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Increase in Tax Audits of Use of Private Aircraft, a/k/a “Corporate Jets”

Tax Talks on **October 28, 2024**

The IRS has announced a new audit campaign targeted at the use of private aircraft, a/k/a “corporate jets”. This has been an intensifying area of focus by the IRS over the last few years as a result of recently-increased tax benefits for private aircraft. Clients who use airplanes for business and have taken advantage of these tax benefits should be prepared for additional scrutiny of their tax returns.

Corporate jets had often been the focus of audits and reviews by the IRS in earlier years, due to some longstanding tax rules that applied to them—including complicated rules for determining which portion of the use of a corporate jet for an executive was personal versus business (with the personal portion being treated and taxed as wages), rules limiting depreciation for luxury travel (which includes private jets and some automobiles) with excess personal use, and specialized excise taxes. The Tax Cuts and Jobs Act created a new and potentially very significant tax benefit associated with corporate jets: the potential to essentially deduct the entire upfront cost of the plane, for planes put into service between 2018 and 2022—if certain business use tests were met.

Perhaps with a skeptical eye on these new-and-improved tax benefits, the IRS announced the audit campaign of private aircraft, with a focus on those owned by business corporations and “complex partnerships.” Items for examination include all of the issues flagged above (such as the deductibility of flight costs as business expenses and the imputation of income to passengers for flights that are for personal use) but the apparent focus is on the accelerated depreciation.

Since the audit campaign announcement, the training materials for the auditors had been obtained (through a Freedom of Information Act request) and subjects of the audit have been revealing their experiences. It is apparent that the IRS has significantly improved their sophistication on corporate jet audits, and the training materials establish that the IRS can and will request detailed documentation to substantiate the business use position. These extend beyond flight logs and documentation related to the plane to the itineraries of the passengers when on the ground, receipts for their activities between flights, etc. While most organizations have compliance and document retention policies in place, recent IRS actions underscore the importance of having these and of (vis a vis tax reporting) erring on the side of recordkeeping. Those organizations which have taken the accelerated depreciation on the purchase price of aircraft are probably the first set of taxpayers who will be vetted/considered for audit.

The initiative and issues here are essentially of equal relevance to high-net-worth individuals who take business use positions in respect of their private aircraft. Again, the likely focus will be on those who have taken the accelerated depreciation (which also applies to planes placed in service in 2023 through 2026 at lower rates), but all parties with corporate jets should take into account the possibility of extensive and detailed audits, and going forward should ensure that their recordkeeping and document retention policies are appropriately expansive to catch all the information that the IRS is currently seeking. While the amounts at issue may be smaller, users of private air services like NetJets may also want to engage in similar recordkeeping, to substantiate the business purposes of their travel.

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