

RNAV—Area Navigation
 RSS—Root-Sum-Square
 SSV—Standard Service Volume
 T—Terminal Service Volume
 TACAN—Tactical Air Navigation
 TVOR—Terminal Very High Frequency
 Omnidirectional Radio Range
 UHF—Ultra High Frequency
 VHF—Very High Frequency
 VOR—Very High Frequency
 Omnidirectional Radio Range
 VOR/DME—Very High Frequency
 Omnidirectional Radio Range/
 Distance Measuring Equipment
 VORTAC—Very High Frequency
 Omnidirectional Radio Range and
 Tactical Air Navigation
 X Channel and Y Channel—Frequency
 Pairing for Distance Measuring
 Equipment and Tactical Air
 Navigation

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Legal Opinion as to Whether the Lessee of an Aircraft Conveyed Under a Finance Lease is the Owner of the Aircraft for Purposes of United States Aircraft Registration

American Airlines has requested the legal opinion of the Federal Aviation Administration (FAA) as to whether the lessee of an aircraft conveyed under a finance lease is the "owner" of the aircraft under Section 501 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1401) for purposes of obtaining U.S. registration of the leased aircraft. Because of the extensive interest among finance institutions and other United States airlines in the specific legal issue raised by American Airlines, the FAA has concluded that the information contained in the legal opinion provided to American Airlines should receive broad dissemination.

Accordingly, the FAA publishes its response to American Airlines concerning the status of a lessee of an aircraft conveyed under a finance lease.

FOR FURTHER INFORMATION CONTACT:
 Mr. John T. Stewart, Jr., Assistant Chief Counsel, International Affairs and Legal Policy Staff, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Telephone (202) 426-3515.

Issued in Washington, D.C. on March 23, 1981.

Albert B. Randall,
 Acting Chief Counsel.

March 19, 1981.

Richard A. Lempert, Esquire
 Vice President and General Counsel,
 American Airlines, Box 61616, Dallas/
 Fort Worth, Texas

Dear Mr. Lempert: This is in response to your recent inquires to the Federal Aviation Administration (FAA) as to whether the lessee of an aircraft which is the subject of a lease, wherein all the risks and rewards of ownership, except legal title, pass to the lessee (hereinafter referred to as a finance lease) is the owner of the aircraft under Section 501 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1401) (Act). It is my considered opinion that an aircraft conveyed under a finance lease which conforms to the characteristics described herein may be registered by the lessee as owner.

"Owner", not defined in the Act, has been defined in Part 47 of the Federal Aviation Regulations (FAR) as follows:

"... 'owner' includes the buyer in possession, a bailee, or a lessee of an aircraft under a contract of conditional sale, and the assignee of that person." 14 CFR § 47.5(d).

This definition is designed to make explicit that the buyer, lessee or bailee under a contract of conditional sale, as defined in Section 101(19) of the Act, is considered to be the owner of the aircraft for purposes of Part 47 of the FAR. The definition is not exclusive. For example, the buyer of an aircraft pursuant to a contract which transfers all rights, including title, in the aircraft is not specifically included in Section 47.5(d). Section 47.5(d) implicitly recognizes that other forms of ownership may exist under the law and that, in the absence of any countervailing Federal interest, the FAA may recognize those forms of ownership. Therefore, the FAA's determination of the owner of an aircraft, for purposes of aircraft registration, must necessarily be based upon the reasons for aircraft registration.

The fundamental purpose of aircraft registration is identification of the aircraft with the country that is responsible for it. By virtue of the Convention on International Civil Aviation (Chicago Convention), the United States has certain international aviation safety responsibilities for aircraft of U.S. nationality. Under the Chicago Convention, the means of affixing nationality is aircraft registration. Aircraft registration in the majority of contracting States is contingent upon the owner or operator of an aircraft having some chosen connection to the State of registry. Under the Act, an aircraft is eligible for registration in the United States, only if it is owned by U.S. Citizens, resident aliens, or noncitizen U.S. corporations which base and primarily use the aircraft in the United States.

The Act limits U.S. aircraft registration to a class of persons over which the United States has some degree of jurisdiction. "Ownership" is necessary to provide a reliable and easily ascertainable legal link between a member of that class and the aircraft. These requirements jointly are a means of insuring that international and domestic laws and policies with regard to an aircraft of United States registry will be carried out.

Accordingly, the interest of the FAA in ascertaining the owner of an aircraft is limited and particularized. Section 501(f) of the Act provides that:

"a certificate of registration" shall be conclusive evidence of nationality for

international purposes, but not in any proceeding under the laws of the United States. Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue."

This section implies that the FAA's determination of the "owner" may not necessarily coincide with a determination of ownership in another forum, for other purposes. As explained in 1938 by Fred D. Fagg, Director of Air Commerce, Department of Commerce, "... we are interested only from the standpoint of nationality of the owner rather than whether he actually possesses legal title."

Until 1938, the proper owner of an aircraft for purposes of U.S. registration was deemed to be the person with all rights, including legal title, in the aircraft. In *In the Matter of Charles P. O'Connor for Registration of Aircraft*, 1 CAA 5 (1938), the Civil Aeronautics Authority, the predecessor agency to the FAA, recognized the buyer of an aircraft under a contract of conditional sale as the "owner" of the aircraft under Section 501 of the Civil Aeronautics Act of 1938 (52 Stat. 1005 (1938)). After an acknowledgement that more than one kind of ownership exists under common law, the CAA adopted the theory that as between the seller, who "holds legal title, in effect, as security for its debt," and the purchaser, who had "complete control over the aircraft to do with as he will even as against the seller so long as payments are duly made," the latter was the proper person to be considered "owner".

Under the Uniform Commercial Code (UCC), the rights, obligations and remedies of a conditional vendee are identical to those of a buyer or lessee in any transaction which is intended to create a security interest in personal property. The *O'Connor* case focused on the realities of commercial law in deciding to acknowledge ownership in the conditional vendee. An analysis of modern commercial law reveals that no distinction remains, in the forty-nine states that have enacted the UCC, between a conditional sale and leases intended as security. Consequently, if the finance leases in question are leases intended as security, the rationale of the *O'Connor* case may be applicable.

While there is not an abundance of court decisions analyzing the proper nature of a lease intended as security wherein title does not pass, examination of the existing court decisions and UCC authorities persuades me that finance leases are leases intended as security. For a lease without an option to purchase to be a lease intended as security, the lessee must have acquired almost all of the incidents of ownership. In order to determine whether the lessee has, in effect, become the owner, a lease must contain certain objective criteria. A lease with all the following characteristics will be considered a lease intended for security:

(1) All the risks and burdens of ownership (e.g. insurance, maintenance, taxes, fees) are transferred to the lessee;

(2) The lessee has an unrestricted right to sublease the aircraft;

(3) A full payout of the lease is required, which is equivalent to the purchase price of the aircraft plus interest;

(4) The term of the lease, with or without options to renew the lease for a nominal sum, is of a duration equal to the useful life of the equipment;

(5) The options to renew are nominal when compared to the lease payments during the base lease term;

(6) The aircraft may be sold at the end of the base lease term, at the option of the lessee and the lessee is entitled to substantially all (i.e. 90%-100%) of the proceeds of the sale.

In accordance with the rationale of the *O'Connor* case, it may be said of a finance lease with these characteristics that, as between the lessor who has retained legal title as security for a debt and the lessee who has absolute dominion over the aircraft "to do with as he will even as against the [lessor] so long as payments are made," that the latter is the owner for aircraft registration purposes. In other words, the tangible differences between the conditional vendee and the finance lessee are insignificant. Accordingly, it is my opinion that the lessee of an aircraft conveyed under a finance lease which meets the requirements discussed herein is the owner of the aircraft under Section 501 of the Act.

An opinion on the eligibility for U.S. aircraft registration of aircraft conveyed under a particular finance lease must await FAA review of the documentation relevant to the transaction finally agreed upon. This documentation must include or be

accompanied by representations by the applicant for aircraft registration of (1) the purchase price of the aircraft plus interest and (2) the estimated useful life of the aircraft. The FAA, if requested, will keep this information confidential.

I also understand that as an airline subject to the reporting requirements of the Securities and Exchange Commission (SEC) you will file any appropriate reports with the SEC concerning the acquisition of aircraft under a finance lease.

Sincerely,

Albert B. Randall,
Acting Chief Counsel.

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National Highway Traffic Safety Administration

National Highway Safety Advisory Committee Site Visits

The National Highway Safety Advisory Committee's Task Force on Procession of Traffic Violations is planning site visits to Salem, Oregon, on April 13 and 14; and Olympia, Washington, on April 15 and 16. The Task Force plans to explore methods for improving the existing system of processing traffic cases without causing a significant increase in funding. Specifically, the members are interested

in several areas: (1) administrative adjudication techniques; (2) uniform traffic tickets; (3) traffic court management information systems; and (4) nonresident violators compact. The information received from these site visits will be compiled into a interim report with recommendations and presented at the full Committee meeting June 15-17, 1981.

Arrangements for the site visits are being made by the appropriate NHTSA Regional Office and the States Governors' Highway Safety Representatives. These site visits are subject to the approval of the appropriate DOT officials. Attendance is open to the public, but limited to the space available. Members of the public may present a written statement to the Committee at any time.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C. on March 23, 1981.

Robert E. Doherty,

Assistant Executive Secretary.

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