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# Why Using an LLC to Own & Operate Your Aircraft is a Bad Idea

By: Dave Weil

Business aviation reminds me of religion: it has many traditions that are very slow to change, even when good reasons exist for change to occur. One such tradition is using a “sole purpose” limited liability company (LLC) to own and operate a business jet. Despite widespread warnings by the [National Business Aviation Association \(NBAA\)](#) and most aviation attorneys, many owners and their advisers still follow this tradition.

Historically many lawyers thought it was a great idea to form a sole purpose LLC to operate a business jet. (i.e. The “sole purpose” of the LLC is to operate the aircraft. This is the entity’s only activity.) The LLC is a business entity specifically designed to limit liability. What better asset to limit one’s liability from than a business aircraft. The only problem with this line of thinking is that there are reasons why this configuration is a very bad idea.

The following are four very good reasons why using this structure is a very bad idea:

## **1. FAA regulatory non-compliance**

If an LLC is created for the sole purpose of operating an aircraft, including employing the pilots (or engaging the pilots via a management company), then according to the FAA the LLC is engaged in providing commercial transportation and the aircraft should be flown under the FAA’s part 135 charter regulations. This is true even if the aircraft is only providing flights for the owner of the LLC. Unfortunately many aircraft owners do not understand this requirement and operate their aircraft illegally as if it qualified for part 91 use. This type of illegal operation can subject the pilots to FAA enforcement action and expose the LLC to significant fines from the FAA.

## **2. IRS Federal Excise Tax (FET) liability**

The money paid into a sole purpose LLC by its owner to fund aircraft operations may be considered by the IRS to be compensation paid for transportation. As such, these payments may be subject to the 7.5% FET. Again, many owners do not realize this potential tax liability exists and may be in for a rude surprise should they get audited.

## **3. Voiding insurance coverage**

Every aircraft insurance policy includes a purpose of use clause. If an aircraft is to be used for commercial transportation (i.e. part 135), then this particular purpose needs to be explicitly stated in the policy. However, in most cases where a sole purpose LLC is created to operate an aircraft, there is no realization that the airplane is engaged in illegal part 135 operations. Typically the purpose of use wording in these situations only allows part 91 use. In such instances, if an accident occurs and the aircraft was not properly certified for part 135 activity, the insurance company could deny the claim.

## **4. Piercing the LLC liability shield**

The primary purpose of using an LLC entity is to protect the owner of the LLC from liabilities created within it (e.g. liabilities resulting from an accident). If the LLC is engaged in illegal activities, such as non-compliance with the FAA’s part 135 regulations, then it may be possible to

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“pierce the corporate shield” and negate the liability protection that the LLC was intended to provide.

## **Conclusion**

If your aircraft operation is setup using the traditional sole purpose LLC structure, it is strongly advised that you consult with an experienced business aviation attorney. There are ways to remedy the situation. You should determine what remedy is best for your particular situation before you run into a serious problem caused by one of the four reasons noted above.



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