

February 16, 1983

Mr. Thomas J. Gallagher, Jr.
Attorney at Law
Farnsworth, Martin & Gallagher
1823 Jefferson Place, N.W.
Washington, D.C. 20036

Dear Mr. Gallagher:

Your letter of February 4, 1983, proposes to submit to the FAA Aircraft Registry for recordation a security interest in aircraft for the faithful performance of an indemnity obligation issued pursuant to tax lease agreements. You have asked for our opinion as to the recordability of such a security instrument. For the reasons given below, we are of the opinion that such are recordable.

Your letter states that various aircraft owners enter into tax leases, where the owner transfers the aircraft to others, who immediately lease the aircraft back to the transferor, generating a tax lease, which has been determined to be not a transaction recordable under the Federal Aviation Act (49 U.S.C. 1401 and 1403). Certain underwriters then offer to insure the parties to the tax lease against the risk of loss of the tax benefits, and in connection therewith, the aircraft owners enter into a reimbursable agreement with the underwriters.

To secure performance by the aircraft owners, the underwriters intend to obtain from the owners a security interest in the aircraft. It is the recording of this security interest for which the determination of recordability is sought.

We view this security interest as having been generated by new consideration between the aircraft owners and the underwriters, with reciprocal rights and obligations, the breach of which could affect interests in the aircraft. As such, it meets the definition of "conveyance" in 49 U.S.C. 1301(2), and is a recordable document under our regulations, 14 C.F.R. Part 49.

Sincerely,

Original signed by:
Joseph R. Standell

Joseph R. Standell
Aeronautical Center Counsel

bcc:
AAC-250