



U.S. Department
of Transportation

**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

February 26, 1999

Matthew McD. Kite, Esq.
Cohen, Todd, Kite & Stanford, LLC
16th Floor, 525 Vine Street
Cincinnati, OH 45202-3124

Dear Mr. Kite:

Forte Equipment Leasing, LLC

This responds to your letter of February 16, 1999, in which you informed us of your client's desire to form a limited liability company (the LLC) which would qualify as a "citizen" for aircraft registration purposes under 49 U.S.C. § 44101, et seq.

You have informed us of the following:

- the proposed LLC will be formed under the laws of the State of Ohio;
- the LLC will be managed by a "citizen of the United States" individual, who is not a member but is an officer of the corporate member; and
- the LLC is comprised of two members, one an Ohio corporation, the other an Ohio limited partnership.

You asked us to advise (1) whether the FAA treats a limited liability company as a "citizen" for eligibility purposes under its aircraft registration requirements; and (2) if so, whether FAA would require any modification or additions to the structuring of the limited liability company as proposed above to satisfy the agency's eligibility requirements.

In response to your first inquiry, yes, FAA does consider an LLC capable of qualifying as a "citizen of the United States" as defined in 49 U.S.C. § 40102(a)(15)(C).

Eligibility for aircraft registration is addressed in 49 U.S.C. §44102(a)(1)(A) which states "an aircraft may be registered under section 44103 of this title only when the aircraft is not registered under the laws of a foreign country and is owned by a citizen of the United States . . ."

A "citizen of the United States" is defined in 49 U.S.C. §40102(a)(15)(C) as an "association organized under the laws of

the United States or a State, . . . , of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States."

The LLC you have described satisfies the first element of the definition in that it is to be formed or organized under the laws of the State of Ohio.

If the "citizen" individual who is to be the manager, is the only managing officer, director, etc., the second element of the definition is also met. If there are other managing officers and/or a board of directors, at least two-thirds of those persons must also be "citizens of the United States".

However, since the membership of the LLC is comprised of one corporation and one limited partnership, several concerns are raised. As you know, a partnership does not qualify as a "citizen of the United States" if any of the partners, whether general or limited, are other than individuals (see 49 U.S.C. § 40102(a)(15)(B)). On the other hand, since we are not informed of the distribution of voting control, we can only offer some examples of voting interest distribution which arguably can satisfy the last element of the definition.

For discussion purposes, we will presume the partnership does not qualify as a "citizen of the United States" and that the corporate member does. If the partnership owns 25 percent or less of the voting interest, the last element will be satisfied. If the partnership owns more than 25 percent of the voting interest, provided the general or managing partner of the limited partnership is a "citizen of the United States", we are often able to say that, although not owned, the interest is controlled by a "citizen of the United States".

We hope the foregoing discussion is helpful in determining how FAA applies the definition contained in 49 U.S.C. § 40102(a)(15)(C) to a limited liability company. If you have further questions or comments, you may contact the undersigned at (405) 954-3296.

Sincerely,

Joseph R. Standell
Aeronautical Center Counsel

By:


Michael R. Burton
General Attorney