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

Office of the Chief Counsel

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

DEC - 2 2010

Mr. Stan Oglesby
Midwest Accident Reconstruction Services, L.C.
110 South Main
P.O. Box101
Concordia, MO 64020

Dear Mr. Oglesby:

This letter is provided in response to your letter dated July 29, 2010, requesting a legal interpretation. Specifically, you sought an interpretation as to whether a certain factual scenario would be considered a charter operation.

In your letter to David Grizzle, Chief Counsel, and a subsequent conversation with Sara Mikolop, you provided the following background. Midwest Accident Reconstruction Services, L.C. (MARS) recently purchased a Piper Seneca twin engine airplane (reciprocating engine) to transport MARS employees and equipment to an accident scene that MARS has been hired to reconstruct. Following MARS' purchase of the airplane, it joined the National Business Aviation Association (NBAA). When the MARS aircraft is used in connection with an accident reconstruction matter, MARS charges fees in addition to the hourly fee that is regularly charged for the accident reconstruction services to recover costs associated with the use of the aircraft. When MARS determines the additional airplane fee, that fee calculation is based on the amount it "costs to fly the plane per mile."

You provide the following scenario. An attorney hired MARS to go to a crash scene in Little Rock, AR and asked that MARS provide him with transportation in MARS' aircraft to Little Rock from St. Louis, MO. For purposes of this interpretation, we assume that the attorney's place of business is located in St. Louis. You wish to charge the attorney a "mileage expense" for the distance traveled between the airplane's base in Sedalia, MO and St. Louis because St. Louis is not en route to the accident scene. You state that this attorney is directly involved in the matter you are responding to in that he directs your reconstruction activities. You believe that your aircraft operations fall within the parameters of part 91 of the Federal Aviation Regulations but you question whether this particular scenario would still be a part 91 operation because of the proposed additional "mileage expense" you wish to charge to transport the attorney.

Under the circumstances described in 14 C.F.R. § 91.501, large airplanes, turbojet-powered multiengine airplanes, and fractional ownership programs may operate under subpart F of part 91. *See* § 91.501(a) (limiting the application of subpart F of part 91 to the "operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under subpart K of this part in operations not involving common carriage"). However, Exemption No. 7897D extends the opportunity to NBAA members to operate small airplanes, such as Piper Senecas, under the operating rules of subpart F. Only those operations that are listed in § 91.501(b)(1) – (7) and (9) may be conducted under the authority of this exemption. *See* Exemption No. 7897D. Thus, Exemption No. 7897D would allow you, a member of NBAA operating a small aircraft, to operate within the purview of subpart F of part 91 if your operation qualifies as one of the operations specified under § 91.501(b)(1) – (7) and (9). We note that you must follow the conditions and limitations set forth in Exemption No. 7897D if you wish to take advantage of this exemption. A copy of this exemption and the exemption as originally issued, reflecting the conditions and limitations, are enclosed.

The scenario you described reflects the type of operation identified in § 91.501(b)(5). This provision allows certain operations to be conducted under 14 C.F.R. 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* § 91.501(b). Specifically, § 91.501(b)(5) allows a company to receive reimbursement for the cost of "owning, operating, and maintaining the airplane" from company officials, employees, and guests as long as the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air).[1] In this instance, MARS' primary business is to reconstruct accident scenes. The expedited carriage of the attorney to the crash scene where he will direct your accident reconstruction activities represents the carriage of a company guest that is within the scope of, and incidental to, the business of the company and, thus, is the type of activity covered by § 91.501(b)(5).

You also stated that you would charge the attorney a "mileage expense" to pick him up from St. Louis and that as a general practice you charge your clients an additional "airplane fee" when you use the airplane to expedite a reconstruction request. The method you use for calculating these charges is not clear. We must caution that any such charges must not exceed "the cost of owning, operating, and maintaining the airplane...." § 91.501(b)(5); *see also* Legal Interpretation to BSTC Corporation from Rebecca B. MacPherson (June 22, 2009) (explaining that subpart F of part 91 is subject to strict interpretation so as to limit abuse of the provisions and avoid operations for profit). "Although the list of costs provided for under § 91.501(d)(1)-(10) does not explicitly apply to § 91.501(b)(5), those expenses

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[1] 14 C.F.R. § 91.501(b)(5) states in pertinent part,

> Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved 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 the cost 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...

may be instructive for determining the costs of 'owning, operating, and maintaining an airplane'...."[2] *See* Legal Interpretation to BSTC Corporation from Rebecca B. MacPherson (June 22, 2009); 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").

Further, we recognize that the list of costs provided for in § 91.501(d)(1)–(9) may not include all the operating costs that may be appropriate for reimbursement. *See* Legal Interpretation to BSTC Corporation from Rebecca B. MacPherson (June 22, 2009). For example, costs such as airplane depreciation, insurance premiums, crew training costs and maintenance expenses may be appropriate for reimbursement. *See id.* Section 91.501(d)(10) provides a means for collecting these costs in that it allows operators to assess a charge, in addition to those listed in § 91.501(d)(1)-(9), equal to 100 percent of the expense of "fuel, oil, lubricants, and other additives." *See id.* However, to ensure that no profit is made from this activity, if you choose to recover these types of costs by using the calculation in 91.501(d)(10), you may not also use an alternate method. *See id.* The mileage expense fee you charge may be an alternate method to calculate costs provided the fee charged does not exceed the cost of owning, operating, and maintaining the airplane, such that you could earn a profit from the transportation. Should you profit from the transportation you are providing, your operations may require part 119 certification as you may be considered a commercial operator.[3] *See* 14 C.F.R. § 119.1(a)(1) (stating that part 119 applies to each person operating or intending to operate as an air carrier or commercial operator).

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[2] 14 C.F.R. § 91.501(d) states,

(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b) (3) and (7) and (c)(1) of this section:

(1) Fuel, oil, lubricants, and other additives.
(2) Travel expenses of the crew, including food, lodging, and ground transportation.
(3) Hangar and tie-down costs away from the aircraft's base of operation.
(4) Insurance obtained for the specific flight.
(5) Landing fees, airport taxes, and similar assessments.
(6) Customs, foreign permit, and similar fees directly related to the flight.
(7) In flight food and beverages.
(8) Passenger ground transportation.
(9) Flight planning and weather contract services.
(10) An additional charge equal to 100 percent of the expenses listed in paragraph (d)(1) of this section.

[3] 14 C.F.R. 1.1 states in pertinent part:

Commercial operator means a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of Part 375 of this title. Where it is doubtful that an operation is for "compensation or hire", the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself a major enterprise for profit.

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 Sara Mikolop, Attorney, Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of the Flight Standards Service.

Sincerely,

Rebecca B. MacPherson

Enclosures