

Reprinted from



Holding Title to Your Aircraft: Which is Best?

Frequently, pilots contemplating the purchase of an aircraft ask the question: "*How should I hold title?*" In my personal name? In an LLC? As always, the only proper answer is: It depends.

Liability Protection: Myth or Fact?

Limited Liability Companies (LLCs) are often used to hold title to aircraft with the belief they will protect the owners from personal liability. Will they? As a general rule, if you are acting as Pilot in Command of a Part 91 operation, you will be held personally liable for all actions attributable to your own negligence or other unlawful conduct during that flight. Moral of this story: get the best insurance coverage you can. What if others are flying your plane? With some exceptions, members of an LLC are not personally responsible for the liabilities of an LLC. So, if the LLC rents your plane to someone else, or your partner (aka, other member of the LLC) is flying, liability for those flights is generally limited to the assets of the LLC. For this reason, it's best to hold title to Part 91 aircraft in an LLC whenever others besides yourself might be operating the aircraft. To go a step further, it never hurts to have a loan that encumbers a good portion of the aircraft's equity, so as to further minimize your losses due to the conduct of others.

About those "exceptions"... One or more persons in your LLC will have primary responsibility for maintaining the airworthiness of the aircraft, and you can't delegate this legal duty to a mechanic (good luck finding one to accept it). If you fail to maintain the aircraft in an airworthy condition, such as: a) operating out of annual; b) AD(s) not complied with; or c) knowingly allowing others to fly with required equipment inoperative, you should expect to be personally named in a lawsuit if those factors are related to an accident.

Corporations could also be used to hold title to your aircraft, but unless that is also the business that you will be using as the basis for your tax deductions, it's cleaner from a tax return perspective to use an LLC.

Tax Deduction and Material Participation

Many aircraft owners think that putting their aircraft into an LLC will magically provide them better deductions for tax purposes. It won't. For example, your LLC owns your aircraft and leases it out to a flight school, but the LLC has no other legitimate business purpose. Are those huge losses (after depreciation) deductible? Not unless the owner can demonstrate that they meet one of the IRS' specific tests for material participation (such as the 100 hour test, which requires extensive documentation). Certainly, it is possible to "group" your aircraft LLC with another operational business to meet other material participation tests, but that grouping election must be filed with the aircraft's first tax return and there must be a reasonable nexus between the two activities. The IRS knows that auditing aircraft owners often yields big changes in tax returns, so it really makes sense to engage an aviation tax specialist before attempting to deduct aircraft losses against ordinary income. Sadly, most CPAs (even the good ones) don't really understand these intricate rules.

Can an LLC Trigger Part 135 Status?

Yes, and be careful. While merely renting an aircraft to a business or individuals can certainly operate within Part 91, the minute the LLC also provides pilot services with the rental, the FAA will almost certainly declare that to be an air charter operation and require all flights be operated under Part 135. If you don't have a 135 certificate, many bad things happen, such as heavy fines by the FAA and void insurance coverage for illegal operations. Additionally, the IRS may seek a 7.5% Federal Excise Tax on all flight income paid to the LLC. So, while not a concern for owner-flown aircraft, if you are hiring professional pilot(s), consult an aviation attorney first.

Should the aircraft be in my name?

Assuming you are the sole owner and sole pilot of the aircraft (except for your own occasional flight instruction), there is nothing inherently wrong with holding title in your own personal name. As always, carry the best insurance you can obtain and reasonably afford.

'til Death do us Part

Two things in life are certain (and we have already discussed taxes). If you hold title in an LLC, the death of one or more members generally does not affect the legal standing of that LLC. However, an aircraft held individually may trigger an expensive and public probate at the time of the owners death. Most aircraft owners hold their real property and bulk of their eligible assets in a living trust (aka, a revocable trust). In most states, certain assets outside the trust (such as vehicles) are exempt from the small estates exemption in the probate code. But what about aircraft? Usually not. So, the death of an aircraft owner who personally owns a six-figure value airplane in a state like California would trigger a probate even if the owner had all other assets in their living trust. To avoid triggering probate, it would be best hold title to the aircraft in

their trust. If you hold title in an LLC, be sure the LLC's member (aka, owner) is the living trust, not the individual.

There is no "right" or "wrong" way to hold title to an aircraft, as everyone's situation is uniquely different. In the end, be sure to consult with the right professionals who can guide you in the process.

Scott Williams, Esq. is an aviation attorney representing buyers and sellers in aircraft transactions, and provides FAA certificate enforcement defense to all pilots. He has owned his 2006 SR20 since new, and is currently serving on the COPA Board of Directors as our Secretary.