



Private Aviation Seminar Series: How to Title and Operate Your Aircraft


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Agenda

- Review Prior Sessions
- Ownership Considerations
 - Direct/ Joint Ownership
 - Special Purpose Entity
 - Trust
- Operations
- Q&A



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Accessing Private Aviation

- Charter
 - One time transportation
- Jet Cards
 - 25 or 50 hour prepaid blocks
 - Part 135
- Fractional Ownership
 - Undivided interest
 - 5 year contract
 - Part 91 or 135
- Whole Ownership
 - You own, operate and control your aircraft
 - You control hiring crew and maintenance personnel



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Making Informed Decision

- Financing Considerations
 - Evaluate the cost to purchase AND operate
 - Lease vs. Buy
- Transportation Needs
 - Typical Mission
 - Desired Features
- Market Research
- Aircraft Selection
- Technical Analysis



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Purchasing an Aircraft

- Select Aircraft and Make Offer
- Visual Inspection/ Records Review
- Negotiate Purchase Agreement
- Confirm Aircraft Ownership and Operation and Tax Strategy
- Technical Inspection
- Correction of Discrepancies
- Delivery and Closing




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Ownership - Operational Factors

- Primary Aircraft Users?
 - Individual users/ family
 - Corporation
- How Many Users?
 - Single individual or entity
 - Multiple individuals and/or entities
 - Consolidated group of entities (parent/ subsidiaries)
- What Is Relationship of Users to Principal(s)?
 - Affiliate
 - Non-Affiliated

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Ownership - Tax Factors

- Will Aircraft be used in Business?
 - Can only deduct if ordinary and necessary business expense
 - Can only depreciate aircraft if used in a trade or business
- Ultimate Taxpayer has Passive Income
 - Sufficient to bear significant passive losses?
 - Structure must be designed to generate passive losses
- Ultimate Taxpayer has Ordinary Income
 - Sufficient to bear significant losses?
 - Structure must be designed to generate ordinary losses
- Mixed Business/ Personal Use?
 - Personal use of business aircraft problems
 - Seat hours/ disallowance of deductions/ depreciation


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Ownership - Liability Factors

- Analyze Risk Exposure
 - Operation limited to affiliate group/ persons
 - Lesser third party liability
 - Employees covered by workers' comp.
 - Charter Usage
 - Greater third party liability
 - Less control over destiny (reliance on air carrier)
- Structure to Mitigate Greater Risk Exposure
 - Isolate significant liability
 - Insurance to mitigate liability

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Ownership - Insurance

- Mitigates Risk Associated with Aviation
 - Should be written to correspond to structure/ operations (e.g. personal business use, commercial use, etc.)
 - Hull insurance
 - Equal to agreed value of aircraft
 - Liability insurance
 - limits correspond to liability exposure
 - Charters should mean highest liability limits
 - War risks insurance
- Adequate named insured coverage
 - Principal(s) and all affiliated users of the aircraft

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Individual Direct Ownership

- **Operational Factors**
 - Single personal user
 - Small number of users
 - All users affiliated or related to principal
- **Tax Factors**
 - No business use
 - Business use by wholly-owned entity but looking for passive losses at the ownership level
 - Limited personal use
- **Liability Factors**
 - No unaffiliated users
 - Sufficient insurance coverage/ named insureds



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Entity Direct Ownership

- **Operational Factors**
 - Single business primary user
 - Small number of users
 - All users affiliated or related to principal*
- **Tax Factors**
 - Primary business use
 - Business entity looking for losses against ordinary income
 - Limited personal use
- **Liability Factors**
 - No unaffiliated users*
 - Sufficient insurance coverage/ named insureds
 - *If charters are conducted, not optimal structure



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Trust Direct Ownership

- **Operational Factors**
 - Similar to individual direct ownership
 - For estate planning (revocable trust) or foreign beneficial ownership (FAA registration)
 - Users affiliated or related to principal
- **Tax Factors**
 - No business use
 - Business use by wholly-owned entity but looking for passive losses at the ownership level
 - Limited personal use
- **Liability Factors**
 - No unaffiliated users
 - Sufficient insurance coverage/ named insureds



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Joint Ownership


- Operational Factors
 - Multiple unrelated business users
 - Users not affiliated or related to principals
- Tax Factors
 - Primary business use
 - Business entity looking for losses against ordinary income
 - Limited personal use
- Liability Factors
 - Several unaffiliated users
 - Sufficient insurance coverage
 - Named insureds
 - Joint owners jointly liable



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Special Purpose Entity

- Operational Factors
 - Single or multiple business primary users
 - Large number of users/ charter customers*
 - Users not affiliated or related to principal(s)
- Tax Factors
 - Primary business use
 - Business entity looking for losses against passive income
 - Limited personal use
- Liability Factors
 - Multiple unaffiliated users
 - Sufficient insurance coverage/ named insureds
 - *If charters are conducted, optimal structure



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Joint Ownership or SPE?

Consideration	Joint Ownership	SPE Ownership
Financing	CON: Having each joint owner as a direct borrower can make an owner in default of the loan if the other owner defaults in any loan covenant	PRO: Having the LLC as borrower can insulate the loan from economic activity of a member (subject to compliance with their guarantee obligations)
Transferability	CON: Each time a new owner is added or removed will involve a new registration with the FAA	PRO: Members can be added or removed without the need to file a new registration with the FAA
Liability	CON: Each owner is fully responsible for the other owner's liability	PRO: The members are not liable for the other member's actions. Only liability is for one's own operation as a dry lessee
Tax Consequences	PRO: Depreciation is at the owner level and offsets active income	CON: Depreciation will only result in passive losses at the LLC level

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Flight Department Company

- Must Separate Ownership from Operation if Special Purpose Entity
 - Part 91 operators are not allowed to provide transportation to others for compensation
 - commercial operator: “person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property”
 - Operation of Aircraft must be “Incidental” to person’s other business or is, in itself, a major enterprise for profit.

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Scenario 1

- Aircraft acquired by operating business for use in its trade or business
- No material passive income
- Want control over flight department
- Proposed structure:
 - Operating business directly acquires aircraft, hires pilots and operates aircraft
 - Mitigates liability exposure with insurance and safety/ training

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Scenario 2

- Aircraft acquired by CEO of operating business for partial use in his business’ trade or business and remaining use for personal flights
- Substantial passive income
- Don’t want to have flight department responsibility
- Proposed structure:
 - Special purpose entity owned by CEO acquires aircraft and leases it to operating business
 - Operating business enters into Part 91 management agreement with management company with air carrier certificate
 - CEO accesses aircraft through charters with manager

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Aircraft Operating Plan

- Design operating plan to maximize tax advantages, minimize liability and comply with FAA requirements
 - Operation by owner/affiliate or management by management company
 - Part 91 or Part 135 management
 - Liability
 - FET
 - Depreciation
 - Dry Leasing or Time Sharing
 - All charter use

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Dry Lease

- Lease of an Aircraft Without Flight Crew
- Lessee has Right of Possession and Legal Custody over Aircraft
- Lessee has Operational Control of Flights
- Lessor Can Be Paid Rent on Hourly or Monthly Basis
 - Lease Agreement filed with FAA (Large Aircraft)
 - Lease Agreement allocates maintenance responsibility/ costs

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Wet Lease

- Lease of Aircraft with at least One Crew Member
 - Providing carriage by air for compensation or hire
 - Lessor must have a Part 135 air carrier certificate
- Lessor Retains Right of Possession and Legal Custody of Aircraft
- Lessor has Operational Control of Flights



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Time Sharing Agreement

- Permissible Wet Lease under Part 91, but No Charge is Made for the Flights Except:
 - Twice the fuel used on the flight
 - Travel expenses of the crew
 - Remote hangar and tie-down costs
 - Insurance obtained for the specific flight
 - Landing fees, airport taxes, and similar assessments
 - Customs, foreign permit, and similar fees
 - In flight food and beverages
 - Passenger ground transportation
 - Flight planning and weather contract services



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Part 91

- No FAA Certification
- Less Restrictive
 - Fewer minimums for operations
 - No flight and duty time restrictions on pilots
 - No drug and alcohol testing of pilots
 - Less restrictive maintenance
- No Charges Allowed
 - Limited reimbursements
- Operator Liable



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Part 135

- FAA Certification of Operator
- More Restrictive
 - Minimums for operations
 - Flight and duty time restrictions on pilots
 - Drug and alcohol testing of pilots
 - Restrictive maintenance
- Charges Allowed
- Air Carrier Liable
- FET applicable

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Self-operation

- Limited to Part 91
 - Dry Leases or Time Sharing Agreements
- Maximum Flexibility and Control
- Full Liability For Aircraft Operations

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Management Company

- Part 91 or Part 135
 - Third party charters to offset costs
- Operational Control Shifts to Air Carrier
- Less Scheduling Flexibility
- Less Control over Maintenance
- Shifting of Liability For Aircraft Operations

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Scenario 3

- Aircraft owned by LLC with 3 members
- LLC has no other business
- 3 members want to personally use Aircraft
- Only 2 members have business purpose for using Aircraft
- Proposed structure:
 - LLC dry leases aircraft to each member
 - Each member enters into management agreement with third party manager for pilot services
 - 2 members can deduct their business expenses in using the Aircraft
 - Operate under Part 91

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Scenario 4

- Aircraft owned by LLC with 1 Member
- LLC has significant other business
- LLC and member want to eliminate liability from operations
- Both LLC and member have passive income
- Proposed structure:
 - Dry lease to air carrier
 - All use under Part 135 operated by air carrier
 - LLC and member can deduct costs of their “charters” from manager
 - Depreciation (7 year) passive and offsets passive income

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Closing Summary

- Aircraft Ownership Structure will depend on:
 - Operational Factors
 - Tax Factors
 - Liability Factors
- Operating Plan Considers:
 - Tax Advantages
 - Liability Exposure
 - FAA Compliance



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Upcoming Seminars

- 2/7/2008 - California and IRS Aircraft Tax Issues
- 3/5/2008 - Financing the Aircraft Purchase or Improvements - How to Get the Best Results
- 4/17/2008 - Estate Planning With Respect to Your Corporate Aircraft
- 5/22/2008 - Aircraft Safety and Risk Management

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