals and for businessmen.” Even if the aircraft is used predominately for business purposes, the I.R.S. will still examine whether commercial flights are available for the routes needed, and analyze whether there is significant time and cost savings produced by use of the private aircraft.

Because of the large amount of costs involved, it’s advisable to have an attorney prepare what I call a Tax Opinion letter. My clients, who are in all 50 states, have found this to be an effective strategy in documenting and justifying deductions for aircraft expenses. First, it shows that you consulted an expert as to the tax aspects of aircraft ownership, and, second, it’s a practical tool to tighten any loose areas of compliance with tax regulations involving business deductions for private aircraft.

A Tax Opinion involves interviewing you about your business activity, and determining how a private aircraft is appropriate and helpful for your business. I also examine

whether the expenses meet the I.R.S. “reasonableness” standard, and whether the costs correlate to the business objectives to be accomplished. It’s important to have a set of facts that show that there’s a logical linkage between use of the aircraft and the generation of business income.

In the Richardson case the taxpayer was able to show that sometimes his employees had to take off on short notice or travel on routes not readily accommodated by commercial aircraft. The taxpayer showed that using a private aircraft saved other travel expenses such as room and board, because managers could visit multiple locations in one day, while use of commercial aircraft would require overnight lodgings and food for his employees. The Court was impressed with evidence that the taxpayer had sought expert advice and that he showed concern for the need to keep proper documentation prepared by his tax attorney.