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

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

NOV 25 2008

Scott C. Burgess, Esquire
Aviation Legal Group, P.A.
Fort Lauderdale Executive Airport
5525 NW 15th Avenue, Suite 200
Fort Lauderdale, FL 33309

Dear Mr. Burgess:

This responds to your letter dated July 9, 2008, that requests an interpretation of 14 C.F.R. § 91.501(b)(5). In the scenario you describe, three separate companies involved in automotive dealership activities are the parent companies of a real estate development company and a special purpose company formed for the sole purpose of dry leasing a large turbojet-powered aircraft to the real estate development company. The aircraft is owned by, and registered to the special purpose company. The real estate development company employs the flight crew and exercises sole operational control of the aircraft. You state that the real estate development company operates the aircraft incidental to, and within the scope of, its business and that no common carriage is involved. The three parent companies of the real estate development company wish to use the aircraft to move their officials and employees for business purposes incidental to, and within the scope of their respective automotive dealership functions.

You question whether the real estate development company may carry officials, employees, guests, and property of the three parent companies when the carriage is within the scope of, and incidental to the business of the three parent companies provided no charge, assessment or fee is made for the carriage in excess of owning, operating, and maintaining the aircraft (except that no charge will be made for the carriage of guests of those companies when the carriage is not within the scope of, and incidental to their business operations).

Section 91.501(b) states that certain operations may be conducted under Subpart F of part 91, rather than under parts 121, 129, 135, and 137 when common carriage is not involved. Subparagraph (5) of that section states that such operations include:

> 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 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.

Under the scenario you present, the real estate development company is operating the flights. Since the company operating the flights is in the business of real estate development, all carriage of officials, employees, guests, and property must be within the scope of, and incidental to, the operator's real estate development business for any charges, assessments, or fees to be made under the provisions of § 91.501(b)(5).

If the carriage involves officials, employees, guests, and property that is not incidental to the real estate development business of the company operating the flight, no charge of any kind may be made. Accordingly, the real estate development company may not make a charge, assessment, or fee under the provisions of § 91.501(b)(5) when carrying officials, employees, guests, and property of any of the three parent companies since that carriage is within the scope of, and incidental to, their automotive dealership activities and not within the scope of, and incidental to, the business of the real estate development company.

This interpretation was prepared by Bruce Glendening and Paul Greer, attorneys in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of the Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel, Regulations Division (AGC-200)
Office of the Chief Counsel