FLIGHTWATCH

STRUCTURING FLIGHT OPERATIONS OF JET AIRCRAFT

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INTRODUCTION AND OVERVIEW

Structuring the operations of expensive aircraft operated by well-endowed corporations is an undertaking with hazards. Engaging in this work requires a thorough understanding of the Federal Aviation Regulations, FAA Advisory Circulars, pertinent exemptions, and case law. In this article, we will examine this complex and confusing area of the law. The basic questions are who or what exercises "operational control" over the flights of the aircraft, and do those operations require the operator to possess an air carrier certificate issued under Federal Aviation Regulations Part 135?

DEFINITIONS AND THE REGULATORY AND LEGAL LANDSCAPE

Consider the following definitions appearing in 14 C.F.R. §1.1:

> *Commercial Operator* means a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of Part 375 of this title. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit.
>
> *Operate*, with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose (except as provided in §91.13 of this Chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).
>
> *Operational control*, with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight.

14 C.F.R. §91.501 governs the operation of large, turbine-powered, multi-engine aircraft and permits in subpart (b)(5):

> Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company.

At first blush, one might conclude that it is permissible to establish a subsidiary corporation to provide air transportation to a parent company. That conclusion would be incorrect. Note the words "other than transportation by air" that appear in 14 C.F.R. §91.501(b)(5). The FAA's position on this language is that if a subsidiary corporation is established merely to provide air transportation for a parent company and if the sole function of the subsidiary company is to provide air transportation, then an air taxi certificate issued under Part 135 of the Federal Aviation Regulations is required.

What is, today, codified as 14 C.F.R. §91.501 was previously codified as 14 C.F.R. §91.181. In FAA Interpretation 1989-22, by letter dated August 8, 1989 from Donald P. Byrne, Esq. of the FAA's Chief Counsel's office to John Craig Weller, Esq., Byrne wrote:

> In your letter of April 10, 1989, you state that many corporations have decided to place their flight departments into separate companies. You refer to these as "flight department companies" and indicate that their function is limited solely to air transportation operations. You argue that a "flight department company" which operates within the parameters of Section 91.181 cannot be construed to be a commercial operator. For the reasons below, we disagree.
>
> Subpart D, Sections 91.181 through Sections 91.215 of the FAR prescribes operating rules, in addition to those prescribed in other Subparts of Part 91, governing the operating of large and turbojet powered multiengine airplanes. Subpart D specifically authorizes an operator to receive a very specific quantum of compensation for operations that would otherwise require some type of operating certificate. To operate pursuant to Subpart D of Part 91, the operation must come within one of the enumerated qualifications set forth in Section 91.181(b)(1) through (b)(9).
>
> Operations which may be conducted in accordance with Paragraphs (b)(1) through (b)(9) include, when common carriage is not involved, the carriage of company officials, employees, and guests of the company on an airplane operated by that company "when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air)."
>
> There is no better settled rule of statutory construction than that which has become known as the plain meaning rule. When the pro-

mulgators' intention is apparent from the face of the regulation that there can be no question as to its meaning, there is no reason for construction. Language that is clear, as is the case with Section 91.181, must be held to what it plainly expresses. Specifically, Section 9.181(b)(5) allows the carriage of company officials, employees, and guests on a company aircraft provided the carriage is – "*incidental*" – to the company's business. Clearly, when the redactors adopted the concept of "incidental," they contemplated that the company's aviation activities would be secondary to the overall business of the company.

The business structure you describe, viewed as a whole, does not fit the literal language of FAR 91.181(b)(5) which does not provide for "flight department companies." Additionally, it is clear that these "flight department companies" are organized solely for the purpose of owning and operating aircraft. If so, they do not fall within the coverage of Section 91.181 since that regulation requires that transportation by air be "incidental" to the company's other business. In order for these "flight department companies" to conduct the operations you describe, they must obtain an appropriate operating certificate.

The "major enterprise" or "primary business" test set out in the definition of commercial operator in Section 1.1 has not been abandoned with respect to those operations listed in Section 91.181(b). Notice 71-32 (published in the *Federal Register* on October 7, 1971 (36 F.R. 19507)), proposed new Subpart D and made this clear in discussing the carriage of goods as incident to a primary business. The notice states:

> The decision to apply Subpart D to the carriage of goods incident to a primary business is not intended to change the applicability of Part 121 to those operations which involve primarily the transportation of cargo by aircraft from one point to another solely for the purpose of sale. Such transportation is considered to be a major enterprise in itself, and may not be conducted with a large aircraft by a person who does not hold an operating certificate issued under Part 121.

This policy was reiterated in the preamble to Amendment 91.101 as follows:

> Although this change in policy (permitting the carriage of property in furtherance of a business) permits a great use of an airplane as an incident to a business, it does not change the FAA policy in regard to the carriage of goods or property by airplane when such carriage is the primary business of the operator of the airplane. When such carriage is in fact a major enterprise in itself, it may not be conducted by any person unless he holds an operation certificate under Part 121 or 135, as applicable.
>
> The preamble also applies the primary business test to operations by subsidiary corporation whose sole purpose is to provide transportation to the parent corporation, a subsidiary or other corporation.

The same logic is set out in a letter from William G. Nelms, Esq. to W.H. Williams, Assistant Vice President, Corporate Aviation, BellSouth Telecommunications, Inc. dated April 18, 1997, dealing with the creation of BellSouth Corporate Aviation and Travel Services, Inc. ("BCAT") where the passengers carried aboard the aircraft were employees or guests of BellSouth or its affiliates. Once again, the FAA stated its position that this was a transportation company noting:

> As you know, 14 C.F.R. Parts 119 and 135 (Parts 121 and 125 for large aircraft) contain provisions that are more demanding than Part 91 safety rules. Those air carrier certification and operational rules apply when someone engages in transporting people or property from one point to another for compensation or hire. Under the circumstances you describe in your letter, BCAT aircraft operations are subject to those air carrier regulations.

THE AMBITIONS OF THE CHIEF FINANCIAL OFFICERS AND ACCOUNTANTS NOT TO HAVE THE AIRCRAFT OWNED BY THE PRIMARY BUSINESS ENTERPRISE

Most often, the chief financial officers and accountants do not want the aircraft owned by the primary financial enterprise. They want a subsidiary corporation established to provide air transportation to the parent company. However, as we know, the FAA views this as being an illegal air taxi operation, and the fines can range as much as $25,000.00 per violation of the Federal Aviation Regulations or $1,100.00 if the entity is a small business concern. 49 U.S.C. §46301(a). A fine of $44,000.00 for two flights conducted without the requisite certificates was affirmed by the FAA in the matter of *Air Solutions, LLC and Air Solutions Group, Inc.*, 2009 WL 8502643 (F.A.A.). In the event the FAA believes an illegal air taxi operation has taken place, it will assert the argument that a host of regulations have been violated. See, e.g., 14 C.F.R. §119.1 (operating without the requisite air carrier certificate); 14 C.F.R. §135.3 (rules applicable to air taxi operations); 14 C.F.R. §135.297 (requirements for a Part 135 instrument proficiency check); 14 C.F.R. §135.299 (requirement for pilot-in-command line checks and route checks). Airmen who operate flights that improperly attempt to circumvent 135 are at risk, but there is authority for the proposition that the airman should not be penalized if he reasonably believed the flight operations were in conformity with Part 91 to the extent the cargo being carried by the aircraft was incidental to a major enterprise for profit of the parent corporation. *Administrator v. Fulop*, 6 N.T.S.B. 298, NTSB Order No. EA-2730, 1988 WL 250619 (N.T.S.B.). The FAA is not shy about prosecuting marginal or legally insufficient cases and seeking an emergency order of revocation of an airman's certificate involving allegations of multiple flights in violation of Part 135. *See Administrator v. Bowen*, 7 NTSB 1052, NTSB Order No. EA-3351, 1991 WL 320201 (N.T.S.B.), where the FAA brought an action to revoke on an emergency basis a Piedmont pilot's airline transport pilot certificate based upon 67 alleged Part 135 flights. The airman produced an expert witness who testified the flights were permitted under 14 C.F.R. §91.501, formerly codified as 14 C.F.R. §91.181, and the airman's expert witness testified the regulation "permits flight crew salary and some other unlisted charges

for those operations to which §91.501(d) applies, provided such charges do not exceed 100% of the charges for fuel, oil, lubricants, and other additives." In *Bowen*, the Board affirmed the initial decision of Judge Coffman finding no violation of the Federal Aviation Regulations had been proven. *Id.* at 6.

OPERATION CONTROL AND COMMON VERSUS PRIVATE CARRIAGE

The concept of operational control is explained in FAA Advisory Circular AC No. 91-37B, Truth in Leasing, February 10, 2016. Generally, with a dry lease, the lessee exercises operational control while with a wet lease, the lessor normally exercises operational control. *Id.*, ¶5.1. Considerations that impact on who exercises operational control are:

1. Who makes the decision to assign crewmembers and aircraft, accept flight requests; and initiate, conduct and terminate flights?
2. For whom do the pilots work as direct employees or agents?
3. Who is maintaining the aircraft and where is it maintained?
4. Prior to departure, who ensures the flight, aircraft, and crew comply with the regulations?
5. Who decides when/where maintenance is accomplished, and who directly pays for the maintenance?
6. Who determines weather/fuel requirements, and who directly pays for the fuel?
7. Who directly pays for the airport fees/parking/hangar costs, food service, and/or rental cars?

Id. at ¶6.3. Additionally, FAA Advisory Circular AC-91-37B contains these cautionary instructions:

8. **Determining responsibility for operational control.** If you have any doubt about the legitimacy or the operating authority concerning the charter flights you are arranging, check with the nearest FAA Flight Standards District Office (FSDO).

8.1 You should note that operational control may remain with the lessor even though the lease is characterized as a dry lease and expressly states that items such as flight following, dispatch, communications, weather, and fueling are to be performed by the lessee. Therefore, in some instances it may be necessary to look at the actual manner in which the operations are conducted to determine which party on the lease has operational control.

8.2 If requested, the FAA will determine whether the lessor or lessee has operational control under 14 C.F.R. Such determination will be based on a careful review of the lease and any other circumstances regarding the actual operation. Where a lease agreement is not clear in regard to operational control of the aircraft, the FAA may ask the parties to amend the lease to properly reflect the party that has operational control.

8.3 The FAA has taken the position that if a person leases an aircraft to another and also provides the flight crew, fuel, and maintenance, the lessor is the operator. If the lessor makes a charge for the aircraft and services, other than as provided for in Part 91 Subpart F, the operation of the aircraft is subject to 14 C.F.R. Part 121, 125, 129, 135, or 137 depending upon the type or size of the aircraft as described in §91.501. This position is supported by *U.S. v. Bradley,* 252 F.Supp. 804 (1966); and *B&M Leasing Corp. v. U.S.,* 331 F.2d 592 (1964).

Id. ¶¶ 8, 8.1, 8.2, 8.3.

Further, in the same FAA Advisory Circular, it advises that a copy of the lease be recorded with the FAA Technical Section in accordance with 14 C.F.R. §91.23, and that notice be given to the nearest Flight Standards District Office at least 48 hours prior to the flight as required by 14 C.F.R. §91.23. *Id.*, ¶¶9,10. Finally, the Advisory Circular contains a sample Truth-in-Leasing clause that should be contained in any dry lease or wet lease pertaining to the operation of an aircraft. The existence of FAA Advisory Circular AC No. 91-37B which can readily be found on the internet precludes anyone asserting that he, she or it does not understand the concept of "operational control" as it is viewed by the FAA.

The concepts of "common carriage" as opposed to "private carriage" are explained in FAA Advisory Circular AC No. 120-12A, Private Carriage versus Common Carriage of Persons or Property, April 24, 1986. Common carriage generally involves the holding out of the willingness to provide transportation to the public. *Id.*, ¶¶ 4A, B, C. Conversely, if holding out to the public is not involved, the willingness to provide transportation for hire involves private carriage. *Id.*, ¶4D. Common carriage may still be involved even though the persons being carried must be members of an organization if that organization is open to a significant segment of the public. *Id.*, ¶4F. Situations where casinos provide transportation to patrons who pay nominal charges have nonetheless been deemed to be common carriage "based on the fact that the passengers are drawn from the general public and the nominal charge constituted compensation." *Id.*

TIMESHARING, INTERCHANGE, AND JOINT OWNERSHIP AGREEMENTS

There are a variety of ways aircraft owners can make their large, turbine-powered, multi-engine aircraft available to persons for use. Under 14 C.F.R. §91.501(c)(1):

> A timesharing agreement means 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.

14 C.F.R. §91.501(d) provides:

> The following may be charged, as expenses for a specific flight, for transportation as authorized by Paragraphs (b)(3) and (7) and (c)(1) of this section:
>
> (1) Fuel, oil, lubricants, and other additives.
>
> (2) Travel expenses of the crew, including food, lodging and ground transportation.
>
> (3) Hangar and tie-down costs away from the aircraft's base of operation.
>
> (4) Insurance obtained for the specific flight.
>
> (5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses listed in Paragraph (d)(1) of this Section.

A timesharing agreement is a "wet lease" since the aircraft is provided with flight crew.

14 C.F.R. §91.501(c)(2) provides:

An interchange agreement means an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment or fee if made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes.

14 C.F.R. §91.501(c)(3) provides:

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.

FAA EXEMPTION NO. 7897K – THE NBAA EXEMPTION

Historically, the National Business Aircraft Association has had in place an exemption whereby aircraft that are not multi-engine turbine-powered aircraft that weigh more than 12,500 pounds or more can still be operated under the timesharing, interchange and joint ownership agreement provisions found in 14 C.F.R. §91.501(c). A letter from James S. Duncan, Executive Director, Flight Standards Service of the FAA to Douglas Carr, Vice President of the National Business Aircraft Association (NBAA) of April 13, 2018, sets out what were, at that time, the provisions of FAA Exemption No. 7897J. Exemption No. 7897J afforded NBAA members an exemption from 14 C.F.R. §§91.409(e) and 91.501(a), and permitted NBAA members "to operate small civil airplanes and helicopters of United States registry under the operational rules of §§91.503 through 91.535, and to select an inspection program as described in §91.409(f).' There are a number of potential maintenance programs permitted under 14 C.F.R. §91.409(f) which include: (1) a continuous airworthiness maintenance program in use by operators under Part 121 or 135 of the Federal Aviation Regulations, (2) an approved maintenance program under 14 C.F.R. §135.419 and in use by a person holding an operating certificate issued under Part 135 of the Federal Aviation Regulations, (3) a current inspection program recommended by a manufacturer or (4) an inspection program approved by an FAA Flight Standards office. 14 C.F.R. §§91.409(f)(1), (2), (3), (4); 91.409(g).

Historically, the conditions and limitations that applied to the NBAA exemption included:

(1) That the operations be conducted in compliance with, *inter alia*, 14 C.F.R. §§91.503 through 91.535; the flight altitudes rules of 14 C.F.R. §91.515(a); and the inspection program requirements listed in 14 C.F.R. §91.409(f);

(2) Notice of the operations must be given to the appropriate Flight Standards District Office along with a copy of the timesharing, interchange or joint ownership agreement together with the aircraft registration number of each aircraft conducting such operations;

(3) An appropriate entry must be made in the aircraft's logbooks showing the provisions of Part 91, Subpart F under which the aircraft is being operated;

(4) The inspection program must have been submitted to and approved by an appropriate flight standards district office; and

(5) The exemption must not require operations to be conducted under Federal Aviation Regulations Part 135.

Letter from John S. Duncan, Executive Director, Flight Standards Service, Federal Aviation Administration to Douglas Carr, April 13, 2018, regarding FAA Exemption No. 7897J.

Recently, in the latest iteration of the exemption (Exemption No. 7897K), the FAA added an additional requirement: each NBAA member operating under the exemption must file a "Notice of Joinder to FAA Exemption No. 7897K" by going to the Federal eRulemaking Portal, inserting the docket number, and going to http://www.regulations.gov and following the online instructions for submitting the documents electronically including:

(1) The person's name or individual submitting the notice of joinder;

(2) The person's physical address, and for a person other than an individual, the physical address of the authorized representative;

(3) The person's email address;

(4) The person's telephone number;

(5) The person's NBAA membership number;

(6) A statement requesting that the FAA append the Notice of Joinder to the list of NBAA members authorized to exercise the privileges of Exemption No. 7897K;

(7) An attestation that the person will not conduct any operation under Exemption No. 7897K if the person's ceases to be an NBAA member; and

(8) An attestation that the person will comply with all conditions and limitations of Exemption No. 7897K.

Letter from Robert C. Carty, Flight Standards Service, Federal Aviation Administration to Douglas Carr, Vice President, NBAA, March 27, 2020, regarding FAA Exemption No. 7897K.

In the FAA's March 27, 2020, letter renewing the NBAA Exemption, the FAA found good cause existed for not publishing a summary of the NBAA's petition in the Federal Register. *Id.* at 1, 2. Further, the NBAA requested that operation under the Exemption be permitted in international operations, noting it had "reviewed all International Civil Aviation Organization (ICAO) Standards and Recommended Practices Annexes and did not identify any elements of the exemption that could conflict with international standards." *Id.* at 1.

TRUTH-IN-LEASING CLAUSE REQUIREMENTS IN LEASES AND CONDITIONAL SALES CONTRACTS

14 C.F.R. §91.23(a) provides:

Except as provided in Paragraph (b) of this section, the parties to a

lease or contract of conditional sale involving a U.S.- Registered Large Civil Aircraft and entered into after January 2, 1973, shall execute a written lease or contract and include therein a written truth-in-leasing clause as a concluding paragraph in large print, immediately preceding the space for the signature of the parties, which contains the following with respect to each such aircraft:

(1) Identification of the Federal Aviation Regulations under which the aircraft has been maintained and inspected during the 12 months preceding the execution of the lease or contract of conditional sale, and certification by the parties thereto regarding the aircraft status of compliance with applicable maintenance and inspection requirements in this part for the operation to be conducted under the lease or contract of conditional sale.

(2) The name and address (printed or typed) and the signature of the person responsible for operational control of the aircraft under the lease or contract of conditional sale, and certification that each person understands that person's responsibilities for compliance with applicable Federal Aviation Regulations.

(3) A statement that an explanation of factors bearing on operational control and pertinent Federal Aviation Regulations can be obtained from the responsible Flight Standards Office.

If an aircraft lease is in favor of a foreign air carrier or a certificate holder under 14 C.F.R. Parts 121, 125, 135 or 141, then the requirements of the truth-in-leasing clause set out in 14 C.F.R. §91.23(a) need not be complied with. However, in those situations where 14 C.F.R. §91.23(a) does apply, no aircraft may be operated under a lease or contract of conditional sale unless the lessee, conditional buyer or registered owner (if the lessee is not a U.S. citizen) has "mailed a copy of the lease or contract that complies with the requirements of Paragraph (a) of this section, within 24 hours of its execution, to the Aircraft Registration Branch, Attn: Technical Section, P. O. Box 25724, Oklahoma City, OK 73125." 14 C.F.R. §91.23(c)(1). Additionally, "[a] copy of the lease or contract that complies with the requirements of Paragraph A of 14 C.F.R. §91.23(a) must be carried aboard the aircraft and must be available for review or inspection upon request by the FAA. 14 C.F.R. §91.23(c)(2). Additionally, "...at least 48 hours before the first flight of the aircraft under a lease or conditional sales contract, notice must be given to the responsible Flight Standards District Office of: (1) the location of the airport of departure, (2) the departure time, and (3) the registration number of the aircraft involved." 14 C.F.R. §91.23(c)(3)(i), (ii), (iii).

Generally, in our practice, we telephone and email to personnel at the appropriate Flight Standards District Office the information required prior to the first flight of the aircraft and we also provide a complete copy of the aircraft lease or document filed with the Aircraft Technical Section of the FAA. Additionally, we typically have electronically filed the lease or conditional sales contract with the Aircraft Technical Branch of the FAA. This filing precludes any argument that the FAA was not apprised of the filing of the documents and the nature of the flight operations.

Generally, commercial or financial information contained in the lease or conditional sales contract is privileged and confidential and not disclosed under the Freedom of Information Act. 14 C.F.R. §91.23(d). The term "lease" is defined in 14 C.F.R. §91.23(e) as follows:

> For the purpose of this Section, a lease means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without flight crew members, other than an agreement for the sale of an aircraft and a contract of conditional sale under Section 101 of the Federal Aviation Act of 1958. The person furnishing the aircraft is referred to as the lessor, and the person to whom it is furnished the lessee.

STRUCTURAL OPTIONS IN THE OPERATION OF THE AIRCRAFT

If the sole function of the aircraft is to provide transportation to prospective customers of the company or personal transportation for officials, employees, or guests of the company, then the most desirable option to preclude any argument that the aircraft is part of a flight department company may be to place ownership of the aircraft in the major enterprise for profit. In doing so, this ensures that the operations of the aircraft are not those of a "commercial operator," since the operation of the aircraft "is merely incidental to the person's other business..." 14 C.F.R. §1.1, Definition of "Commercial Operator."

If the chief financial officer or the accountant or other personnel are opposed to the aircraft being owned by the "economic engine" or "driving force" in the corporate structure, one may consider establishing a corporate entity to own the aircraft and then "dry leasing" (without flight crew) the aircraft from that entity to the principal corporate entity. The principal corporate entity may then employ its own flight crew, provided, however, the principal corporate entity must exercise "operational control of an aircraft." This means that the principal corporate entity must have a complete appreciation for the status of all existing maintenance, all upcoming maintenance, and all anticipated maintenance required to keep the aircraft airworthy. Any dry lease agreement between the ownership entity and their principal business entity must ensure that these requirements of operational control are satisfied.

If a major enterprise for profit engaged in commercial ventures other than aviation desires to recover some of the operating cost of owning and maintaining the aircraft, the aircraft may be the subject of a timesharing agreement under 14 C.F.R. §91.501(c)(1) provided only the ten items set out in subparagraph (d) 1 through 10 of that provision may be charged. Again, the timesharing agreement must be carried aboard the aircraft, must be dispatched to the FAA Technical Center within 24 hours of execution, and at least 48 hours before the first flight, notice must be given to the FAA of the airport of departure, the time of departure, and the registration number of the aircraft. Additionally, in light of the new requirements set out in FAA Exemption No. 7897K, a Notice of Joinder to FAA Exemption No. 7897K must be submitted electronically to the Federal Aviation Administration.

In those circumstances where an entity desires to be a joint registered owner of an aircraft, then the operation of the aircraft may be the subject of a joint ownership agreement under 14 C.F.R. §91.501(c)(3). One must emphasize, however, that in order to employ a joint ownership

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and "positive free cash flow for the June quarter." He predicted a coming surge in corporate travel, but said international demand recovery will be "very choppy and uneven."

Delta entered into agreements for 29 used Boeing 737- 900ERs and seven used Airbus A350-900s. Bastian said the pandemic provided an opportunity to simplify Delta's fleet and accelerate retirements of 18 B777s and the MD-88 and MD-90 fleets, and to add newer generation aircraft at attractive prices.

Delta, Aeromexico Add Mexico Service

Resumed daily service from Mexico City to Austin and Dallas can be booked either through Aeromexico or Joint Cooperation Agreement partner Delta.

Aeromexico will add 12 Boeing 737 MAX 8s in October, subject to approval of transaction with Dubai Aerospace Enterprise by the U.S. District Court for the Southern District of New York "due to our voluntary Chapter 11 financial restructuring."

United Posts Second Quarter Net Loss of $434 Million

United posted a second quarter net loss of $434 million, but expects to return to profitability in third quarter, with full recovery in demand anticipated by 2023. The airline has not seen an impact on bookings as a result of the COVID-19 delta variant, CEO Scott Kirby told analysts, and a recent company survey found that 84% of MileagePlus members are fully vaccinated against Covid-19.

United announced the purchase of 270 new aircraft—50 Boeing 737 MAX 8s, 150 MAX 10s and 70 Airbus A321neos—and plans to retrofit the mainline, narrow-body fleet "to transform the customer experience and create a new signature interior with a roughly 75% increase in premium seats per North American departure."

Air Canada Resumes International Service

Air Canada resumed flights to Greece, United Arab Emirates, Italy, Spain, United Kingdom and Morocco and plans new three times weekly nonstops from Montreal to Cairo. Year-round nonstops between Calgary and Frankfurt will operate with transatlantic joint venture partner Lufthansa.

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agreement, all of the aircraft owners must be "registered joint owners." 14 C.F.R. §91.501(c)(3). Having the aircraft owned by a limited liability company with multiple owners will not satisfy the requirements of the regulations to employ a joint ownership agreement.

In the event two or more aircraft owners desire to interchange their aircraft, an interchange agreement may be employed under 14 C.F.R. §91.501(c)(2). The synthesis of timesharing, interchange, and joint ownership agreements was the genesis of NetJets, which allowed aircraft owners to jointly own and interchange aircraft without having an air taxi certificate. This, in turn, led to the FAA promulgating Subpart K to the Federal Aviation Regulations which is, in essence, a mini-Part 135 operation with less stringent standards and requirements.

TAX IMPLICATIONS

The tax implications of these activities are generally beyond the scope of this article. It is the practice of this office to refer clients to seasoned tax practitioners to assist them with paying federal transportation excise tax where the facts require such payments. Further, in the acquisition of aircraft, sales and use tax implications are typically planned for and evaluated as a precursor to the execution of an aircraft purchase agreement and delivery of the aircraft. Evaluations are made with respect to those states which are "fly-away" jurisdictions that allow applicable sales and use taxes to be paid in the jurisdiction where the aircraft is used, as opposed to the jurisdiction where delivery of the aircraft was taken.

CONCLUSION

The acquisition and ownership of aircraft, especially business aircraft, is a complex undertaking requiring an appreciation for a myriad of considerations. Planning must be put in place before the aircraft is acquired. A study of the corporation's needs in the operation of the aircraft should be conducted to evaluate the most suitable aircraft for the missions to be flown on behalf of the company. Counsel will frequently find that the chief financial officer or accountants employed by the major enterprise for profit will want to have a transportation company established even though it runs afoul of 14 C.F.R. §91.501(b)(5). In situations where corporate representatives are adamant that the aircraft be structured in this manner, they should be acquainted with the right of the Federal Aviation Administration to impose substantial fines and penalties for each flight. As discussed above, the fines can range up to $25,000 per violation. 49 U.S.C. §46301(a). This may lead personnel in these positions of authority and trust to alter their thought processes about the best manner in which to own and operate the aircraft.

This area of the law is constantly evolving. For that reason, the practitioner should keep abreast of changes in practices, policies and procedures which apply to flight operations and the regulations and policies promulgated and enforced by the Federal Aviation Administration.

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