CAN I MAKE MY AIRPLANE AND MY PILOT AVAILABLE FOR USE BY MY FRIENDS CHARGING FOR THE AIRPLANE AND THE PILOT WITHOUT GETTING A 135 CERTIFICATE?

People who make their airplanes available with flightcrew as a package deal where there is one check for the pilot and the airplane without operating under Part 135 can get into trouble. This is a very complicated area of the law and is discussed in my article entitled "Navigating in the Zone of Confusion – Reflections on Illegal Air Taxi Operations," appearing in Volume XXI, No. 2 of the Transportation Law Journal published by the University of Denver College of Law in 1993.

If you own a large, turbojet-powered multiengine airplane, you may make the aircraft available under a time sharing agreement under FAR § 91.501(c)(1) and charge the ten items allowed under FAR § 91.501(d). I have been told it is very difficult to make a profit under a time sharing agreement. Also, one should consider the truth-in-leasing clause requirements and notice requirements set forth in FAR § 91.23. Typically when I am called upon to draft a time sharing agreement, I draft the instrument after carefully reviewing the Federal Aviation Regulations and interpretations of the FARs by the Agency attorneys. Then I send the proposed time sharing agreement to the FAA attorneys and the local Flight Standards District Office alerting them to the fact that the instrument has been drawn and the aircraft will be operated under the document unless they believe it is defective or fails to comply with the FARs.

Another possibility for a large, turbojet-powered, multiengine aircraft is to operate it under a joint ownership agreement where one of the registered joint owners makes the aircraft available with flightcrew, and the other joint owner "pays a share of the charge specified in the agreement." Obviously, a joint ownership agreement affords more flexibility in terms of what can be charged than a time sharing agreement. Again, one needs to be mindful of the truth-in-leasing requirements set forth in FAR § 91.23. Once again, when I draft a joint ownership agreement, I research it carefully and send copies both to the FAA attorneys and to the Flight Standards District Office alerting them to the fact that the aircraft will be operated pursuant to that instrument before the flight operations begin.

A final possibility is an interchange agreement where two airplane owners swap time. This is allowed by FAR § 91.501 with respect to large, turbojet-powered, multiengine aircraft. The two airplane owners are allowed to swap equal time, and "no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes."

It is possible to operate an aircraft that is not a large or turbojet powered, multiengine airplane under FAR § 91.501 provided the aircraft operator joins the National Business Aircraft Association and complies with the requirements that must be met to satisfy its Exemption No. 1637M appearing in the Grant of Exemption in the Matter of the National Business Aircraft Association for an Exemption from §§ 91.169 and 91.181(a) of the Federal Aviation

Regulations, Regulatory Docket No. 12227. [What is now FAR § 91.501 was FAR § 91.181 at the time the Exemption was granted.] For further details please contact the National Business Aircraft Association.

In summary, there are proper methods to employ to timeshare, jointly own, and interchange airplanes whether they are large or small. However, the procedures must be carefully followed to ensure the operation does not require a certificate of authority issued under Part 135 of the Federal Aviation Regulations.