

Part 135 Certificates The Right Way to Charter Your Aircraft

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Aircraft owners often choose to charter their aircraft in order to offset some of the maintenance and management expenses associated with aircraft ownership. However, if an aircraft owner charters his aircraft without following the strict regulations established by the Federal Aviation Administration in FAR Part 135, each chartered flight is illegal and carries significant penalties, including great financial risk for the owner. Some owners incur this risk when they choose to charter their own aircraft rather than leasing it to an established FAR Part 135 air carrier operator.

The term “Part 134½ charter” has been coined by the aviation industry to refer to illegal charters conducted in violation of FAR Part 135. These illegal charters have increased in number in recent years, causing many in the aviation community to voice concern. The FAA has given clear instruction on this issue: if an aircraft owner supplies an aircraft and a crew for hire, he is operating a charter service as defined in FAR Part 135. In order to avoid violation of this regulation, he must either apply for and receive a Part 135 certificate or lease the aircraft to an established Part 135 operator prior to providing a charter service.

The risks assumed by aircraft owners operating illegal charter services are substantial. Each time a non-sanctioned charter occurs, the owner of the aircraft involved is exposed to a large fine, impoundment of the aircraft, and imprisonment of the aircraft crew. Further, the owner’s insurance policy will likely exclude charter services from coverage, leaving the aircraft owner personally liable for any costs to repair or replace the aircraft, as well as for any damages suffered by third parties that may result from an incident involving the aircraft. If there are outstanding loans on the aircraft, operating an illegal charter carries an additional risk, as the denial of insurance coverage may accelerate the loans. A typical loan agreement holds the aircraft owner responsible to maintain full insurance coverage on the aircraft during the term of the loan. If the aircraft owner violates the terms of the insurance policy covering the aircraft, the lending institution has the right to accelerate the loan and demand immediate payment in full. This may generate a significant financial liability for the owner, as lenders generally require a personal guarantee prior to issuing such loans.

Chartering the aircraft with a Part 135 operator can also provide significant benefits to the owner. For instance, Part 135 operators are required to ensure that both aircraft and crew comply with the much stricter FAA standards for charter operators. As such, an established Part 135 operator will supply the aircraft owner with a properly trained crew and exceptional maintenance of the aircraft, as well as providing an income stream to the owner. Many Part 135 operators will also assume a portion of the maintenance costs and insurance premiums for the aircraft.

Lease negotiations with a Part 135 operator should occur prior to the aircraft purchase, as some states exempt an owner from paying sales and use tax on the purchase of an aircraft if it is leased to a charter service immediately upon purchase. Each state tax code is unique and should be

closely evaluated by an attorney or other tax professional prior to any purchase or lease. Leasing the aircraft correctly can result in considerable tax savings for the owner.

The legal and financial repercussions of operating a Part 134½ charter greatly outweigh any short-term benefits an aircraft owner may realize by circumventing the law. If owners are looking for additional aircraft revenue, they should consider retaining an attorney to facilitate the execution of a properly drafted lease with an experienced Part 135 operator. This allows the aircraft owner to maintain a superior aircraft and generate additional revenue without incurring the substantial risks associated with operating a Part 134½ charter. ⁱ

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