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

Office of the Chief Counsel

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

JUL -2 2013

Robert P. Silverberg
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Georgetown Place, Suite 120
1101 30th Street, NW
Washington, DC 20007

Dear Mr. Silverberg:

This letter is in response to your request for a legal interpretation regarding 14 CFR § 91.501(b)(5).

Facts:

Your question concerns a company that is not engaged in air transportation, but uses a fleet of aircraft in furtherance of its business. You provided no other details as to the nature of this company. You further explain that officials, employees, and guests of the company are transported on the company aircraft, and the carriage of such individuals is within the scope of, and incidental to, the business of the company. You did not indicate whether these officials, employees, and guests of the company reimburse the company for the costs associated with the flight.

Additionally, you explain that the company is willing to allow individuals whose carriage is not within the scope of, or incidental to, the business of the company to occupy any unused seats on its aircraft. The company does not charge such individuals for access to those seats but is "prepared to facilitate a donation by any non-business guest to one or more local charities." You then clarify that "the company will make known to the non-business guest that while they are under no obligation to make any charitable contribution in exchange for the transportation, if they choose to do so, that the company will see to it that any contribution will be forwarded to the named charity." The individuals may choose to utilize the tax deduction for the charitable gift, however, the company will not claim any charitable deduction in those instances. The company "will merely see to it that the individual's contribution is sent to the designated charity…[t]he funds contributed by individuals will not be deposited by the company into any of its accounts or in any way co-mingled with the accounts for the company."

Question:

You ask whether this company would be deemed to be charging the non-business guest for transportation and therefore be engaged in transportation for compensation or hire by

advising the guests of the opportunity to make the charitable contribution and forwarding the individual's contribution to the designated charity.

Answer:

Based on the information that you have provided, the FAA is unable to definitely answer whether your flights described above involve the carriage of persons for compensation or hire. Our analysis follows below.

Analysis:

In general, when a flight involves the carriage of persons or property for compensation or hire, the operator must hold a part 119 air carrier or commercial operator certificate and operate these flights under part 121 or 135 rules. *See* Legal Interpretation to Gregory S. Winton from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation, and Regulations (Feb. 14, 2013).

Additionally, the FAA generally prohibits aircraft operators from seeking reimbursement for the costs associated with flights conducted under part 91. *See* Legal Interpretation to Mike Nichols from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Dec. 30, 2010). However, certain exceptions to this prohibitions may be found in 14 CFR § 91.501. One such exceptions allows for the limited reimbursement for the "carriage of officials, employees, guests, and property of a company on an airplane operated by that company… when carriage is within the scope of, and incidental to, the business of that company…and no charge is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane." *See* 14 CFR § 91.501(b)(5).

In the scenario you describe, your question involves individuals whose carriage is not within the scope of, or incidental to, the business of the company who occupy unused seats on its aircraft.[1] Therefore, the limited reimbursement exception provided by 91.501(b)(5) does not apply. Instead, the analysis here rests on whether "facilitat[ing] a donation by any non-business guest to one or more local charities" constitutes "compensation" for the flight.

The FAA has continually maintained a long-standing policy that defines compensation in very broad terms. *See* Legal Interpretation to Alan M. Dias from Rebecca B. Macpherson, Assistant Chief Counsel for Regulations (Dec. 19, 2011). It does not require profit, a profit motive, or the actual payment of funds. Instead, compensation under the FAA's view is the receipt of *anything of value,* including valuable good will. *See* Legal Interpretation to Joseph A. Kirwan from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 27, 2005); *see also* Legal Interpretation to Michael Goldman from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (June 14, 2005).

Without further detailed information, the FAA is unable to conclude whether these charitable donations constitute "compensation" for the purposes of determining whether

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[1] Although 91.501(b)(5) allows for the limited reimbursement for the carriage of *guests* of a company, this only applies if said carriage is in the scope of, or incidental to, the business of that company.

these flights involve the carriage of persons or property for compensation or hire, thus requiring the operator to hold a part 119 air carrier or commercial operator certificate and to operate these flights under part 121 or 135 rules. The scenario you describe does not explain if the company has any affiliation with the charities receiving the funding. Furthermore, you do not describe in adequate detail why the company has decided to facilitate these donations, how the information on the availability of seats is disseminated, or how this information is presented to potential guests. These factors should be considered when determining whether the company is receiving something of value when facilitating these charitable donations, such as receiving valuable good will due to the company's role in assisting the charity collect its donation.

Your letter acknowledges that "charities and the public could look upon the company with favor for being willing to facilitate charitable giving" and concludes that "this alone should not be sufficient to be considered compensation to the company as the company is already viewed favorably in the community for its prior direct and substantial charitable giving." However, the FAA reiterates that it maintains a long-standing policy that compensation is construed very broadly. Therefore we caution that receipt of good will through facilitation of charitable donations in some circumstances may be construed as compensation, and thus would be in violation of part 91 operating rules.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards. Please contact us at (202) 267-3073 if we can be of further assistance.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for
International Law, Legislation, and Regulations
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