FAA May Permit Charitable Flights, But Careful Planning Is Needed To Deduct the Costs

June 16, 2006

By John R. Copley[1] and John B. Hoover[2]

Companies operating aircraft often provide flights for charitable purposes. For example, aircraft owners generously provided hurricane relief flights in response to Hurricane Katrina.[3] In the past, the Federal Aviation Administration (the "FAA") has taken enforcement action against aircraft operators for the acceptance of a tax deduction for performance of a charitable flight and has offered an FAA Chief Counsel opinion regarding the requirements of the Federal Aviation Regulations ("FARs") explicitly indicating that such flights cannot be performed without holding a commercial license if a tax deduction is taken. The basis for the conclusion is that a tax deduction is a form of compensation because it provides savings to the taxpayer. However, the FAA has since stated that as a policy matter, it will seek to support "truly humanitarian efforts" and will not treat charitable deductions related to humanitarian flights as defined by the FAA, standing alone, as compensation or hire for purposes of enforcement of FAR 61.113 or FAR Part 135.

Unfortunately, even if the performance of a charitable flight and taking the related charitable deduction will not result in an enforcement action by the FAA, careful planning is needed for companies to deduct the costs attributable to charitable flights. The IRS severely limits charitable deductions for companies that use their aircraft for charitable flights. In general, tax deductions for charitable flights are limited to out-of-pocket costs such as fuel. However, in appropriate circumstances, companies may be able to deduct all of the costs attributable to charitable flights by treating the flights as business flights for the purpose of promoting the company's image, compensatory flights to the executive primarily responsible for arranging the charitable flight or charter flights.

FAA Limitations on Charitable Flights

Under the FARs, companies not licensed as air carriers and private pilots are limited in the compensation that they may receive for conducting a flight. Specific provisions in FAR § 61.113 permit private pilots to share the cost of a flight with passengers provided that the pilot is making the flight without regard to the passengers. There are also certain limited exceptions to licensing provided for Part 91 operators in FAR § 91.501. However, the FARs do not by their terms provide an exemption for accepting any compensation, even if solely in the form of a tax deduction, for charitable or humanitarian flights. Thus, because of the FAA's insistence on an extremely broad interpretation of the term "compensation," even the passive advantage gained through taking a tax deduction is construed as compensation requiring

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[1] John R. Copley is a partner at the law firm of Garofalo, Goerlich Hainbach, P.C. in Washington, D.C. Mr. Copley can be reached at (202) 776-3972 or jcopley@ggh-airlaw.com.

[2] John B. Hoover is an attorney at the law firm of Dow, Lohnes & Albertson, PLLC in Washington, D.C. Mr. Hoover can be reached at (202) 776-2391 or jhoover@dowlohnes.com.

[3] An example of the charitable use of aircraft in Hurricane Katrina relief efforts is provided on the website of the National Business Aviation Association at *http://web.nbaa.org/public/katrina/relief.php*.

licensing of the company as an air carrier and the pilot as a commercial pilot. Despite this conclusion, the FAA has announced as a matter of policy it will not enforce its licensing requirements if the only compensation is in the form of a tax deduction provided for at least a limited subset of charitable or humanitarian flights.

In the early 1990s, the FAA sought to define further its ever-strict view that no type of compensation is permitted to pilots or companies not holding a commercial license. In a 1992 enforcement action, the FAA sought the revocation of a private pilot's license because the pilot had performed three flights for charitable or humanitarian purposes either carrying persons for emergency medical attention or in one case carrying a member of an educational foundation to speak at a seminar.[4] In two of the flights, the pilot had sought direct reimbursement and in the other flight the pilot had sought a tax deduction based on his donation of services to the foundation. While the FAA originally sought to revoke the pilot's license, the order was subsequently modified to a suspension of 180 days. On appeal, the suspension was further reduced to 30 days and the charges related to two of the flights, including the flight for which the pilot had sought a tax deduction, were dismissed as being stale. The NTSB magnanimously concluded that as the private pilot had not held himself out as being able to perform emergency medical flights and as no commercial operator was available to carry the persons involved to the hospital, four to six hours away by ground, a 30-day suspension was sufficient to vindicate the public interest. In a subsequent letter to Senator Phil Gramm in 1993, the FAA Acting Chief Counsel affirmed the FAA position that compensation or hire exists where "a private pilot receives reimbursement of expenses or takes a tax deduction for voluntarily carrying persons or property on flights," and as a consequence acceptance of such deductions even for humanitarian flights is prohibited to private pilots.[5]

However, due to Congressional pressure or otherwise, the FAA now appears to have adopted a somewhat more conciliatory enforcement policy. The FAA has concluded that it can support "truly humanitarian efforts." The FAA's current policy concludes that "[s]ince Congress has specifically provided for the tax deductibility of some costs of charitable acts, the FAA will not treat charitable deductions of such costs, standing alone, as constituting 'compensation or hire' for the purpose of enforcement of" the FARs."[6] However, caution should be exercised in taking advantage of this policy. In defining "truly humanitarian efforts" the only examples provided by FAA were flights "to transport ill or injured persons who cannot financially afford commercial transport to appropriate medical treatment facilities, or to transport blood or human organs," and other flights for the purpose of "transporting a child to visit with a dying relative, or transporting a dying patient to return to the city of the patient's birth." Whether, for example, flights carrying supplies or personnel to assist hurricane victims, or flights carrying members of a charitable foundation to a seminar or event would be considered "truly humanitarian" by the FAA is an open question as such flights are not addressed by the FAA policy.[7] Lastly, it should be emphasized that while the FAA's current policy permits charitable flights for which no compensation is received other than tax deductions, no other type of compensation is permitted for charitable flights.

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[4] *Administrator v. Carter*, 1992 NTSB LEXIS 249 (1992).

[5] *Letter from John H. Cassidy, Acting FAA Chief Counsel to Senator Phil Gramm, March 8, 1993*.

[6] FAA Order 8400.10 - Air Transportation Operations Inspector's Handbook, Paragraph 1345 (revised through May 26, 2005).

[7] Private pilots participating in charity airlifts may receive reimbursement for fuel and oil consumed. *See Letter from Assistant Chief Counsel, December 7, 1990*. Likewise, there are specific provisions under FAR § 61.113 for reimbursement of operating expenses for pilots participating in certain search and rescue operations. However, the FAA has not specifically addressed taking an available tax deduction for such activities.

IRS Limitations on Tax Deductions for Charitable Flights

Many companies generously make their aircraft available for charitable flights. Their ability to deduct the costs attributable to these flights for income tax purposes depends on the circumstances relating to the flights. As explained below in more detail, strategies for deducting the costs of charitable flights include, in appropriate circumstances, treating them as business flights, compensatory flights, or charter flights. However, to explain these alternatives it is first necessary to review the rules providing for the disallowance of fixed costs allocable to charitable flights.

No Charitable Deduction for Fixed Costs of Flights for Charitable Purposes

While the FAA now appears to permit aircraft operators to perform some charitable flights and take the associated tax deduction, the IRS only allows a charitable deduction for variable costs of transportation for charitable purposes.[8] "Only those expenditures incurred for operation, maintenance, and repair, which are directly attributable to the use of such aircraft" on a charitable flight can qualify as charitable deductions.[9] Examples of costs that could be "directly attributable" to a charitable flight include (a) the cost of fuel and oil for the flight, (b) pilot fees incurred solely for the flight, (c) rental charges for an aircraft used only for the flight, and (d) extra liability insurance incurred only for the flight.[10]

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[8] Treas. Reg. § 1.170A-1(g) (charitable deduction allowed for "out-of-pocket transportation expenses"); *Orr v. United States*, 343 F.2d 553, 557 (5th Cir. 1965) (charitable deduction is not allowed for "payments which the taxpayer would have made for non-charitable reasons"); Rev. Rul. 58-279, 1958-1 C.B. 145, *modified*, Rev. Rul. 84-61, 1984-1 C.B. 39 (charitable deduction allowed for "out-of-pocket expenses directly attributable to the performance of such volunteer services"). As with any charitable deduction in excess of $250, the taxpayer must obtain an appropriate written acknowledgement of the expenditure from the charitable organization prior to the filing of the taxpayer's income tax return. I.R.C. § 170(f)(8); Treas. Reg. § 1.170A-13(f)(10). In addition, charitable deductions by individuals are limited to 50% of adjusted gross income, and charitable deductions by corporation are limited to 10% of taxable income, with certain adjustments and subject to carryover provisions. I.R.C. § 170(b), (d); *see also* Rev. Rul. 84-61 (out-of-pocket transportation expenses treated as contributions "to" charity and subject to 50% of adjusted gross income limitation for individuals under § 170(b)(1)(A)). The charitable contribution limitations under § 170(b) are increased for certain contributions during 2005 under the *Katrina Emergency Tax Relief Act of 2005*, P.L. 109-73, § 301.

[9] Rev. Rul. 58-279. To determine the portion of expenses directly attributable to charitable flights, it is necessary to identify the actual costs incurred with respect to the particular charitable flights. Nevertheless, it should be reasonable to multiply total variable costs for items such as fuel by a charitable use percentage based on charitable miles (or hours) divided by total miles (or hours) for the year. *See Orr*, 343 F.2d at 555 (charitable deduction allowed for "proportionate share" of gasoline and oil).

There is no requirement to determine the portion of out-of-pocket costs attributable to charitable use under the "occupied seat hour" rule prescribed in IRS Notice 2005-45, 2005-24 I.R.B., with respect to the entertainment facility disallowance under I.R.C. § 274(a). In this regard, I.R.C. § 274(f) makes it clear that § 274 (including the entertainment expense deduction limitations under § 274(a)) are not applicable to the determination of charitable deductions.

[10] *See Orr*, 343 F.2d at 555; Rev. Rul. 58-279; Priv. Ltr. Rul. 92-43-043 (July 29, 1992). Even if additional liability insurance premiums are incurred solely as a result of a charitable flight, it is not clear that such premiums could qualify as charitable deductions. In *Orr*, 343 F.2d at 557, the court disallowed a charitable deduction for insurance premiums, because the charitable organization was not the sole beneficiary of the insurance policy. However, in Private Letter Ruling 92-43-043 a charitable deduction was allowed for the premiums attributable to a rider on the taxpayer's liability insurance applicable only to the charitable flights.

In contrast, charitable deductions are not permitted for a proportionate share of fixed costs that would have been incurred even if the charitable flight had not occurred.[11] Examples of such fixed costs include depreciation, general maintenance and repairs, and insurance.[12] Similarly, pilot salaries and aircraft rents that do not vary with the number of flights would appear to be fixed costs that would not be "directly attributable" to a charitable flight. These principles appear to preclude interest expense allocable to charitable flights from qualifying as a charitable deduction.[13] Furthermore, no deduction is allowable for the fair rental value of an aircraft used for charitable flights.[14]

Accordingly, taxpayers generally cannot take a charitable deduction for fixed aircraft operating and maintenance costs attributable to charitable flights. Since a taxpayer is only entitled to a business expense deduction for the portion of its aircraft expenses attributable to the business use of the aircraft, it would not be permissible for a taxpayer to deduct costs attributable to a charitable flight as business expenses (assuming the charitable flight is not primarily for business purposes).[15] Since fixed expenses often comprise most of the operating and maintenance costs of an aircraft, a charitable flight can result in a substantial disallowance of expenses that might otherwise be deductible. For example, if a company aircraft is used 100% for business flights, then all of its maintenance and operating expenses ordinarily would be deductible. However, if the same aircraft is used 90% for business flights and 10% for charitable flights, then 10% of the fixed costs apparently would be nondeductible.[16] In other words, charitable flights can result in the disallowance of otherwise deductible business expenses, because a charitable deduction is not allowed for fixed costs attributable to charitable flights, and there is no provision in the law allowing

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[11] *Orr*, 343 F.2d at 556-8; Rev. Rul. 58-279.

[12] *Orr*, 343 F.2d at 556-8; *Mitchell v. Comm'r*, 42 T.C. 953, 973-4 (1964), *acq*. 1965-2 C.B. 6 (no charitable deduction for depreciation); Rev. Rul. 58-279.

[13] The deductibility of interest expense allocable to a particular flight generally depends on whether the flight is for business or nonbusiness purposes. *See* Treas. Reg. § 1.163-8T (interest tracing rules apply to determine character of interest expense); *Helwig v. Comm'r*, T.C. Memo 1999-386 (interest allocable to entertainment facility was nondeductible under § 274(a)).

[14] *Orr*, 343 F.2d at 555; Rev. Rul. 58-279. I.R.C. § 170(f)(3) precludes a charitable deduction for the use of taxpayer's property for charitable purposes. *See also* Treas. Reg. § 1.170A-7(a)(1), (d) *Example (1)*; *Mathis v. Comm'r*, T.C. Memo 1986-210. Prior to the enactment of § 170(f)(3) in 1969, a charitable deduction could be taken for the contribution to charity of the exclusive use of property. *See McNamara v. Comm'r*, T.C. Memo 1973-3, *acq. action on dec.,* 1973 W.L. 34784 (Apr. 19, 1973).

[15] Applicable tax regulations provide that the business use percentage is determined based on business miles divided by total miles, and do not provide for the treatment of charitable miles as business miles. *See* Treas. Reg. § 1.274-5T(b)(6)(i)(B). In *Orr*, all of the fixed expenses attributable to the charitable use of the aircraft were disallowed even though the aircraft was used for charitable, business and personal use. *See Orr v. United States*, 226 F. Supp. 809 (M.D. Ala. 1963), *aff'd*, 343 F.2d 553 (5th Cir. 1965) (In 1957, the aircraft was used approximately 80% for charity, 13% for business and 7% for personal use. In 1958, it was used approximately 15% for charity, 49% for business and 36% for personal use.). *See also Davidson v. Comm'r*, 82 T.C. 434, 440 (1984) ("[c]haritable uses are personal").

[16] In the case of an aircraft used solely for business and charitable flights, it would seem reasonable to argue that all of the fixed costs should be deductible as business expenses. Under the out-of-pocket costs rule, fixed costs allocable to charitable flights fail to qualify for charitable deduction treatment due to the fact that they are not "caused" by the charitable flight. *See Orr*, 343 F.2d at 557 ("the test is one of causation"). It would seem to follow that such costs are "caused" by the business use of the aircraft. However, there does not appear to be any published authority supporting the reallocation of fixed costs from charitable flights to business flights, and it would appear to be inconsistent with the regulations and the holdings in *Orr* and *Davidson*. *See* note 15 above.

the deduction of such costs as business expenses (assuming the primary purpose of the flight was for charitable rather than business purposes).[17]

Instead of rewarding companies that conduct charitable flights with a tax benefit, this rule imposes an additional tax liability on such companies. It is inconceivable that Congress intended that flights for charitable purposes would result in an increase in the aircraft operator's taxes.[18] Imposing an additional tax liability on companies that provide charitable flights is clearly bad tax policy. The appropriate remedy would be to enact legislation or issue regulations to correct this problem. For example, the issue could be resolved through regulations providing that fixed costs to operate and maintain an aircraft are to be allocated only among non-charitable flights.[19]

Alternative of Treating Charitable Flights as Business Flights

One possible alternative to the disallowance of fixed costs of a charitable flight is to characterize the flight as a business flight. The FAA does not object to an aircraft operator's flights for its own business purposes. Of course, this is only appropriate when the facts support such a characterization. In general, charitable contributions and business expenses are mutually exclusive classifications.[20] That is, depending on the relevant facts, a particular flight could be primarily for a charitable purpose or for a business purpose, but not both. A business deduction is allowable for travel expenses if the primary purpose of the trip relates to the taxpayer's business.[21] In the case of gifts to charity, the general rule is that the gift constitutes a business expense rather than a charitable deduction "if the benefits received, or expected to be received, [by the donor] are substantial, and meaning by that, benefits greater than those that inure to the general public from transfers for charitable purposes (which benefits are merely *incidental* to the transfer)."[22] "Expenditures for institutional or 'good will' advertising which keeps the taxpayer's name before the public are generally deductible as ordinary and necessary business expenses provided the

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[17] See below regarding charitable flights conducted primarily for business purposes.

[18] The prohibition on charitable deductions for an allocable portion of fixed expenses is imposed by the IRS and the courts because the statute authorizing charitable deductions requires that charitable contributions be "paid" and that the expenditures be "to or for the use of" the charity. *See* I.R.C. § 170(a)(1) (charitable deduction allowed for charitable contribution "*payment* of which is made"); Treas. Reg. § 1.170A-1(a) (deduction allowed for charitable contribution "actually paid"); *Orr*, 343 F.2d at 556 ("The absence of any evidence as to whether Congress focused on this problem provides no basis for extending the meaning of payment to include 'depreciation.'").

[19] For example, suppose that 80% of the flight miles (or hours) are for business flights, 10% are for charitable flights and 10% are for personal flights. Under this suggested regulatory structure, the "out-of-pocket" costs attributable to the charitable flights would be deductible as a charitable contribution. The out-of-pocket costs would then be subtracted from the total operating costs. The remaining operating costs (including the fixed costs attributable to the charitable flights) would be allocated 8/9ths to the business flights and 1/9th to the personal flights.

[20] *See* Treas. Reg. § 1.162-15(a).

[21] Treas. Reg. § 1.162-2(b).

[22] *Singer Co. v. United States*, 449 F.2d 413, 423 (Ct. Cl. 1971) (charitable deduction denied for discount in bargain sale of sewing machines to schools because "predominant purpose" for sales at discounted price was to enlarge future potential market for Singer sewing machines as a result of students training on the machines).

expenditures are related to the patronage the taxpayer might reasonably expect in the future."[23] However, merely having the desire to promote the company's image may not be sufficient to support a business deduction.[24]

The likelihood that a flight which serves a charitable purpose will be respected as a business flight may be enhanced by entering into an agreement with the charity providing, for example, that the charity will (i) prominently acknowledge the fact that the company provided the flight, (ii) provide advertising for the company in the organization's printed or other materials, (iii) grant the company the right to use the charity's name in company advertising, and/or (iv) provide the company an advantage in selling its products or services. It would help to support a business deduction if the company could integrate the charitable flights into its own promotional activities such as by mentioning the flights in its advertisements or by distributing marketing materials in connection with the flights. More generally, company press releases, minutes, memoranda and other documents should be consistent with the position that the flight is undertaken predominantly for business purposes, such as promoting the company's image or products, and not for charitable purposes.

If a company determines that a particular flight for the benefit of charity was undertaken predominantly for business purposes, then it will be particularly important for the company to document the expected business benefit that it expects to realize from the charitable flight and related promotional/advertising activities. Such documentation of business purposes will be most effective if made on a substantially contemporaneous basis with the flight[25] and maintained with the company's regular records of the business purposes of each flight. However, it may not always be the case that the relevant facts and circumstances will support a business deduction for a flight that benefits a charity.[26]

Alternative of Treating Charitable Flights as Compensatory Flights

Another alterative would be to treat charitable flights as flights provided to an executive as compensation for services in appropriate circumstances.[27] The FAA permits an operator of an aircraft to provide flights to its executives as compensation as long as no payment is received for the flight. In general, this approach would only appear to be reasonable with respect to an employee who takes the lead

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[23] Treas. Reg. § 1.162-20(a)(2). The regulation offers the example of company advertising expenditures to encourage contributions to the Red Cross, which could qualify as business deductions by keeping the company's name before the public. *Id.*

[24] *See Hartless Linen Service Co. v. Comm'r*, 32 T.C. 1026 (1959) (contributions to churches were charitable deductions and not advertising expenses when the members of the churches were not aware of the contributions).

[25] Treas. Reg. § 1.274-5T(c)(1) ("the probative value of written evidence is greater the closer in time it relates to the expenditure or use").

[26] Even though the company may have decided to treat a particular flight that benefits a charity as a business flight, it may be advisable to obtain a written acknowledgement from the charitable organization to protect the company's charitable deduction at least for the allocable variable costs in the event that the IRS determines on audit that the flight is predominantly for charitable purposes.

[27] Treating charitable flights as the personal flights of an individual employee appears to be a workable approach in view of the fact that the court in *Sutherland Lumber-Southwest, Inc. v. Commissioner*, 255 F.3d 495 (8th Cir. 2001), *acq*., *action on dec.* 2002-002 (Feb. 19, 2002), apparently had no difficulty accepting this classification of charitable flights.

in arranging the charitable flight.[28] Under this approach, the value of the flight ordinarily would be a taxable fringe benefit to the employee.[29] In addition, the company ordinarily would be entitled to deduct the costs associated with such compensatory flights.[30] Again, contemporaneous documentation reflecting the compensatory nature of the flight will be important. In general, the company should not refer to such flights as charitable activities of the company, but should refer to them as personal flights by the employee.[31]

Unfortunately, the employee, who must include the taxable fringe benefit in his or her individual taxable income, may not be able to take a charitable deduction on his or her income tax return for the value of the charitable flight. As discussed above, the out-of-pocket expense requirement means that the employee must have "paid" the amount that he or she seeks to deduct.[32] It can be argued that this payment requirement is met by an employee to who is taxed on the value of the charitable flight.[33] However, in the

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[28] The mere fact that a flight for the benefit of a charitable organization advances the charitable interests of the employee rather than the company may not be sufficient to justify treating the flight as a charitable flight by the employee, rather than by the company. *See Knott v. Comm'r*, 67 T.C. 681 (1977), *acq*. 1979-2 C.B. 2 (charitable contribution by corporation was not treated as a distribution to shareholders, since there was no actual distribution to the shareholders, no transfer in satisfaction of the shareholder's liabilities and no payment of shareholder's traveling expenses); Rev. Rul. 79-9, 1979-1 C.B. 125. *Knott* may be distinguishable on the grounds that a charitable flight would involve payment of the employee's travel expenses (if the employee actually goes on the charitable flight). It may also be helpful for the employee to execute a legally binding pledge to the charitable organization prior to the flight.

[29] *See Sutherland*, 255 F.3d at 496 (charitable flights treated as taxable fringe benefit to employee at Standard Industry Fare Level (SIFL) rates). If the flights would constitute excessive compensation to the employee, then they may be characterized in some other manner for tax purposes (*e.g.*, as dividend distributions).

[30] *See* Treas. Reg. § 1.162-25T (ordinary and necessary business expense deduction for fringe benefit provided to employee is based on employer's cost rather than amount included in employee's compensation); *Sutherland*, 255 F.3d at 496 (charitable flights by employee were not treated as entertainment flights subject to entertainment expense deduction limitations under § 274(a)); *Ireland v. United States*, 621 F.2d 731, 737 (5th Cir. 1980) (taxable fringe benefit to employee was based on value of flights, even though company deducted significantly greater operating costs). Of course, the company's ability to deduct the costs of providing compensatory flights may be limited if the compensatory flights constitute excessive compensation.

[31] It may be advisable to obtain a written acknowledgement from the charitable organization to protect the company's charitable deduction at least for the allocable variable costs in the event that the IRS determines on audit that the flight is predominantly for the company's charitable purposes, rather than compensation.

[32] *See* note 18 above. In this regard, it may be relevant that the court in *Orr*, 343 F.2d at 556 explained that depreciation is not deductible because it is not "paid." *See also Scholet v. Comm'r*, T.C. Memo 2005-140 (individual could not deduct charitable contributions made by his wife and children); Rev. Rul. 67-137, 1967-1 C.B. 63 (company, not employees, was entitled to charitable deduction for payments by company to charities selected by employees).

[33] One argument to support a charitable deduction by the employee is that a charitable flight provided by an employer to an employee for the employee's charity work is analogous to a payroll deduction in which the employer pays a portion of the employee's compensation to a charitable organization. *See* Treas. Reg. § 1.170A-13(f)(11) (payroll deduction substantiation rules). This argument can also be supported by analogy to an employee's ability to deduct as employee business expenses the amounts imputed to him or her for use of a company automobile in connection with the employer's business, when the employer

absence of legal authority clearly indicating that the employee is treated as having made a payment to charity for a charitable flight provided by his or her employer, it seems likely that the IRS would not permit such a charitable deduction.[34]

Alternative of Providing Charitable Flights Under Charter Arrangement

Another approach would be for an individual (*e.g.*, a stockholder or employee) to charter the aircraft from the company for the charity flight.[35] For the arrangement to be respected, it would be advisable for the charter service to be provided under arm's length terms.[36] Of course, for the company to provide charter service, it would be necessary for the company to have the appropriate FAA certification. If the arrangement is respected, the company should be able to deduct the costs of providing the charter service.[37] Similarly, the individual paying for the charter flights ought to be entitled to a charitable deduction for the charter fees as an out-of-pocket cost paid on the charity's behalf.[38]

Conclusion

Under the FAA's current enforcement policy, certain narrowly defined charitable/humanitarian flights can be flown so long as no compensation is received other than the permitted tax deduction. Unfortunately, the out-of-pocket charitable deduction limitation severely limits the ability of companies to deduct their costs attributable to such flights. Depending on the relevant facts, companies may find it more

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reports a taxable fringe benefit to the employee for the entire value of the employee's use of the automobile. *See* Treas. Reg. § 1.162-25(b); Temp. Treas. Reg. § 1.162-25T(c), *Example (2)*.

[34] If the employee were to take a charitable deduction with respect to charitable flights taxed to him, the employee would have to determine the appropriate portion of the taxable fringe benefit to deduct with respect to the charitable flights. As discussed above, charitable deductions are allowed for out-of-pocket transportation expenses and not for fixed costs. *See* note 8 above. In this regard, note that the standard mileage rate for charitable use of an automobile is considerably less than the standard business mileage rate. *See* I.R.C. § 170(i) (generally, 14 cents per mile for charitable use of automobile); Rev. Proc. 2005-78, 2005-51 I.R.B. 1177 (Dec. 2, 2005) (44.5 cents per mile in 2006 for business use of automobile). However, it may be that an employee would deduct the entire amount of the taxable fringe benefit with respect to charitable flights on the assumption that this amount is no greater than the variable costs of such flights.

[35] The viability of this approach is supported by an IRS ruling in which a company provided the use of an entertainment facility (which was not an aircraft) to a commonly controlled company which used the facility for charitable purposes. Tech. Adv. Mem. 2002-14-007 (Apr. 5, 2002).

[36] If the charter is not at arm's length terms and rates, the arrangement might be recast as a charitable flight provided to the charity by the company with only a partial reimbursement of costs from the individual. *See* note 28 above. If recast in this manner, the variable cost limitation discussed above could limit the company's deductions. *See* note 8 above.

[37] *See* T.A.M. 2002-14-007 (deductions allowed with respect to entertainment facility provided to related company, which used facility for charitable purposes). Nevertheless, it may be advisable to obtain a written acknowledgement from the charitable organization to protect the company's charitable deduction at least for the allocable variable costs in the event that the IRS determines on audit that the flight is predominantly for the company's charitable purposes and does not respect the charter arrangement.

[38] *See* Treas. Reg. § 1.170A-1(g). Nevertheless, it is possible that the IRS could question the individual's charitable deduction of the charter fees on the grounds that a payment to a related company may not ultimately constitute an out-of-pocket cost for the individual (particularly if the individual owns the company) or that the individual derives a benefit from the activity (in the form of additional charter fees for his business).

advantageous to treat such flights as one of the following for tax purposes: (a) business flights to promote the company's public image, (b) compensatory flights provided to an employee, or (c) charter flights to an individual. Each of these alternative requires appropriate documentation and bears some risk of challenge from the IRS. However, these alternatives are generally better than the disallowance of the deductions for the fixed costs attributable to the flights. Obviously, the best solution would be for Congress or the IRS to recognize that it is clearly bad tax policy to impose an increased tax burden on companies that provide their aircraft for charitable flights, and enact laws or adopt regulations to remedy the problem.

Partial Listing of Charitable Air Transportation Non-Profit Organizations

- **Angel Flight America:** http://www.angelflightamerica.org/. Provides, through its members, access for people in need seeking free air transportation to specialized health care facilities or distant destinations due to family, community, or national crisis.

- **Air Care Alliance:** http://www.aircareall.org/. A nationwide league of humanitarian flying organizations whose volunteer pilots are dedicated to community service. This ACA site will introduce you to us and to all the groups we list whose volunteers perform public benefit flying for health care, patient transport, disaster relief, environmental support, and other missions of public service.

- **Corporate Angel Network:** http://www.corpangelnetwork.org/. Arranges free transportation to cancer patients traveling to treatment using the empty seats on corporate jets.

- **Flights for Life:** http://www.users.qwest.net/~btim/flightsforlife/ Formed in 1984 as a non-profit organization dedicated to providing free air transportation for medically-related purposes. FFL works in cooperation with hospitals, blood banks, health-care agencies and private individuals all over Arizona and surrounding states.

- **Flying Samaritans:** http://www.flyingsamaritans.org/ Flying Samaritans is an all-volunteer organization which operates free one-day medical clinics in Baja California, Mexico. Doctors, dentists, nurses, translators, pilots and support personnel fly to clinics in private aircraft on weekends. Flying Samaritans is organized in 10 chapters, drawing resources from California, Arizona, and Baja California, Mexico.

- **LifeLine Pilots:** http://www.lifelinepilots.org/ LifeLine Pilots is a private, non-profit organization that provides people in medical and financial distress with access to free air transportation on small (4-6 seat), private aircraft for health care and other compelling human needs.

- **Mercy Medical Airlift:** http://www.mercymedical.org/ Manages the use of donated corporate jets with flight crews to transport relief workers, government employees, disaster specialists and to reunite evacuee families. There is no charge to the public for MMA provided transportation.

- **Volunteer Pilots Association:** http://www.volunteerpilots.org/ The Volunteer Pilots Association is a charitable non-profit organization providing air transportation to needy people who must travel to obtain medical treatment. Our member pilots, flying privately owned general aviation aircraft, donate their time and flight expenses. Because there is never a charge to those we fly, a verifiable financial need must exist.