U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

MAR 3 - 2011

Mr. Scott Hunsaker
Partner
Locke Lord Bissell & Liddell, LLP
2800 JPMorgan Chase Tower
600 Travis
Houston, TX 77002

Dear Mr. Hunsaker:

This letter is provided in response to your request for a legal interpretation sent to the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, on October 25, 2010. In your request for interpretation, you present a lengthy explanation of a corporate family with multiple parent-subsidiary relationships that fall under a single parent company. You then ask a series of questions regarding the applicability of 14 C.F.R. part 91, subpart F to various scenarios involving the operation of two aircraft (Aircraft No. 1 and Aircraft No. 2) by various members of this corporate family.

Subpart F of part 91 provides operating and flight rules for large and turbine-powered multiengine airplanes and fractional ownership program aircraft. Section 91.501(a) provides the specific criteria that an airplane must meet in order to be eligible for operation under subpart F. Specifically, § 91.501(a) limits the applicability of subpart F to "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 part 91 in operations that do not involve common carriage. Your request for interpretation asked us to assume that Aircraft No. 1 and Aircraft No. 2 meet the criteria of § 91.501(a).

Since we assume that Aircraft No. 1 and Aircraft No. 2 meet the criteria of § 91.501(a), we can look to § 91.501(b) to determine whether the operation may be conducted under subpart F of part 91. Section 91.501(b) describes the various operations that may be conducted under the rules of subpart F rather than the rules of parts 121, 129, 135, and 137 of title 14 of the Code of Federal Regulations, when common carriage is not involved. For purposes of this interpretation, however, we must consider the applicability of § 91.501(b) to each of the aircraft separately, because each aircraft involves different ownership arrangements and thus operations conducted with each aircraft are treated differently under § 91.501(b).

I. Aircraft No. 1

Aircraft No. 1 is wholly owned and operated by a single company within the corporate family described below. The subsection relevant to your requests for interpretation regarding Aircraft No. 1 is § 91.501(b)(5) which allows for the following:

> 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[.]

This provision allows a company operating an aircraft described in § 91.501(a) to carry officials, employees and guests of the company or officials, employees and guests of certain other members of the company's corporate family within the parent-subsidiary scheme: (A) parents or subsidiaries of the company operating the aircraft, and (B) companies that share a common parent with the company operating the aircraft (i.e., a subsidiary of the company's parent, a subsidiary of a subsidiary of the company's parent). *See* Legal Interpretation from Donald P. Byrne, Acting Assistant chief Counsel for Regulations and Enforcement, to Robert Glasser (October 26, 1990) (stating, "...the FAA has consistently interpreted that the language in § 91.501(b) of 'parent,' 'subsidiary,' and 'subsidiary of a parent' are 'corporate terms' and possess their normal meaning."). *See e.g.* 17 C.F.R. § 230.405 (identifying parent-subsidiary relationships for purposes of Securities and Exchange Commission registration requirements to include those relationships in which there is either direct control or indirect control through an intermediary).

Your request for interpretation described a number of subsidiary companies that make up a corporate family under the purview of a single parent company and participate in the parent-subsidiary relationship described by § 91.501(b)(5). Under the parent, there are three companies referenced in your letter as "First Tier Subsidiaries." You state that each of the First Tier Subsidiaries is wholly owned and controlled by the parent company. One of the First Tier Subsidiaries directly owns and controls two subsidiaries referenced in your letter as "Second Tier Subsidiaries." Finally, your letter references two additional "Lower Tier Subsidiaries" which are either directly owned and controlled by a Second Tier Subsidiary or indirectly owned and controlled by a Second Tier Subsidiary.[1]

You then presented a number of scenarios involving the carriage of officials, employees and guests of the various subsidiaries within this corporate family. These scenarios fall into three categories:

1. Carriage of officials, employees and guests of the company operating the aircraft.
2. Carriage of officials, employees and guests of a subsidiary of the parent of the company operating the aircraft (i.e., officials, employees and guests of a First Tier Subsidiary).

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[1] The diagram depicting the corporate structure described in this paragraph and included with your request for interpretation is attached as Attachment A.

3. Carriage of officials, employees and guests of a subsidiary of a subsidiary (i.e., officials, employees and guests of a Second Tier Subsidiary) of the parent of the company operating the aircraft.

All of these categories of scenarios meet the criteria found in § 91.501(b)(5) in that they involve carriage of officials, employees and guests of the company operating the aircraft or of a subsidiary of the operator's parent.

Section 91.501(b)(5) also allows the company operating the aircraft to collect a charge, assessment or fee for the carriage of that company's officials, employees and guests, and the officials, employees and guests of a parent or subsidiary, or subsidiary of the parent, when the carriage is within the scope of and incidental to, the business of the company operating the airplane and the company's business is not air transportation. *See* § 91.501(b)(5); Legal Interpretation from Rebecca B. MacPherson to Scott C. Burgess (November 25, 2008) (stating that the carriage of officials, employees, guests or property of a parent of the company operating the aircraft must be within the scope of and incidental to the business of the company operating the aircraft in order for any charges, assessments or fees to be collected pursuant to § 91.501(b)(5)); Legal Interpretation from Gregory S. Walden to Wendell L. Willkie (May 24, 1990 (stating that § 91.501(b)(5) "allows a company to make the specified charges for the carriage of officials, employees and guests of the company operating the airplane, or of a subsidiary or parent of such company, when such carriage is with in the scope of and incidental to the business of *the company operating the airplane*." (emphasis added)). Any such charges must not exceed "the cost of owning, operating, and maintaining the airplane...." § 91.501(b)(5). *See also* Legal Interpretation from Rebecca B. MacPherson to BSTC Corporation (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). To this end, the list of costs provided under § 91.501(d)(1)-(10) may be instructive for determining the costs of "owning, operating, and maintaining an airplane" although this subsection does not explicitly apply to § 91.501(b)(5).[2] *See* Legal Interpretation from Rebecca B. MacPherson to BSTC Corporation (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").

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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.

Your request for interpretation asks us to assume, however, that the company operating the aircraft does not collect a charge, assessment or fee for the carriage of any of the officials, employees or guests of the company or officials, employees or guests of any of the members of the company's corporate family.[3] Consequently, it makes no difference whether the carriage of officials, employees or guests of the company operating the aircraft or the company's corporate family are incidental to or within the scope of the business of the company operating the aircraft because no charge, assessment or fee for the carriage is being made.

II. Aircraft No. 2

In your request for interpretation, you state that Aircraft No. 2 is subject to a joint ownership agreement as described in § 91.501(c)(3). Section 91.501(c)(3) describes a joint ownership agreement as, "[A]n arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement."

You state that one company within the corporate family described above possesses a 95 percent ownership interest in Aircraft No. 2 and a second company, within the same corporate family, owns the remaining five percent. Pursuant to the joint ownership agreement, the company that possesses a 95 percent ownership interest "employs and furnishes the flight crew..." and each of these two companies pays a share of the costs for the flight crew as specified in the joint ownership agreement. Thus, for purposes of this interpretation, we will assume that Aircraft No. 2 is subject to a § 91.501(c)(3) joint ownership agreement.

Since Aircraft No. 2 is subject to a joint ownership agreement, it is limited to those operations described in § 91.501(b)(6) if the joint owners wish to conduct operations under subpart F of part 91. Section 91.501(b)(6) allows, "The carriage of company officials, employees, and guests of the company on an airplane operated under a ... joint ownership agreement as defined in paragraph (c) of this section..." Thus, we have interpreted this provision to allow only the carriage of officials, employees and guests of the companies that are parties to the joint ownership agreement. *See* Legal Interpretation from Rebecca B. MacPherson to Jeffrey T. Lawyer (October 13, 2008).

In the various scenarios involving Aircraft No. 2, you state that Aircraft No. 2 is used to carry the officials, employees and guests of the two companies that are parties to the joint

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[3] In the scenarios you present, you state that, generally the company operating the airplane charges a subsidiary of its parent company for the costs of the company's employees. You continue to state that "no charge is made nor is any compensation otherwise received by...[the company operating the airplane] for aircraft flight crew, maintenance and similar personnel, or for other aircraft related-costs." Although the bases for the charges that are assessed "for the costs of the company's employees" are not clear, based on the forgoing and for purposes of this interpretation we are assuming that no charge, assessment or fee is being made for the carriage provided in the scenarios described in your request for interpretation. Thus, while we assume for purposes of this interpretation that the charges are not related to the carriage, this interpretation does not opine on whether those charges are in fact proper.

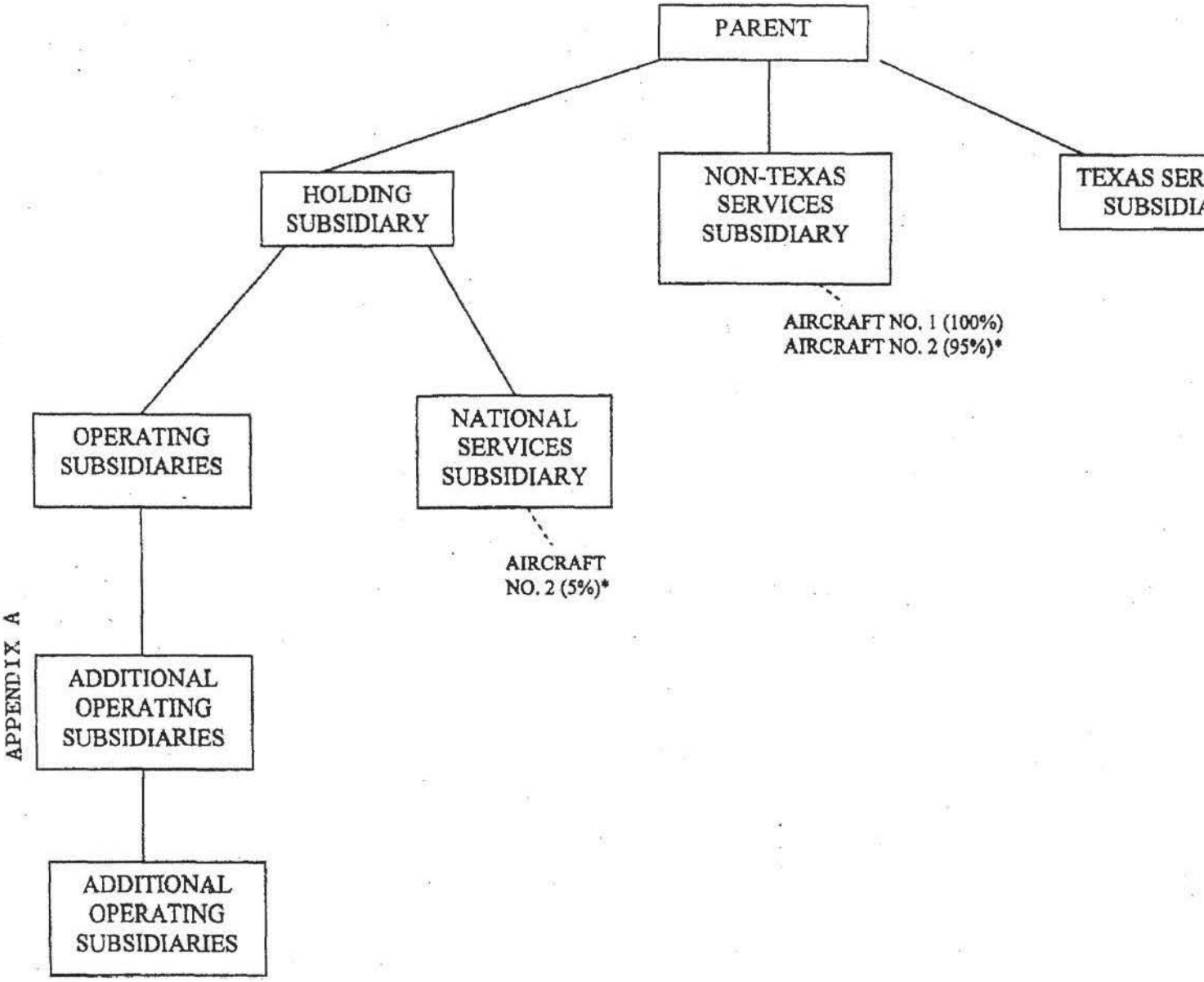
ownership agreement. This carriage is permitted under § 91.501(b)(6).[4] You also state that the parties to the joint ownership agreement carry officials, employees and guests of companies within their corporate family that are not parties to the joint ownership agreement, but this carriage is not permitted under § 91.501(b)(6). *See* Legal Interpretation from Rebecca B. MacPherson to Jeffrey T. Lawyer (October 13, 2008). This prohibition applies whether or not the carriage is within the scope of and incidental to the business of the company operating the aircraft.

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, coordinated with the General Aviation and Commercial Division of the Flight Standards Service.

Sincerely,

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

[4] In the scenarios you present, you state that on some occasions Aircraft No. 2 is operated by the company that possesses a 95 percent ownership interest in the aircraft and employs and furnishes the flight crew. You also state that on some occasions the company with a 5 percent ownership interest in the aircraft operates the aircraft. Typically, under a joint ownership agreement, the company that employs and provides the flight crew also provides the maintenance and other elements indicative of operational control. *See e.g.*, FAA Order 8900.1, Volume 3 General Technical Administration, Chapter 13 Lease and Interchange Agreements, Section 6 Process an Aircraft Lease Agreement for Regulatory Compliance Under 14 CFR Section 91.23, Paragraph 3-502B. However, based on the facts you presented in your request for a legal interpretation, we cannot make a determination as to which company that is party to the joint ownership agreement has operational control of the operations conducted using Aircraft No. 2.



APPENDIX A

* Aircraft No. 2 is subject to a Joint Ownership Agreement, with the flight crew employed and furnished by the N
Subsidiary.