

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
124	Western Airlines	14 CFR Portion of Appendix H to Part 121	To permit petitioner to use the new Western 727-200-838 Redfin Simulator to meet the visual requirements of Phase II. <i>GRANTED 10/19/81.</i>
758	Great Western Airlines, Inc.	14 CFR § 121.623	To permit petitioner to file Instrument Flight Rule flight plans without complying with destination alternate airport fuel requirements. <i>DENIED 10/19/81.</i>
21803	Richard Burdyn	14 CFR § 61.129(b)(1)(ii)	To permit petitioner to apply for a commercial pilot certificate with airplane rating without meeting the required 10 hours of flight instruction and practice in airplanes having flaps, retractable landing gear, controllable pitch propeller. <i>DENIED 10/16/81.</i>
16556	Agana Navy Flying Club	14 CFR § 61.111(b)	Extension of Exemption 2399A which permits pilots who are members of the Agana Navy Flying Club to carry passengers on cross-country flights between the Mariana Islands of Guam, Rota, Tinian, and Saipan, subject to certain conditions and limitations. <i>GRANTED 10/16/81.</i>
20801	The Boeing Company	14 CFR § 25.809(b)	To allow, to the extent necessary, type certification of the model 747 with upper deck emergency exits which are not operable from outside the airplane. <i>DENIED 10/19/81.</i>
21526	Mr. Daniel R. Stroud	14 CFR § 91.22(a)(1)	To permit operation of petitioner's Bellanca SKCAB-180 airplane in certain operations without carrying the 30-minute fuel reserve required. <i>PARTIAL GRANT 10/21/81.</i>
22106	American Airlines	14 CFR § 121.318(b)(2)	To permit petitioner to operate 19 DC-10 airplanes after December 1, 1981, without having a public address system microphone, at each floor level exit in a passenger compartment and be readily accessible to a flight attendant seated in a seat adjacent to that exit. <i>GRANTED 10/21/81.</i>
21788	Airmark Corporation	14 CFR § 135.89(b)(3)	To permit Airmark's Gulfstream II airplanes to be operated at altitudes up to and including flight level (FL) 410 without at least one pilot at the controls wearing a secured and sealed oxygen mask that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude exceeds 12,000 feet mean sea level (MSL). <i>GRANTED 10/20/81.</i>
20641	John C. Mallory	14 CFR § 63.53(a)	Reconsideration of denial of petition to permit the petitioner to hold an aircraft dispatcher airman certificate before reaching the minimum age 23. <i>DENIED 10/19/81.</i>
21063	Denver Jet, Inc. (DJJ)	14 CFR § 135.243(a)	Reconsideration of the denial of Mr. Jeffrey Lesserg's petition to allow him to serve as pilot in command (PIC) for DJJ without holding an airline transport pilot certificate (ATPC). <i>DENIED 10/19/81.</i>
20520	KLM Royal Dutch Airlines	Portions of 14 CFR Part 91 & 121	Extension of Exemption No. 3036 which allows petitioner to continue to operate three U.S.-registered B-747-206B aircraft using a FAA-approved master minimum equipment list and an FAA-approved continuous airworthiness maintenance program. <i>GRANTED 9/17/81.</i>

[FR Doc. 81-31766 Filed 11-4-81; 8:45 am]

LING CODE 4910-13-M

Legal Opinion of the Department of Transportation (Federal Aviation Administration) as to the Effect of a Lease Solely for Federal Income Tax Purposes on the Requirements of the Federal Aviation Act of 1958 Relating to the Registration of Aircraft and Recordation of Interests in Aircraft

SUPPLEMENTARY INFORMATION: Mr. Melvin L. Bedrick, Cravath, Swaine & Moore, New York, New York, has requested the legal opinion of the Federal Aviation Administration (FAA) concerning an agreement relating to the transfer of tax attributes in respect of aircraft owned by United Airlines. Because of the extensive interest among finance institutions, other United States airlines and potential aircraft purchasers in the specific issues raised by Mr. Bedrick, the FAA has concluded that the opinion issued to Mr. Bedrick should receive broad dissemination.

Accordingly, the FAA publishes its response to Mr. Bedrick concerning the status of a "Federal Income Tax Lease" as it relates to aircraft registration and the recordation of interests in aircraft.

FOR FURTHER INFORMATION CONTACT: John T. Stewart, Jr., Assistant Chief Counsel, International Affairs and Legal

Policy Staff, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-3515.

Issued in Washington, D.C. on October 29, 1981.

Edward P. Faberman,
Acting Deputy Chief Counsel.
October 28, 1981.

Melvin L. Bedrick, Esquire,
Cravath, Swaine & Moore,
One Chase Manhattan Plaza,
New York, New York 10005.

Dear Mr. Bedrick: This is in response to your request to the Federal Aviation Administration (FAA) for an opinion as to the effect of a certain lease solely for Federal Income Tax purposes on the requirements of Title V of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1401-1406) (Act) and implementing regulations. Based upon analysis of the lease agreement of October 8, 1981, as amended, your written legal opinion of October 13, 1981, and your representations at our meeting on October 26, 1981, it is our opinion that the lease agreement has no legal effect on the ownership of the aircraft for purposes of aircraft registration.

It is our understanding that the following is true with respect to the lease solely for Federal Income Tax purposes (hereinafter referred to as tax lease). The tax lease is a contract in which the registered owner of the aircraft (hereinafter referred to as the tax lessee) retains title to the aircraft as well as the burdens, benefits and incidents of

ownership and sells to the tax lessor, for cash, the tax lessee's right to depreciate and take the investment tax credit with respect to the aircraft. To satisfy the requirements of the Economic Recovery Tax Act of 1981, this sale of tax benefits is cast in terms of a pro forma sale—lease back of the aircraft. The cash payment is accompanied by a promise on the part of the tax lessor to make principal and interest payments to the tax lessee which, together with the cash payment, equal the purchase price of the aircraft. The tax lessee promises to make rental payments to the tax lessor which equal the tax lessor's principal and interest payments. These two obligations will be set off against one another and it is intended that no cash transfer, beyond the initial cash payment, will be made. The tax lessor obtains absolutely no interest in the aircraft, including any interest as security for the tax lessee's performance of its obligations under the tax lease. Furthermore, in the event that the tax lessee decides to sell the aircraft during the course of the lease, he is required to obtain the consent of the purchaser to take the aircraft subject to the tax lease.

It is our opinion that the tax lease is not a sale and lease-back in any traditional sense of those terms as it neither creates nor transfers any interest in the aircraft. It is clearly not a lease intended as security, as described in our letter to American Airlines of March 19, 1981 (46 FR 18877 (1981)). The tax lease effects the transfer of tax rights traditionally held by the owner of an aircraft to a purchaser of those rights without the transfer of any of the indicia of ownership

which normally trigger tax rights and obligations. The purchaser of those tax rights in all other ways has absolutely no connection to the aircraft; the tax lessor acquires neither legal title nor any other right with respect to the aircraft beyond the right to be characterized by the Internal Revenue Service as the owner of an aircraft for tax purposes.

In ascertaining who is the owner of an aircraft for purposes of aircraft registration, the FAA is concerned with those aspects of ownership which the tax lessee has explicitly retained. The mere transfer of tax benefits effected by the tax lease does not transmit ownership from the tax lessee to the tax lessor for purposes of aircraft registration.

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," a civil aircraft of the United States, within the meaning of section 503(a)(1) of the Act. Since the rights of any third party with an actual or prospective interest in the aircraft are unaffected by the tax lease, there is no need for the constructive notice that is achieved by recordation. Consequently, the tax lease is not eligible for recordation under the Act.

This opinion is based upon the specific tax lease submitted to the FAA on behalf of your client. We express no opinion as to the effect on aircraft registration and eligibility for recordation of tax leases which are not substantially identical to the tax lease at hand.

Sincerely,
Edward P. Faberman,
Acting Deputy Chief Counsel.

[FR Doc. 81-31889 Filed 11-4-81; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 79-3, Notice No. 4]

Highway Cost Allocation Study; Meeting and Requests for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA will hold a public meeting on November 23, 1981, to discuss the progress of the Highway Cost Allocation Study. This will be the fourth and final such meeting on the study. The meeting will focus on the study's cost assignment methods and user charge options. Attendees' reaction to any aspect of the study and to the FHWA report "Working Paper No. 12: Capital Cost Allocation and User Charge Structure Options" are sought. Technical experts on highway cost allocation and finance as well as representatives of interested groups are invited to attend. Comments to the docket on any matters related to the

conduct of the study are also requested from concerned parties.

DATE: Meeting—November 23, 1981. Comments to the docket on the study must be submitted by December 7, 1981, if they are to be considered in the final report.

Time: Meeting—9:30 a.m.
Place: Meeting—Room 4200, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

ADDRESS: Submit comments to and inspect reports at FHWA Docket No. 79-3, Room 4205, HCC-10, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. For copies of reports contact Dr. Anthony R. Kane at the program office specified below.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony R. Kane, Chief, Transportation and Socio-Economic Studies Division, 202-426-2923, or Mr. S. James Wiese, Attorney, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are Monday through Friday, 7:45 a.m. to 4:15 p.m., ET.

SUPPLEMENTARY INFORMATION:

Background

The 3-year Highway Cost Allocation Study required by Section 506 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599) arose from the concerns of the Congress that (1) the data analysis on which previous cost allocation studies were based needs updating; (2) future highway user taxes should be based on an equitable allocation of costs; and (3) the Federal-aid highway program has changed with regard to the level and type of programs being financed.

To satisfy Congress' concerns, Section 506 requires the Secretary of Transportation to (a) study costs occasioned in the design, construction, rehabilitation, and maintenance of Federal-aid highways by the different classes of vehicles using these roads; (b) estimate the share of such costs attributable to each class of motor vehicles; (c) assess the need for long-term monitoring of roadway deterioration to determine the relative damage attributable to traffic and environmental factors; and (d) recommend alternative tax structures that would more nearly achieve an equitable distribution of the tax burden on persons and vehicles using Federal-aid highways.

Section 506 further requires the Secretary to submit a final report on the study to Congress by January 15, 1982; progress reports by January 15, 1980, and by January 15, 1981; and a study

plan within 180 days of enactment. In addition, Congress required the Congressional Budget Office (CBO) to submit within 90 days of enactment, guidelines for the Secretary's use in the preparation of a study plan. CBO's *Guidelines for a Study of Highway Cost Allocation* were submitted to the Congress and the Secretary on February 1, 1979. DOT's *Highway Cost Allocation Study Plan* was transmitted to the Congress on June 27, 1979; its *First Progress Report on the Federal Highway Cost Allocation Study* on March 12, 1980, and its *Second Progress Report on the Federal Highway Cost Allocation Study* on January 16, 1981. Copies of the *Guidelines*, the *Study Plan*, the *First Progress Report*, and the *Second Progress Report* are available for the public's inspection in the docket room specified above.

The Act requires that the study look at the allocation of the Federal share of the cost of the highway improvements financed from the Highway Trust Fund. The Congress further specified that the method used to allocate costs shall be based on the costs occasioned by each class of user rather than some other basis. The analysis FHWA is undertaking is responsive to these requirements. It will examine assignment of costs and the generation of user revenues for today's programs and conditions as well as future ones.

Meeting

The November 23 meeting will be the fourth and final public meeting on the Cost Allocation Study. The first was held March 23, 1979, to provide comments to be considered in the preparation of the June 1979 *Study Plan*. The second meeting, held March 21, 1980, was to comment on the plans for and progress of the study as reflected in the *First Progress Report*. The third meeting, held October 17, 1980, was to comment on the plans for and progress of the study as reflected in two FHWA Working Papers: "Highway Cost Allocation Scale Analysis" and "Federal Highway Revenue and Highway Cost Allocation Options." This fourth meeting will focus on the study's methods and on alternative user charges available to finance future Federal-aid highway programs. This meeting should help in the determination of the recommended cost allocation methodology and Federal user charge structure that will be transmitted to Congress in the *Final Report*.

Information on some of the methods and user charge alternatives under consideration may be found in the report "Working Paper No. 12: Capital