U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

DEC - 4 2017

Lawrence Williams
[redacted]

Re: Flight Department Companies

Dear Mr. Williams,

This is in response to your letter dated June 25, 2017, requesting an interpretation of whether certain operations can be conducted under part 91, or whether they require certification under part 119. A member of my staff provided guidance by phone and sent you various interpretations issued by the Office of the Chief Counsel of the FAA, regarding this topic. However, based on your subsequent electronic request, dated October 11, 2011, we are responding in light of the facts provided in the original request for interpretation and follow up communications.

Question: Can the proposed operation be conducted under part 91, or does the company need to become certificated under part 119?

Facts:

1. A limited liability company (LLC) was organized by an individual;
2. The individual is the majority owner of the LLC (Majority Member);
3. A second person is a minority owner of the LLC (Minority Member);
4. The LLC owns an aircraft;
5. The LLC operates the aircraft for the personal transportation of the Majority Member. It also provides air transportation to other people, whether or not the Majority Member is aboard;
6. The Majority Member has not entered into a lease agreement with the LLC, but uses the aircraft as if it were his own;
7. The Majority Member contracts with pilots of company B (Company B) – an aircraft management company and part 135 operator owned by Minority Member – to fly the aircraft; and
8. Company B purchases fuel for the flights conducted on the LLC's aircraft and the Majority Member reimburses Company B for such expenses.

Analysis:

A flight department company is any company that is organized for the sole purpose of owning and operating an aircraft for the transportation of people for compensation or hire. *See* Legal Interpretation to Joseph A. Kirwan, from Rebecca B. MacPherson, Assistant Chief Counsel Regulations Division (May 27, 2005) and Legal Interpretation to Larry Richards, from Mark W. Bury, Acting Assistant Chief Counsel, International Law, Legislation, and Regulations Division (Feb. 20, 2013). Flight department companies provide air transportation that is not "incidental" to the company's purpose. Thus, they must be certificated under part 119.

This policy has been enforced, since at least 1972, when the FAA issued the final rule on Large and Turbine-Powered Multiengine Airplanes (37 FR 14759, Jul. 25, 1972) to amend part 91 and add a new Subpart D (now Subpart F). According to the Agency, if "the primary business of the corporation operating the airplane is transportation and the carriage of persons or goods for any other corporation, for a fee or charge of any kind, [then it] would require the corporation operating the airplane to hold a commercial operator certificate under Part [119]."

Your scenario presents an example of a flight department company:

First, the main purpose of the entity is to operate an aircraft to provide transportation by air. This makes it a major enterprise for profit, since the company's compensation is derived from air transportation. The FAA defines compensation in broad terms, and has confirmed that capital contribution made by shareholders or members of a company to fund the operating expenses of the company's aircraft, constitutes compensation. *See* Legal Interpretation to James W. Dymond, Esq., Moore & Van Allen PLLC, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (Mar. 9, 2007) and Legal Interpretation to James E. Cooling, from Lorelei Peter, Assistant Chief Counsel for Regulations (Aug. 22, 2017).

Second, the LLC's aircraft is used for the personal transportation of the Majority Member or other individuals. These operations are thus, not within the scope of, nor are they incidental to, the business of the company (which must be something other than air transportation).

Third, the fact that the LLC is organized for liability purposes, or set up as a disregarded entity for tax purposes, does not change our assessment of the scenario.

For the reasons stated above, the LLC is deemed a flight department company, and the proposed operations cannot be conducted under part 91 since they are subject to part 119 certification.

We trust this response adequately addresses your questions. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Francisco E. Castillo, General Attorney in 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,

Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

[redacted]

June 25, 2017

Office of the Chief Counsel
800 Independence Avenue SW
Washington, DC 20591

Greetings:

I request a legal interpretation as to whether the following scenario is operated under FAA Part 91 and does not require 119 Certification:

Company A owns a Lear Jet. One of the principals (Mr. A) of Company A hires pilots that work for Company B (a FAR part 135 operation) to fly the Lear Jet for Mr. A's personnel business. The sole owner of Company B is also a part owner of Company A (the Lear Jet). Mr. A pays Company B for the pilot's services, and maintains operational control of the aircraft (i.e. Initiates, conducts and terminates the flights).

Company B also purchases the fuel for the flights (to get fuel costs discounts afforded to Company B), and Mr. A reimburses Company B for the fuel used on the flights.

Sincerely,

Lawrence Williams