March 22, 1996

Kevin Y. Jung, Esq.
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RE: Part 91 Interpretations
Request

Dear Mr. Jung:

This letter is in response to your letter of February 28, 1996, in which you requested my views on a proposed air operation of an executive aircraft under FAR Part 91. You state the facts are as follows:

> Company A is about to own a Falcon 900B. Company A cannot qualify as a United States Citizen under 14 CFR §47.3 and file a U.S. trustee's affidavit required under §47.7(c). Under these circumstances, the U.S. citizen trustee will become the registered owner of the Falcon with the FAA, and Company A becomes the sole beneficiary under the trust. Between the U.S. citizen trustee and Company A, the parties enter into an aircraft operating agreement, whereby Company A acquires the Falcon to operate under Part 91. Company A would have its own flight department with crew.

Your questions and my responses are as follows:

Question IA: Can Company A operate Falcon under 14 CFR §91.501(b)(5)?

Answer: Yes, 14 CFR §91.501(b)(5) applies to the operator of an aircraft. However, Company A cannot be merely a "flight department" company. If Company A's primary business is providing air transportation to other companies--or if such transportation is, in fact, a major enterprise in itself--it will need an operating certificate, regardless of 14 CFR §91.501.

Question 1B: Does 14 CFR §91.501(b)(5) apply only to owners of aircraft?

Answer: 14 CFR §91.501(b)(5) applies to operators of aircraft.

Question 1C: If 14 CFR §91.501(b)(5) does not apply to non-owner of aircraft, what Part 91 section can a lessee, i.e., Company A, operate aircraft and still be qualified as Part 91 operation? Is time sharing agreement arrangement possible under this situation as described in §91.501(c)(l)?

Answer: See the above.

Question 1D: Instead of an aircraft operating agreement between the U.S. trustee and Company A, the U.S. trustee enters into an aircraft operating agreement with a different company, Company B. Is this arrangement acceptable to the FAA? Can Company B operate under Part 91, specifically in relation to §91.501(b)(5)?

Answer: Yes.

Question: How about §91.501(b)(6)?

Answer: Yes, with the exception of a joint ownership agreement, as Company B is not a joint owner.

> Companies A, B, C, and D jointly acquire a Falcon 900B. Companies A, B, C, and D cannot qualify as United States citizens under 14 CFR §47.3. Therefore, they all use a trust company or companies who qualify as U.S. citizens under §47.3 and file U.S. trustees' affidavits required by §47.7(c). Under these circumstances, the U.S. trustees become the registered owner of the Falcon with the FAA and Companies A, B, C, and D become the sole beneficiaries under the trust. Between Companies A, B, C, and D, they enter into joint ownership agreement to operate the Falcon. One of these companies would have a flight department with crew and others would share charges to be specified in their joint ownership agreement.

Question 2A: Can Companies A, B, C, and D enter into joint ownership agreement?

Answer: No. The companies are not owners of the aircraft; therefore, they cannot enter into a joint ownership agreement.

Question 2B: Does 14 CFR §91.501(c)(3) apply to Companies A, B, C, and D?

Answer: See answer to 2A, above.

Question 2C: Will Companies A, B, C, and D be considered as owners under §91.501(c)(3)?

Answer: No.

Question 2D: If 14 CFR §91.501(c)(3) applies to Companies A, B, C, and D, in addition to operating under a joint ownership agreement, can these companies also use 14 CFR §91.501(b)(5) to cover their respective parent, subsidiaries, and common parent's subsidiaries and charge allowable expenses in owning, operating, and maintaining the Falcon?

Answer: Although 14 CFR §91.501(c)(3) operations are not available to Companies A, B, C, and D, those companies can use 14 CFR §91.501(b)(5) to cover their respective parents, subsidiaries, and parent's subsidiaries when they are operators of the aircraft.

Question 2E: If Companies A, B, C, and D cannot operate the aircraft under §91.501(c)(3), can they operate under 14 CFR §91.501(c)(1)?

Answer: The companies can operate under 14 CFR §91.501(c)(1) assuming, of course, that each of the companies is able to lease the aircraft to another company with flight crew. Each company can also operate under §91.501(b)(5).

Question 3: How is 14 CFR §91.501(b)(5) different from 14 CFR §91.501(b)(6)? Can you provide us with a situation or context in which each section is applied? When do 14 CFR §91.501(b)(5) and 14 CFR §91.501(b)(6) become applicable?

Answer: (b)(6) simply brings operations defined under time sharing agreements, interchange agreements, and joint ownership agreements (including their respective cost allocation schemes) within the overall exception granted by §91.501(b). (b)(5) similarly describes another means of operation permitted within the overall exception of §91.501(b). While (b)(6) incorporates, by reference, the cost allocation schemes of §91.501(c)(1-3), (b)(5) uses a self-contained cost allocation scheme.

Question 4: It is our understanding that §91.501(b)(5) requires a primary business by the company that operates the airplane, other than transportation by air. How is this primary business test applied? Is it based on a dollar amount between the cost of operating an airplane under Part 91 vis-à-vis the annual gross from other business with the bigger dollar amount side being considered the primary business of that company?

Answer: This was addressed in our prior correspondence.

Sincerely,

George L. Thompson
Assistant Chief Counsel