



## **How can it be commuting when I'm working from home?!**

**By Lisa D. Holt**

Following the 2017 Jobs Act, expenses allocated to a flight on company aircraft for the purpose of travel between an executive's residence or vacation home and their principal place of business would generally NOT be a deductible business expense. The IRS issued a NPRM in June which clarifies in Prop. Reg. §1.274-14 that they have taken the position that §274(l) disallows all expenses for a commuting flight regardless of whether the executive is imputed income for the flight. The NBAA has filed comments to the proposed rule and requested a public hearing, arguing that (1) requiring the company to impute income to the executive while disallowing the expense of providing the flight results in double taxation; (2) §274(l) should apply only to flights between the employee's residence and their place of employment, and not between the residence and a secondary business location; and (3) only the incremental cost of providing the commuting flights should be subject to disallowance.

There is an exception to the general rule in §274(l) that flights between an executive's residence and their principal place of business is nondeductible commuting expense, "[E]xcept as necessary for ensuring the safety of the employee." Prop. Reg. §1.274-14 uses the same heightened level language as Reg. §1.132-5(m), that being a "bona fide business-oriented security concern." The NBAA comments request that this be clarified to allow that specific risks, such as a heightened risk of COVID-19 complications, would meet this threshold.

To answer the question posed in the headline, the IRS has not given any indication that an executive working from home due to COVID-19 will have their principal place of business temporarily change to the residence; however there will need to be some acknowledgment of the current environment during the pandemic. Watch this space.