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

Office of the Chief Counsel

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

MAR 15 2012

Mr. Robert J. Thole
Law Clerk
Bradshaw, Fowler, Proctor & Fairgrave, P.C.
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-8004

Dear Mr. Thole:

This letter is provided in response to your request for a legal interpretation e-mailed to me on November 17, 2011. In your request for a legal interpretation you asked whether the cost of an aircraft engine warranty (paid by the flight hour) could be included in the terms of a time share agreement as a permissible cost under 14 C.F.R. § 91.501(d).

Your request for interpretation asks only that we examine costs permitted under § 91.501. Thus, for purposes of this legal interpretation, we assume that the subject aircraft meets the requirements of § 91.501(a) and that any operations conducted with the subject aircraft will fall under the purview of § 91.501(b)(6) because you stated that the aircraft will be operated in accordance with a time sharing agreement.[1] Based on these assumptions, operations in the subject aircraft would be permissible under subpart F of part 91.

As you may be aware, subpart F of part 91 was promulgated as an exception to the rules requiring a certificate for commercial operations, and as such has been strictly interpreted to avoid any abuse of these provisions (i.e., conducting an operation for the purpose of making a profit). *See* 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). Although flights operated under subpart F of part 91 cannot be conducted for purposes of making a profit, the agency determined that an operator may assess a fee reflective of certain expenses attributable to a particular flight. *See* 37 Fed. Reg. at 22796.

---

[1] Section 91.501(b)(6) allows the following operation to take place under Part 91: "The carriage of company officials, employees, and guests of the company on an airplane operated under a time sharing... agreement as defined in paragraph (c) of this section."

Section 91.501(d)(1)-(10) identifies the charges that may be assessed as expenses for a flight conducted pursuant to a time sharing agreement.[2] *See* § 91.501(c)(1) (stating that only those charges specified in § 91.501(d) may be made for flights conducted under a time sharing agreement). In promulgating this list, the FAA acknowledged that there may be other expenses in addition to those specific items listed in § 91.501(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. at 22799; 38 Fed. Reg. 19024, 19024-25 (July 17, 1973). To balance the need for reimbursement of these types of costs against the prohibition from profiting from operations conducted under part 91, the FAA decided to allow in (d)(10), a per flight charge that is equal to 100 percent of the cost of the fuel, oil, lubricants and other additives for the flight in addition to those charges identified in (d)(1)-(9). *See* 91.501(d)(10); 38 Fed. Reg. at 19024-25. Thus, under (d)(10), your client may assess an additional per flight charge that may be used towards the engine warranty cost. Please note, however, that the total of all charges assessed under (d)(10) for a particular flight must not exceed the total cost identified in (d)(1) for that flight.

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
Assistant Chief Counsel for Regulations, AGC-200

---

[2] Section 91.501(d)(1)-(10) (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.