



Is Getting an FAA Charter Certificate for You? Maybe. -By John Craig Weller-



Business aircraft are expensive to own and operate, and they entail substantial risk in operation. Under Part 91 of the FAR, where most business aircraft are operated, there are opportunities for sharing of aircraft expenses as well as risk management. However, these opportunities are strictly limited and, in many cases, may simply not do the job. Well, why not consider the charter rules in Part 135? This month we will explore some of the reasons for operating under Part 135 and in the next issue we will discuss the basics of how to obtain Part 135 certification.

One of the most obvious benefits of Part 135 is the ability to receive compensation from anyone, in any amount, for use of a company aircraft. Rather than being limited to payment from corporate affiliates or sharply limited compensation, under Part 135 an aircraft operator can receive from anyone compensation limited only by the market (perhaps even a profit). For example, under Part 91 a corporate executive can only reimburse his company for certain limited direct expenses of a personal flight. For this reason, many executives simply choose to treat personal flights as a taxable fringe benefit. As a result, the IRS gets more taxes and the company gets nothing for the use of the airplane. However, if the company airplane is flown under Part 135, the executive is free to reimburse for the full cost of any personal flights. In these “post Enron” days, that may be a more palatable solution for the company and the executive.

Another significant benefit of operating under Part 135 is liability protection for company assets. To protect these assets, company lawyers often want to place the company airplane(s) and associated personnel in a separate subsidiary with no other business. In other words, a “flight department” company. Unfortunately, the FAA maintains that such a structure is not permitted under Part 91. However, if the subsidiary holds a Part 135 certificate, this structure is perfectly OK, and the assets of the rest of the corporate family may be protected.



Most states have some form of sales or use tax that usually applies to the purchase or use of an aircraft by a state resident. Thus, a company buying an expensive jet aircraft may face a significant tax bill from the state. However, many states provide an exemption for aircraft that are used under Part 135. The conditions surrounding these exemptions vary from state to state, and any conditions must be scrupulously observed to preserve the exemption. However, if the exemption is available, operating under Part 135 rather than Part 91 can mean significant tax savings.

Conducting third party charters with the company airplane under Part 135 may also enhance the opportunity to deduct the aircraft ownership and operating expenses as a business expense. Finally, at least on paper, Part 135 may be “safer” than Part 91 because of the additional safety requirements.

Despite the advantages of Part 135, we all know there is no free lunch. Part 135 comes at a price. First, there is the time and expense required to obtain an FAA certificate. Part of this certification process involves development of company operating, training, and maintenance manuals that will strictly govern your operations. Once certification is achieved, you will receive more scrutiny from the FAA. Finally, your operations will be subject to certain significant restrictions. Some airports you could use under Part 91 may no longer be available because of runway length restrictions. In addition, you may be limited to airports with on-field weather reporting. Your pilots will now have to adhere to limits on flight and duty time. These limits may sometimes mean an overnight stay for the boss. In short, you will have to balance the advantages of operating under Part 135 against the cost and restrictions involved.

It is possible to avoid the initial time and expense of obtaining your own Part 135 certificate. Many existing certificate holders will allow you (for a price) to place your airplane and crew on their certificate. Your airplane can then be operated under Part 135 when advantageous and under Part 91 at other times. Of course, this approach may limit the benefits of Part 135. For example, liability protection for Part 91 flights is lost.

The decision to move to Part 135 is a significant one. However, with the appropriate advice (including aviation counsel), the right decision can be made. Next time we will review the process for getting a certificate. See you then.

