

130.12 Tax Considerations for University-Provided Flights

This document is intended to provide only a summary of some of the key U.S. federal income tax principles that may apply with respect to employee flights on a University-provided aircraft and is not intended to provide a comprehensive discussion of all of the rules that may apply. This is also not intended to provide tax advice – you should consult with your own tax adviser to determine the specific tax treatment that may apply to any compensation provided or reported by the University.

Generally, 26 CFR § 1.61-21(a) and 26 CFR § 1.132-5(k) govern the taxability of flights on employer-provided aircraft (owned or leased) for employees whose travel is for university-business purposes.

Generally, 26 CFR § 1.61-21(g) governs the taxability and valuation of flights on employer-provided aircraft (owned or leased) for employees whose travel is partially or wholly for personal purposes or for guests of employees whose travel is partially or wholly for personal purposes

See section 130.13 for additional details regarding required tax calculations for university-provided flights.

1. If an employee of the University takes a flight on a University-provided aircraft, can the value of the flight be excluded from the employee's income?

A: Generally, when a flight is taken for business reasons, if the cost of the flight would be deductible by the employee if paid for personally, it is excluded as a working condition fringe benefit. Examples of such flights include travel for business reasons between different University locations, attendance at official events and recruitment activities.

An employer generally is required to impute income to an employee who uses an employer-provided aircraft for personal purposes. When a flight is partly for business purposes and partly for personal purposes, its classification as a business flight or a personal flight is determined based on the primary purpose for the trip (determined based on the facts and circumstances with respect to each flight).

There is a special exclusion rule that may apply if certain conditions are satisfied. If an aircraft is chartered by the University and 50% or more of the regular passenger seating capacity of the plane is filled with employees flying for substantiated business reasons,

the value of the flight generally will not be included in the income of those employees who are flying for either business or personal reasons. (§1.61-21(g)(12)).

Example: The University charters an aircraft with 20 seats, not including 3 seats for the flight crew. Passengers on the flight include 10 employees who are on the flight for substantiated business purposes, 8 family members of those employees and 3 crew members. Because 10 of the 20 passenger seats are filled with employees flying for business reasons, the 50% rule is met.

2. If the spouse or child of an employee accompanies the employee on a charter flight, will the value of the flight be included in the employee's income?

A: University-provided flights by an employee's family generally are treated as personal flights and the value of such flights generally is included in the employee's income. However, the 50% rule summarized above generally also applies to spouses and dependent children, surviving spouses, and retired/disabled former employees. The value of the flight for these individuals will not be taxed if the 50% rule is met. If any other family member or friend of the employee is included on the flight, the employee's income will include the value of the flight for these individuals.

3. Can members of the Board of Regents be counted as employees for determining whether the 50% rule is met?

A: If a Regent is also an employee of the University, that Regent can be counted as an employee for purposes of determining whether the 50% rule is met, if the Regent is taking the flight in his or her capacity as an employee.

Example: Regent A is also employed by the university as a full-time faculty member. The University charters a flight to take 10 faculty members, including Regent A, to an academic conference. Regent A is considered an employee for purposes of determining whether the 50% rule is met.

Example: Regent B is also employed as a part-time faculty member. The University charters a flight to an athletic contest. Regent B is not considered an employee for purposes of determining whether the 50% rule is met.

4. If the value of a charter flight must be included in an employee's income, how is the value determined?

A: The amount includable in an employee's income for personal use of an employer-provided aircraft is based on either (1) the fair market value of the transportation at arm's length fair market charter rates, or (2) the Standard Industry Fare Level (SIFL) value, which is determined based on a formula prescribed by the IRS that uses certain factors that are updated periodically to reflect current costs and values (§1.61-21(g)(5)).

5. If the charter flight is donated by a University donor, are any of these tax considerations changed?

A: The same requirements summarized in questions 1 – 4 will still be applied if the flight is donated to the University.

6. Can the University issue a charitable contribution receipt to a donor for the value of a donated charter flight?

A: The value of a donated charter flight can be considered a charitable contribution if the flight is taken for substantiated business purposes, with no personal benefit to the donor; no costs are reimbursed by the University; and IRS charitable deduction regulations are met (§1.170A-1). The amount of the contribution is equal to the actual direct costs of the flight, such as fuel costs and pilot wages but excludes fixed costs, such as insurance and depreciation.

7. If the University partially reimburses direct costs of a donated charter flight, can the University issue the donor a charitable contribution receipt for any unreimbursed direct costs?

A: Yes, IRS rules would allow a charitable deduction for unreimbursed direct costs if they are separately identified and substantiated through invoices or other supporting documentation. For example, the donor could invoice the university for the cost of fuel used on a charter flight but request charitable contribution credit for the cost of wages paid to the pilot.