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

September 10, 2007

Joseph D. Fabian
[redacted]

Dear Mr. Fabian:

This letter responds to your request for an interpretation dated May 4, 2007. You asked for an interpretation of 14 CFR part 91 and 61 of the Federal Aviation Regulations with regard to a scenario that you described as follows:

You are an ATP/CFII with SE and ME ratings. You are self employed as a contract pilot and flight instructor. Customer "A" owns a 4 seat Beech Bonanza and hires you to fly it for him and his law firm; and also hires you to provide flight instruction to the owner of the aircraft. Customer "B" (non-pilot) owns a seven seat Cessna 421 and hires you to fly it for his personal transportation. You bill each owner for pilot services at the end of the month.

As a preliminary matter, before we discuss the actual issue you raised, we want to caution you. When you fly A and A's law firm employees on A's aircraft, if A does not acknowledge that you are A's direct employee or agent for the flight and does not acknowledge that A is liable for your actions or inactions, then A is not assuming operational control of the flight. Instead, it would appear that A has hired you for your aviation expertise to transport A and A's law firm employees from point to point. As such, you would have operational control of this "compensation or hire" flight. As such you would have to be certificated to conduct Part 135 operations. On the other hand, if A acknowledges that it has "operational control" of the flights where you are the pilot, such that, for example, any negligent act that you commit during that flight operation would be the responsibility of A, then there is a better chance that the FAA would find that A has operational control of the flight and that such flights could be conducted under Part 91. We would use the same type of "operational control" analysis in evaluating your business arrangements with B.

You present the following scenario in order to raise your issues: Customer "A" wants to take 5 members of this staff on a vacation trip. You ask if Customer "A" calls Customer "B" and asks to lease his plane, can you fly it without violating part 135 regulations. You state that no charges will be made to any passengers and the lease payment will only cover direct operating costs of the Cessna 421. Customer "A" would subsequently be billed for your service as his pilot.

The facts that you presented are not complete. Thus, we have to make assumptions and respond in a general manner. As a preliminary matter, you state that you are a self-employed contract part 91 pilot and flight instructor. We are assuming that you are not also a pilot employee of Customer A or B. However, we are also assuming that, at a minimum, you would be considered A's agent for the vacation flight and as such, A acknowledges that it has "operational control" of the flight and will be held accountable for the acts and omissions of its employees and agents (i.e., you) in the operation of the vacation flight. We assume you are asking whether the operation you described can be conducted under 14 CFR part 91.501(b)(4) because the flight is a "vacation trip" and neither Customer A or B appears to be a corporate entity. Section 91.501(b)(4) states that operations that may be conducted under the rules of subpart F of part 91, instead of those in parts 121, 129, 135 and 137 when common carriage is not involved (and if the aircraft used is a large or turbo-jet powered multi-engine airplane), include "(f)lights conducted by the operator of an airplane for his personal transportation or the transportation of his guests when no charge, assessment, or fee is made for the transportation." But it is clear that although A's guests are not paying anything for the vacation flight, A is paying for the use of B's aircraft and A is paying either you directly or B for your pilot services.[1] If the facts support a finding that either B or you have "operational control" of the vacation flight in that A disavows responsibility for and liability for the safety of the flight operation and because A would be paying either B or you for flying the aircraft to transport people for a vacation, Section 91.501(b)(4) would be inapplicable.

In your scenario, Customer A would lease Customer B's plane and pay the direct operating costs of the Cessna 421 for use during vacation trip. Customer B may dry lease his aircraft to others for their use. If the lease is truly a dry lease for a vacation flight of Customer A's employees, Customer A would have to understand that A is assuming operational control and responsibility for the operation of Customer B's aircraft during the vacation flights. Also, Customer B's lease must contain the necessary truth in lending clauses that make Customer A aware of the responsibilities of operational control. See e.g. Section 91.23.

However, if it appears from a pattern or from the evidence in a particular case that Customer B is acting in concert with you to furnish B's aircraft, with you as the pilot, to others as a package, the operation or operations would be considered a "for hire" wet lease operation In other words, the facts may well establish that B would be providing both the aircraft and crew to A for a compensation or hire flight. In such a situation, it is likely that the FAA would find that B has "operational control" and that B must be certificated to conduct Part 135 operations. On the other hand, even if the facts demonstrate that B is not providing both the aircraft and pilot to A, if the facts establish that A does not consider you its employee or its agent for the vacation flight and thus if A would not agree that it is liable for your acts or omissions during that flight, then you would be viewed as having "operational control". If

[1] In your letter, you do not clearly state who is billing A for your pilot services. You also do not clearly indicate whether A would be paying you directly or whether A would be paying B for your pilot services. If A pays B for your pilot services, we would view the arrangement as a wet lease (not a dry lease) of an aircraft from B to A and we would most likely conclude that B has operational control of the vacation flight and that B must be certificated to conduct Part 135 operations.

you are viewed as having operational control and thus are responsible for the safety of the flight, then we would find that you need to be certificated to conduct Part 135 operations because you would be transporting other people or property for compensation or hire.

This response has been prepared by Cecile O'Connor, 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 earliest convenience at (202) 267-3073.

Sincerely,

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