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

JUN 22 2009

BSTC Corporation
Mr. Ronald Sheardown
3512 Campbell Airstrip Road
Anchorage, AL 99504-3838

Dear Mr. Sheardown,

This is in response to a request for a legal interpretation you submitted through FAA Regional Counsel in Alaska. Specifically, you question whether your operations in Canada and Russia may be conducted under the provisions of 14 C.F.R. § 91.501, and what expenses may be considered as the "costs of owning, operating and maintaining the airplane" as allowed under § 91.501(b)(5). FAA Regional Counsel has requested that this office respond to your inquiry.

You note that BSTC is consulting with a Moscow-based mine owner and has committed to staffing a development project in Russia with U.S. and Canadian-based consultants, engineers, geologists, construction companies and other specialists. BSTC would like to use its IAI-1124 Westwind business jet to transport the consultants and other specialists under contract to the mining site in Russia under 14 C.F.R. § 91.501(b)(5). You question whether BSTC may charge a fee to the consultants and other specialists under contract for the flights on BSTC's airplane that are related to the development project under 14 C.F.R. § 91.501(b)(5). If so, you also question whether you may include, as costs of "owning, operating, and maintaining the airplane," the expenses listed under § 91.501(d)(1), as well as pro rata fees for airplane depreciation and airplane "wear and tear."

In determining whether § 91.501(b)(5) applies to your operations outside of the United States, it is important to note that subpart F of part 91 contains exceptions to some of the commercial operating rules, allowing certain operations within the United States to be conducted under Part 91 that would normally be required to be conducted under other commercial regulations, such as parts 121, 129, 135, and 137, when common carriage is not involved. *See* 14 C.F.R. § 91.501(b). It appears that the transportation of these guests, fellow consultants who will be working on the mining site under contract with BSTC, may be incidental to and within the scope of BSTC's mining business. Thus, § 91.501(b)(5) would apply. However, to the extent that these BSTC operations will be conducted in Canada and Russia, BSTC will need to consult with the Civil Aviation Authority for both Russia and Canada and determine which of their licensing and operating rules BSTC also must comply with while conducting these operations within their respective airspace. *Cf.* Legal Interpretation 1992-42, Letter to Mr. Wilkie from Kenneth B. Quinn, FAA Chief Counsel (June 10, 1992) (noting that FAA's jurisdiction extends to operation of U.S.-registered aircraft in foreign countries); *see* 14 C.F.R. §§ 91.701-91.715.

You also question what items may be included as costs of "owning, operating, and maintaining the airplane;" specifically, whether the items in § 91.501(d)(1) may be included in the expense calculation for § 91.501(b)(5), and whether pro rata fees for airplane depreciation and wear and tear may also be included. We must again stress that subpart F of part 91 was promulgated as a general exception to the certificate rules for commercial operations, and as such, has been strictly interpreted to avoid any abuse of these provisions (i.e., conducting any operation for the purpose of making a profit). 37 Fed. Reg. 22796, 22796 (Oct. 25, 1972)(stating that it was "not intended that these operations be conducted for the purpose of making a profit."); Legal Interpretation to Mr. Rex Reese from Rebecca B. MacPherson, Assistant Chief Counsel of Regulations (June 2, 2008); 1992-42 (June 10, 1992); Legal Interpretation 1990-18 (July 13, 1990). Therefore, although the list of costs provided for under § 91.501(d)(1)-(10) does not explicitly apply to §91.501(b)(5), those expenses may be instructive for determining the costs of "owning, operating, and maintaining an airplane." *See* § 91.501(b)(5); Legal Interpretation 1992-42 (noting that calculating expenses for § 91.501(b)(5) operations is "more a question of what items a diligent airplane owner can become aware of and reasonably include").

In regard to your last question, whether you may charge pro rata fees for airplane depreciation and "wear and tear," the FAA notes that airplane depreciation and maintenance costs were explicitly addressed with regard to operations conducted under § 91.501(b)(3), (b)(7), and (c)(1). *See* 37 Fed. Reg. 22796, 22799 (Oct. 25, 1972); *see also* 38 Fed. Reg. 19024, 19024 (July 17, 1973). In amending the regulation, the FAA acknowledged that there may be other expenses in addition to the expenses listed in (d)(1)-(9), such as airplane depreciation, insurance premiums, crew training costs, and maintenance costs that might not result in profit and may be appropriate for reimbursement. *See* 37 Fed. Reg. 22799. To balance the need for reimbursement of these types of costs against the prohibition from profiting from these operations, the FAA decided to allow a "charge equal to 100% of the cost of the fuel,[oil, lubricants, and other additives] for the flight" instead of the specific computation of airplane depreciation and maintenance fees. *See* 38 Fed. Reg. 19024.

Given the various methods used by operators to compute these expenses and the need to insure that a profit is not being made, the FAA believes that this method may also be appropriate for calculating airplane depreciation and maintenance expenses for § 91.501(b)(5) operations. *See* 14 C.F.R. § 91.501(b)(5) (allowing reimbursement that does not exceed the cost of "owning, operating and maintaining the airplane"); *cf.* Legal Interpretation 1992-42 (June 10, 1992) (noting that FAA has not created an exclusive list of expenses that may be charged for § 91.501(b)(5) operations but rather notes that it is "more a question of what items a diligent airplane owner can become aware of and reasonably include"). However, if a separate pro rata fee for airplane depreciation is charged, an additional fee under § 91.501(d)(10) would not be permissible and if charged, would constitute compensation for the operation. Thus, airplane depreciation and incidental maintenance costs may be recovered by using either the calculation provided for in 14 C.F.R. § 91.501(d)(10), or another reasonable method, provided the total charges are not in excess of "owning, operating and maintaining an airplane." 14 C.F.R. § 91.501(b)(5).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Anne Bechdolt, Acting Manager of the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service.

Sincerely,

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