

**GKG Law, P.C. Presents**  
**An Aviation Tax Law Webinar**  
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**Regulatory and Business  
Considerations in Choosing and  
Working With an Aircraft  
Management Company**

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# Operational Control and Management Companies





# OPERATIONAL CONTROL: MANAGEMENT COMPANIES

## → Key Issue:

→ Properly defining and allocating responsibility in management company documents

## → Key Concept:

→ Some Operational Control functions can be delegated

→ Operational Control responsibility cannot be delegated



# OPERATIONAL CONTROL PLANNING: STRUCTURE

- Define the applicable ownership and operational structure for the aircraft
- Business/Financial/Tax Considerations
- Issues:
  - Who will own the aircraft?
  - Who will use the aircraft?
  - Who will operate the aircraft?
  - Who will employ the pilots?





# OWNERSHIP/OPERATING STRUCTURE

- Aircraft ownership and operation separated
  - Ownership – Leasing entity (SPE)
  - Operation – One or more active businesses
  - Charter lease from SPE to Management Company
  - Dry lease(s) from SPE to Active businesses
  - Aircraft management agreement between (among) Management Company and lessee(s)



# OWNERSHIP/OPERATING STRUCTURE

→ Who will employ the pilots?

→ Management Company

→ One of the lessees

→ A third party





# OPERATIONAL CONTROL PLANNING: MGT AGREEMENTS

- How will the airplane be operated?
  - Exclusively Part 135
  - Both Parts 91 and 135
  - Exclusively Part 91
- Each of the above choices will affect Operational Control allocation



# OPERATIONAL CONTROL PLANNING: MGT AGREEMENTS

- Exclusively Part 135: Management company will always have Operational Control
- Both Part 91 and Part 135: Management Company always has Operational Control of Part 135 flights/Lessee always has control of Lessee flights
  - Part 91 ferry, positioning, *etc* flights-either one
- Exclusively Part 91: Lessee always has Operational Control





# REVIEWING/REVISING MANAGEMENT AGREEMENTS

- Clear and unequivocal allocation of Operational Control as appropriate
  - Management Company – Part 135
  - Lessee – Part 91
- Control of pilots
  - Part 135 – Pilots must be employees or agents of Management Company
  - Part 91 – Lessee must control pilots even if employees of Management Company



# REVIEWING/REVISING MANAGEMENT AGREEMENTS

## → Other Operational Control Issues:

- Oversight of pilot training/qualification
- Assignment of pilots to flights
- Designation of PIC
- Flight Release
- Accomplishment/Oversight of maintenance
- Restriction/prohibition of Part 135 in insurance/loan documents
- Indemnity of Management Company





# REVIEWING/REVISING MANAGEMENT AGREEMENTS

→ Operational Control decisions:

→ Direct safety or compliance effect

→ Business/Financial decisions:

→ Insurance

→ Aircraft upgrades

→ Employee compensation



# COMMON MISTAKES

- Misunderstanding of Operational Control:
  - Management Company has Operational Control of Lessee Part 91 flights
  - Delegation of function does not mean delegation of responsibility
  - Owner/Lessee interference with Management Company decisions





# COMMON MISTAKES

- Owner/Lessee “holding out” charter flights
  - Using Owner/Lessee name for charters
  - Advertising
  - Billing for charters
  - Directly receiving money for charters
- References to “dispatching” of flights
  - No dispatch function in Part 135
  - Flight release
  - Flight following



# **Business Considerations in Negotiating Aircraft Management and Charter Agreements**





# Business Considerations: Part 91 Management

- Term of Contract
- Deposit
  - Co-mingled
  - Segregated Funds
- Monthly Management Fees
- Hangar Rent



# Business Considerations: Part 91 Management

- Pilots
  - Salaries and Benefits
  - Day-Rate
  - Training Costs
  - Cross-Utilization





# Business Considerations: Part 91 Management

- Aircraft Maintenance and Cleaning
  - Cost of Labor
  - Cost of Parts
  - Prior Approval Required



# Business Considerations: Part 91 Management

- Fuel
- Insurance
- Catering





# Business Considerations: Part 135 Charter

- Conformity Inspection Fees
- Charter Rates



# Business Considerations: Part 135 Charter

- Allocation of Charter Revenue
  - Manager-Originated Charters
  - Owner-Originated Charters
  - Occupied Legs
  - Empty Legs





# Business Considerations: Part 135 Charter

- Allocation of Charter Expenses
- Scheduling Priority
  - Rights to Preempt Charters
  - Compensation for Preempted Charters
- Fuel Surcharges



# Business Considerations: Part 135 Charter

- Incidental Expenses
- Federal Transportation Excise Taxes
- Fuel Tax Credits





# Closing Remarks



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