Aircraft Martini Talk - Gossip That's Too Good to be True

-By Keith G. Swirsky-

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The CEO calls you into his office and tells you that over the weekend he attended a dinner party at a friend's house and was told that this friend's company is writing off all use of its jet, and the CEO wants to know why his own company's tax department can't find a way to do the same thing. In particular, the friend, who works in New York City, has a home in Florida, commutes to Florida on weekends during the winter, and writes off the flights on Fridays and Mondays between New York and Florida. The CEO wants to do the same thing, but he reminds you that his tax department said that this was commuting, or even entertainment use of the aircraft, and could not be treated as deductible business use for tax purposes.

How should you respond? If you are the chief pilot or the CFO, the most diplomatic response is that you will immediately look into whether your tax department is being too conservative. Assuming that your tax department had conducted research and was confident that it was handling aircraft tax compliance properly, the more straightforward response is that many tax rules are open to interpretation, and some taxpayers will be very aggressive in their interpretations while others will err on the side of being more conservative; the decision to be aggressive or conservative is largely a judgment call. You may also say that the majority of aircraft owners have not consulted an aviation tax and regulatory expert to obtain proper advice – and that the CEO's friend may, knowingly or unknowingly, simply be taking large IRS and/or regulatory risks.

This may just be the tip of the iceberg. The CEO certainly has many friends that own or use corporate aircraft, and undoubtedly has heard a lot of cocktail party chatter about his or her friends who have never been audited by the IRS, or who have won on every issue ever raised in an audit. Certainly, when it comes to the corporate aircraft, a lot of posturing happens and people tend to exaggerate or perhaps gloss over the details. After all, who wants to admit over drinks that they flouted the tax code and then took a beating in a tax audit.

As you may now realize, this article is intended to poke fun. However, it is a serious matter when tax planning for the corporate aircraft is handled cavalierly. It is definitely cavalier to simply carbon-copy what someone else is doing, simply because they are taking bigger write-offs or being less restrictive on FAA compliance matters. It is definitely cavalier to resort to the old saying "we've always done it this way, why do we need to change anything?" The fact is that laws change, and even when laws do not change, our understanding of the laws evolves, and federal and state agencies enforcement positions on the laws evolve. Lastly, it is cavalier to assume that an executive, an accountant or a lawyer who is a trusted advisor, but not an expert in aviation, can provide accurate and/or comprehensive tax advice and planning.

Most importantly, if you are confronted with a federal income tax audit, or a state sales and use tax audit involving the aircraft, you should NEVER assume that if you keep the "big guns" (translation: aviation tax lawyer) out of the picture, that the taxing agency will settle easily or with better results. In fact, the opposite is almost always true – the better and more credible your representative in a tax audit, the more likely you are to have the auditor relying on your expert to provide the structure for settling the audit. This is mostly true because a large majority of auditors have handled few, if any, aircraft tax audits, and accordingly are more than happy to allow your experts to educate them on the law.

To circle back to the top, aircraft martini talk can be thought provoking, but should never provide a substitute for thoughtful planning founded on proper research. The National Business Aircraft Association has substantial tax and FAA resources available on its website, and can also refer members to tax experts. GKG Law has long been a contributor to the NBAA's resource materials, and also has dozens of articles, power point presentations and audio/video webinars archived on its own website: gkglaw.com. For a more proactive approach, you can attend an NBAA tax seminar, or other industry sponsored seminar, or log into one of the many webinars put on by GKG Law. Of course, for what you will view with 20/20 hindsight as a bargain, you can hire an aircraft tax expert to guide you through the planning maze.

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