U.S. Department
of Transportation
**Federal Aviation
Administration**

JUN 12 2009

Mr. Fred Meier
Winstead PC
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270

Dear Mr. Meier,

This is in response to your request for clarification of a legal interpretation issued July 24, 2008 to Mr. Jeff Bauer. Specifically, you question whether a corporation may enter into a time sharing agreement with someone other than another corporation and still recover the expenses allowed for under 14 C.F.R. §91.501(d).

Section 91.501(b)(6) permits the "carriage of company officials, employees, and guests of the company on an airplane operated under a time sharing, interchange or joint ownership agreement as defined in [§91.501(c)]" to be conducted in accordance with the operating rules of part 91, rather than the operating requirements of parts 121, 129, 135, or 137. As noted in the July 24, 2008, legal interpretation, a time sharing agreement is "an arrangement whereby a person leases his airplane with flight crew to another person...;"and "person," as used in this definition, retains its meaning as defined in 14 C.F.R. §1.1. Thus, a corporation could enter into a time sharing agreement with "an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity . . ." and be reimbursed for the expenses provided under 14 C.F.R. §91.501(d). *See* 14 C.F.R. §1.1 (defining "person").

The FAA acknowledges that such arrangements often raise issues with regard to retention of operational control of the aircraft. It is important to note that "whenever the aircraft and flight crew are furnished by separate and unrelated persons, it is ...the policy of the FAA to consider the lessee of the aircraft as the operator so long as he retains control, direction, and responsibility of the aircraft. . . . [However], [w]henever the instrumentalities of transportation , i.e., the aircraft and crew, are furnished by separate persons acting in concert, the situation is not the same. In such cases, the question to be considered is whether the net effect of the actual operational arrangements of the parties places responsibility for the operation of the aircraft in the lessor of the aircraft, the person furnishing the flight crew, or both." 36 Fed. Reg. 19507, 19509 (Oct. 7, 1971).

Accordingly, when such an agreement provides for the lease of an aircraft with a flight crew employed by the lessor, (i.e., a wet lease) "operational control normally remains in the hands of the lessor whose employee is the pilot in command of the aircraft." 36 Fed. Reg. 19507, 19509 (Oct. 7, 1971). In cases where the aircraft and flight crew are furnished by separate and unrelated persons, it is "presumed that the lessee of the aircraft is the operator of that

aircraft." 37 Fed. Reg. 14758, 14760 (July 25, 1972). Thus, in those situations where a corporation enters into a time sharing agreement with an individual, and it is not clear that the individual and the corporation are truly "separate and unrelated," the FAA may determine that either the corporation was responsible for the operation of the aircraft, or the individual was responsible, or both the corporation and the individual were responsible for the operation of the aircraft.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Anne Bechdolt, Acting Manager of the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200