U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

DEC 3 0 2010

Mr. Mike Nichols
National Business Aviation Association
1200 18th Street NW, Suite 400
Washington, DC 20036

Dear Mr. Nichols,

This is in response to your March 1, 2010 letter that requested the FAA consider revising the long-standing "Schwab Interpretation." *See* Legal Interpretation to Mr. Star from Donald P. Byrne, Assistant Chief Counsel, Regulations Division (Aug. 2, 1993). Specifically, you asked the FAA to consider narrowing its broad prohibition provided in the Schwab Interpretation by allowing a company to seek reimbursement for certain high-level employees and officials using the company aircraft for personal travel.

The FAA generally prohibits aircraft operators from seeking reimbursement for the costs associated with flights conducted under 14 C.F.R. § 91. Certain exceptions to this general prohibition may be found in 14 C.F.R. § 91.501. One such exception provides for the limited reimbursement for the "carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or subsidiary of that parent, when the carriage is within the scope of, and incidental to, the business of the company…and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating and maintaining the airplane." *See* 14 C.F.R. § 91.501(b)(5); *see also* Legal Interpretation to BSTC Corporation from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (June 22, 2009) (discussing what items and charges may be included as costs of owning, operating, and maintaining the airplane and the appropriate methods used by operators to calculate these expenses).

You requested the FAA allow a company to obtain reimbursement from limited, high-level employees and officials when the company makes a written determination that it is within the scope of the company's business that the individual fly on the company aircraft during personal travel. You note several instances where personal travel on company aircraft may be within the scope of the company's business, and therefore reimbursement would be appropriate. First, the business may require constant communication with the employee and/or the employee must conduct meaningful, real-time work aboard the company aircraft. Additionally, you note the constant and immediate availability of key personnel may be so vital that the company has effective control over the employee's schedule and the employee might be recalled at any time during personal travel.

The Office of the Chief Counsel sought public comment on this issue due to its possible significant impact on the regulated community. In July, we published a proposed interpretation in the Federal Register. *See* Proposed Legal Interpretation 75 Fed. Reg. 39,196 (July 8, 2010).

The FAA rejects the NBAA's argument that personal travel is within the scope of, or incidental to, the company's business when the employee would need to remain in constant contact with the company or have the opportunity to conduct meaningful, real-time work on the company aircraft. The advances in communication technology weaken the argument that the use of company aircraft is necessary for personal travel for these reasons.

The FAA agrees, however, that control over a high-level employee or official's schedule and the employee's ability to be recalled at anytime is a more compelling argument for allowing a company to be reimbursed for the personal travel by an individual whose position merits such a high level of interference into his or her travel plans. High-level employees and officials may be unable to reliably schedule personal travel due to the nature of their employment. The FAA recognizes that routine personal travel, such as vacations, could be cancelled up to the last moment because of compelling business concerns. As such, the company may determine that it is more efficient to provide the company aircraft for the entire trip, rather than reimburse the individual for the cost of cancelled commercial airfare. Likewise, the company may accommodate the individual's altered plans by providing the company aircraft when the compelling business concern has been resolved. The company's ability to alter an individual's travel plans on short notice may render a flight both within the scope of, and incidental to, the company's business. Thus, the FAA determines that a company could be reimbursed for the pro rata cost of owning, operating, and maintaining the aircraft when used for routine personal travel by an individual whose position merits such a high level of company interference into his or her personal plans.

It is important to note that not all personal travel would meet the conditions for reimbursement. A high-level employee or official may have personal travel plans that are unlikely to be altered or cancelled, even for compelling business reasons. For example, absent an emergency, it may be unlikely that a high-level employee would be expected to miss a significant event, such as a wedding or funeral of a close family member. It is also unlikely that an employee would be expected to cancel or reschedule necessary or urgent medical treatment. These examples, however, are not a strict prohibition on the reimbursement for specific types of personal travel in all instances. Rather, they are provided as guidance to companies as they develop their policies and determine whether the personal travel in question would qualify for reimbursement. The company should keep records indicating that it has made a determination that the flight in question was of a routine personal nature.

In order to prevent abuse of the proposed change, a company should maintain and regularly update a list of individuals whose position with the company require him or her to routinely change travel plans within a short time period. The company should be prepared to share this list with the FAA if requested. The FAA recognizes that the Securities Exchange Commission and Internal Revenue Service employ the concept of "specified individuals" in

the context of certain reporting requirements and taxation issues. These individuals generally include officers, directors, and more than 10 percent owners of a company. The FAA does not believe that all officers and directors of a company are likely to be subject to the level of company control discussed above. Rather than issue a blanket description of which individuals may be covered by the proposed revision, the FAA believes it is appropriate for the company's board, or equivalent governing body, to list which company individuals are so situated.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200