Additional Materials

- Flight Department Company Memorandum
- Form Aircraft Time Sharing Agreement
- NBAA Exemption 7897G
- Sample – Member Cost and Charter Agreement

JACKSON WALKER L.L.P.
ATTORNEYS & COUNSELORS

MEMORANDUM

TO:

FROM: James D. Struble, Esq.

DATE:

RE: Regulatory Concerns Regarding Ownership of Aircraft

---

1. Summary

The Federal Aviation Administration (FAA) considers a single purpose entity (*i.e.*, LLC, corporation or partnership) that owns and operates an aircraft without having another business purpose as a commercial operator.

2. Regulatory Background

Federal Aviation Regulations (FARs) govern the operation and use of business aircraft. If an aircraft operation is for "compensation or hire" then it is a commercial operation and must be operated by a Part 135 certificate holder and under the more restrictive operational regulations of Part 135. Non-commercial operations are governed by the less restrictive Part 91 rules. Generally speaking, Part 135 has more stringent requirements than Part 91 for weather reporting, aircraft certification and maintenance, pilot duty time, and take-off and landing distance restrictions. Further, Part 135 operations require the collection of the Federal Excise Tax (FET) which is a tax of approximately 7.5% along with segment fees. Non-commercial operations under Part 91 do not require collection of the FET but are subject to payment of a fuel tax.

An entity which operates an aircraft commercially without a certificate is subject to civil penalties of up to $25,000 per violation. (49 U.S.C. § 46301)

3. Flight Department Company

The "Flight Department Company" issue arose as various companies attempted to insulate the company's assets by creating a separate entity that would own and operate the aircraft. The FAA has consistently viewed such "Flight Department Companies" as commercial operation and attached to this memorandum are three FAA decisions (1981, 1982, 1989) (Exhibits 1, 2, 3) and an opinion letter (Exhibit 4) which reflect the FAA's view that a company that exists solely for the purpose of "owning and operating" an aircraft is a commercial operator which must possess a commercial certificate. The FAA applies a "primary business" or "major

that exists solely for the purpose of "owning and operating" an aircraft is a commercial operator which must possess a commercial certificate. The FAA applies a "primary business" or "major enterprise" test and asks "whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit." 14 C.F.R. § 1.1. There are some exceptions under Subpart F to Part 91 (Part 91.501, formerly known as 91.181) such as intra-corporate family operations, joint-ownership, timesharing, demonstration flights and interchange agreements.

4. **91.501** "Within the scope of, and incidental to, the business use of the company"

The intra-corporate family operations are an exception to the general rule that commercial operations are not allowed under Part 91. Under 91.501(b)(5) "carriage of officials, employees, guests and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company when the carriage is not within the scope of, and incidental to, the business of that company." This section does not apply when the sole purpose of the company is the ownership of the aircraft. The company owning the aircraft must have a primary business purpose other than the ownership of the aircraft for this exception to apply.

5. **Dry Lease**

An entity whose sole purpose is the ownership of an aircraft is not prohibited by the FARs from leasing that Aircraft without a crewmember to related companies or third parties. The owner as lessor is simply providing the Aircraft to the lessee and the lessee is in "operational control" of the Aircraft and provides its own flight crew. Dry leasing requires a truth-in-leasing statement (Part 91.23) but is not a commercial operation from the FAA perspective and is not subject to the FET. So long as the pilots do not have a financial or employment relationship with the lessor, the dry lease will not be viewed as a commercial operation. See attached Federal Aviation Decision (Exhibit 4).

6. **Alternatives**

A. Individual Ownership with increased liability insurance.

B. Place Aircraft in entity with another primary business purpose and make no charges unless Aircraft use is within the scope of and incidental to the business use of the entity, its subsidiary or its parent.

C. Dry Lease from entity to its members and have member obtain pilot services from an independent third party or provide his own pilot services.

JDS:dv

Attachments

Exhibit 1
to
Regulatory Concerns Regarding Ownership of Aircraft

Flight Department Company

FEDERAL AVIATION DECISIONS

Interpretation 1981-6

FAD Digest of Interpretations:

FAR 135.1

A company that exists solely for the purpose of owning or leasing and operating a 7-passenger Cheyenne turboprop for its 3 founders, for which it will receive compensation, must hold a commercial operator certificate under Part 135, because transportation is the primary business of the company, rather than being a matter which is merely incidental to its primary business.

FAR 91 Subpart D

Although Subpart D of Part 91 applies only to large and turbojet aircraft, the owner of a small turboprop aircraft may petition for an exemption permitting it to conduct operations under Subpart D.

Source of Interpretation: Letter to Rebecca H. Baritot from Edward P. Faberman, Assistant Chief Counsel, dated January 19, 1981.

The Draft of the proposed agreement relating to the sharing aircraft usage enclosed with your letter dated November 7, 1980, has been reviewed by this office.

According to the proposed agreement, three parties will form a company designed to purchase or lease an aircraft to be used by those parties. The company will be responsible for obtaining insurance and hanger space, maintaining the aircraft, hiring pilots, scheduling, and assuring compliance with Federal Aviation Regulations (FAR).

The terms of the proposed agreement indicate that the company will exist solely for the purpose of owning or leasing, and operating an aircraft for the use of the three parties. For this it will receive compensation. Section 91.181(a) of the FAR states, in part, that the "operating rules in this subpart do not apply to those airplanes when they are required to be operated under Parts 121, 123, 129, 135, and 137 of this chapter." The preamble to Section 91.181 contains an explanation that if the primary business of persons or goods for a fee or charge of any kind would require the corporation to hold a commercial operator certificate under Part 121 or 135 of the FAR, as appropriate.

In the case of the 7-passenger Cheyenne turboprop named in your proposed agreement, a Part 135 certificate is required. Certification is necessary because transportation is the primary business of the company rather than being a matter which is only incidental to the primary business of the company.

Certification would be accomplished by the Federal Aviation Administration Region in which the operation is located. We will be glad to give you the name of the Regional Counsel for that region upon receipt of that information.

An additional issue is the fact that Section 91.181 of the FAR is applicable only to large and turbojet aircraft, while a Cheyenne is a small turboprop aircraft. If this were the only issue, you could petition for an exemption to conduct operations under the operating rules of Subpart D of Part 91.

Exhibit 2
to
Regulatory Concerns Regarding Ownership of Aircraft

Flight Department Company

FEDERAL AVIATION DECISIONS

Interpretation 1982-12

FAD Digest of Interpretations:

FAR 135.1

A corporation whose sole purpose is to provide air transportation to its 10 owner corporations, providing both the plane and the pilot, is required to hold a Part 135 Certificate.

FAR 91 Subpart D; FAR 135.1

If all owners of a corporation whose sole purpose is to provide air transportation to the owners are listed as owners of the particular airplanes involved and are members of the Business Aircraft Owners Association, and thus entitled to an exemption permitting small aircraft to operate under FAR § 91.181, the corporation may conduct its operation under Part 91 rather than Part 135.

Source of Interpretation: Letter to H.S. Demmerly from Dwight L. Larison, dated November 1, 1982.

This will refer to your memorandum of September 14, 1982, regarding the proposed operation of an aircraft for airplanes by Linn Photo Company of Cedar Rapids, Iowa. The inquiry apparently was made by Mr. Robert Priborsky of that company.

In reviewing the materials, which you forwarded, it would appear that this would violate Part 135, since the corporation to be formed would be formed for the sole purpose of providing air transportation. That corporation would be providing both pilot and plane to the 10 owner corporations and that particular corporation providing same would have to meet the requirements of Part 135.

One possibility for this operation in a slightly different form would be to proceed under Section 91.181. In that instance, however, each of the owning corporations would have to be listed as owner of the particular airplanes involved and they would have to be members of the Business Aircraft Owners Association in order to take advantage of their exemption permitting small aircraft to operate under this section.

This is the only way we can conceive at this time that they could accomplish much the same purpose and still be within the Section 91 operations and avoid the necessity of obtaining an ATCO certificate under Section 135.

Exhibit 3
to
Regulatory Concerns Regarding Ownership of Aircraft

Dry Lease

FEDERAL AVIATION DECISIONS

Interpretation 1989-20

FAD Digest of Interpretations:

FAR 135.1
The rental of an aircraft without a pilot is a "dry lease" and is not subject to Part 135 of the FAR.

Source of Interpretation: Letter to Mike Green from Kenneth E. Geier, Assistant Chief Counsel, signed by Joseph T. Brennan, Deputy Assistant Chief Counsel, dated July 29, 1989.

Your letter of July 5, 1989, to the Wichita Flight Standards District Office has been referred to this office for reply.

The situation you presented involved Company A, who owns a Cessna Conquest I which it uses for company transportation. Company A utilizes a pilot who is hired on a contract basis. Company B, from time to time, rents the aircraft from Company A for its use. Company B hires the same pilot on a contract basis. The pilot has no financial interest in the aircraft, and each company pays the pilot separately for his services. Your question is whether Company A's lease of the aircraft to Company B would be considered an operation subject to the provisions of Part 135 of the Federal Aviation Regulations.

For the sake of this opinion, it is assumed that the pilot used is an independent contractor and has no financial or employment relationship with either company other than when he/she is hired to operate the aircraft. It is further assumed that, under the rental agreement/lease agreement, Company B is free to use any qualified pilot to operate the aircraft while it is in its custody and is not required to use the same pilot as Company A.

Assuming the situation to be as set forth above, it is our opinion the rental agreement/lease agreement between the companies would be considered to be a "dry lease", and the operations would not be subject to Part 135 of the Federal Aviation Regulations.
If there are any questions, please advise us.

Flight Department Company

FEDERAL AVIATION DECISIONS

Interpretation 1989-22

FAD Digest of Interpretations:

FAR 91.181(b)
"Flight department companies" organized solely for the purpose of owning and operating aircraft do not fall within the coverage of FAR § 91.181 since the regulation requires that transportation by air be "incidental" to the company's business.

FAR 91.181(b)
The "major enterprise" or "primary business" test set forth in the definition of commercial operator in FAR § 1.1 has not been abandoned with respect to those operations listed in § 91.181(b).

Source of Interpretation: Letter to John Craig Weller from Donald P. Byrne, Acting Assistant Chief Counsel, dated August 8, 1989.

This is in response to question one of your letter of April 10, 1989, wherein you requested a legal Interpretation of Subpart D of Part 91 of the Federal Aviation Regulations (FAR) and also responds to your followup letter of July 17, 1989.

We regret the delay in responding to your inquiry but the branch responsible for that interpretation has a very heavy volume of high priority matters, including safety rulemaking, Congressional inquiries, and requests under the Freedom of Information Act. Your inquiry came at a particularly busy time as the attorney responsible for the interpretation was in the process of responding to the remand of the Aman decision issued by the Seventh Circuit Court of Appeals. The agency's response was issued on May 26, 1989. Additionally, because of the Court's opinion in Aman, that attorney has had to respond to over 30 Congressional requests for information concerning the status of the Age 60 rule. The work on the response to the Courts remand taken together with the work required to answer all of the Congressional and similar inquires consumed almost all of the responsible attorney's time from the date of your first request to the date of your followup. Moreover, we have recently learned that the petitioners have filed a notice of appeal in that case.

In your letter of April 10, 1989, you state that many corporations have decided to place their flight departments into separate companies. You refer to these as "flight department companies" and indicate that their function is limited solely to air transportation operations. You argue that a "flight department company" which operates within the parameters of Section 91.181 cannot be construed to be a commercial operator. For the reasons below, we disagree.

Subpart D, Sections 91.181 through Sections 91.215 of the FAR prescribes operating rules, in addition to those prescribed in other Subparts of Part 91, governing the operations of large and turbojet powered multiengine airplanes. Subpart D specifically authorizes an operator to receive

a very specific quantum of compensation for operations that would otherwise require some type of operating certificate. To operate pursuant to Subpart D of Part 91, the operation must come within one of the enumerated qualifications set forth in Section 91.181 (b) (1) through (b) (9).

Operations which may be conducted in accordance with paragraphs (b) (1) through (b) (9) include, when common carriage is not involved, the carriage of company officials, employees, and guests of the company on an airplane operated by that company "when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air)."

There is no better settled rule of statutory construction than that which has become known as the plain meaning rule. When the promulgators' intention is so apparent from the face of the regulation that there can be no question as to its meaning, there is no reason for construction. Language that is clear, as is the case with Section 91.181, must be held to what it plainly expresses. Specifically, Section 91.181 (b) (5) allows the carriage of company officials, employees, and guests on a company aircraft provided the carriage is - "*incidental*" - to the company's business. Clearly, when the redactors adopted the concept of "incidental," they contemplated that the company's aviation activities would be secondary to the overall business of the company.

The business structure you describe, viewed as a whole, does not fit the literal language of FAR 91.181 (b) (5), which does not provide for "flight department companies." Additionally, it is clear that these "flight department companies" are organized solely for the purpose of owning and operating aircraft. If so, they do not fall within the coverage of Section 91.181 since that regulation requires that transportation by air be "incidental" to the company's business. In order for these "flight department companies" to conduct the operations you describe, they must obtain an appropriate operating certificate.

The "major enterprise" or "primary business" test set out in the definition of commercial operator in Section 1.1 has not been abandoned with respect to those operations listed in Section 91.181 (b). Notice 71-32 (published in the Federal Register on October 7, 1971 (36 F.R. 19507)), proposed new Subpart D and made this clear in discussing the carriage of goods as incident to a primary business. The notice states:

> The decision to apply Subpart D to the carriage of goods incident to a primary business in not intended to change the applicability of Part 121 to those operations which involve primarily the transportation of cargo by aircraft from one point to another solely for the purpose of sale. Such transportation is considered to be a major enterprise in itself, and may not be conducted with a large aircraft by a person who does not hold an operating certificate issued under Part 121.

This policy was reiterated in the preamble to Amendment 91-101 as follows:

> Although this change in policy (permitting the carriage of property in furtherance of a business) permits a greater use of an airplane as an incident to a business, it does not change the FAA policy in regard to the carriage of goods or property by airplane when such carriage is the primary business of the operator of the airplane. When such carriage

is in fact a major enterprise in itself, it may not be conducted by any person unless he holds an operating certificate under Part 121 or 135, as applicable.

The preamble also applies the primary business test to operations by a subsidiary corporation whose sole purpose is to provide transportation to the parent corporation, a subsidiary or other corporation.

In conjunction with the foregoing, none of the operations you describe to be conducted by the "flight department companies" in question one, of your letter, may be conducted under Subpart D of Part 91. As you are aware, you have the option of petitioning the FAA for rulemaking to amend Section 91.181 in accordance with FAR 11.25.

As stated above, the branch responsible for that interpretation has a very heavy volume of high priority matters and, therefore, cannot respond to both of your inquiries at this time. We anticipate a response to your second question within 120 days.

We hope that this satisfactorily responds to question one of your letter.

Exhibit 4
to
Regulatory Concerns Regarding Ownership of Aircraft

U.S. Department
of Transportation
Federal Aviation
Administration

MAR 9 2007

James W. Dymond, Esq.
Moore & VanAllen PLLC
430 Davis Drive, Suite 500
P.O. Box 13706
Research Triangle Park, NC 27709

RE: Request for Guidance and Interpretation Regarding "Flight Department Companies" and Part 91 Operations

Dear Mr. Dymond:

This responds to your letter dated December 28, 2006 that presents a scenario in which certain U.S. citizens desire to form a limited liability company ("Company") for the purpose of owning and operating a civil aircraft ("Aircraft"). The owner of the Company ("Client") will make contributions to the Company in the amounts needed to pay the costs of owning and operating the aircraft that will be used solely for the transportation of the Client, the Client's family members and guests for personal purposes. You request a legal interpretation to several questions:

(1) Would the Company be considered a "flight department company" by the FAA [Federal Aviation Administration]?

Yes, as that phrase has been used in FAA interpretations. A company whose sole purpose is transportation by air and receives compensation (amounts paid by the Client needed to pay the costs of owning and operating the aircraft) must obtain certification under Part 119 unless the aircraft has a maximum allowable payload of 6000 pounds or more than 20 seats, when it could operate under part 125. Section 91.501 (b)(4) is drafted to permit an individual owner, not a company, to operate an airplane for his own personal transportation and guests without charge. Thus section 91.501 (b)(4) cannot be used by a flight department company.

(2) If the FAA would consider the Company to be a flight department company, then would the FAA consider the contributions made by the Client to the Company in order to fund the operating expenses of the Aircraft to be "compensation" for the Client's personal transportation on the Aircraft?

Yes.

(3) If the answers to Question 1 and Question 2 above are both "yes," then could the Company's flight operations (based on the assumptions) properly be conducted under Part 91 pursuant to the "personal transportation" exemption described in 14 C.F.R. § 91.501(b)(4)?

No.

(4) If the answer to Question 1 and/or Question 2, above is "no," then would the Company's flight operations (based on the assumptions) properly be conducted under Part 91?

No. Depending upon the number of different kinds of passengers this might constitute common carriage, in which case the FAA would require the company to obtain a Part 119 certificate and operate within the requirements of Part 121 or Part 135.

This response was prepared by Bruce Glendening, Attorney in the Regulations Division of the Office of the Chief Counsel and has been coordinated with the Air Transportation Division of Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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

AIRCRAFT TIME SHARING AGREEMENT

This Aircraft Time Sharing Agreement ("Agreement") is entered into as of this the _____ day of _____, 2015, by and between _____, a _____Corporation, having its principal place of business at _____, _____, _____ ("Time Sharor"), and

Name: _____
Address: _____
_____
("Time Sharee").

FOR AND IN CONSIDERATION of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of all which is hereby acknowledged, the parties hereto do hereby covenant, contract and agree as follows, to wit:

SECTION I - OWNERSHIP

1.1 Ownership. Time Sharor represents and warrants that it is the sole owner of the U.S. registered, large, multi-engine turbojet aircraft described as:

Make / Model:
Model Year:
Serial Number:
Registration:
("Aircraft").

1.2 Time Sharor's operation of the Aircraft is incidental to the business of Time Sharor.

SECTION II - TIME SHARING OF THE AIRCRAFT

2.1 Time Sharing. Time Sharor hereby provides the Aircraft to Time Sharee and Time Sharee hereby accepts from Time Sharor the Aircraft with flight crew. Time Sharee shall pay Time Sharor the costs and expenses described below in Section 2.3. It is the parties intention that this Agreement is a "time sharing agreement" as that term is defined at 14 C.F.R. § 91.501(b)(6) and (c)(1).

2.2 Term. The initial term of this Agreement shall begin on the ___ day of _____, 2015, and continue until _____, 2016. This Agreement shall automatically renew at the end of the initial term unless this Agreement is terminated by written notice by either party to the other party. Such notice of termination must be received by the other party not less than thirty (30) days prior to the end of the then current term of this Agreement.

2.3 Costs and Expenses Paid by Time Sharee. Time Sharee shall reimburse Time Sharor for the following expenses and costs of each specific flight taken by Time Sharee:

a. fuel, oil, lubricants, and other additives;

b. travel expenses of the crew, including food, lodging, and ground transportation;

c. hangar and tie-down costs away from the aircraft's base of operations;

d. insurance obtained for the specific flight;

e. landing fees, airport taxes, and similar assessments;

f. customs, foreign permit, and similar fees directly related to the flight;

g. in flight food and beverages;

h. passenger ground transportation;

i. flight planning and weather contract services;

j. an additional charge equal to 100 percent of the expenses listed in paragraph (a) of this section;

k. the applicable FET on the sum of a – f, i and j above; and

l. in-flight food and beverages and passenger ground transportation shall be stated separately.

Time Sharor shall invoice Time Sharee for the above expenses within 10 days after the completion of the flight or series of flights. Such invoice shall detail by permissible category the charges incurred and include all Federal excise taxes and segment fees.

2.4 Time Sharor's Insurance. Time Sharor will maintain not less than $_____ of liability insurance.

2.5 Operational Control. Time Sharor shall maintain and exercise Operational Control over the Aircraft for all Flights. Operational Control includes, but is not limited to possession, command and control, and also shall include, without limitation, exclusive control over:

a. the flight crew and all crew members;

b. determining whether any particular flight may be operated safely;

c. assigning crew members to particular flights;

d. initiating and terminating flights;

e. issuing directions to crew members to conduct flights; and

f. dispatching or releasing of flights.

2.6 Authority of Pilot in Command. In accordance with the applicable governing regulations, the flight crew shall exercise its duties and responsibilities regarding the safety of each flight conducted hereunder. Whenever, in the sole discretion of the pilot-in-command, safety of flight may be compromised, the pilot-in-command may terminate a flight, refuse to commence a flight, or take any other action required for safety, without liability for loss, injury, damage, or delay. The pilot-in-command shall have the right to refuse to board or remove cargo or passengers whenever in his/her judgment the presence of such cargo or passengers would endanger the Aircraft, its cargo or passengers and shall have the right to select the route to destination; provided, however, that the shortest route which is safe and economical shall be followed.

2.7 All Other Costs. Time Sharor shall be responsible for payment of all costs and expenses not specifically charged to Time Sharee in this Agreement.

2.8 Aircraft Maintenance. Time Sharor shall be responsible for all Aircraft repairs and maintenance.

SECTION III - REPRESENTATIONS AND WARRANTIES

3.1 Time Sharor. Time Sharor represents and warrants to Time Sharee that:

a. It is the Owner of the Aircraft.

b. It is an entity duly and validly organized and existing in good standing and has the power and authority to enter into this Agreement.

c. It will not operate the Aircraft in transportation of passengers or cargo for compensation or hire.

3.2 Time Sharee. Time Sharee represents and warrants to Time Sharor that:

a. It is an entity duly and validly organized and existing in good standing and has the power and authority to enter into this Agreement.

b. It will not operate the Aircraft in transportation of passengers or cargo for compensation or hire.

SECTION IV - MISCELLANEOUS

4.1 Effect of Termination. Upon any termination of this Agreement, each party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination and any liability arising from breach of this Agreement will survive termination of this Agreement. Neither party will be liable to the other for damages of any sort solely as a result of terminating this Agreement in accordance with its terms, except as specifically provided above. Termination of this Agreement will be without prejudice to any other right or remedy of either party.

4.2 Relationship of Parties. It is understood and agreed that the relationship of the parties hereto is strictly that of Time Sharor and Time Sharee, and this Agreement shall not be construed as a joint venture or partnership.

4.3 Agreement Binding on Assigns. All covenants, conditions and agreements and undertakings in this Agreement shall extend to and be binding on the respective heirs, successors, and assigns of the respective parties hereto the same as if they were in every case named and expressed.

4.4 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the United States of America, and the State of _____ substantive and procedural law will apply.

4.5 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

4.6 No Waiver. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

4.7 No Rights in Third Parties. This Agreement is made for the benefit of Time Sharor and Time Sharee and their respective subsidiaries and affiliates, if any, and not for the benefit of any third parties.

4.8 Attorneys' Fees. It is further understood and agreed by and between the Time Sharor and Time Sharee that if on account of a breach or default by either party of any of their obligations hereunder, it shall become necessary for the other party to employ an attorney to enforce or demand any of either party's rights or remedies, hereunder, then and in any such event, the defaulting or breaching party shall pay all reasonable and necessary attorneys' fees, costs of court and other expense occasioned by such default(s) and breach(es).

4.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.

4.10 Notices. All notices required to be given by either party shall be sufficient if giving in writing and personally served or sent by U.S. certified/registered mail to the last known address of the party.

4.11 Headings and References. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

4.12 Entire Agreement. This Agreement is the entire agreement between the parties and may not be modified orally or in any other manner other than by agreement in writing and signed by all parties or their respective successors in interest.

SECTION V - TRUTH-IN-LEASING

THE AIRCRAFT HAS BEEN MAINTAINED AND INSPECTED UNDER FAR 91 FOR THE PREVIOUS TWELVE (12) MONTHS.

IT WILL BE MAINTAINED AND INSPECTED UNDER FAR 91 FOR OPERATIONS TO BE CONDUCTED UNDER THIS AGREEMENT. DURING THE DURATION OF THIS AGREEMENT _____ IS CONSIDERED RESPONSIBLE FOR OPERATIONAL CONTROL OF ALL AIRCRAFT IDENTIFIED AND TO BE OPERATED UNDER THIS AGREEMENT.

AN EXPLANATION OF FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE.

I, _____, THE UNDERSIGNED _____ OF _____, A _____ CORPORATION, CERTIFY THAT _____ IS RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT AND THAT _____ UNDERSTANDS ITS RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

TIME SHAROR:	TIME SHAREE:
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____
Date:_____	Date:_____

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

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

March 20, 2015

Exemption No. 7897G
Regulatory Docket No. FAA-2002-12728

Mr. Douglas Carr
Vice President
National Business Aviation Association, Inc.
1200 G Street NW, Suite 1100
Washington, DC 20005

Dear Mr. Carr:

This letter is to inform you that we have extended Exemption No. 7897, as amended, for 12 months. It explains the basis for our decision, describes its effect, and lists the conditions and limitations.

The Basis for Our Decision

By letter dated March 10, 2015, you petitioned the Federal Aviation Administration (FAA) on behalf of the National Business Aviation Association, Inc. (NBAA) for an extension of Exemption No. 7897. That exemption from §§ 91.409(e) and 91.501(a) of Title 14, Code of Federal Regulations (14 CFR) allows NBAA to operate small civil airplanes and helicopters of United States registry under the operational rules of §§ 91.503 through 91.535 and to select an inspection program as described in § 91.409(f).

You also requested the FAA remove condition number 6 so the exemption would be valid for operations outside of the United States. In accordance with § 11.83, the FAA must verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO).

The FAA has determined that good cause exists for not publishing a summary of the petition in the Federal Register because the requested amendment of the exemption would not set a precedent.

Our Decision

The FAA has determined that the justification for the issuance of Exemption No. 7897, as amended, remains valid with respect to this exemption and is in the public interest. To ensure continuity of operations while your request to remove condition number 6 is reviewed, the FAA is extending Exemption 7897, as amended, with no change, for 12 months. During this time period, the FAA will make a decision on the amendment request. There is no need for NBAA to petition for extension during this time period.

Therefore, under the authority provided by 49 U.S.C. 106(f), 40113, and 44701, which the FAA Administrator has delegated to me, the National Business Aviation Association, Inc. (NBAA), is granted an exemption from 14 CFR §§ 91.409(e) and 91.501(a) to allow NBAA to operate small civil airplanes and helicopters of the United States registry under the operational rules of §§ 91.503 through 91.535 and to select an inspection program as described in § 91.409(f), subject to the following conditions and limitations.

Conditions and Limitations

1. Only those operations that are listed in § 91.501(b)(1) through (7) and (9) may be conducted under the authority of this exemption. Those operations must be conducted in compliance with the operating rules in §§ 91.503 through 91.535. However, helicopter operations are not required to comply with the flight altitude rules of § 91.515(a), provided the operations comply with the minimum safe altitude requirements in § 91.119. Aircraft operated under the authority of this exemption must use an inspection program listed in § 91.409(f).

2. No person may operate an aircraft under this exemption unless the appropriate Flight Standards District Office (FSDO) has been -

    a. Notified that the operation will be conducted under the terms of this exemption; and

    b. Provided with a copy of the time-sharing, interchange, or joint ownership agreement under which each aircraft is being operated, if appropriate. Each agreement must include the aircraft registration number of each aircraft involved.

3. No person may operate an aircraft under this exemption unless an entry is made in the aircraft logbook showing the provisions of part 91, subpart F, under which it is being operated.

4. No person may operate an aircraft under the authority of this exemption unless an inspection program has been submitted to and approved by the appropriate FSDO.

5. This exemption does not authorize the conduct of any operation required to be conducted under the rules of part 135.

6. This exemption is not valid for operations outside of the United States.

The Effect of Our Decision

Our decision extends the termination date of Exemption No. 7897, as amended, to March 31, 2016, unless sooner superseded or rescinded.

Sincerely,

/s/
John S. Duncan
Director, Flight Standards Service

MEMBER COST AND CHARTER AGREEMENT

Preliminary Statements: The Members are co-owners of the Company, which Company is or intends to become the registered owner of _____ (the "**Aircraft**"). The Company has entered into an Aircraft "Dry" Lease and Charter Management Agreement (the "**Management Agreement**") with [Part 135 Certificate Holder] ("**Aircraft Manager**"), whereby the Company has retained Aircraft Manager to manage the Aircraft and conduct flight operations pursuant to Aircraft Manager's air carrier operator's certificate and whereby Aircraft Manager retains operational control of all flights.

Payment of Fixed and Variable Costs:

Fixed Costs: Each Member, in proportion to its Membership Percentage, shall pay the fixed costs related to the Aircraft (defined below), to include (collectively, the "**Fixed Costs**"):

1. All monthly fixed expenses pursuant to Exhibit ____ of the Management Agreement;

2. Maintenance, repair and overhaul of the Aircraft, its engines and systems (including any CESCOM Maintenance tracking fees);

3. Navigation chart services (to the extent not covered by the Management Agreement); and

4. Property taxes.

Variable Costs: Each Member will pay 100% of all variable costs attributable to the charter of the Aircraft by such Member to include (collectively, "**Variable Costs**"):

1. Fuel, oil, lubricants and other additives;

2. Travel expenses of any crewmembers to include per diem expenses;

3. Hangar and tie-down services away from the Aircraft's base of operation;

4. Insurance obtained for the specific flight;

5. Landing fees, airport taxes and similar assessments;

6. In-flight food and beverages;

7. Passenger ground transportation;

8. Flight planning and weather contract services (to the extent not covered by the Management Agreement);

9. Any hourly rate for airframe, engine or APU maintenance reserve programs;

10. Satellite phone; and

11. Repositioning fees.

Invoicing: Fixed Costs and Variable Costs due under this Agreement will be invoiced by Aircraft Manager and paid by the Members in accordance with the Management Agreement; provided that Managers of the Company are also permitted, without duplication, to make assessments for Fixed Costs in accordance with the Company Agreement to which this Agreement is attached.

Charter and Scheduling:

Charter: The Aircraft has been dry leased to Aircraft Manager under the terms of the Management Agreement exclusively for charter under Part 135 of the FAA Regulations, and all flights under the Management Agreement are intended to be considered commercial transportation under the Aircraft Manager's air carrier operating certificate for purposes of Part 135 of the FAA Regulations. The terms of this Agreement are subject to Aircraft Manager's possession and operational control under the Management Agreement. Each Member acknowledges that all flights will be subject to commercial air transportation excise taxes pursuant to Code Section 4261.

Scheduling of the Aircraft: Aircraft Manager shall have final authority over scheduling of the Aircraft, provided, however, that such scheduling shall be conducted in accordance with this Agreement and Aircraft Manager will use reasonable efforts to accommodate the needs of each Member and to avoid conflicts in scheduling.

Each Member will provide Aircraft Manager with written requests for flight time and proposed flight schedules as far in advance of any given flight as possible. Each request for flight time shall include the following information for the proposed flight:

(1) proposed departure point;
(2) destination;
(3) date and time of flight;
(4) names and addresses of anticipated passengers;
(5) nature and extent of luggage and/or cargo to be carried;
(6) catering and ground transportation desired; and
(7) date and time of a return flight, if any

Requests for flight time shall be honored in the order in which they are received.

For each twelve (12) month period, each Member shall be entitled to a number of hours flight time equal to such Member's Membership Percentage during such twelve (12) month period multiplied by three-hundred (300) hours. Any Member desiring flight time in excess of the hours

described in the preceding sentence must obtain the prior consent of a majority (in terms of Membership Percentage) of the other Members, which consent shall not be unreasonably withheld, conditioned or delayed. Additionally, except in connection with required maintenance and repair, no Member shall remove the Aircraft from Dallas Love Field for more than one hundred and twenty (120) consecutive hours without the prior consent of a majority (in terms of Membership Percentage) of the other Members, which consent shall not be unreasonably withheld, conditioned or delayed.

Limitation on Charter: Unless all Members consent, no Member is entitled to charter the Aircraft, nor to request Aircraft Manager to charter the Aircraft in any manner inconsistent with the terms of the Company Agreement to which this Agreement is attached, this Agreement or the Management Agreement, and no Member shall interchange the Aircraft with any other aircraft or enter into any agreement to do so.

Suspension of Charter Rights: If a Member fails to timely and fully pay its respective Fixed Costs and Variable Costs, or such Member otherwise breaches the provisions of this Agreement or the Company Agreement to which this Agreement is attached, then the rights of that defaulting Member to charter, and to be carried aboard, the Aircraft are indefinitely suspended until such defaulting Member pays all amounts, late fees, and interest, due hereunder or otherwise cures such breach. This matter of orderly governance of the Company's affairs is not to be deemed an election of remedies, and supplements all agreements, rights, remedies and recourses as are set forth in the Company Agreement of the Company.

Authority of Flight Crew: In accordance with the applicable FAA Regulations, each flight crew will exercise all of its duties and responsibilities in regard to the safety on each flight. Each Member specifically agrees that the pilot in command, in such pilot's absolute discretion, may terminate any flight, refuse to commence any flight, or take any other action which in the considered judgment of the pilot in command is necessitated by considerations of safety or compliance with applicable law. The pilot in command of any flight shall have absolute discretion in all matters concerning the preparation of the Aircraft for flight and the flight itself, the load carried and its distribution, the decision whether a flight shall be undertaken, the route to be flown, the places where landings shall be made, and all other matters relating to the operation of the Aircraft. No such action of the pilot in command shall create or support any liability for loss, injury, damage or delay to any Member.

Ratification: By becoming a Member in the Company each Member agrees to and ratifies the terms of this Agreement, and further agrees to be bound to the terms hereof as such may be amended from time to time by the Company