



U.S. Department
of Transportation
**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

N743BA
P.O. Box 25082
Oklahoma City, Oklahoma 73125

December 24, 1987

Mr. Roy S. Powell, Jr.
Vice President and Associate Counsel
GATX Leasing Corporation
Four Embarcadero Center, Suite 2200
San Francisco, CA 94111

Dear Mr. Powell:

Swedish Cross-Border Lease Transaction

As requested in your letter of December 10, 1987, we have reviewed the material you submitted in connection with this transaction to determine if such affect the current registration, and whether or not these documents are appropriate for recordation with the FAA Aircraft Registry. For the reasons given below, we are of the opinion that the aircraft must be reregistered and the documents are eligible for recording.

By way of background, you have characterized the transaction as one similar to the tax benefit transfer, or safe harbor lease previously used in the United States pursuant to the Economic Recovery Tax Act of 1981.

The transaction contemplates that a U.S. owner/registrant, FNHR, will sell the aircraft (we understand there may be as many as five aircraft involved; this letter covers all which are subject to the terms of the documents reviewed) to a Swedish concern, Finans. Finans will then lease the aircraft back to FNHR under terms that allow continued recognition of FNHR as the owner. The entire transaction will include loans, a guaranty, a defeasance agreement, assignment, escrow agreement and a purchase option which complete the transaction. In effect, the aircraft will return to the ownership of FNHR, the same as now, although the basis of its ownership will have changed.

In this case, after the sale to Finans and the lease back to FNHR, FNHR makes a simultaneous payment to an offshore bank, which has the responsibilities of making all the payments, including the option price, which are otherwise the responsibility of FNHR.

Finans simultaneously grants to CIT, the current security holder, certain options, including a purchase option. Although CIT is a secured party in the transaction which currently provides the basis for ownership by FNHR, this grant of an option is additional security, and is a conveyance, eligible for recording. By facsimile transmission of December 18, you forwarded an additional instrument, whereby CIT assigns all its rights in the purchase option to FNHR. This strengthens FNHR's position as an

owner in our view for registration purposes, but does not otherwise alter the character of the transaction.

In our opinion on safe harbor leases (46 FR p. 55052, Nov 5., 1981) we held that the transaction did not affect the registration of the aircraft in that the documents were not eligible for registration.

The 1981 opinion stated, among other things: "Because the tax lease neither creates nor transfers any interest in the aircraft, and because the obligations created by the tax lease are not binding upon any third party, the tax lease does not constitute a 'conveyance which affects the title to or any interest in,' civil aircraft...."

In this transaction, there are transfers of the aircraft (FNHR to Finans, Finans to FNHR), the obligations of the lease are binding on third parties (Barclays, GATX, etc.) and several of the instruments are conveyances. The assignment by CIT to FNHR of its rights under this agreement does not change the character of the original agreement as a conveyance. The transaction cannot be considered as a tax benefit transfer subject to the 1981 opinion.

Sincerely,

Joseph R. Standell
Aeronautical Center Counsel

By:


R. Bruce Carter
Attorney Adviser

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Joseph R. Standell
Aeronautical Center Counsel

Original Signed By
By: R. BRUCE CARTER
R. Bruce Carter
Attorney Adviser

cc: AGC-7/AGC-200/AAC-250

AAC-7:RBCarter:lm1:2296:12/24/87