Oct 26 1990

Robert Glasser, Esquire
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Washington, DC 2003

Dear Mr. Glasser:

Thank you for your letter of November 22, 1989, concerning an interpretation of §91.501 (formerly §91.111) of the Federal Aviation Regulations (FAR). We regret the delay in responding to your request. The situation described in your letter and your question are set forth below, and your question is followed by our interpretation of the FAR.

Situation:

Our client is a partnership comprised of three partners. Two of the three partners are corporations. The third partner is a partnership itself comprised of nine corporations. Our client intends to lease one aircraft from a leasing company, and lease a second aircraft form one the eleven corporations compromising the partnership. It is the partnership's intent to operate the aircraft in accordance with l4 C.F.R. § 91. l81 (b) (3) , and that part provides as follows:

> The carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of that 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 any 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.

The only difference between the above language of Part 91.181(b) (3) and that which we propose to do is the fact that this Part refers to a company, and our client is a partnership. In all other respects this Part describes how our client, the partnership, intends to operate the two leased aircraft.

Question:

This is to request a formal FAA interpretive opinion of 14 C.F.R. §91.181(b)(3) in order to ascertain whether it applies with equal force to partnerships.

Assumption:

Although your letter refers to §91.181(b) (3), you recite the language contained in §91.181(b)(5), which on August 18, 1990, was recodified as §91.501(b)(5) under Subpart F of Part 91. Since 191.181(b) (3), which is now recodified as §91.501(b) (3), deals with demonstration of an airplane to prospective customers, we assume that you mean §91.501(b)(5).

Regulatory History:

Part 91 was amended to add Subpart D in 37 FR 14758, July 25, 1972. The preamble to that amendment states that 275 comments were received in response to the NPRM. That preamble also states, in pertinent part, that "(The) NBAA (National Business Aircraft Association) recommended changes in the applicability of Subpart D to include a fuller use of the aircraft in private carriage. ... Most of the comments received from the corporate operators endorsed the position of the NBAA ...."

Analysis:

The regulatory history behind Subpart F reveals that the rationale of Subpart F was to upgrade the safety standards of large and turbojet transport airplanes that are being used in private carriage. Additionally, in accepting the recommendation of a commenter for a "fuller use" of corporate aircraft, the FAA provided in the rule that the operator could receive limited reimbursement of expenses for certain private (versus commercial) carriage operations.

Regarding §91.501(b) (5), a careful review of the preamble language in the NPRM and the amendment to Part 91, which created Subpart D, as well as the comments contained in Docket 11437, reveals that the rule is discussed in the context of corporate aircraft operations and omits any reference to individuals or partnerships.

In interpreting the provisions of §91.501(b) (5) which was originally §91.181(b) (5), the FAA has stated that the agency's long-established interpretation of the parent-subsidiary provision in FAR 91.181(b) (5) is that it should be strictly construed to apply only to corporate complexes of the parent -subsidiary scheme. Additionally, the FAA has consistently interpreted that the language in §91.501(b) of "parent," "subsidiary," and "subsidiary of a parent" are "corporate terms" and possess their normal meaning.

Therefore, based on a review of the preamble language of the NPRM, comments to that NPRM, the amendment to Part 91, which created Subpart D, the regulatory history of 91.501(b) (5), and previous interpretations, it is our interpretation that 91.501(b) (5) only applies to corporate operations and does not apply to partnerships or individuals.

We hope this satisfactorily answers your inquiry.

Sincerely,

Donald P. Byrne

Acting Assistant Chief Counsel Regulations and
Enforcement Division