U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

JUL 17 2014

David M. Hernandez
Vedder Price
1401 I Street NW, Suite 1100
Washington, DC 20005

Dear Mr. Hernandez:

This letter is in response to your March 14, 2014 request for a legal interpretation on 14 CFR § 91.501(b)(5). You asked whether an aircraft manufacturer can provide air transportation on its aircraft in connection with the manufacturer's "promotional events for celebrity guests and seek reimbursement under § 91.501(b)(5)."

You indicate that you represent a manufacturer that would like to enter into promotional services agreements under which certain celebrity endorsers agree to make a series of appearances on behalf of the manufacturer at an event related to their professions. You provide an example where a golfer might be asked to make appearances at guest cabins or hospitality tents hosted by the manufacturer at professional golf tournaments. The celebrities will be directly or indirectly compensated by the manufacturer in exchange for their agreement to make the series of appearances under the promotional services agreement. The manufacturer would transport the celebrity to the event[1] on their aircraft as a guest and wants to seek reimbursement for the transportation as it is incidental to, and within the scope of, the manufacturer's business since the carriage would facilitate the marketing and selling of the manufacturer's aircraft.

The FAA generally prohibits aircraft operators from seeking reimbursement for the costs associated with flights conducted under 14 C.F.R. § 91. Certain exceptions to this general prohibition may be found in 14 C.F.R. § 91.501. One such exception provides for the limited reimbursement for the "carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or subsidiary of that parent, when the carriage is within the scope of, and incidental to, the business of the company…and no charge, assessment or fee is made for the carriage in excess of the cost of

[1] The event referenced is limited to transportation to and from the promotional events and not for transportation in general.

owning, operating and maintaining the airplane." *See* 14 C.F.R. § 91.501(b)(5); *see also* Legal Interpretation to Mike Nichols from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Dec. 31, 2010).

In your scenario, your client wishes to pay celebrities to make appearances on behalf of the manufacturer in order endorse the manufacturer's products. Providing transportation to the paid celebrity endorsers in order to assist with marketing, promoting, and ultimately selling the manufacturer's products appear to be within the scope of, and incidental to, the business of the company. *See* Legal Interpretation to Randy R. Hutton from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Oct. 8, 2010) (drawing a distinction between transporting guests for the purposes of "marketing, promoting and ultimately selling" products versus providing air transportation to a "group of people whose primary purpose for travelling is a pleasure trip."). Therefore, the manufacturer may seek reimbursement[2] for the costs associated with these flights conducted under 14 C.F.R. § 91.

Lastly, you state that the manufacturer and the celebrity are considering entering into "lift agreements," by which the celebrity would receive no-cost or low-cost transportation on board aircraft owned and operated by the manufacturer in order for the celebrity to become familiar with the use and benefits of the manufacturer's products and services, which "familiarity will increase the effectiveness of the celebrity's promotional activities." We understand that these operations would not provide transportation to an event at which the celebrity was scheduled to make a promotional appearance.

We caution you that the FAA has adopted a strict interpretation of § 91.501. This provision represents a limited exception to certification requirements for commercial operators and air carriers. *See* Legal Interpretation to Mr. Wilkie from Kenneth P. Quinn, Chief Counsel, FAA (June 10, 1992). Therefore, it is the burden of your client to show how the transportation of the celebrity endorsers in this scenario is within the scope of, and incidental to, the business of the company. *See* id. Providing the celebrity endorser with familiarization on the use and benefits of the manufacturer's products and services may be within the scope of, and incidental to, the business of the company. However, simply providing transportation for the celebrity and seeking reimbursement without conducting the described familiarization and use of the manufacturers products on every one of these flights may be considered air transportation, which would require the operator to 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 use of "lift agreements" as stated in your letter could create the appearance of a charter-type operation, which also requires additional certification requirements.

---

[2] The FAA assumes, for the purposes of this legal interpretation, that any reimbursement you seek does not exceed of the cost of owning, operating and maintaining the airplane. *See* Legal Interpretation to BSTC Corporation from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (June 22, 2009)

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
AGC-200