March 6, 1996

Kevin Y. Jung, Esq.
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352

RE: Request for Part 91 Legal Interpretation

Dear Mr. Jung:

This letter is in response to your letter of February 12, 1996, in which you requested my views on a proposed air operation of an executive aircraft under FAR Part 91, in particular §91.501. You state the facts are as follows:

> Company A is a holding company incorporated under the laws of the United States or any state thereof. Company A has four subsidiaries, Sub B, Sub C, Sub D, and Sub E. Each subsidiary has been incorporated under the laws of one of the states of the United States. All of the four subsidiaries currently have ongoing and existing businesses. Company A also has parent company, Company P, incorporated in a foreign country. Not one of these companies, Company P, Company A, Sub B, Sub C, Sub D, and Sub E, can meet the United States citizenship requirement under FAR §47. Except for Company P, when one of these companies acquires a large and turbojet-powered multi-engine civil airplane, it intends to utilize a United States citizen trust company to register the aircraft with the FAA.

Your questions and my responses are as follows:

Question 1: If Company A were to acquire the aircraft and through a U.S. citizen trust company, the aircraft is registered with the FAA, can Company A carry its parent Company P's officials, employees, guests, or property within the scope of and incidental to the business of Company P and charge Company A's owning, operating, and maintaining expense of the airplane to Company P and still be qualified under Part 91 operation?
Answer: Yes, to the extent that the transportation of P's officials is within the scope of and incidental to the business of Company A and that Company A's business is not air transportation.

Question IA: Under the same situation as #1, does it matter if Company P is a domestic parent company or a foreign parent company.

Answer: No, FAR §91.501 does not distinguish between domestic parent companies and foreign parent companies.

Question 1B: Under the same situation as #1, must Company A carry Company P's officials, employees, guests, or property only within the scope of and incidental to its business, as opposed to the business of Company P?

Answer: No, specific reference is to the business of either an aircraft owner/operator, its parents, or its subsidiaries.

Question 2: What is the definition of "official," "employees," and "guests" under 14 CFR §91.501(b)(5)?

Answer: The terms "official," "employees," and "guests" do not impart any special meaning under 14 CFR §91.501(b)(5). They are defined on the basis of common usage in the American language.

Question 3: If Sub B were to acquire the aircraft and through a U.S. citizen trust company, the aircraft is registered with the FAA, can Sub B carry Company A, Sub C, Sub D, and Sub E's officials, employees, guests, or property and charge these companies with Sub B's owning, operating, and maintaining expenses of the aircraft under 14 CFR §91.501(b)(5)?

Answer: Yes.

Question 3A: What expenses are covered under the meaning of "owning, operating, and maintaining" an airplane?

Answer: The cost of owning, operating, and maintaining the aircraft includes both direct costs and they include a pro rata apportion of all fixed and variable overhead expenses associated with the aircraft.

Question 3B: Under the same situation as #3, can Sub B carry Company P's officials, employees, guests, or property under 14 CFR §91.501(b)(5) and charge its expenses for owning, operating, and maintaining the aircraft?

Answer: Sub B may operate the airplane under the same terms as Company A, except that it may not charge any fees to Company P. The reason for this is that Company P and Sub B are not in parent/subsidiary relationship as envisioned by the regulation.

Question 4: Under 14 CFR §91.501(c)(3), if Company A, Sub B, Sub C, Sub D, and Sub E were to jointly own and register the aircraft with the FAA through a U.S. citizen trust company, can only Company A have a flight department with flight crew to service other joint

owners and still be qualified under Part 91 operation?

Answer: Ordinarily, any of the joint owners could have the flight department. However, in the hypothetical you pose, one of the given facts is that none of the companies meet the citizenship requirements of 14 CFR §47, and aircraft cannot be operated under a joint ownership agreement unless all of the conditions of 14 CFR §91.501(c)(3) are met, including the requirement that all users be registered joint owners of the aircraft.

Question 4A: Under the same situation as #4, what kinds of charges can Company A charge under an agreement to other joint owners and still be qualified as Part 91 operation?

Answer: Assuming that the joint ownership agreement is one qualified under 91.501(c)(3), the charges are not specified in the FARs.

Question 4B: Under the same situation as #4 and 14 CFR §91.501(c)(3), can each joint owner's parent company be served by the joint owners?

Answer: No, only the joint owner's passengers can be carried.

Question 4C: Under the same situation as #4, in order for the joint owners to be able to share charges specified in their agreement, must the employment and furnishment of flight crew with the airplane be within the scope of and incidental to the business of the joint owners?

Answer: No.

Question 4D: Under the same situation as #4 and 14 CFR §91.501(c)(3), is use of the aircraft by one of the joint owners of the aircraft limited to the carriage of its officials, employees, guests, or property and none other?

Answer: Yes.

Question 5: Under 14 CFR §91.501(b)(5), even if expenses for owning, operating, and maintaining an aircraft are chargeable but not charged, does this still qualify under Part 91 operation?

Answer: Yes.

Question 5A: Under the same situation as #5, how can a conflict under 14 CFR §91.501(b)(5)'s limitation on what can or cannot be charged and the Internal Revenue Code on charging one's service at a fair market value be resolved?

Answer: I am not qualified to address Internal Revenue Code issues. I suggest that an alternative source be consulted for an answer to this inquiry.

Question 6: If Sub B were to acquire an airplane and through a U.S. citizen trust company, the aircraft is registered with the FAA, can Sub B enter into a time sharing agreement under 14 CFR §91.501(c)(1) with Company A, Company P, Sub C, Sub D, and Sub E with a time allocation of 20%, 15%, 10%, 10%, 10%, respectively, and 35% for its own use and charge its expenses in accordance with the respective percentage of time allocation?

Answer: No, charges may be made for the expenses of specific flights only as set forth in §91.503(d)(1-10).

Question 6A: Under the same situation as #6, what types of expenses can Sub B charge to other time users?

Answer: Same as above.

Question 6B: Under the same situation as #6, are Sub B’s chargeable expenses limited to its ownership, operation, and maintenance of the aircraft under Part 91 operation?

Answer: Same as above.

Question 7: If an entirely new corporation is established to acquire the aircraft and through a U.S. citizen trust company, the aircraft is registered with the FAA, in terms of this new company's annual gross sales/business vis-à-vis the cost of operating the aircraft, how much of gross revenue must this new company have in order not to be deemed a paper company established solely to operate the aircraft under Part 91?

Answer: The FAA has not established a standard, other than that if the primary business of the corporation operating the aircraft is transportation, or the carriage of persons or goods for a fee or charge--the operation would require a commercial operator's certificate. Based upon your description, the new corporation would appear to be essentially a flight department company organized solely for the purpose of owning and operating an aircraft--a transportation company.

Question 8: Under 14 CFR §91.501(b)(5), what percentage of stock ownership is required to be classified as "parent" or "subsidiary"?

Answer: As the terms "parent" or "subsidiary" are not defined in the Federal Aviation Regulations, they should be given their common and ordinary definition in the American language.

Sincerely,

George L. Thompson

Assistant Chief Counsel