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Pilot Counsel

Pilot privileges and limitations: Sharing expenses

By John S. Yodice (From AOPA Pilot, July 1992.)

A pilot may legally share the expenses of a flight with his passengers.

This is an important privilege to general aviation aircraft owners and pilots. It is well known. It is often used. But there are important limitations to this privilege. These limitations must be understood and observed if we are to stay out of trouble with the FAA, and if we are to keep our insurance coverage in effect.

The shared-expense privilege is really an exception to the general rule that a private pilot may not legally be paid to pilot an aircraft. Even if the pilot isn't paid, under the general rule the pilot may not legally pilot an aircraft carrying paying passengers or cargo.

There are several exceptions to this general rule. The shared-expense privilege is one. Section 61.118(b) of the Federal Aviation Regulations very simply says: "A private pilot may share the operating expenses of a flight with his passengers." The regulation doesn't tell us what are "operating expenses" or how they may be "shared." We have to glean this information from legal decisions and FAA interpretations, and we have to make some interpretations of our own.

"Sharing," as that concept has been interpreted, means a pro-rata sharing by all of the occupants of the aircraft, including the pilot. For example, if the aircraft is rented, each person, including the pilot, must pay an equal amount toward the rental fee. If the pilot carries two passengers, the rental expense must be split three ways. A flight in which the pilot does not participate in sharing the expenses will not be considered as a bona-fide shared-expense flight.

The concept of sharing also means that the pilot must be going on the flight for his or her own purpose and not merely to transport the passengers. A classic example is the college student flying home for the weekend who advertises on a college bulletin board for passengers who are willing to share expenses to go along on the flight. The pilot is obviously taking the trip for his or her own purpose of visiting home.

A much harder case is that of a pilot who wants to use the expense-sharing privilege to build up flying time toward some advanced certificate or rating. It could be argued that the pilot is not going on the flight for his or her own purpose and has no reason to go to the particular destination to which the passengers want to go. What makes these cases difficult is that the shared-expense argument could be a disguise to cover what is really a commercial operation. A commercial operation requires that the operator be certificated by the FAA as a commercial operator and must be operated to higher regulatory standards beyond FAR Part 91. Nevertheless, I believe that, depending on the

circumstances, a good case could be made for a bona-fide shared-expense flight to build flying time. Just remember that the FAA will look hard at the facts of a particular case to determine if it was a disguised commercial flight. If there is any doubt, you may find yourself involved in an FAA enforcement case, and you will have to persuade a judge that it was a bona-fide expense-sharing flight.

What expenses may be shared? The regulation says "operating expenses." There is no doubt that the rental cost of an aircraft may be shared. What about an owned aircraft? In the few instances where the FAA has given opinions to pilots, it has attempted to limit expenses to direct operating costs, such as gas, oil, landing and parking fees away from home base, and the like, but not such prorated costs as insurance, maintenance, inspection, reserve for engine and propeller overhaul, and base hangar or tiedown rent. The FAA takes this conservative approach because it wants to ensure that there is no profit motive to a shared-expense flight. A profit motive would make the flight commercial.

But the regulation doesn't use the word direct.

My interpretation of "operating expense" is broader than the FAA's. If a pilot-owner can ascertain with reasonable certainty all of the operating costs attributable to a particular flight, then all of the operating costs may be shared. There still would be no profit motive. The key is being able to prove the amount of operating expenses.

Most pilot-owners account for indirect costs, such as insurance, maintenance, etc., by dividing the annual costs by the number of hours flown in a year to arrive at a cost per hour. That calculation is typically made at the end of a year and not before a particular flight. Yet if an hourly cost, which includes indirect operating costs, is to be shared, it must be reasonably ascertainable at the time of flight. The answer is that an owner-pilot knows with a reasonable degree of certainty the total cost per hour to operate his or her aircraft based on past experience. As long as that estimate is conservatively made and ultimately can be substantiated (at the end of the year, for example, or at the time of engine or propeller overhaul), then it should pass muster. Overestimating the hourly cost is only asking for trouble.

Notice that I did not include depreciation as an indirect cost that may be shared. While a good argument could be made for inclusion of depreciation, in many of the cases I have looked at, it was not justified. After reserving for engine and prop overhaul, the actual depreciation did not amount to much. It becomes confused with depreciation allowable for tax and accounting purposes.

Another question that is frequently asked is: If a private pilot may share expenses, what about the holder of a commercial pilot or an airline transport pilot certificate? The question comes up because the regulation that we quoted earlier talks in terms of a "private pilot." Without going through a detailed legal analysis of the regulation, let's go right to the bottom line. A commercial pilot or ATP may exercise the privileges of a private pilot, including the shared-expense privilege.

Another important problem in the shared-expense flight is insurance coverage. Policies on many light aircraft designate that the aircraft is to be used only for "business and pleasure" and not for a "commercial purpose." Under the business and pleasure category, many modern insurance policies specifically cover a shared-expense flight to the extent that it is allowed by the FARs. But under some older forms of policies that are still in use, there could be a problem. Under the definition of "business and pleasure," or elsewhere in these policies, flights for which a "charge" is made are excluded from insurance coverage. After an accident or incident, an insurance company could argue that any payment, including a shared-expense payment or arrangement, is a charge that voids the insurance coverage. This has happened in the past. Most of the cases interpreting these kinds of provisions have been decided in favor of the pilot-

owner. That may not prevent an insurance company from declining coverage for a particular accident or incident that occurred on an expense-sharing flight. Because you would like to have this problem resolved in advance of any shared-expense flight, you should carefully read your policy. If a shared-expense flight is not clearly covered, you should clarify the matter with your insurance company.

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