

## Personal Use

### FEDERAL AVIATION DECISIONS

#### Interpretation 1993-17

FAD Digest of Interpretations:

**FAR 91.501(b)(5)**

Under FAR 91.501(b)(5), no charge may be made when officials, employees, or guests are carried on a company airplane for vacation, pleasure trip, or similar purposes, because their presence on the airplane is not within the scope of, and incidental to, the company's business.

**FAR 91.501(b)(5)**

FAR 91.501 (b)(5) precludes a company from charging one of its officials when he is carried on a company airplane for vacation, pleasure, or similar purposes; neither the company's desire to maintain prompt communications with the official, nor tax considerations, alters this result.

**FAR 1.1**

Whether a company has operation control of its airplane depends on an analysis of all of the facts relevant to the operation of the airplane: one of the elements to be considered is the written agreement between the company that owns the airplane and the operations company that maintains and operates the airplane, and how the parties implement that agreement.

**FAR 1.1**

A person has operational control of an aircraft if he or she exercises complete control over the phases of aircraft operation requiring aviation expertise.

Source of Interpretation: Letter to Mr. Star from Donald P. Byrne, Assistant Chief Counsel, Regulations Division, dated August 2, 1993.

This is in response to your letter of June 22, 1992. We regret the delay in responding to you.

Your question concerns Section 91.501 of the Federal Aviation Regulations of Subpart F of the Federal Aviation Regulations (FAR). Subpart F applies to the operation of large and turbojet-powered multiengine civil airplanes of L'S. registry not required to be operated under Parts 121, 125, 129, 135, and 137 of Chapter 1 of the FAR.

You advise that your client, Charles Schwab & Co., Inc. (the "Company") leases, without crew, an airplane ("the airplane") covered by the applicability of Subpart F. The airplane is used by the Company for usual corporate purposes including transportation of officials, employees, and guests of the Company.

Section 91.501(d) provides, in pertinent part, as follows: (d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b)(3) and (7) and (c)(1) of this section:

Paragraph (b)(3) addresses demonstration of an airplane to prospective customers. Paragraph (b)(7) allows the carriage of property under certain circumstances. It does not apply to carriage of persons. We believe it is clear that neither of these paragraphs applies to the carriage you describe. Paragraph (c)(1) defines "time sharing agreement." Please note that a lease is involved in a time sharing agreement. There is no indication that the carriage you describe takes place pursuant to a time sharing agreement.

The paragraph that applies to the carriage of officials, employees, and guests of a company is (b)(5). It reads as follows: (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 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* (emphasis supplied.)

We call to your attention the underscored language. Agency interpretations of this language have held that no charge may be made when officials, employees, and guests are carried on a company airplane for vacation, pleasure trip, or similar purposes. Their presence on the airplane is not considered to be within the scope of, and incidental to, the company's business.

Your letter contains extensive arguments and theories designed to persuade us that the Charles Schwab Company should be allowed to charge Mr. Schwab when he is carried for vacation pleasure or similar purposes. We have considered each argument and theory. Without intending to detract from your eloquence, we must advise you that we do not agree. It may very well be that the Company wants to maintain prompt communications with Mr. Schwab when he is on pleasure trips. That desire, however, does not alter that fact that he is traveling for pleasure. As stated, the Agency's interpretations have held that such carriage is not within the scope of, and incidental to, the company's business. The ability of the Company to communicate with him is in no way dependent upon charging him for carriage for such purposes.

You also mentioned IRS considerations. Please be advised that interpretation and application of aviation safety regulations is not dependent on, or affected by, what may be consistent with IRS regulations.

We noticed your reference to an operations company that Charles Schwab & Co., Inc. uses to perform maintenance and operation of the airplane. We also note that you state that control of operation of the airplane is under Charles Schwab & Co., Inc. We do not make a finding regarding whether or not the Company has "operational control" of the operation of the airplane. (See 14 CFR Section 1.1) Whether or not the Company has operational control of its airplane depends upon an analysis of all the facts relevant to its operation. One of the elements to be considered is the written agreement between the operations company and the Charles Schwab Company and how the parties implement that agreement. The local Flight Standards District Office, in this case the FSDO at Burlingame, together with the Assistant Chief Counsel for the Western-Pacific region, should review all pertinent factors bearing on operational control.

The terms "operate" and "operational control" are defined in Part I of the Federal Aviation Regulations (14 CPU 1.1) as follows: Operational control. with respect to a flight means the exercise of authority over initiating, conducting or terminating a flight.

A person has operational control if that person exercises complete control over the phases of aircraft operation requiring aviation expertise. Operate, with respect to aircraft, means use, cause to use or authorize to use aircraft for the purpose of air navigation including the piloting of aircraft with or without the right of legal control (as owner, lessee, or otherwise).

We are sending a copy of this letter to the Burlingame FSDO and the Assistant Chief Counsel at Los Angeles. If a determination of operational control of the Company's airplane has not been accomplished either or both will contact the Company.

Again, we regret that delay in responding *to* you. Thank you for your patience.