

BUT IT'S JUST SITTING THERE . . .

At a lot of companies, that's all it took to get the corporate jet for the weekend. Now, thanks to the IRS, it may take a lot more.

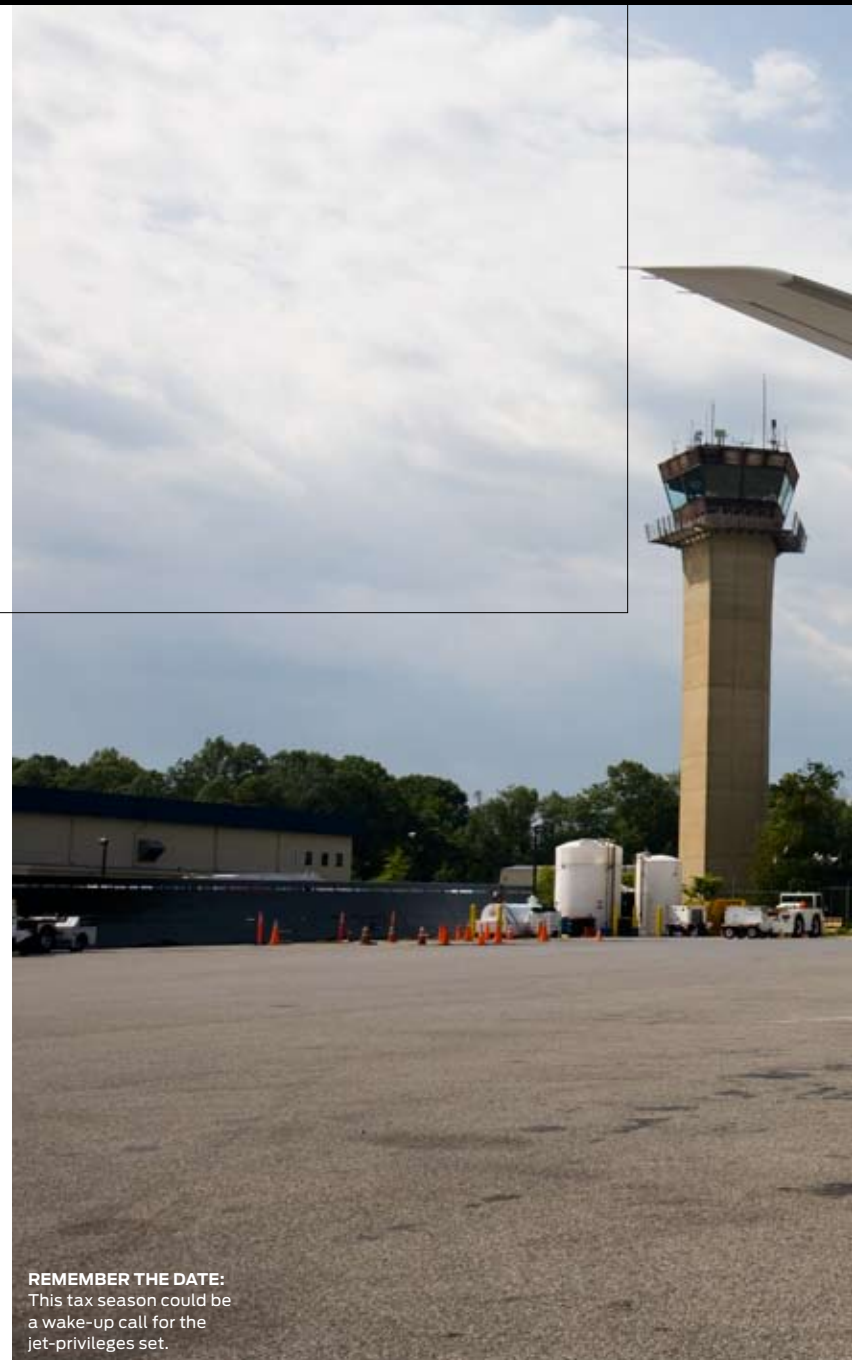
BY GARY I. HOROWITZ

The best perk a corporate executive can get is the keys to the company aircraft. Taking the jet to the islands on short notice for a weekend of golf, family and friends — now *that's* living. In the past, it was also fairly inexpensive both for the executive and the company, but recent tax-law changes might put a damper on everyone's plans.

In the past, it was simple: An executive could use the company's aircraft for personal-entertainment purposes as long as the company counted the value of the flights as a fringe benefit in his income. The "value" of the flights might be calculated using either the "SIFL" rate, akin to first-class commercial airfare, or the current charter rate. At the end of the year, the company would send the executive a W-2 listing the flights as compensation subject to federal income

tax. These rules have not changed — the trips are still counted as income for the executive at SIFL or charter rates. What *has* changed is what happens to the company when it lets executives use the jet.

Until recently, the companies could deduct *all* costs associated with executive jaunts, including direct operating costs such as fuel and fixed costs such as interest maintenance and insurance. Never mind that this created a huge mismatch on the books, with the executive recording perhaps several thousand dollars in additional income and the company writing off \$30,000, \$40,000 or more. No one ever said the tax code was logical. But some logicisms (particularly when they're not advantageous to the government) rankle the IRS more than others. The IRS tried to correct the imbalance; taxpayers resisted; a federal court ultimately



REMEMBER THE DATE:
This tax season could be a wake-up call for the jet-privileges set.

ruled in taxpayers' favor. But then the IRS pulled an ace from the bottom of the deck and persuaded Congress to change the law.

Now, under the American Jobs Creation Act (don't ask) of 2004, when executives, directors or certain part-owners of a company use their firm's aircraft for entertainment purposes, the company can take a tax deduction on the costs relating to those trips in an amount no greater than the amount imputed as passenger income. So if an executive



is imputed with \$10,000 in income and the company previously wrote off \$50,000 in related direct operating and fixed costs, the company just lost \$40,000 in tax deductions.

As with most changes in tax law, the new rules have

caused considerable confusion and created more questions than answers. What is an “entertainment” flight? What if the flight is for business *and* personal purposes? And so on. The IRS has attempted to answer these questions in recently issued proposed “Treasury Regulations.” They are predictably complex, but provide some useful direction and planning opportunities.

It all depends on how creative you want to be (and still remain in compliance with the tax laws, of course). For

example, one alternative some companies choose is to devise an arrangement with an aircraft charter operator that officially turns an executive’s getaway into a “charter.” The company should thus be able to keep its full tax deduction. The executive, naturally, has to pay the charter operator a fee, which would seem to defeat the whole purpose . . . but *not* necessarily if the company is able to give the executive a (taxable) bonus that can be used to cover the executive’s flying costs.

Alternatively, the company could lease the aircraft to the executive, along with, perhaps, a bonus. Or, if one top executive at the company is likely to take most of the personal trips, that person might be better off actually buying a stake in the jet, giving him an asset that could appreciate over time.

Whether a company wants to work through the tax regulations or structure its aircraft operations to avoid them, companies now need to carefully consider the hidden tax consequences of allowing its executives personal use of business aircraft. And executives need to be flexible — or they may find their companies suggesting they get in the long line for a commercial flight. ■

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