

Client Alert

IRS Approves Use of Alternative SIFL Rates for Income Tax Purposes

June 30, 2021

On June 14, 2021, the IRS published Rev. Rul. 2021-11 authorizing employers to use any of the three sets of Standard Industry Fare Level ("SIFL") rates calculated and published by the U.S. Department of Transportation ("DOT") and applicable for income tax purposes to flights provided by employers to their employees during the first half of 2021. By permitting employers to select one of the three options published by DOT, the IRS is effectively providing a measure of relief that takes into consideration the impact of the COVID-19 pandemic.

The standard SIFL rates published by DOT in February 2021 were significantly higher than the standard SIFL rates for prior periods. According to DOT, the increase resulted from the unprecedented reduction in airline seat miles because of the COVID-19 pandemic combined with a slower reduction in related airline expenses.^[1]

To address these anomalies, DOT also published two sets of alternative SIFL rates that factored in the atypical reduction in airline seat miles while also accounting for the offset of airline expenses resulting from government relief received by the major airlines. However, prior to the publication of Rev. Rul. 2021-11, employers did not know if the IRS would permit the use of the DOT published alternative SIFL rates when calculating the income, if any, to be imputed to an employee or partner who is flown on an employer-provided aircraft.

Under § 61 of the Internal Revenue Code, the value of such a flight is potentially taxable to the employee or partner. This also is true when a non-employee guest or a family member of an employee or partner (spouse or dependent child) is on board the aircraft, and whether or not the employee or partner is on board. If a trip is conducted for non-business purposes and the employee or partner does not pay fair market value for that trip (which payment is often impermissible due to restrictions on such payment imposed by the Federal Aviation Administration and DOT), the employer must impute the value of the trip to the employee or partner as non-cash fringe benefit income, which is taxable compensation to the employee or partner. Treas. Reg. § 1.61-21(a)(3).

The fringe benefit amount to be imputed as income to an employee is calculated either by using the cost of chartering a similar aircraft or by using the more common and normally less expensive SIFL methodology. Under the SIFL methodology, "Control Employees" are imputed more income than Non-Control Employees. Control Employees are board members, shareholders, elected officers and employees compensated among the top 1% of all paid employees. The amount of income to be imputed to an employee under the SIFL methodology is calculated by computing the SIFL charge for the length of the trip (using the SIFL rates in effect when the flight occurred), applying the appropriate multiple for the type of employee and aircraft to the total, and then adding the terminal fee.

Rev. Rul. 2021-11, which authorizes employers to use any of the three alternative sets of SIFL rates published by DOT, is welcome news for both employers and employees since it allows for the use of the lower alternative SIFL

rates published by DOT. An employer's ability to impute income using any of the three alternative SIFL rates will enable it and its affected employees to keep SIFL income imputation calculations in line with their expectations absent distortions created as a result of the COVID-19 pandemic.

<https://www.transportation.gov/administrations/office-policy/covid-19-global-health-emergency-impact-sifl>.

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