

Demonstration Flights

By Michelle Wade and

Dillon Strohm

Have you ever taken a demonstration flight or provided a demonstration flight in an aircraft? The buyer wants to know how the aircraft flies before she signs a purchase agreement, and the seller wants to be reimbursed for the costs of the demonstration flight. How do you satisfy everyone and remain in compliance with the Federal Aviation Regulations (FARs)?

We all know the general rule the FAA does not allow an aircraft owner to provide "transportation" to others, unless the aircraft owner has obtained an operating certificate from the FAA and DOT. There are some exceptions to this general rule in FAR 91.501, including a demonstration flight exception. The regulatory exception is only available for larger aircraft because FAR 91.501 applies to U.S. registered large (more than 12,500 pounds maximum certificated take-off weight), turbojet-powered multiengine civil airplanes in operations not involving common carriage. National Business Aviation Association (NBAA) members may utilize the NBAA's Small Aircraft Exemption which allows operators of piston airplanes, small airplanes, and all helicopters to utilize some of the operations allowed under Part 91.501.

FAR 91.501(b) reads: "(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include— . . . (3) Flights for the demonstration of an airplane to prospective customers when no charge is made except for those specified in paragraph (d) of this section". Charges listed in paragraph (d) include fuel, travel expenses of the crew, landing fees, and an additional charge equal to 100 percent of the fuel. This basically means that seller can charge two times the cost of the fuel plus a few miscellaneous charges.

Operational control of the aircraft (which is important to the FAA) as well as possession, command and control of the aircraft (which is important to the IRS) should remain with the seller for a demonstration flight.

The aircraft's insurance coverage should be reviewed to confirm that it covers a demonstration flight for which the seller will receive payment under FAR 91.501 and that the buyer is satisfied with the amount of coverage.

Federal excise tax will also be due on the amounts charged for the demonstration flight and the seller should collect this federal tax and remit it to the IRS. Each state may have different state sales/use tax results for this type of operation so you will want to contact your state tax advisor as well.

Most demonstration flights can be documented with a short written agreement between the parties addressing the date, time and purpose of the flight, the regulatory limitations on the amount to be paid, that the seller retains operational control, and the timing of the invoice and payment. A seller may also want to limit the flight so that it does not exceed a set number of hours.

Michelle M. Wade and Dillon L. Strohm are attorneys with the law firm of Jackson & Wade, L.L.C. and counsel clients on the acquisition, financing and operation of corporate jets operated under Part 91 and Part 135 of the Federal Aviation Regulations. Jackson & Wade, L.L.C. can be found at www.jetlaw.com



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