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P R E S I D E N T ' S L E T T E R



Greetings!

This is my first letter to you as the new 2003-2004 President of NAFA. I would like to thank John Puffer for his leadership and service as the 2002-2003 President of NAFA. We are fortunate that John will continue to serve on the NAFA Board until 2005. I want to welcome David Davis of 1st Source Bank, Richard Crofton from CIT Group and Joe Dini from Merrill Lynch Capital as new members of the Board of Directors. Both David and Joe have served as directors in the past. Joe also will serve as Vice President this year. Additionally, I want to also thank our departing members of the Board: Lou Seno from Boeing Capital, Rudy Tenore from Fleet Capital, John Newton from Cessna Finance Corporation and Richard Milling from Gulfstream Financial Services. We truly appreciate their leadership contributions and their years of service on the NAFA Board of Directors.

During our NAFA annual conference last April in Savannah, we discussed the continuing slow market in aircraft sales, the high supply of pre owned aircraft listed for sale, the number of cancelled orders and “white tails” with most manufactures and the significant drop in market values of almost all models of aircraft. As this year has progressed, most members of NAFA have seen increased demand for aircraft and a stabilizing of market values. The discounting of new and pre owned prices, the continuing low interest rates and tax incentives have spurred sales activity. The “talk” at the recent NBAA Convention in Orlando reflected a growing level of optimism in the industry as the stock market has show some strength, and corporate profits have exceeded expectations. Cautious optimism, supported by increased activity from buyers, is shared by many.

As NAFA members, we are viewed as leaders in the Aviation industry. We are in position to build a strong foundation to support aircraft sales as the economy recovers. The extensive knowledge and experience of NAFA members provides sound underwriting and good judgment for aircraft financing transactions. Our proactive and thoughtful approach to structuring and documenting aircraft loans and leases will contribute to a more stable and profitable growth of our business. NAFA represents a respected standard of expertise for aircraft finance that will provide benefits to a growing aviation industry, and all our clients.

Please mark your calendars for our 2004 NAFA conference at the Silverado Resort in Napa Valley, CA. Encourage your colleagues to attend and invite the aviation industry professionals that you work with in your business. The details of the program will be available in our March 2004 newsletter.

Thank you for your continued support of NAFA. Please contact me, or any member of the Board with any questions or ideas about NAFA. This is your association.

Thanks,
Jim Dickerson

AUTHOR SOUGHT

In our last edition of *The NAFA News* (February 2003), we were pleased to publish a fine article entitled “*Insurance Products for the Aircraft Financial Community*”. Regrettably, due to publication error, we listed our General Counsel, David Warner, as author. David has informed us that he did not write that article – but we have not been able to locate the original submission with the author’s identity. We’d like to give the author the thanks and credit he or she is due – if you are that person, or know who he or she is – please step forward! We apologize for any inconvenience this may have caused.



EVALUATING BUSINESS AVIATION OPTIONS

By **William J. Quinn, Jr., CEO**
Aviation Management Systems, Inc.

In today's aviation marketplace, an abundance of travel options exist for anyone interested in utilizing business aviation for their travel requirements. Whether your needs suggest whole or joint aircraft ownership, fractional ownership, charter, or a combination of these options, the availability and number of business transportation alternatives to fit just about any circumstance or budget are greater today than ever before. Because of this, the process of choosing the most appropriate option(s) can be a little challenging, certainly time consuming, and depending upon the complexity of your travel needs, highly complicated and confusing. There are no standard templates or protocols one can apply to provide the right questions to ask or the answers that will be needed. The number of influential factors that must be taken into consideration will vary based on the overall scope and complexity of one's travel requirements. However, there are some fundamental guidelines that can be applied to this procedure that can help simplify the process.

THE INITIAL ANALYSIS: THE MOST IMPORTANT CONSIDERATIONS

The first step in the option evaluation process, is to make certain you properly identify and define your travel needs. It is critical to the success of this process that you understand what your needs are. Once this is accomplished, you can go about completing the initial process of looking at the options available to identify whether or not one or more of the available options will adequately address your travel requirements.

In order to properly identify your needs, it is important to start by reviewing your basic travel patterns. The first step is to conduct a transportation analysis, which is a fundamental tool in defining your travel priorities. This is also commonly referred to as a straightforward "needs analysis." This type of analysis should, at a minimum, contain specific and quantifiable answers to the following questions:

- What are your most common destinations?
- What is your frequency of travel?
- How many people typically travel with you?
- What are the specific or personal needs for the people that travel?
- What do the people that travel know or understand about business aviation?
- What is acceptable and what is not?
- What are your financial constraints or limitations?

It is important to identify the benefits and take into consideration any owner-specific needs or requirements. These requirements are often referred to as "discrete priorities." For example, if the basic travel patterns or requirements of the majority of the travelers require an aircraft to have a range of at least 2,000 miles, but the CEO insists on having a trans-continental capability, the range consideration could become a key driver or "discrete priority" in determining how to fulfill your overall needs.

Once you have identified the basic travel patterns, it is time to begin the process of following up on any discrete priorities. The next step is to negotiate a consensus from all involved participants regarding the impact these discrete priorities might have in the overall selection process.

Staying focused on the primary needs or reasons for travel is very important. If the decision to consider business aviation travel is a means of increasing efficiency, maintain a focus on maximizing that benefit. On the other hand, if it is simply a matter of convenience, you may choose to use discretion in your ultimate solution. More often than not, business aviation users are looking for maximum efficiency. Factors such as time management, the time value of managers, the ability to exact more from key managers or employees by maximizing their productivity, while maintaining reasonable lifestyles, and from a capital perspective, the time value of money, are all underlying value considerations when it comes to making the decision to invest in business aviation. Other equally important considerations that are typically factored into the analysis are security, safety, and flexibility.

An important component in the process of conducting an effective and meaningful travel analysis is an understanding that all forms of travel, including business aviation, have certain limitations. Understanding these limitations will assist in properly defining the usefulness and boundaries of acceptable travel habits. Can business travel be planned around aircraft availability? The number one priority can also be the number one limitation! It is important to consider that in many cases, selecting one option may not be the ideal solution for addressing the full scope of your travel needs. The Executive Vice-President of a company may not find it acceptable or efficient to plan travel around the CEO's business or personal travel plans. Consequently, you may need to plan on alternative considerations.

Range limitations are but one of a number of important factors in conducting an effective and meaningful travel analysis. Are non-stop flights always a critical requirement? The furthestmost destination is the limiting range factor, and the user may end up paying significantly more for the convenience of an aircraft with a non-stop capability. Additional limitations may be imposed by a requirement to align oneself with a specific service provider or aircraft manufacturer due to prior experiences.

Defining the travel priorities through a process of careful and thoughtful analysis helps establish the aircraft(s) or service(s) best suited to the user's specified needs. Once the specific aircraft(s) or type of aircraft has been identified, the next step is to choose the optimal aviation option. While there are subtle variations on the following options, the basic choices are: whole aircraft ownership, joint aircraft ownership, fractional ownership, and block or ad-hoc charter services.

FULL AND JOINT OWNERSHIP: THE MOST COST INTENSIVE OPTIONS ALSO OFFER MORE BENEFITS

Whole aircraft ownership has a variety of benefits, including interest in the collateral value, full control of the operating and budgeting aspects, and absolute management of the aircraft as an asset. The risk components to this option include the capital costs associated with acquiring the aircraft, the total operating costs, the general liabilities, and the required investment of resources to properly manage the asset. As is true with most things, the higher rewards are offset with greater risks, and the risk profile for whole aircraft ownership can certainly sway potential buyers or users to other more palatable options.

In many respects, the various aspects of joint aircraft ownership resemble those of whole aircraft ownership. However, the fundamental premise in this option is that the joint owners share the financial responsibilities associated with the cost of acquiring the aircraft, the fixed operating expenses, the management of the aircraft, and the attendant risk and liabilities that come with operational control. While certain joint ownership scenarios can offer subtle differences in management responsibilities, the underlying concepts of both joint and whole aircraft ownership require that the owners take on full responsibility for managing the operation of the aircraft. Operational management of the aircraft can be accomplished by either establishing an internal flight department or by retaining the services of a management company.

A corporate flight department is fairly simple to structure, yet complex in operation. In general, it consists of an Aviation Manager or Director of Aviation who is responsible for the design and oversight of the entire operation, flight crews who operate the aircraft, internal or external maintenance support, and any leased or owned facilities for storing and maintaining the aircraft.

The benefits of an internal flight department are complete management, operational and cost control, with a potentially increased margin of safety as a result of that control. The drawbacks include increased demand on non-aviation related management personnel, company executives, or in the case of personally owned aircraft, certain individual resources. It is important to consider that aircraft and



their associated flight departments can consume large quantities of sometimes scarce resources, particularly in small companies, discrete organizations, or privately run flight departments.

For some aircraft owners, outsourcing the operational management of the aircraft makes more fiscal and management sense. Some outsourcing advantages include increased transportation flexibility and cost savings, the ability to have alternative transportation provided if a company's or individual's aircraft is unavailable, and decreased demand on the owner's internal resources. From a management perspective, outsourcing to an aviation management company can be beneficial, but it does, arguably, cost more (anywhere from 5% to as much as 20% over internal management). In addition, certain risk factors increase with less control over the management and operation of the aircraft. However, this can be addressed, and in many cases minimized, with adequate due diligence in the selection of an appropriate management company.

Another option to consider is outsourcing the management and operational control of the aircraft by utilizing the services of a charter/management company. There are two very definable benefits that can be realized from this option: the addition of charter revenue as a means to offset certain costs, and the ultimate shifting of the "operational control" responsibility to the charter or management company, which can serve to reduce the owner's general liability and risk. However, care should be taken to insure the language of the management agreement is crafted in such a manner as to reflect the shift in the responsibility for operational control. There are, of course, some downsides to this option. The aircraft is generally utilized more aggressively (more annual hours and landing/cycles per year), which could serve to increase the operating expenses and potentially reduce the aircraft's market value in a shorter time frame. This option needs to be considered very carefully, and it is imperative the owner conduct a very thorough due diligence process on the proposed charter/management company.

FRACTIONAL OWNERSHIP: AN EXTREMELY VALUABLE AND VERSITALE OPTION

Fractional ownership is one of the fastest growing portions of the business aviation industry. With more than 750 fractional aircraft currently in service supporting the needs of approximately 6,000 owners, this valuable tool offers some very unique benefits. Perhaps the most significant benefit of fractional ownership is a lower capital cost of ownership when compared to either whole or joint aircraft ownership.

A fractional buyer essentially purchases an undivided interest in a fractional aircraft. In addition, the owner pays a specified monthly management fee, which basically equates to a fraction of the fixed annual operating expenses. The owner additionally pays an hourly-occupied charge that equates to an amount equal to the direct operating cost of the aircraft specified by the fractional provider or manager.

The perceived benefit of the fractional pricing structure (monthly management fee and the hourly occupied charge) is that the fractional owner is not required to commit the necessary upfront capital to support certain fixed operating expenses associated with whole or joint aircraft ownership. In addition, the implied buying power of a fractional manager suggests that a large fleet of fractional aircraft can achieve lower economies of scale, which should keep the incremental costs down in comparison to a single aircraft operator or even a smaller flight department. From a financial perspective, the risks involved with fractional ownership are generally lower, although this can depend on the specific fractional provider or manager.

Many of the benefits associated with fractional ownership are similar to full aircraft ownership, but with certain subtle differences. First, the owner controls the collateral, but only in the sense that it is an undivided interest. Second, the owner has "operational control" of the aircraft, which is limited to the period of time the owner is flying on either a program aircraft, or the actual aircraft he owns a share in, which is a very rare occurrence. Finally, once the program documents have been signed, the budget is essentially fixed. With exception of the agreed upon escalators, the owner knows what the cost will be for any given level of flight activity.

The negative aspects of fractional ownership are fairly straightforward. In most cases you will not know who the crew will be; in some instances you may not know what type of aircraft you will be flying on; and depending on the fractional provider, the ultimate residual value of the interest you acquire will most likely be less than you anticipate.

There are also other mezzanine levels within the realm of fractional ownership characterized as Jet Card programs (ie. Marquis Jets, Delta Air Elite, Centient), that allow lesser levels of participation than traditional fractional programs such as the ability to acquire 25-hour blocks of time as opposed to a minimum purchase of 50 hours.

Joint and fractional ownership share a number of similarities: lower capital costs, lower operating costs, potentially less management workload, and potentially less risk. Some of the common threads among whole aircraft ownership, joint ownership, and fractional ownership include varying degrees of control, generally consistent or identifiable risk factors, varying requirements for management oversight, and ongoing demands on cash flow.

CHARTER: THE LEAST EXPENSIVE OPTION

The charter option continues to stand out as the least expensive of all the available business aviation options. It remains an excellent entry-level business aviation tool. Whole aircraft owners, fractional providers, and even fractional owners also utilize charter for supplemental lift. When a corporate, fractional, or personal aircraft is unavailable due to maintenance or scheduling conflicts, charter becomes the next best and most accessible option for either replacement or supplemental lift.

The charter option offers a wide range of flexibility, especially with respect to budgeting. When utilizing the services of a professionally managed charter company, there are, in most cases, lower risk factors than other business aviation options. There are no fixed costs involved with charter, as it is essentially a "pay as you go" option. Hence, the user has no commitments unless there is a "block charter" arrangement. Block charter is a simple contractual charter option wherein the user buys a "block" of charter time (hours) to utilize the charter company's services during a term specified by the governing contract or agreement.

The disadvantages of charter are fairly straightforward. The most common and easily identifiable issues generally revolve around operational considerations and customer service. The greatest challenge that charter companies face is maintaining a consistent level of service. Problems typically revolve around a lack of reliability in the services offered by the charter company. The issues that charter users experience typically manifest themselves around scheduling problems; delays, and cancellations, which are generally the result of poor scheduling of either crews or maintenance; poor onboard service; and poorly maintained aircraft and equipment. While these issues can certainly be addressed by increased oversight or auditing, it is not always easy for a user to overcome the stigma that results from an exposure to a less than professional charter company.

The other aspects of charter that are considered by some as a disadvantage are the fact that you can never be assured what aircraft you will be flying in or who the crew will be. Last, but certainly not least, the monies spent on charter do not build any equity, meaning that any money spent on this option is essentially gone forever. If you can overcome these issues and control is not important to you, charter is an excellent option to consider.

CLEARLY IDENTIFY YOUR COSTS

In general, the costs of each business aviation option are typically defined and stipulated in the appropriate agreements. For any form of aircraft ownership, the purchase and sale agreement, whether or not it is whole, joint, or fractional aircraft purchase, will typically address the major capital considerations. Fractional ownership is somewhat unique in that the scope of the operative agreements, which includes the purchase and sale agreement, also addresses the operating capital requirements. In the fractional world, it is important to make certain that you understand what you are obligating yourself to before signing any financial documents, purchase agreements, interchange agreements, or management agreements. Charter agreements are generally straightforward because they are typically fee-for-service contracts. However, even with charter contracts, it is important to make certain the language of the agreement outlines your obligations and defines all the costs you will be incurring.

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LEGAL CORNER

By David D. Warner, Esq.

NAFA Board Member

General Counsel, Jaffe, Raitt, Heuer & Weiss

The Holidays are upon us, and another year is coming to a close. Time to pause and take stock of what we've seen this year, and where we're going next year.

In reflecting on what *The NAFA News* has brought you this year, I note that we've been privileged to publish many superb articles, and we thank the many talented and dedicated aviation professionals who wrote those. Our articles have covered a wide range of topics of interest. One recurring theme in several of the legal-related articles was legal compliance from the owner/operator's perspective – ranging from the ever-popular “flight department company” dilemma to sophisticated tax structures for optimizing the tax benefits involved in ownership of an aircraft.

These articles don't directly cover the “finance” issues we all work with every day. But they do help us be more aware of the issues our customers must face and resolve, in order to keep on flying and keep on making the monthly loan payments. Sometimes recognizing the benefits of a key tax opportunity will be the difference between a deal that dies and one that closes – and gets funded. Of course, many of our customers either are experts in this arena or have the benefit of advisers who are, in which case being a knowledgeable lender gives you an edge on the competition. But there are many customers who can significantly benefit from a few friendly suggestions. There are many things we can do to help our customers, and it's that level of service that our membership strives to offer our customers.

This knowledge also helps us avoid costly problems. Remember – if our customer is not complying with the FARs, any sanctions he gets will directly affect his ability to comply with his financing terms. Worst case, non-compliance may void insurance at precisely the time you need it the most, or possibly result in government seizure abroad. We've always been aware of our customers' sales and use tax issues, and many of our members became acquainted this year with the problems that result from a borrower who doesn't pay property taxes. One of our members reports that New Jersey has recently become even more aggressive in collecting sales/use taxes – to the point of seizing aircraft. Many state and local tax regimes let the tax collector go straight to the head of the line, priming out our first secured lender status. Horror stories abound. All of us put the burden of legal and tax compliance on the customer – as it should be. But when our customer gets burned, we feel a lot of the heat as well, and sometimes the best way to avoid the heat is simply to keep the matches and the gasoline separated.

EVALUATING BUSINESS AVIATION OPTIONS

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BRINGING EVERYTHING TOGETHER

The major cost categories for any form of ownership are as follows: capital considerations, fixed and direct operating requirements, cost of money, taxes, and other fees that will vary based on your needs, your geographic area of operation, and the size of your check book. The major drivers of these cost categories are: the time value of money, the cost of services, both direct and fixed aircraft related expenses, transaction fees, and any financial covenants or restrictions associated with financing the purchase of an aircraft or fractional interest.

When choosing a business aviation option(s) that best fits your specified needs, rate each option in relation to the defined needs, capital considerations, cash flow, and operational needs or limitations. The most capital-intensive options are whole or joint aircraft ownership, followed in order by fractional ownership, and then charter. From a pure cash flow perspective, charter is the most cost-effective option, followed by fractional ownership, and then full or joint aircraft ownership. From an operational or risk management perspective charter can, arguably, be the most palatable, followed by fractional ownership, and then full or joint aircraft ownership.

The real question that we should ask ourselves is, “What do we do with this knowledge?” What can we – and our already over-burdened diligence and loan administration people – do to help our customers avoid these pitfalls? A thorough review of our practices and procedures is important. Do we verify a customer's payment or exemption from sales tax? How about *use tax compliance* in the home state, where your customer takes delivery in a no-tax “fly away” state? We all routinely check for the issuance of a satisfactory insurance policy – do we also check that our customer hasn't set up a FAR-violative flight department subsidiary? Recurrent checks for ongoing compliance by customers with tax requirements – not just payments on the aircraft alone, but of taxes generally – and generally structural compliance with FARs should be part of our administration program. An ounce of prevention...

And speaking of non-finance legal news – the FAA finalized and issued the long-anticipated new fractional rules – “Subpart K” to Part 91 – in September 2003. Among other things, Subpart K mainly establishes regulatory safety standards for operations under fractional ownership programs, including management operations, maintenance, training, crewmember flight and duty requirements and others. Generally speaking, the rule now requires fractional management companies to operate according to Part 135 standards. A full description of Subpart K is well beyond the scope of this article, and for those who are interested the NBAA is presenting a seminar series in numerous locations this winter and spring. I'm sure other educational programs will be offered as well. The key thing for our members is that if a customer falls into this Rule, their operations will be significantly different than under pure Part 91. Because of the way “fractional ownership programs” is defined, there may be many instances where what is intended as a garden-variety aircraft-sharing arrangement among friends may be deemed to be a “fractional ownership program” and thereby fall under Subpart K. So, at a minimum, we all need to be aware of whether our customer is unintentionally setting up a joint ownership or use structure that will inadvertently put him into the reach of this Rule – another item for the loan workup diligence checklist! →

Best wishes for a happy Holiday season, and for a healthy, prosperous new year!

Once a decision has been made to pursue a business aviation option for your transportation requirements, it is prudent to consider asking the following questions:

- What are you interested in spending from a capital and operating perspective?
- What financial and liability risks are you willing to accept?
- What level of management responsibility are you prepared to take on?
- What are the company's or individual's long term goals and objectives?
- How will business aviation serve these goals and objectives?

It is important that corporate management ensures the effective operational management of this valuable service. Each and every aspect of a company's use of business aviation should be defined and agreed upon by senior management in order to properly optimize the benefits available with this valuable tool.

Once you have completed the analysis and evaluated the available transportation options, you will have a good understanding of the owner's or company's needs and limitations. Make certain you explore all of the options with an open mind before selecting the most appropriate option or combination of options. Lastly, everything in life is subject to change, so make certain that part of your analysis takes into consideration an exit strategy and what the implications of that strategy would be from both a financial and a risk perspective. →



CORPORATE AIRCRAFT USED 95% FOR PERSONAL USE HELD FULLY DEDUCTIBLE

By Louis M. Meiners, Jr., Esq. CPA
President, Advocate Aircraft Taxation Company

The IRS has announced in Chief Counsel's Advice 200344008 that a company that operated an aircraft for the business purpose of compensating employees was allowed full deductions for all aircraft costs, including depreciation, as ordinary and necessary business expenses; even though 95 percent of the use of the aircraft was for employees' personal use.

FACTS OF THE RULING

The facts as outlined in the Chief Counsel's Advice are as follows: "Taxpayers is a Subchapter S Corporation primarily engaged in a non-aviation activity. Taxpayer has multiple shareholders who are all members of a single family. Taxpayer owns fractional interest in two jet aircraft. Taxpayer presented flight logs that documented business use of the aircraft at approximately five percent with the remaining 95 percent being personal use¹ by the shareholders and two non-family employees."

"In the tax year...taxpayer incurred operating expenses on the aircraft...and depreciation...The total of these sums constituted the total expenses (and the deductions) for maintaining the aircraft. The deduction for these expenses flowed through the S Corporation to the shareholders on their...individual tax returns."

"For the tax year...taxpayer properly determined the SIFL value of each personal use flight under Treasury Regulation Section 1.61-21 and reported that value in compensation and the wages of the appropriate shareholder or employee. ...More than three-quarters of the SIFL value was attributable to the shareholders, and the remainder was attributable to the employees. The shareholders' income for personal use of the aircraft was offset by the aircraft expenses flowing through the S Corporation. **Because the deductible expenses were more than 10 times the SIFL value of income included by the shareholders and employees, the shareholders claimed a very significant net deduction for the expenses of the personal use of the S Corporation's aircraft, much of which was attributable to use by them or other family members.**"

The opinion then went on to analyze Section 274 which limits the deductibility of certain fringe benefits to employees. However, Chief Counsel recognized that *Sutherland Lumber – Southwest, Inc. v. Commissioner* 114T.C. 197 (2000), aff'd 255 F. 3d 495, acq., held that Section 274 did not disallow the deductions in *Sutherland* because the Tax Court concluded that when an employer includes in the employee's income the value of the vacation flight as determined under the fringe benefit rules of Treasury Section 1.61-21(g), the employer satisfies the requirements of the exception to the deduction disallowance. The opinion held; "The Court reasoned that Congress understood how the SIFL valuation of recipient's income could differ from the provider's deductible cost of providing the benefit to the recipient, but that Congress chose to permit the "mismatch". Chief Counsel found that the taxpayer properly included the SIFL rates and income just as the taxpayer in *Sutherland* did. The case at issue according to Chief Counsel is identical to *Sutherland* except that in this case an S Corporation provides aircraft use to both employees and shareholders.

PLANNING OPPORTUNITIES EMINATING FROM THIS RULING

Although this Chief Counsel's advice should not be cited as precedent, it does provide an opportunity to review how the Service perceives both the taxation of the fringe benefit and the corresponding deduction to the

employer. We believe the following items of note are important in analyzing an aircraft-structuring transaction:

1. The Chief Counsel's opinion did not concern itself with the fact that substantially all of the use was for personal use of employees and shareholders. In fact, the opinion states that the facts were identical to *Sutherland* even though in that case personal use was not 95 percent.
2. The opinion assumes that the expenses are ordinary and necessary business expenses and reasonable in amount, based on the premise that the wages paid to the employee constituted deductible expenses. To the extent that wages would have constituted excess compensation for the value of the services rendered, a different result would have likely been reached.
3. An aircraft is listed property and as such must be used more than 25% of the time for business use other than compensatory use, or be subject to a slower method of depreciation. This slower method would also disallow the aircraft's eligibility for bonus depreciation.
4. Although the deductibility limitations are exempted from the disallowance under Section 274(a), they are nonetheless subject to contemporaneous record keeping requirements. Taxpayers should be very cautious in maintaining the records at a level sufficient to qualify for deductibility under this Section.
5. There are various other limitations such as passive activity, at risk rules, basis limitations, or trade or business requirement, which may also affect the deductibility of the expenses by the Corporation or its shareholders.

AN EXPANDED OPPORTUNITY FOR BUSINESS OWNERS TO EXPENSE THEIR AIRCRAFT

We believe this new ruling provides significant opportunities for those with substantial personal use of their aircraft to have it structured as compensation deductible to their businesses. With proper planning, the savings can be significant. Taxpayers are cautioned that the Service has announced on November 13, 2003, that it will be focusing its resources on eight key areas within the general topic of executive compensation including fringe benefits of corporate-owned aircraft. Taxpayers have therefore been forewarned of the necessity of complying with the complex rules regarding the taxation of fringe benefits. →

1 The term "personal use" should be clarified. The flights provided to the employees and shareholders are fringe benefits. The assets used by Taxpayer to provide the fringe benefits (the aircraft travel) are business assets. They are used by the Taxpayer for a business purpose under §162, i.e., to compensate employees and shareholders. In the absence of factual development to the contrary, we assume that the airplane expenses are ordinary and necessary business expenses and reasonable in amount. See *Kurzet v. Commissioner*, 222 F.3d 800 [830] (10th/ Cir.2000) [2000-2 USTC ¶50,671] (reversing for clear error the Tax Court's factual finding in *id.*, T.C. Memo 1997-54 [CCH Dec. 51,857(M)], that expenses for use of an airplane were unreasonable)

Louis M. Meiners, Jr. is an attorney and CPA who serves as president of Advocate Aircraft Taxation Company. Advocate's practice is limited to serving the needs of owners and operators of aircraft. Services include sales and use tax management on aircraft acquisitions, income tax planning, federal excise tax planning, and representation before taxing authorities. Meiners can be reached at (800) 787-8112, or loum@advocatetax.com

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DECEMBER 2003



NATIONAL AIRCRAFT FINANCE ASSOCIATION'S 33rd ANNUAL MEETING

4th ANNUAL NAFA - ASA APPRAISER EDUCATION SEMINAR

May 12-14, 2004
The Silverado Resort
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