

Summary of Selected Items for Typical Executive Aircraft Sharing Arrangements
John Ransom – Jackson Walker LLP – November 1, 2017

	Charter Part 135	Owner Use Part 91.501(b)(5) ¹	Dry Lease Part 91.23 Truth- in-Leasing	Time Share Parts 91.501(b)(6) and (c)(1)	Interchange Part 91.501(b)(6) and (c)(2)	Joint Ownership Part 91.501(b)(6) and (c)(3)	Private Pilot Reimbursement FAR 61.113	NBAA Nichol's Interpretation – Key Executive Reimbursement for Personal Flights
Operational Control? ²	Charter Company	Owner	Dry Lessee	Time Sharor	Person providing aircraft & pilots	Joint owner who provides the pilots ³	Pilot Owner/Lessor	Employer
Flight Crew Hired by?	Charter Company	Owner	Dry Lessee	Owner/Lessee	Owner/Lessee	One of Joint Owners	Flown by Pilot Owner/Lessor	Employer
FAA Reimbursement Limitation?	No	Cost of owning, operating and maintaining plane.	No, but lessee pays all operating costs including flight crew.	91.501(d) - Two times actual fuel plus certain out of pocket trip costs. Flight crew provided by Time Sharor.	Differential in costs of owning, operating and maintaining the two planes, but no monetary true up of differential flight hours.	Reimburse for flight crew provided by another Joint Owner. User pays own share of all other costs.	Reimburse owner/lessor pilot for prorata portion of cost of operating expenses, including lease costs. ⁴	Prorata cost of routine personal travel
RVSM Certificate?	Charter Company	Parent or sub employing pilots and owning aircraft	Each Dry Lessee	Time Sharor	Person providing aircraft & pilots	Joint owner who provides pilots	Pilot Owner/Lessor	Employer
7.5% FET?	Yes	No	No	Yes	Yes, FMV of hourly flight time, not just cost differential	No	No	Yes ⁵
Federal fuel excise tax refund?	Yes	No	No	Yes	Yes	No	No	Yes
State sales tax? ^{6 7}	No	No	Yes	No	No	No	No	No

¹ FAR Part 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.”

² Operational Control means “Exercise of authority over initiating, conducting or terminating a flight.” Person with Operational Control has primary legal liability should an accident or incident occur and has regulatory responsibility for the safe operation of the plane.

³ Views vary on operational control determination for joint owners who do not employ the pilots.

⁴ Varying rules for employer reimbursement (pilot only, no passengers allowed), prorata expense sharing by passengers (common purpose test) and charitable flight reimbursement. See FAR 61.113

⁵ PLR 93 22 002

⁶ State sales tax generally due if aircraft is provided without pilots. Comments here are based on Texas law, but each state is unique and may have different tax regimes. See New Texas Tax Code 163.006 exemption for owner and over 50% affiliate lease payments.

⁷ Lease of aircraft to charter company may be exempt from state sales tax. Charter fees to customers and reimbursements are usually not subject to state sales tax as the aircraft is provided with an operator.