

Jet Costs Under Control

Alternative Operations for Today's Economy

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In today's economy, many ultra-high net worth individuals who own corporate jets are looking to minimize costs and want to take on "partners" or "sell hours" to friends. There are several options to help an owner achieve this goal, but most aircraft owners are unaware of the Federal Aviation Administration, Internal Revenue Service, state Department of Revenue and insurance issues that must be considered each time a change is made to an aircraft operating structure.

The FAA does not allow an aircraft owner to provide "transportation" to others, unless the aircraft owner has obtained governmental authority by obtaining an operating certificate from the FAA and Department of Transportation. What this means is that the FAA does not allow "flight department companies" that are established solely for the purpose of operating aircraft and providing "transportation" to a parent corporation, subsidiary, individuals or other entities, unless that sole purpose entity has obtained an operating certificate. This is also generally true if the owner's aircraft is registered outside the United States.

Insurance policies purchased to cover only a personal/company flight operation may not cover these alternative operations, or any operation involving any reimbursement or consideration for a flight, especially if the operation violates U.S. Federal Aviation Regulations, or FARs. Operational control of the aircraft (which is important to the FAA) as well as possession, command and control of the aircraft (which is important to the IRS) can be deemed to be held by different parties than one might expect under various operating structures. An owner needs to review the aircraft's insurance coverage, operations and documentation for those operations to make sure the insurance covers all of the aircraft's operations and all of the relevant parties.



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Charter Certificate

Many companies want to allow their aircraft to be chartered to third parties to offset the costs of owning and operating an aircraft but do not want to incur the time and expense of obtaining their own charter certificate. Charter companies often add private aircraft to their charter certificate so that the charter company can charter the aircraft to third parties. This allows the aircraft owner to take advantage of the operating experience and marketing connections of the charter company while receipts from charter operations may help to offset costs.

Some of the factors to consider include increased governmental oversight and paperwork for maintenance and operations, increased training requirements for the crew and other record-keeping issues. A charter company must have operational control over its aircraft and control over the crew for charter flights. In other words, the charter company is responsible for issues such as maintenance decisions and crew rest and duty information at all times, regardless of whether the aircraft is operated by the owner for itself much of the time. State sales tax issues in connection with the lease of the aircraft to the charter company, passive activity issues, and federal excise tax issues on both charter flights to third parties and owner flights should be considered.

Joint Ownership

Under FAR 91.501(c)(3) "A joint ownership agreement means an 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."

This option is generally only available to larger aircraft as FAR 91.501 applies to U.S. registered large (more than 12,500 pounds maximum certificated take-off weight), turbojet-powered multi-engine civil airplanes in operations not involving common carriage.

Joint ownership requires that each party own an interest in the aircraft. An individual is not a "joint owner" in the eyes of the FAA if he or she owns an interest in the limited liability company that owns the aircraft. Before jointly owning an expensive asset like a corporate jet an individual will want to look at the tax consequences. These include transfer taxes, any capital gains/depreciation recapture if an individual is selling an interest in a current aircraft. An owner also should consider scheduling issues, whether each of the joint owners is willing to comply with the FARs, and the ability of each of the joint owners to "work and play well with others".

Dry Leasing

Under a structure utilizing a dry lease, the aircraft could be owned by the owner and leased to a third party. The FAA defines a dry lease as the lease of an aircraft without crew, as opposed to a "wet lease" which involves the lease of aircraft with a crew. To provide aircraft and crew from one entity to another for compensation, the operator must obtain an operating certificate, unless it fits within an exception, such as

time-sharing. Generally, under a dry lease structure, a lessee can lease an aircraft and must hire pilots from an independent entity, which is not owned by the shareholders/ members of the aircraft owner. The owner/ lessor cannot require that the lessee use any specific pilot or pilot company.

The issue of possession, command, and control and operational control must be addressed to ensure that the flights are not subject to the federal excise tax and that they are operated in compliance with the FARs.


The truth-in-leasing requirements in FAR 91.23 will apply to a dry lease. Each state may have different state sales/use tax results for this type of operation. Federal tax issues, such as passive activity losses, also need to be considered.

Time-sharing

Time-share is defined in FAR 91.501(c) as "an arrangement whereby a person leases

his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section". This option, like joint ownership, is also generally available only to large aircraft. An owner may still be able to utilize a time-share arrangement if it complies with the special "NBAA exemption" to FAR 91.501 (available to NBAA members who also otherwise meet the requirements of the exemption).

FAR 91.501(d) limits the amount an owner can charge for a time-share flight. The charge is limited to a list of 10 items, which in the past usually did not fully reimburse the owner for the full cost of the flight. Basically, the owner can charge two times the cost of fuel for that flight plus some miscellaneous trip expenses. The truth-in-leasing requirements in FAR 91.23 also will apply to a time-share.

There are unexpected FAA issues that can trip up an unsuspecting owner. One of these is that a company that has no other business purpose than operating the aircraft cannot time-share an aircraft to another person or entity. Generally, time-share flights will be subject to the federal air transportation excise tax, which must be collected and remitted by the owner. Each state may have different state sales/use tax results for this type of operation. 

Michelle Wade and Dillon Strohm are attorneys with the law firm of Jackson, Wade & Blanck LLC and counsel clients on the acquisition, financing and operation of corporate jets operated under Part 91 and Part 135 of the Federal Aviation Regulations. For more information, visit the firm's website at www.jetlaw.com.