



U.S. Department
of Transportation

Federal Aviation
Administration

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

September 4, 1985

Preston G. Gaddis II, Esq.
Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102

Re: Lease with Option; N1004A

Dear Mr. Gaddis:

Your letter of August 27, 1985, requests our opinion of a lease between GATX Leasing Corporation and Compania Mexicana de Aviacion, S.A. de C.V. The lease contains a clause allowing the Lessee the option of purchasing the aircraft at the end of the 10-year term for an amount equal to 26.67 percent of Lessor's cost. The lease recites that Lessor's cost is \$48,000,000. Accordingly, there is a presumption that the option price, being in excess of 10 percent of Lessor's cost, requires a determination that this is a true lease, and is not equivalent to a conditional sales contract.

However, you point out that the Conveyance Examiner's Guidelines identifies the option price as 10 percent of the lease payments, and that this lease provides, not only for basic rent payments, but also "floating" payments based on the interest that is applicable, which changes with market conditions. Thus the amount of the lease payments will change, as will the determination of the option price percentage.

We have reviewed the Guidelines, and are of the opinion that this part was not reviewed prior to distribution. The Guidelines are still considered "draft," and when errors such as this are detected, they will be changed. The page has been changed, and is being distributed. The change will reflect our position that the 10 percent option price will be measured against either the Lessor's acquisition cost, if newly acquired, or the fair market value if the Lessor has held the aircraft for some time.

Accordingly, we are of the opinion that the referenced lease is a true lease, is not equivalent to a conditional sales contract, and that registration should be made in the name of the Lessor.

Sincerely,

Joseph R. Standell
Aeronautical Center Counsel

By: 
R. Bruce Carter
Attorney-Advisor