REIMBURSEMENT OF FLIGHT EXPENSES FOR OWNER-PILOTS HANDBOOK
INTRODUCTION

September 2011

As an owner-pilot of a light business airplane (LBA), you have discovered the utility and practicality of owning and operating your own aircraft. An LBA is like a time machine allowing you to get to where you need to be directly, efficiently and at a reasonable cost. Long check-in lines, hub-and-spoke routing and sitting in traffic are a thing of the past when you travel in your own aircraft.

Having an LBA also opens up numerous possibilities for putting it to use with your business. Using your LBA to travel to business meetings is one of the highlights of being an owner-pilot. Being able to travel to several disparate meeting locations in one day increases your productivity and reach. Your co-workers will likely see the utility of traveling for business by private airplane and may ask for you to fly certain missions or to carry them with you to meetings.

Pilots may be able to receive reimbursement for many business flights, but certain opportunities for using your LBA for work will involve limitations that you will need to comply with in order to avoid violating the Federal Aviation Regulations (FARs), FAA guidance and even your insurance coverage.

Disclaimer: The National Business Aviation Association (NBAA) has developed this Reimbursement of Flight Expenses for Owner-Pilots Handbook to provide an introduction for owner-pilots who wish to use their light business airplanes for business. This handbook is intended to provide general information and is no substitute for the advice of legal and tax advisors addressing a specific set of facts that owner-pilots may face. Additionally, this version of the handbook is dated September 1, 2011, and does not incorporate any statutes, regulations or guidance released after that date.
The Federal Aviation Regulations (FARs) establish the privileges and limitations for private and commercial pilots and for common and private carriage. These are key concepts that dictate if a pilot can receive reimbursement for certain flights.

Private Pilot Privileges and Limitations: FAR Section 61.113

The FARs provide that “no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.”1 Although it is a little unclear in the manner in which it is written, this prohibition basically prevents private pilots from:

- Being a pilot in command on a flight involving carriage of passengers or property for hire, or
- Being paid to act as a pilot in command on any aircraft.

The FAA has very broad interpretations of what constitutes “carriage for hire” and “being paid” or compensated, as will be discussed in more detail below. Although the general rule in FAR Section 61.113 significantly restricts private pilots, the rule does have certain exceptions that a private pilot could take advantage of. The rules can be complex, particularly since numerous FAA legal interpretations provide more context than the seemingly simple wording of the regulations. This NBAA resource was developed to explain what options exist and necessary requirements to take advantage of these options.

COMPENSATION

The FAA position on what constitutes “compensation” was articulated in an interpretation to a charitable organization seeking guidance and interpretation regarding its charitable operations.2 The interpretation involved a charitable organization seeking to provide free medical benefit flights using volunteer pilots who would log the flight hours involved but not take a tax deduction for their donated time. Money to cover flight expenses for the proposed operations would be donated to the charity by third persons.

The FAA declared that it “construes ‘compensation or hire’ very broadly...[and that compensation or hire] does not require a profit, a profit motive or the actual payment of funds.”3 The FAA continued by stating that compensation “is the receipt of anything of value”4 and concluded that compensation would exist in the proposed operation by the charity because “expenses associated with the flight would be paid by donors to the charity, not the individual pilot; and second, the pilots would acquire flight hours at the charity’s expense – flight hours that could be used to demonstrate aeronautical experience eligibility for an airman certificate.”5 In other words, the FAA found that the volunteer pilots were receiving compensation because they were able to build flight time that was paid for by someone else, namely, the donors that paid the expenses of the flights. In another example, the exchange of flight time and television advertisements on a barter basis was found to be compensation,6 because there was a “quid pro quo which benefits the pilot or the operator, that is compensation or hire.”7

In addition, the FAA’s interpretation of the scope of the cost-sharing with passengers exception to the general prohibition against compensation makes it clear that even goodwill is considered compensation.8 As an example, a private pilot had his license suspended for his carriage of friends of his friend to (and/or from) a Super Bowl party at Mr. Ed’s Bar and Grille, owned by the pilot’s friend.9 While the pilot did not receive monetary compensation, the FAA found and the NTSB agreed that the pilot was receiving significant goodwill from the owner of Mr. Ed’s Bar and Grille, (for whom he had previously performed unrelated services) for his carriage of third parties at the pilot’s expense (which was over $1,000).10

Accordingly, for purposes of analyzing “compensation or hire” limitations applicable to pilots, it is critical to understand that the receipt of anything of value, even if there is no payment of funds, will be considered compensation by the FAA. In other words, anytime a pilot receives something of value for carrying a passenger, the FAA will consider the pilot to have been involved in a flight involving carriage for compensation or hire.

The FAA has permitted one exception to the general rule and will not consider a tax deduction taken by a pilot who donates his or her time and aircraft to a charitable purpose flight (not involving any other compensation to the pilot).11 If there is any compensation of any kind (anything else of value received by the pilot) for the charitable purpose flight, then regardless of whether or not the pilot takes a charitable tax deduction, the flight will still be treated as being for compensation or hire.12

REIMBURSEMENT BY EMPLOYER

A private pilot is permitted to be compensated for acting as pilot in command of an aircraft where the flight is only incidental to the private pilot’s business or employment and no passengers or property are carried on the aircraft for compensation or hire.13 In other words, so long as the private pilot’s business or employment is not itself flying or flying-related, and no passengers or property are carried
on board the aircraft, then the private pilot can be compensated for flying him or herself to the destination.

FAA legal interpretations from the office of the FAA Chief Counsel are useful in that they shed light on the limitations applicable to private pilot reimbursement. While the language in FAR Section 61.113 does not define the scope of the compensation, a recent FAA interpretation discussed the pilot being “compensated for the expense of the flight” and suggests the FAA may be focused on the pilot’s actual out-of-pocket costs. But since profit motive is not salient to the FAA’s “compensation or hire” analysis, it is unclear whether the language used by the FAA in the interpretation is intended to limit the scope of the “compensation” for the flight. In any case, without further guidance from the FAA on this issue, it would be prudent to only be compensated for the expense of a flight that is incidental to the business or employment of the pilot. What is clear from FAR Section 61.113 is that if passengers are carried on a flight incidental to the private pilot’s business or employment, no reimbursement is permitted from the business or employer business or employer.

A recent interpretation by an employee of a company whose business is not related to air transportation and who was using his airplane for transportation to business meetings is illustrative of the FAA’s position. The person requesting the interpretation asked whether he may be reimbursed for the cost of the transportation and to what extent if he also transports fellow coworkers to the meetings.

In dealing with the question of reimbursement by an employer when coworkers are present on the flight, the FAA referred to the specific language of Section 61.113(a) and (b) and noted that since the pilot would be “transporting people to the meeting, the allowance for the flight to be conducted for compensation or hire (i.e. reimbursement) under 61.113(b) does not apply.”

SHARING OF FLIGHT EXPENSES

A private pilot is allowed to share operating expenses of a flight with his passengers provided that the private pilot does not pay less than the pro rata share of the operating expenses. Operating expenses are limited to only fuel, oil, airport expenditures and rental fees. Accordingly, where a private pilot and three passengers travel together on a flight conducted by the private pilot, the private pilot can collect three-fourths of the cost of fuel, oil, airport expenditures and rental fees associated for that flight – and must remain responsible for his or her pro-rata share, one fourth of such costs.

A recent FAA interpretation defines the scope of permissible sharing of flight expense between a private pilot and his or her the passengers. First, the FAA reiterated its position that “a private pilot may not pay less than the pro rata share of operating expenses for the flight because ‘if pilots pay less, they would not just be sharing expenses but would actually be flying for compensation or hire,”’ which would violate Section 61.113(c). Second, the FAA cited to an earlier interpretation that allows passengers to share in the cost of operating expenses of a flight only for those operations which are “bona fide, i.e., joint ventures for a common purpose.”

The interpretation concluded that where passengers are present, the private pilot may only seek reimbursement for the operating expenses of the flight from the passengers, provided the pilots pays his own pro-rata share of the operating expenses, and provided further that the pilot and the passengers all “share a common purpose, such as attending the business meeting.”

The FAA has made it clear that private pilots can only share operating expenses with passengers only where the purpose of the flights is “bona fide, i.e., joint ventures for a common purpose.” In other words, if the private pilot’s only purpose for flying passengers to a business meeting is to drop them off, then the pilot and the passengers would not all have a “common purpose.” It is also important to be careful with the “common purpose” requirement as the FAA has previously found that mere “goodwill” to be gained by carrying a business colleague on an aircraft (even if no money was exchanged) constitutes “compensation” to the pilot, which again is prohibited by Section 61.113.

CHARITABLE FLIGHTS

A private pilot is permitted to act as pilot in command of a charitable, nonprofit or community event flight carrying passengers for hire provided that the sponsor and pilot comply with the applicable requirements applicable to such charitable, nonprofit, or community event flight. The FARs recently were revised and now impose significant requirements with respect to charitable, nonprofit, and community events as detailed in FAR Section 91.146.

First, the organization for whom funds are being raised must be either a charitable organization recognized by the IRS, a local or community cause, or a non-profit organization recognized under state or federal law, as long as one of the organization’s purposes is the promotion of aviation safety. The organization is prohibited however from being in the business of transportation by air. In addition, the FARs impose significant limitations on passenger carrying flights related to the charitable, nonprofit or community event supporting such organization, including:

- A requirement that the flight is a nonstop flight made in VFR day conditions within a 25 mile radius of the public airport where the flight originated and must end
- Limiting the an aircraft holding a standard airworthiness certificate and having 30 passenger seats or less and a payload of no more than 7,500 pounds
• Prohibiting aerobatic or formation flights
• A prohibition against conducting flights over a national park, unit of a national park, or abutting tribal lands, without prior FAA approval
• A limitation to a total of four charitable events or non-profit events or one community event per year, with no event lasting more than three consecutive days

Any private pilot who is acting as a pilot in command of a passenger carrying flights related to the charitable, nonprofit or community event supporting such organization must have at least 500 hours of flight time, must conduct the flight according to safety provisions in FAR Part 136 (applicable to commercial sightseeing air tours), and is limited to four events per calendar year.

Assuming that all of the above are complied with and that the sponsor organization notifies the local FAA Flight Standards District Office at least seven days in advance and provides it with a signed letter that includes the date, time, location and purpose of the event, and a list of any prior events in the year conducted by the sponsor, a photocopy of each pilot in command’s pilot certificate, medical certificate, and required logbook entries as well as a statement acknowledging compliance, then a private pilot may be reimbursed only for that portion of the passenger payment for the flight that does not exceed the pro rata cost of owning, operating and maintaining the aircraft for that flight, which may include fuel, oil, airport expenditures and rental fees.

The FAA has stated that even when charitable purpose flights were involved, such as transporting of medical patients with financial need, the non-compensation rules in FAR Section 61.113 would still apply and a private pilot would not be permitted to be compensated for carrying the medical patients. The FAA clarified that the charitable airlift exception in FAR Section 61.113 clearly prohibit “the point-to-point transportation of persons or property.” The FAA, in distinguishing the charitable airlift exception, reminds that pursuant to FAR Section 61.113(d), “the passengers are flown around for a brief period of time, and then returned to the point of origin; whereas with your proposal, the passengers would be flown from point A to point B.” The FAA concludes that since medical transportation flights involve point-to-point transportation, if they involve compensation, a Part 119 certificate would be required.

SEARCH AND LOCATION OPERATIONS
A private pilot may be reimbursed for aircraft operating expenses that are directly related to sanctioned search and location operations under the direct control of a local, state of federal agency or a recognized search and location operation. Since this is an exception to the prohibition against a private pilot acting as a pilot in command on a flight involving carriage of passengers or property for hire, it follows that passengers may be carried on board of the search and location operation flight as long as it is under the direct control of a local, state of federal agency or a recognized search and location operation.

EXPERIMENTAL AIRCRAFT
The general FAA rule regarding the operating limitation of experimental aircraft is that experimental aircraft may not be used to carry persons or property for compensation or hire. There are several exceptions that will permit compensation or hire using an experimental aircraft but these are generally limited to towing a glider that is a light-sport aircraft or unpowered ultralight vehicle by a qualified pilot and by an aircraft that has had a current 100-hour inspection or conducting flight training pursuant to FAA deviation authority.

In light of the FAA’s broad definition of “compensation or hire,” pilots are prohibited from operating an experimental aircraft in any flight that involves carrying any persons or property where anything of value is received by the pilot. This not only prohibits reimbursements otherwise permitted under FAR Section 61.113, such as sharing of flight expenses with passengers or conducting search and location operations, but also any other items constituting value, such as goodwill. On the other hand, it would appear that a pilot of an experimental aircraft flying alone can be reimbursed for his or her expenses where the flight is only incidental to the private pilot’s business or employment and no passengers or property are carried on the aircraft for compensation or hire.

Commercial Pilot Privileges and Limitations: FAR Section 61.133
Contrary to the prohibition imposed with respect to private pilots, the FARs specifically permit a commercial pilot to act as pilot in command “for compensation or hire” of an aircraft that is “carrying persons or property for compensation or hire... and... provided the [commercial pilot] is qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation.”

This rule although a little unclear in the manner it is written, allows a commercial pilot to:

• Act as a pilot in command on a flight involving carriage of persons or property for hire, or
• Be paid to act as a pilot in command on an aircraft.

It is important to note that the commercial pilot would still need to be “qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation.” What this alludes to is that commercial pilot would still need to comply with the requirements for exercising the privileges of a commercial pilot license and with any other section of the regulations that would apply to the carriage.
For example, a commercial pilot must be in possession of at least a second class medical certificate in order to exercise the privileges of a commercial pilot license. Similarly, to the extent that the carriage would constitute “common carriage” or a “on demand operations,” then in addition to complying with FAR Section 61.133, the carriage would be subject to the certification rules under FAR Part 119, and the commercial pilot would be required to be qualified under and conduct the operation under FAR Parts 121 or 135 as applicable. Several recent legal interpretations from the office of the FAA Chief Counsel underscore the above restrictions applicable to holders of commercial pilot licenses.

In one interpretation, an individual holding a commercial pilot license and a third-class medical certificate requested an opinion on whether he is able to enter into a contract with third party firm of physicians to review their examination facilities. The pilot contemplated that in addition to using his aircraft to transport himself to the various client examination facilities, he would occasionally carry some of the firm’s physicians on his trips to their facilities. Pursuant to the contract, the pilot wanted to be reimbursed for the full cost of the aircraft operation, whether he travels alone or with the firm’s physicians. Before dealing with the reimbursement question, the FAA opined that although the pilot held a commercial pilot license, since he had a third-class medical, “he would therefore not be permitted to conduct the proposed operations using his commercial pilot certificate.”

The FAA elected to answer the reimbursement question using the standards applicable to private pilots and noted that “a third-class medical certificate is sufficient for operations conducted as a private pilot.” While finding that using his aircraft to travel to client sites is within the scope of FAR Section 61.113(b), the FAA reminded the pilot that “Section 61.113(b) does not permit carrying passengers or property for compensation of hire.”

The interpretation continued by noting that since the contemplated activity involved carrying the firm’s physicians on board the aircraft as the pilot visits the examination facilities, this constitutes carrying passengers for compensation and “could not be conducted without a Part 119 certificate.”

The interpretation seems to suggest that since the pilot would be contracting for air carriage for compensation, that this would constitute a “commercial operation.” This is consistent with an earlier interpretation where FAA rejected a request by a holder of an ATP pilot certificate to get compensated for a series of nine trips involving the carriage of paying passengers seeking to attend a race on another island. The holder of the ATP pilot certificate was not otherwise certified under Part 119. In its analysis, the FAA again used the standards applicable to private pilots in FAR Section 61.113(b) and noted that reimbursement was permitted where the pilot and his passengers share a common purpose. The FAA continued that “absent a common purpose for their travel, reimbursement for the pro-rata share of operating expenses constitutes compensation and the flights would be considered a commercial operation for which a Part 119 certificate is required.”

The FAA addressed the issue of privileges of advanced pilot certificates by noting that while the ATP certificate holder may “act as pilot in command of an aircraft carrying persons or property for hire…in order to conduct such operations, the ATP certificate holder must also obtain a Part 119 operating certificate when operating a civil aircraft as a commercial operator in air commerce.” The FAA relied on the definition of “commercial operator” in finding that the multiple passenger-carrying trips could not be conducted for compensation (in the form of reimbursement) by the ATP.

Another recent interpretation involved a 400-hour commercial pilot seeking to enter into an agreement with his employer to rent and fly an aircraft twice per night to transport the employer’s property between two locations. The commercial pilot was only seeking to be reimbursed for operating expenses and would not carry any person or property for any affiliate of the employer. The FAA, while acknowledging that the contemplated operations do not constitute common carrier operations, found that the operations constituted on-demand operations and accordingly require a Part 119 operating certificate.

**PART 119 CERTIFICATION RULES**

FAR Part 119 sets forth the certification rules and requirements for air carriers and commercial operators as well as operations not involving common carriage but involving aircraft with 20 or more seats, or 6,000 pounds or more maximum payload capacity.

The FAA defines “air carrier” as “a person who undertakes directly by lease, or other arrangement, to engage in air transportation”; “commercial operator” as “a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property”; and “common carriage” as “an operation for compensation or hire in which an operator holds itself out (by advertising or any other means), as willing to furnish transportation for any member of the public who seeks the services that the operator is providing.”

The FAA uses four elements in defining a common carrier – “(1) a holding out of a willingness to (2) transport persons or property (3) from place to place (4) for compensation” and differentiates it from private carriage by finding that “carriage for hire which does not involve ‘holding out’ is private carriage.” The FARs defines a direct air carrier as “a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.”

As previously discussed, the FAA has an expansive definition of “compensation or hire,” and accordingly, if a commercial pilot engages in the carriage by aircraft of persons or property, for compensation or hire, he or she...
would be deemed to be a commercial operator and accordingly subject to FAR Part 119. Further, if a commercial pilot advertises and holds out that he or she can provide such transportation, then the pilot would likely also be deemed to be a common carrier.

There are no exceptions to the certification requirement for common carrier operations and air carriers engaged in common carrier operations must hold an air carrier certificate and operate under specific FAR Parts, such as 135 (on demand) or 121 (scheduled). In other words, unless a commercial pilot operating an aircraft is (or works for) a certificated air carrier, he or she may not engage in common carriage.

On the other hand, several exceptions to certification requirements apply to private carriage (commercial operations where no common carriage is involved) that would permit a commercial pilot to act as a pilot in command and to be compensated (reimbursed) without the operation having an air carrier certificate.

**exceptions to air carrier certification requirement**

Section 119.1 exempts several types of operations as long as they are not conducted using aircraft with 20 or more seats, or 6,000 pounds or more maximum payload capacity. These operations would permit a holder of a commercial pilot certificate, provided *no holding out* is involved, to enjoy the two privileges accorded to commercial pilots and therefore to act as a pilot in command of such flights involving carriage of persons or property for hire and to be compensated for conducting the operation (provided that he or she meets all other requirements for exercising the commercial pilot certificate) without having to have an air carrier certificate provided that none of the other FARs restrict the operation (such as the general requirement to conduct for-hire point to point flights under Part 135).

The permitted operations that can be conducted by a pilot who has been issued a commercial pilot certificate and that meets all requirements for exercising such certificate include:

- Student instruction
- Ferry or training flights
- Aerial work operations, such as crop dusting, seeding, spraying and bird chasing
- Banner towing
- Aerial photography or survey
- Fire fighting
- Helicopter operations in construction or repair work (*but not for transportation to and from the site of operations*)
- Powerline or pipeline patrol
- Sightseeing flights conducted in hot air balloons

These flights cannot also involve the carriage of persons or property from point to point as this will turn them into dual-purpose flights and will require them to be conducted under Part 135.

Additional operations that can be conducted by a pilot who has been issued a commercial pilot certificate and meets all requirements for exercising such certificate include:

- Nonstop commercial air tours conducted in an airplane or helicopter having a standard airworthiness certificate and passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25-statute mile radius of that airport.
- Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff if – (a) not more than two passengers are carried in the helicopter in addition to the required flightcrew; (b) each flight is made under day VFR conditions; (c) the helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of Part 91; (d) the operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests; (e) the number of flights does not exceed a total of six in any calendar year; (f) each flight has been approved by the FAA; and (g) cargo is not carried in or on the helicopter.
- Operations conducted under FAR Parts 133 (rotorcraft certification demonstration flights) or 375 (operation of foreign civil aircraft in the United States).
- Emergency mail service conducted under 49 U.S.C. 41905.
- Operations conducted under the provisions of FAR Section 91.321 (carriage of candidates in elections).

**Carriage of candidates in elections**

Aircraft operators are permitted to receive payment for “carrying a candidate, agent of a candidate, or person traveling on behalf of a candidate, running for federal, state or local election, without having to comply with the rules in Parts 121, 125 or 135.” Since this rule does not also exempt compliance with Part 61, the reimbursement rules would still apply, and accordingly, a private pilot may not be compensated for such carriage while a commercial pilot would be able to act as a pilot in command of such flight involving the carriage of persons for hire and to receive compensation for acting as pilot of such flight. This exception is only available to aircraft operators whose “primary
business is not as an air carrier or commercial operator”70 and only so long as the flight involving the carriage of the candidate, agent or person traveling on behalf of a candidate is conducted under the rules of Part 9171 and the applicable federal, state or local law requires the operator providing the transportation to receive payment for the carriage.72 Finally, the permitted payment is limited only to that amount required by the Federal Election Commission or the applicable state or local law.73

**FAR SECTION 91.501 AND NBAA EXEMPTION 7897**

FAR Section 91.501 permits the operating under Part 91 of large and turbine-powered multiengine aircraft for certain specified operations which may otherwise have been subject to Part 119’s certification requirements and Parts 121 (scheduled air carrier), 129 (foreign air carriers), 135 (on demand air carrier), and 137 (agricultural operations), as applicable. While Section 91.501 is limited to large (“more than 12,500 pounds, maximum certificated take-off weight”74) and turbine-powered multiengine aircraft, NBAA was granted a Small Aircraft Exemption by the FAA75 (NBAA Exemption 7897) that allows small aircraft to use the rules in Section 91.501.

To take advantage of the exemption, the aircraft operator must be an NBAA Member, must select an inspection program under FAR Section 91.409(f) and must notify and provide certain materials to its local FAA Flight Standards District Office.76

Assuming that an owner-pilot has been issued a commercial pilot certificate and qualifies under NBAA Exemption 7897, provided no holding out is involved, then he or she would be permitted to exercise both privileges granted to commercial pilots, namely:

- To act as pilot in command of an aircraft carrying passengers for hire on a flight permitted to be conducted under Section 91.501(1)-(7) and (9), or
- To be compensated for acting as a pilot in command for a flight permitted to be conducted under Section 91.501(1)-(7) and (9).

Since we are concerned with the analysis of permissible reimbursement of flight expenses for owner-pilots, we will focus on the second privilege enjoyed by a commercial pilot, to be compensated for acting as a pilot in command. Section 91.501 limits reimbursement (which is “compensation”) only for:

- Demonstration flights to prospective customers,
- The carriage of company officials, employees, and guests of the company under a time-sharing agreement.77

The operation of a flight under a time-sharing agreement is limited to a company (not an individual) and further requires an actual written document that is filed with FAA in advance,78 but would be available to an owner-pilot who owns and operates an aircraft through his going-concern business. It is critical that the entity that the owner-pilot uses to hold title to the aircraft is a separate going-concern business that has material business operations other than the ownership and operation of the aircraft. The FAA has stated that “if a corporation is established solely for the purpose of providing transportation to the parent corporation, a subsidiary, or other corporation…the primary business of the corporation operating the airplane is transportation and the carriage of persons or goods for any other corporation, for a fee or charge of any kind would require the corporation operating the airplane to hold a commercial operator certificate.”79

Section 91.501 limits reimbursement for the above three permitted operations to:

- Twice the actual expense of fuel, oil, lubricants and other additives incurred for the operation
- Travel expenses of the pilot, including food, lodging and ground transportation
- Hangar and tie-down costs away from the aircraft’s base of operation
- Insurance obtained for the specific flight, if any
- Landing fees, airport taxes and similar assessments
- Customs, foreign permit and similar fees directly related to the flight
- In-flight food and beverages
- Passenger ground transportation
- Flight-planning and weather-contract services

Accordingly, where an owner-pilot has been issued a commercial pilot certificate and complies with all requirements for exercising such certificate (such as having a current second or first class medical certificate), he or she would be permitted to be reimbursed for the limited amount described above when acting as a pilot in command of a demonstration flights to prospective customers or a flight involving carriage of property (other than mail) on an aircraft operated in furtherance of the pilot’s non-air-transportation business. Additionally, if the owner-pilot’s aircraft is owned by his or her business, provided that such business is a going concern that has material operations other than the aircraft, then the commercial pilot (otherwise complying with all requirements for exercising such certificate) would be permitted to be reimbursed for the limited amount de-
scribed above for a flight involving the carriage of company officials, employees and guests of the business under a time-sharing agreement.

Although not involving reimbursement for flight expenses, the other privilege enjoyed by a commercial pilot, namely being paid to act as pilot in command of an aircraft carrying passengers for hire, when analyzed within the context of flight permitted to be conducted under Section 91.501(1)-(7) and (9) will also allow a commercial pilot be paid for acting as a pilot in command of an aircraft carrying passengers for hire for:

- Ferry or training flights;
- Aerial work operations such as aerial photography or survey, or pipeline patrol, but not including fire fighting operations,
- Flights conducted by the operator of an airplane for his personal transportation, or the transportation of his guests when no charge, assessment or fee is made for the transportation,
- 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 company 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,
- The carriage of company officials, employees and guests of the company on an airplane operated under a time sharing, interchange or joint ownership agreement, or
- The carriage of persons on an airplane operated by a person in the furtherance of a business other than transportation by air for the purpose of selling them land, goods or property, including franchises or distributorships, when the carriage is within the scope of, and incidental to, that business and no charge, assessment or fee is made for that carriage.80

As it relates to the NBAA Small Aircraft Exemption, the requirement to hold a commercial pilot certificate is only with regard to the compensation/reimbursement benefits that are afforded by the exemption. A private pilot may take advantage of other operational and maintenance aspects of the NBAA Small Aircraft Exemption, for example.
EXAMPLES

Scenario A

An entrepreneur owns three different companies and uses her Cessna CJ3 for each of those companies. She is a private pilot with type rating, but no commercial rating. She wants to charge her companies for the use of the CJ3.

This situation would seem to fit within the permitted employer reimbursements in FAR Section 61.113. Here, the entrepreneur would be permitted to be compensated for acting as pilot in command of the CJ3 and thereby reimbursed for her expenses of a flight as long as the flight is incidental to the entrepreneur’s and the company’s business and no passengers or property are carried on the aircraft for compensation or hire. As discussed above, none of the entrepreneur’s business can itself be flying or a flying-related activity. The conservative approach to such permitted reimbursement would be to limit the amount to the pilot’s actual out of pocket costs.

Scenario B

An individual who owns his own aircraft is a regional outside sales person for a company and he flies to meet clients. He is commercially rated and carries samples to demonstrate to prospective customers. He wants to be reimbursed by his company for mileage, just as if he had driven his personal car.

This essentially involves the carriage of persons or property for compensation or hire. Even though the owner-pilot works for the company and flies to meet clients of the company, by carrying samples and seeking reimbursement, he has elevated the operation to a commercial operation which would require certification of the operator (the pilot) under Part 119 unless an exception applies. The commercial pilot is therefore required to comply with the FARs that apply to the commercial operation subject to an exception in Part 119 or in Part 91.501 as discussed above. For this example, we assume that the pilot does not hold out. FAR Part 91.501 permits several commercial operations that would otherwise need to be conducted under Part 121, 129, 135 or 137 to be conducted under Part 91. One of the exemptions is applicable in this case. Part 91.501(b) (7) permits the “carriage of property (other than mail) on an airplane operated by a person in the furtherance of a business or employment (other than transportation by air) when the carriage is within the scope of, and incidental to, that business or employment and no charge, assessment, or fee is made for the carriage other than those specified in paragraph (d) of this section.” Under this exception, the pilot in this example would be permitted to be reimbursed only for (1) two times the fuel, lubricants and other consumables for the specific flight; (2) travel expenses of the pilot, including food, lodging and ground transportation incident to the specific flight; (3) hangar and tie-down costs away from the aircraft’s base of operation; (4) insurance obtained for the specific flight, if any; (5) landing fees, airport taxes, and similar assessments for the specific flight; (6) Customs, foreign permit and similar fees directly related to the flight, (7) in-flight food and beverages for the flight, (8) passenger ground transportation the specific flight, and (9) flight-planning and weather-contract services for the specific flight.

SAME FACTS, CARRIES A CO-WORKER

This again involves the carriage of persons or property for compensation or hire. None of the available exceptions in Part 119 or in Part 91.501 would permit the pilot to be compensated for this carriage when he operates his own aircraft and seeks to be reimbursed for the carriage of a co-worker.

SAME FACTS, CARRIES A CUSTOMER TO ANOTHER MEETING

In this version of Scenario B, the pilot wants no compensation from the customer for the flight, but wants to receive reimbursement from the company.

This again involves the carriage of persons or property for compensation or hire. None of the available exceptions in Part 119 or in Part 91.501 would permit the pilot to be compensated for this carriage when he operates his own aircraft and seeks to be reimbursed for the carriage of a customer.
REIMBURSEMENT SUMMARY TABLE

The FARs and FAA guidance discussed above would suggest that for general purposes of pilot reimbursement for FAR Part 91 flights (not involving the exceptions discussed above), the FAA will treat commercial pilots reimbursement under the same rules as applicable to private pilots (unless the operation involved is conducted by a certificated air carrier). While the rule applicable to commercial pilot permits a holder of a commercial pilot license to be paid to “act as a pilot in command on a flight involving carriage for hire” or to “be paid to act as a pilot in command on an aircraft,” it conspicuously does not permit the commercial pilot to operate the flight involving carriage for hire and requires that the pilot comply with the FARs that apply to the operation (e.g., FAR Parts 119, 121 and 135 but subject to the exceptions in Part 119 or in Part 91.501).

Assuming Part 91 operations are being conducted (and the operator does not possess an air carrier certificate), the below table presents a high-level summary for the general rule for private and commercial pilot reimbursement under FAR Section 61.113:

<table>
<thead>
<tr>
<th>Purpose of the Flight</th>
<th>Pilot Certificate</th>
<th>Payment/Reimbursement by</th>
<th>Can Passengers or Property Be Carried</th>
<th>Amount of Payment/Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flight is incidental to business (yours and the employer’s) or employment</td>
<td>Private or commercial</td>
<td>Employer</td>
<td>No</td>
<td>Expenses of the flight</td>
</tr>
<tr>
<td>Pursuant to a “common purpose” by you and all your passengers</td>
<td>Private or commercial</td>
<td>Fellow passengers</td>
<td>Yes</td>
<td>Passenger portion only pro-rata cost of operating expenses (fuel, oil, airport expenditures, and rental fees)</td>
</tr>
<tr>
<td>Charitable, nonprofit, or community event flight carrying passengers for hire</td>
<td>Private or commercial</td>
<td>Recognized charitable organization, local or community cause, or a recognized non-profit aviation safety organization</td>
<td>Yes (VFR within 25 miles/not point to point)</td>
<td>Passenger portion only pro-rata cost of owning, operating, and maintaining the aircraft for the flight, (may include fuel, oil, airport expenditures, and rental fees)</td>
</tr>
<tr>
<td>Search and location operation under the control of the agency or operation</td>
<td>Private or commercial</td>
<td>Local, state of federal agency or recognized search and location operation</td>
<td>Yes</td>
<td>Aircraft operating expenses directly related to search and location operations</td>
</tr>
</tbody>
</table>

(continued)
The exceptions to the air carrier certification requirements discussed above will allow only the holders of a commercial pilot license, provided no holding out is involved, to conduct and be reimbursed for certain additional Part 91 operations as permitted by FAR Section 119.1 and, assuming the NBAA Small Aircraft Exemption applies (where the aircraft is not a large or multiengine turbojet aircraft), Section 91.501.85.

<table>
<thead>
<tr>
<th>Purpose of the Flight</th>
<th>Pilot Certificate</th>
<th>Payment/Reimbursement by</th>
<th>Can Passengers Be Carried</th>
<th>Amount of Payment/Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student instruction; ferry or training flights; aerial work operations (crop dusting, seeding, spraying and bird chasing); banner towing; aerial photography or survey; fire fighting; helicopter operations in construction or repair work; powerline or pipeline patrol; and sightseeing flights conducted in hot air balloons</td>
<td>Commercial only</td>
<td>Customer</td>
<td>Yes (not point to point)</td>
<td>No specific limitation</td>
</tr>
<tr>
<td>Nonstop commercial air tours</td>
<td>Commercial only</td>
<td>Passenger</td>
<td>Yes (within 25 miles/not point to point)</td>
<td>No specific limitation</td>
</tr>
<tr>
<td>Limited helicopter flights</td>
<td>Commercial only</td>
<td>Passenger</td>
<td>Yes (two passengers/VFR/within 25 miles)</td>
<td>No specific limitation</td>
</tr>
<tr>
<td>Emergency mail transportation</td>
<td>Commercial only</td>
<td>U.S. Postal Service</td>
<td>No</td>
<td>Contract pricing</td>
</tr>
<tr>
<td>Carriage of candidates in elections</td>
<td>Commercial only</td>
<td>Passenger</td>
<td>Yes (candidate, agent of a candidate, or person traveling on behalf of a candidate)</td>
<td>Amount required by the Federal Election Commission or under the applicable state or local law</td>
</tr>
<tr>
<td>Demonstration flights to prospective customers</td>
<td>Commercial only</td>
<td>Prospective customer</td>
<td>Yes</td>
<td>(1) twice fuel and other consumables; (2) travel expenses of the pilot, including food, lodging and ground transportation; (3) hangar and tie-down costs away from the aircraft’s base of operation; (4) insurance obtained for the specific flight, if any; (5) landing fees, airport taxes, and similar assessments; (6) Customs, foreign permit and similar fees directly related to the flight; (7) in-flight food and beverages; (8) passenger ground transportation; and (9) flight-planning and weather-contract services</td>
</tr>
<tr>
<td>Carriage of property (other than mail) on an airplane operated by the pilot in the furtherance of a non-air-transportation business when the carriage is within the scope of, and incidental to, that business or employment</td>
<td>Commercial only</td>
<td>Third party</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>The carriage of company officials, employees, and guests of the company under a time-sharing agreement</td>
<td>Commercial only (reimbursement to company operating the aircraft only)</td>
<td>Other party to the time-sharing agreement</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
END NOTES

1. 14 CFR § 61.113(a)
3. Id.
4. Id.
5. Id.
7. Id.
8. See text at notes 23–24
10. Id.
11. See, e.g., Legal Interpretation dated May 27, 2005, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Joseph A. Kirwan, Legal Interpretation dated October 16, 2009, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Robert P. Silverberg. The FAA found that “since Congress has specifically provided for the tax deductibility of some costs of charitable acts, the FAA will not treat charitable deduction of such costs, standing alone, as constituting “compensation or hire”. FAA Order 8400
13. 14 CFR § 61.113(b)
15. See text at notes 2–5
16. See text at note 18
17. Legal Interpretation dated Mar. 4, 2009, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Guy Mangiamele
18. Id.
19. 14 CFR § 61.113(c)
22. Id.
23. Legal Interpretation 1985-26 dated December 26, 1985, Letter from John H. Cassady, Assistant Chief Counsel, Regulations and Enforcement Division, to Thomas H. Chero
25. 14 CFR § 61.113(d)
26. Id. § 91.146(a)
27. Id. § 91.146(b)(8)
28. Id. § 91.146(b)
29. Id.
30. The pilot records must demonstrate that show the pilot is current in accordance with 14 CFR § 61.56 and 61.57 and that any private pilot has at least 500 hours of flight time. Id. § 91.146(e)(2)
31. The statement must list all prior charitable, nonprofit, or community events that the pilot has participated during the current calendar year. Id. § 91.146(e)(3)
32. Id. § 91.146(e)(7)
33. See Legal Interpretation dated May 27, 2005, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Joseph A. Kirwan
34. Id.
35. Id.
36. Id.
37. 14 CFR § 61.113(e)
38. Id. § 91.319(a)(2)
39. Id. § 91.319(a)(1), (g)
40. Id. § (h)
41. See text at notes 2–8
42. 14 CFR § 61.113(b)
43. Id. § 61.133(a)(1)
44. Id. § 61.231(a)(2)
46. Id.
47. See text at note 13
49. Id. citing to definitions of “air commerce” and “commercial operator”
50. Legal Interpretation dated May 18, 2009, Memorandum from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Don Bobertz
51. Id. citing to various prior FAA interpretations requiring a “pilot to share with his passengers a bona fide common purpose for conducting the flight.” See Legal Interpretation dated Mar. 4, 2009, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Guy Mangiaramele; Legal Interpretation dated Nov. 19, 2008, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Peter Bunce; Legal Interpretation dated December 26, 1985, Letter from John H Cassady, Assistant Chief Counsel for Regulations, to Thomas Chero; Legal Interpretation dated December 19, 1977-81, Letter from John L Fitzgerald, Jr., ACE-7, to Bob Von Seggern

52. Id. citing to Legal Interpretation dated Nov. 19, 2008, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Peter Bunce (where no common purpose existed where a pilot transported ill passengers to treatment facilities dictated by the passengers) and Legal Interpretation dated December 26, 1985, Letter from John H Cassady, Assistant Chief Counsel for Regulations, to Thomas Chero (where no common purpose existed where a pilot transports passengers to a destination where the pilot has no particular business to conduct)

53. Id.

54. “a person who, for compensation of hire, engages in the carriage by aircraft in air commerce of persons or property” 14 CFR §1.1

55. Legal Interpretation dated Feb. 25, 2010, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to James Wagner

56. 14 CFR §119.1(a),(b)

57. Id. §1.1

58. Id.


60. FAA AC No. 120-12A

61. Id.

62. 14 CFR §119.1

63. See text at notes 2-12

64. 14 CFR §119.1(e)

65. Administrator v. Bryan, NTSB Order No. EA-1963 (1983) which found that a helicopter flight which included aerial photography and then a landing following which reporters left to conduct interviews and take photographs on the ground, had a dual purpose and was not entitled to the aerial photography exemption

66. Must comply with the Letter of Authorization issued under §91.147. For nonstop commercial air tours conducted in accordance with part 136, subpart B of the FAR, the requirements of Part 119 will apply unless excepted in §136.37(g)(2) and for nonstop commercial air tours conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50-2, part 93, subpart U, and Part 119 of this chapter, as applicable, will apply.

67. 114 CFR §119.1(e)(9) refers to 49 U.S.C. 41906 but Section 41906 was moved to Section 41905 by the Act dated Oct. 13, 2008 (effective 10/1/2008, as provided by §2(c) of such Act, which appears as 39 USCS §101 note)
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