

# Strategies for Sharing a Business Aircraft

November 10, 2017

**PRESENTED BY:**

**James D. Struble**  
Jackson Walker L.L.P.  
2323 Ross Avenue, Suite 600  
Dallas, TX 75201  
(214) 953-6000  
[jstruble@jw.com](mailto:jstruble@jw.com)

**John M. Ransom**  
Jackson Walker LLP  
1401 McKinney Street , Suite 1900  
Houston, TX 77010  
(713) 752-4200  
[jransom@jw.com](mailto:jransom@jw.com)



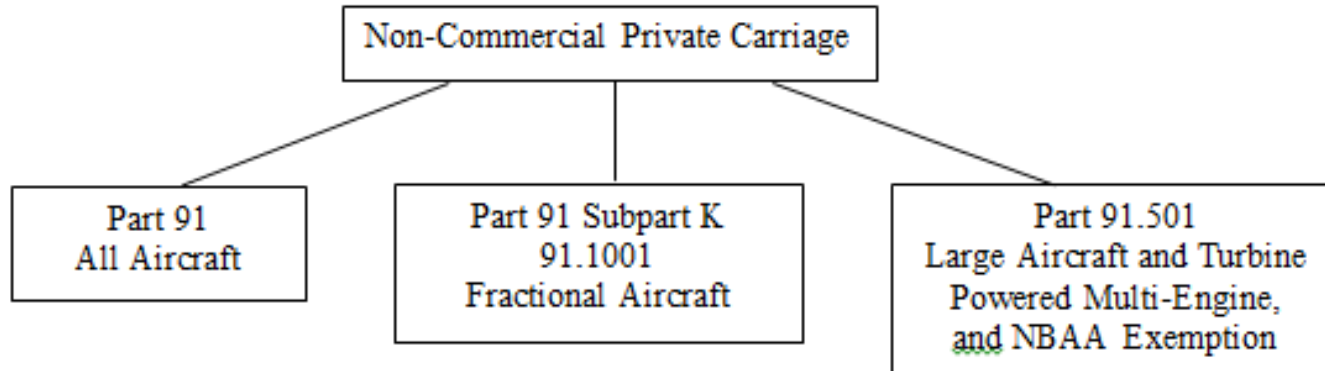
# Aircraft Sharing

- Types of Ownership Structures
- Considerations:
  - Command & Control?
  - Flight crew with aircraft or separate?
  - FAA Reimbursement limits?
  - State sales tax?
    - New Texas exemption for dry lease payments by owners and over 50% controlled affiliates effective September 1, 2015.
  - Federal Excise tax?
  - Property tax (Texas commercial use exemption)?
  - RVSM for each operator?
    - FAA Notice August 7, 2017 – No LOA after 2017 for ADS-B Out Aircraft?
  - Named insureds?

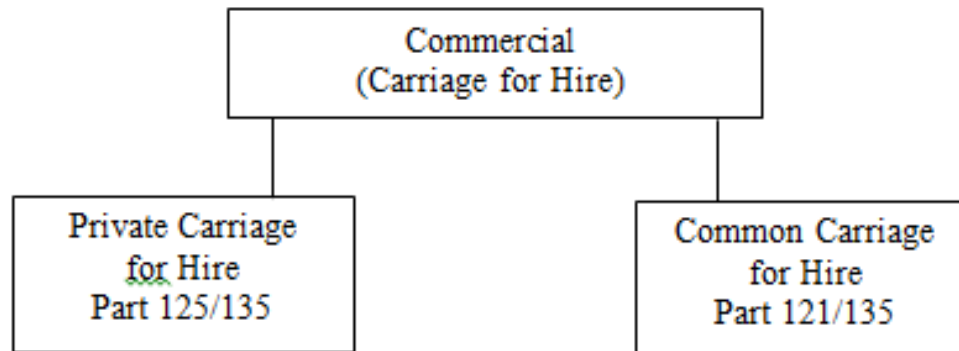


# Business Aircraft FARs

## NO CERTIFICATE REQUIRED:



## CERTIFICATE REQUIRED:





# Part 91 v. Part 135

## Pros and Cons

### Part 91

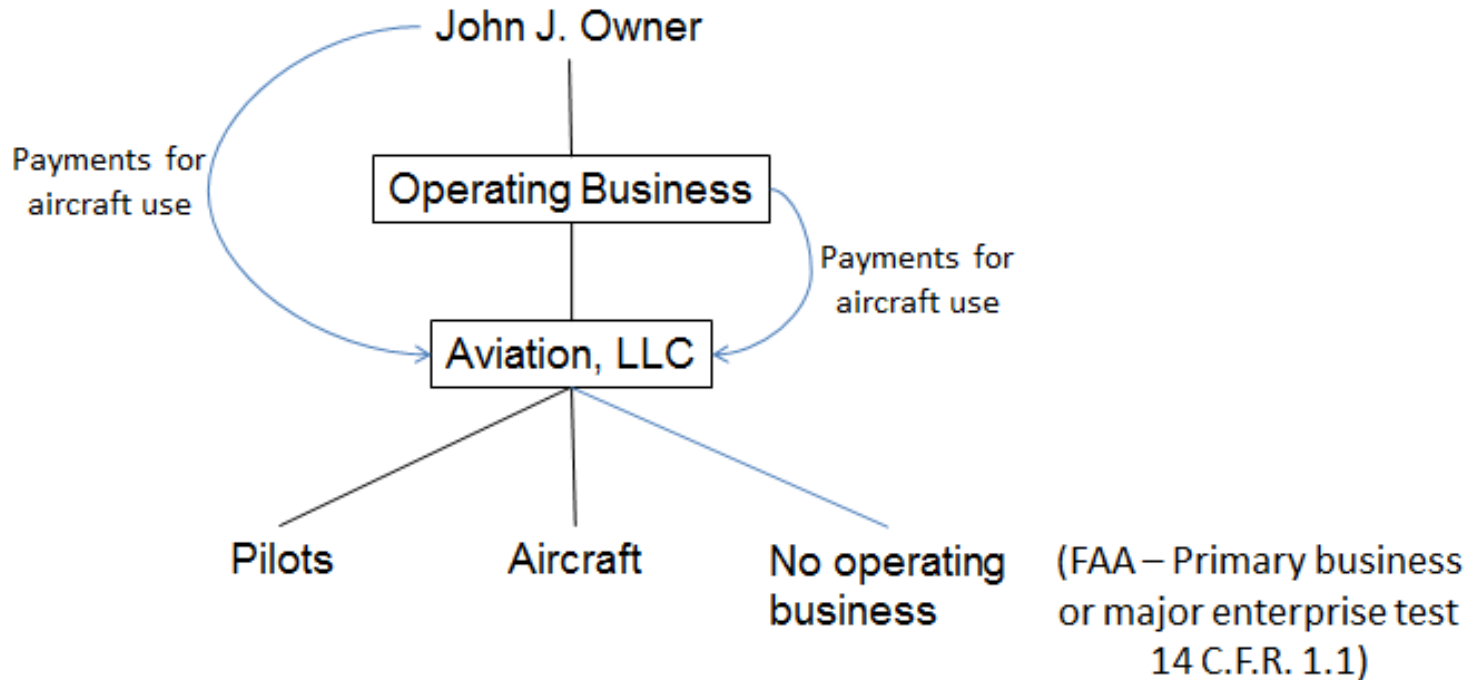
- Operational liability with the operator (dry lessee)
- No specific crew time limits
- No drug and alcohol testing required
- Less restrictive runway length and weather requirements
- Less FAA oversight
- Depreciation 5 year MACRS
- No compensation except dry lease, 61.113 reimbursement or 91.501 sharing.
- FET on certain 91.501 costs.
- Sales tax on dry lease costs.
- See new Texas Tax Code Section 163.006 exemption for dry lease payments by owners and over 50% controlled affiliates effective September 1, 2015.

### Part 135

- Operational liability with certificate holder
- Crew duty time limits
- Drug and alcohol testing
- Runway length, weather reporting restrictions
- More FAA oversight
- Depreciation 7 year MACRS
- May receive compensation
- FET on charter charges (but fuel tax credit
- Texas – much more favorable local property tax treatment
- Conformity Inspection (\$)
- Pilot Records Improvement Act (PRIA)



## Flight Department Company\* – FAA Views as a Commercial Operation

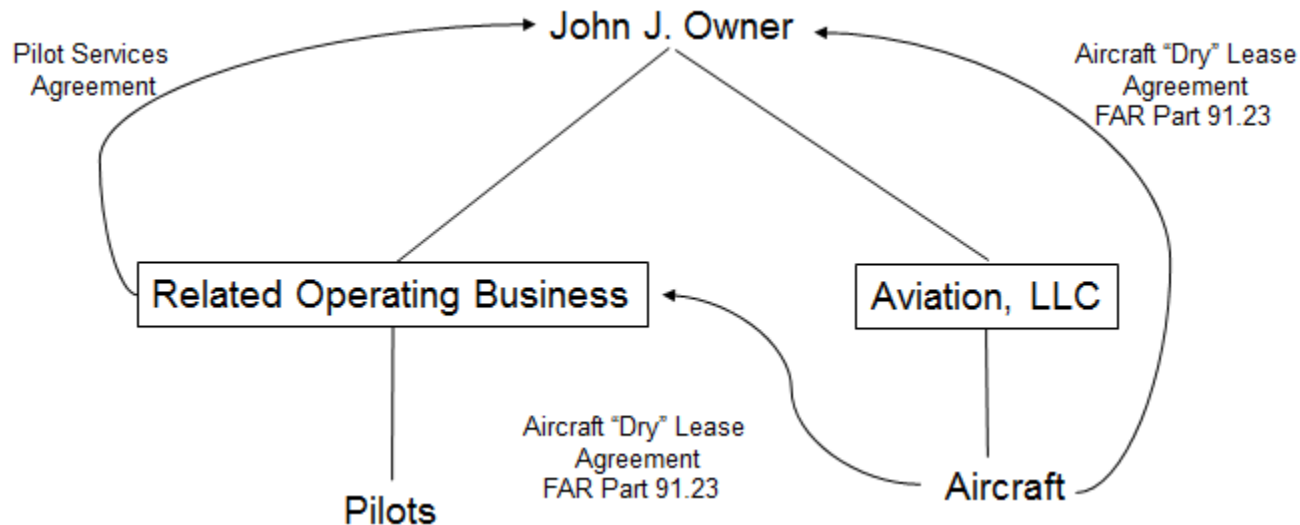


\*Flight Department Company Memorandum included in additional materials



# Typical FAR Part 91 Aircraft Ownership & Operation Structure

## Alternative 1- Separate Aviation Entity



### Notes:

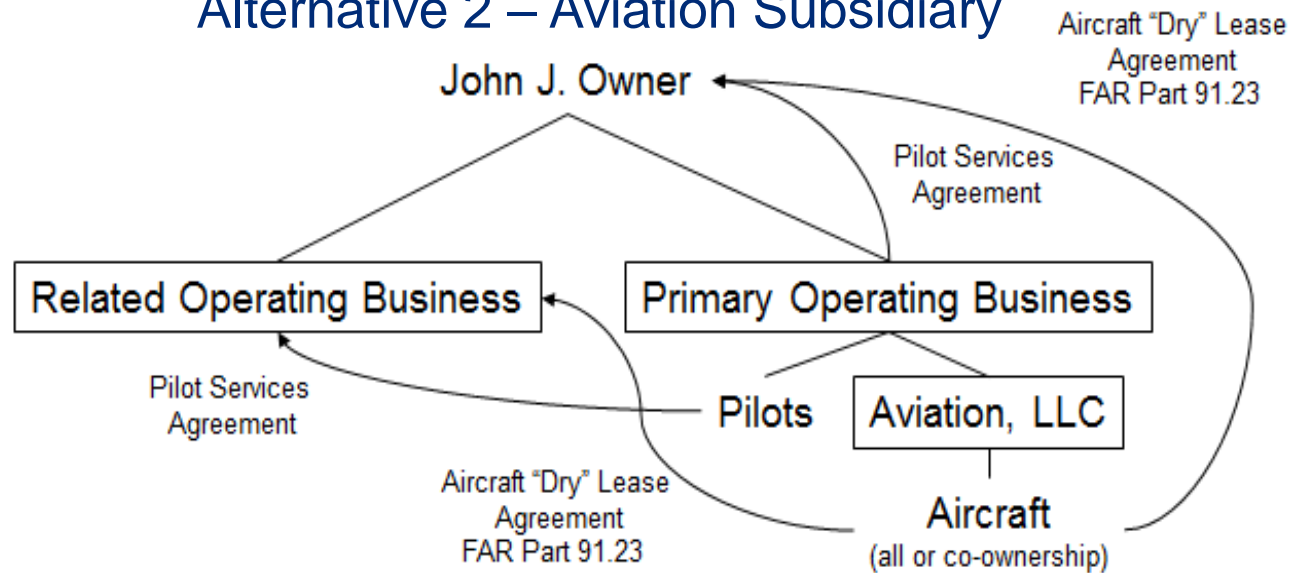
- *Personal flights by Owner* - Mr. Owner leases aircraft from Aviation, LLC and hires pilots from Related Operating Business. Mr. Owner will have "operational control" of the aircraft.
- *Business flights by Related Operating Business* – Related Operating Business leases aircraft from Aviation, LLC. Related Operating Business will have "operational control" of the aircraft.
- Aviation, LLC never provides the airplane with pilots to any person, including itself. Instead it is solely a leasing company with rental income, operating costs and depreciation on the aircraft.
- Since Aviation LLC only rents the aircraft, it may be exempt from Texas sales tax on the purchase of the aircraft but must collect sales tax on the FMV rental payments unless the owner or lessee is a certificated flight school or charter operator.
- Texas sales tax exemption available for lease payments by owners and over 50% affiliates. Texas Tax Code Section 163.006





# Typical FAR Part 91 Aircraft Ownership & Operation Structure

## Alternative 2 – Aviation Subsidiary



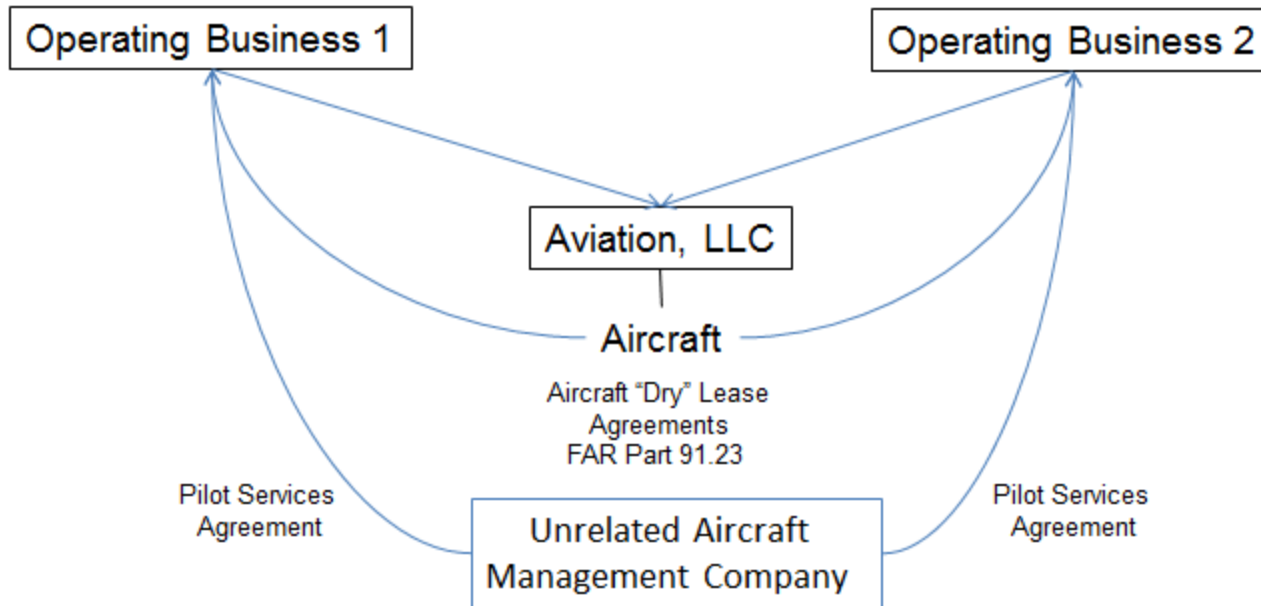
### Notes:

- *Personal flights by Owner* - Mr. Owner leases aircraft from Aviation, LLC and hires pilots from Primary Operating Business. Mr. Owner will have "operational control" of the aircraft.
- *Business flights by Primary Operating Business* – Primary operating business leases aircraft from Aviation LLC for state sales tax and FAR purposes, but since Aviation LLC is a disregarded entity for federal income tax purposes this use is treated as direct business use. Primary business will have "operational control" of the aircraft.
- *Business flights by Related Operating Business* – Related Operating Business leases aircraft from Aviation, LLC and hires pilots from Primary Operating Business. Related Operating Business will have "operational control" of the aircraft.
- Aviation, LLC never provides the airplane with pilots to any person, including itself. Instead it is solely a leasing company with rental income, operating costs and depreciation on the aircraft. However, for federal income tax purposes Aviation LLC is disregarded so rentals to the Primary Operating Business are ignored.
- Since Aviation LLC only rents the aircraft, it may be exempt from Texas sales tax on the purchase of the aircraft but must collect sales tax on the FMV rental payments unless the lessee exclusively operates the aircraft in a flight school or a FAR Part 135 charter operation.
- Texas sales tax exemption available for lease payments by owners and over 50% affiliates. Texas Tax Code Section 163.006



# Typical FAR Part 91 Aircraft Ownership & Operation Structure

## Alternative 3 – LLC Ownership with Management Company



### Notes.

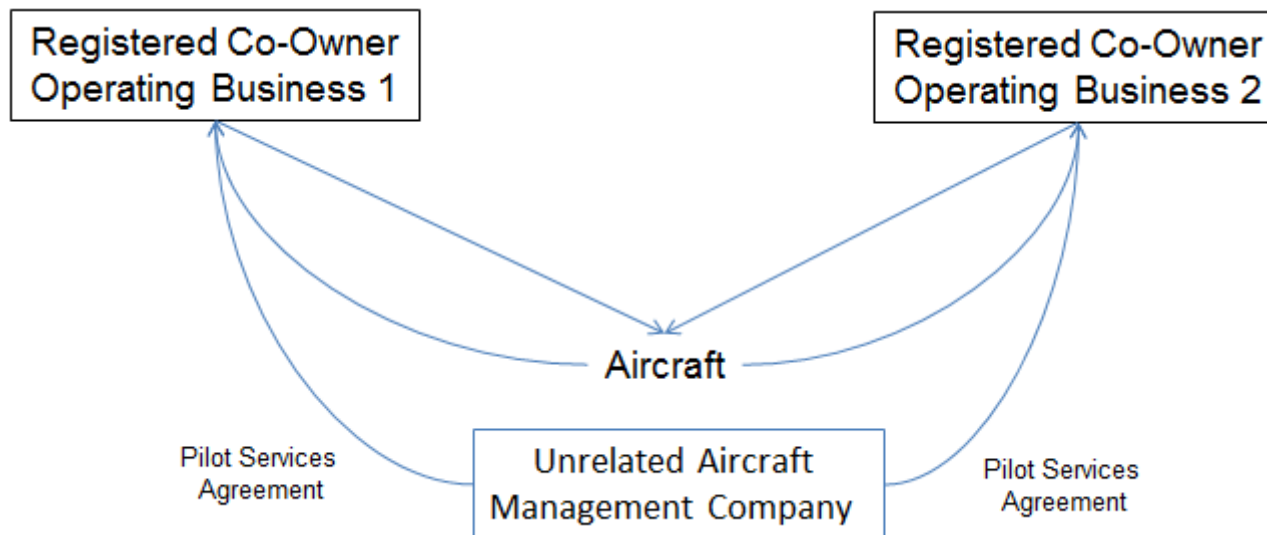
- Each user has operational control for its flights.
- LLC taxed as partnership. Section 761 election out probably not available due to rental of aircraft.
- Passive rental activity under Section 469.
- Single depreciation method and calculation.
- Combined disallowed entertainment use.
- Since Aviation LLC only rents the aircraft, it may be exempt from Texas sales tax on the purchase of the aircraft but must collect sales tax on the FMV rental payments unless the lessee exclusively operates the aircraft in a flight school or a FAR Part 135 charter operation.
- Texas sales tax exemption available for lease payments by owners and over 50% affiliates. Texas Tax Code Section 163.006





# Typical FAR Part 91 Aircraft Ownership & Operation Structure

## Alternative 4 – Co-Ownership with Management Company



### Notes.

- Each owner has operational control for its flights.
- No tax or state law partnership, but confirm in writing.
- Each owner determines its own depreciation method and calculation.
- Each owner determines its own personal and entertainment use.
- No dry lease or reimbursements for flights in furtherance of owner's business so sales tax on purchase absent exemption.
- Can insert LLC or other special purpose entity for each co-owner to utilize rental exemption, but dry lease needed to operator.
- Texas sales tax exemption available for lease payments by owners and over 50% affiliates. Texas Tax Code Section 163.006



## A Word on 91.501 Exceptions in General

91.501 exceptions apply only to:

- Large – greater than 12,500 pounds maximum certificated TOW (14 C.F.R. 1.1)  
and
- Turbojet-Powered, Multi-Engine – not turbo prop
- Airplanes - no helicopters
- U.S. Registered
- NBAA Exemption No. 7897 for “small” aircraft.



# NBAA Exemption 7897\*

## NBAA Member

### Small civil airplanes and helicopters -

- Pistons and Turbo-props allowed
- Notify local FSDO
- Provide copy of Time Sharing, Interchange or Joint Ownership Agreement to FSDO
- Aircraft Logbook Entry
- 91.409(f) inspection program must be approved by FSDO

\*Included in additional materials



# Consolidated Corporate Group Operations

- 91.501(b)(5)
- Company operating the aircraft cannot be a “Flight Department Company”\*
- Can reimburse direct and indirect operating costs (but no profit)
- No Truth-in-Leasing requirement
- Who is in the Intra-Corporate Family?

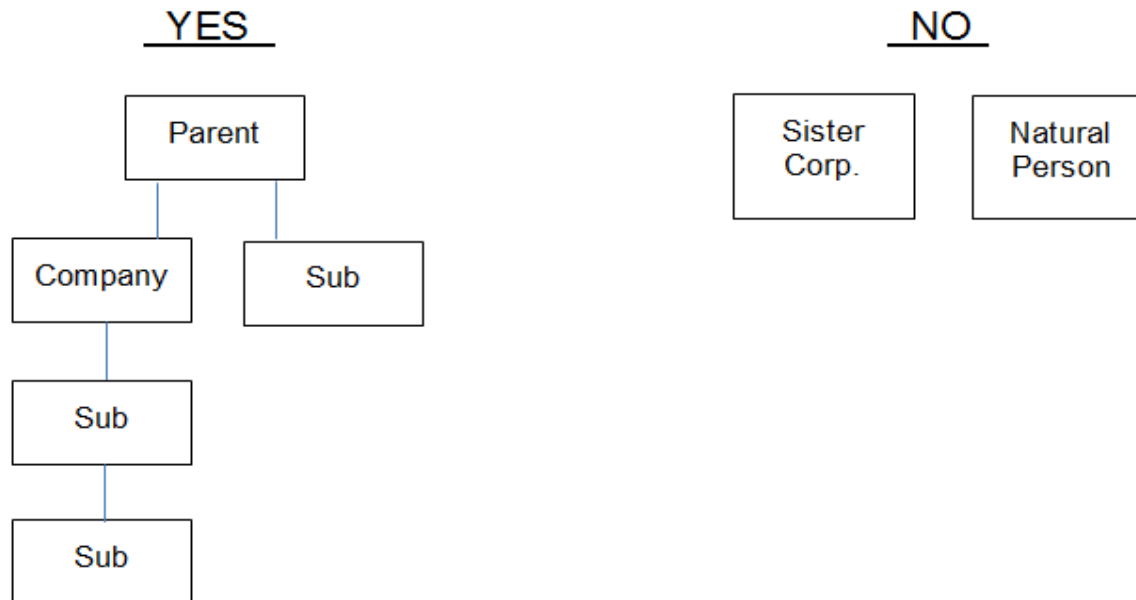
\*Flight Department Company Memorandum included in additional materials



# The Intra-corporate Family

## 91.501(b)(5)

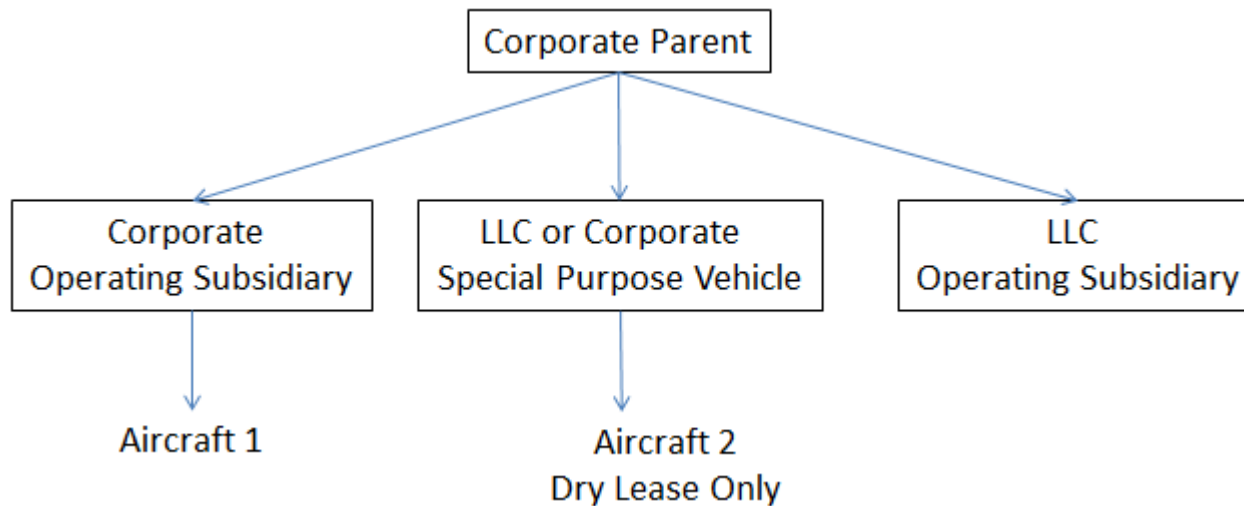
“on an airplane operated by that company,  
or the parent or a subsidiary of the company  
or a subsidiary of the parent...”





# Typical FAR Part 91 Aircraft Ownership & Operation Structure

## Alternative 5 – Consolidated Corporate Group FAR 91.501(b)(5) Reimbursements



### Notes.

- Corporate Parent reimbursement of Corporate Operating Subsidiary costs for Aircraft 1 okay.
- LLC Operating Subsidiary reimbursement of Corporate Operating Subsidiary costs for Aircraft 1 may NOT be okay as the FAA has sometimes construed “parent and subsidiaries” to be limited to corporations under FAR 91.501(b)(5), and not limited liability companies.
- Special Purpose Vehicle must dry lease Aircraft 2 to other group members without pilots. No FAR 91.501(b)(5) reimbursements due to flight department rule.





## Time Sharing\*

- 91.501(b)(6), (c)(1)
- Does not have to be related party
- The amount of compensation allowed can generally be no more than two times the actual cost of fuel for the specific flight plus incidental expenses
- 7.5% FET (unless IRS affiliated Group Exemption applies)
- Truth-in-Leasing

\*Form Time Sharing Agreement included in additional materials



# Interchange Agreement

- 91.501(b)(6), (c)(3)
- written agreement
- equal time on each other's aircraft
- commercial operation and FET applies
- no charge except for the differential cost of “owning, operating and maintaining”
- no monetary “true-up” for unequal use, must settle with hours
- FET applies, and it is more than complicated (the value of time exchanged and the differential cost paid are subject to FET)
- Truth-in-Leasing applies



## Joint Ownership

- each owner owns an undivided interest and is a registered owner
- one of the registered joint owners employs and provides the flight crew, operational control – therefore it is a wet lease
- Joint Ownership Agreement is a lease and Truth-in-Leasing provisions apply
- FET applies

## Compare to Co-Ownership (not a 91.501 exception)

- Each owner owns an undivided interest and is a registered owner
- Each owner supplies its own pilots and is operational control
- Cost Sharing governed by Co-Ownership Agreement
- No FET
- Sales tax subject to exemptions. See Texas Tax Code Section 163.006



## Who do you want to share your aircraft with?

- Economic owners
- Key employees
- Family
- Friends
- Business Partners
- Unrelated Parties



# RVSM

## Reduced Vertical Separation Minimum

### Short Story –

Each Operator of aircraft must have a RVSM Letter of Authorization.

### Longer Story –

To operate between 29,000 and 41,000 feet (inclusive), each **operator** (not just the owner) must have:

- RVSM – Compliant Aircraft
- RVSM – Approved Maintenance Program
- RVSM – Knowledgeable Pilots governed by Part 91, Appendix G

### Risks –

- FAA Enforcement
- Civil Penalty
- Airman Certificate suspension/revocation



# RVSM Example

## Dry Lease to LLC Members

Pilots obtained from independent (not related to LLC) source

Typical scenario –

- RVSM LOA issued to LLC-registered owner of aircraft
- Each member / dry lessee relied upon this LOA
  - Same aircraft / same maintenance / same pilots
- FAA Inspectors tacit approval of single LOA (but not in writing)

But reality is –

- Each operator (dry lessee) needs a separate LOA
- Streamlined RVSM Authorization Process
- New Inspector Guidance
- New ADS-B out Rules





## RVSM for ADS-B Out Aircraft

FAA Notice of Proposed Rulemaking - August 7, 2017

- Eliminates requirement for Letter of Authorization
- Only for ADS-B Out compliant aircraft
- Effective in 2018 for areas where FAA has ADS-B coverage  
*“Sufficient to confirm RVSM height-keeping”*
- Still need:
  - RVSM – Compliant Aircraft
  - RVSM – Approved Maintenance Program
  - RVSM – Knowledgeable Pilots governed by Part 91, Appendix G



## Practical Considerations of Aircraft Sharing

- Who should you share with?
- Scheduling
- Time away from home base
- How many hours
- Money
- Insurance
- Tax benefits



## Who Should You Share With?

- Do you get along with them?
- Do you get along with their significant others?
- Dogs and Cats
- Smoking
- Red Wine
- 50/50 Share Owners, conflict resolution



## Scheduling\*

- Who administers?
  - LLC member
  - aircraft manager
  - chief pilot
- How far in advance
- Resolution of scheduling conflicts
- Time away from home base
- Projected maintenance / training downtime

\*Sample exhibit to LLC Company Agreement included in additional materials



## Time Away From Home Base

- Restrictions
  - How long?
  - How far?
- Repositioning
  - Who bears this cost?



## Hours

- Estimated total annual use
- Percentage of ownership
- Over utilization





## Money

- Fixed costs according to ownership percentage
- Direct Operating Costs (DOC) to the operator of that flight



## Tax Benefits

Who takes them?



## Additional Materials

- Flight Department Company Memorandum
- Form Aircraft Time Sharing Agreement
- NBAA Exemption 7897G
- Sample – Member Cost and Charter Agreement

# Strategies for Sharing a Business Aircraft

November 10, 2017

**PRESENTED BY:**

**James D. Struble**  
**Jackson Walker L.L.P.**  
**2323 Ross Avenue, Suite 600**  
**Dallas, TX 75201**  
**(214) 953-6000**  
**[jstruble@jw.com](mailto:jstruble@jw.com)**

**John M. Ransom**  
**Jackson Walker LLP**  
**1401 McKinney Street , Suite 1900**  
**Houston, TX 77010**  
**(713) 752-4200**  
**[jransom@jw.com](mailto:jransom@jw.com)**