

10 September 1970

Mr. John H. Whitworth, Jr.
Dewey, Ballantine, Bushby, Palmer & Wood
140 Broadway
New York, New York 10005

Re. Leases by Jetair Leasing, Inc. to All Nippon Airways
Company, Ltd., of five aircraft

Dear Mr. Whitworth:

We refer to your letter of September 2, 1970 in which you request an opinion from this office as to: (1) whether two leasing agreements, as amended by options to purchase, would be considered by the FAA to constitute genuine leases as distinguished from contracts of "conditional sale" as defined in Section 101(16) of the Federal Aviation Act of 1958, as amended, and (2) whether the recording of the options would affect the present registration of the aircraft which are now registered in the name of Jetair Leasing, Inc. (Jetair).

In your letter you indicate that the two leases in question were executed August 25, 1969 and December 4, 1969 between Jetair and All Nippon Airways Company, Ltd., a Japanese corporation (ANA) and covered three and two Boeing 727-200 aircraft, respectively. Both of these lease agreements have been recorded with the FAA. You also indicate that Jetair entered into two separate agreements with ANA granting options to purchase the five aircraft. These agreements were entered into on September 2, 1969 for the three aircraft and on December 4, 1969 for the remaining two aircraft, and are considered by the parties to be amendments to the two lease agreements.

After reviewing the material contained in your letter and the two lease agreements and options it is our opinion that the recorded lease agreements, as amended by the options to purchase, would not be considered as conditional sales within the meaning of Part 47 of the Federal Aviation Regulations and Section 101 of the Federal Aviation Act of 1958, as amended. Accordingly, we do not consider that the recording of the options would affect in any way the present registration of the aircraft in the name of the lessor, Jetair Leasing, Inc. We base this opinion on the following:

1. It appears from your letter and from the terms of the lease agreements and options that the intention of the parties was that the transactions would constitute genuine lease arrangements and not conditional

sales. This is supported by the fact that the options were executed by separate agreement apart from the lease agreements, and in fact the first option was executed subsequent to the first lease.

2. A review of the figures furnished by your letter and contained in the lease and option agreements indicates that the transactions do not fall within the definition of a conditional sale since they do not involve payment, as compensation, of a sum substantially equivalent to the value of the aircraft. In this connection, we note that the sum of the aggregate lease rentals plus the aggregate option price amounts to 146 percent of the original cost of the five aircraft and 181 percent of the estimated market value of the aircraft on the date the options first become exercisable by ANA.

We are forwarding a copy of this opinion to the FAA Aircraft Registry. If you have any further questions or if we can be of any other assistance, please feel free to contact us.

Sincerely,

Original Signed By
Joseph T. Brennan

JOSEPH T. BRENNAN
Aeronautical Center Counsel, AC-7

cc:
AC-250
GC-10

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(the "Two Aircraft"). Hence the original cost of such aircraft to Jetair was \$32,306,067.

By Lease Agreements dated August 25, 1969 and December 4, 1969, Jetair leased to All Nippon Airways Company, Ltd., a Japanese corporation ("ANA"), the Three Aircraft and the Two Aircraft, respectively. Such Lease Agreements were recorded by the Federal Aviation Administration ("FAA") on January 21, 1970 and April 13, 1970, respectively, as Conveyances Nos. M062673 and T36532, respectively. By letters dated September 2, 1969 and December 4, 1969, Jetair granted ANA options to purchase the Three Aircraft and Two Aircraft, respectively, such options to become exercisable on January 1, 1973 or later. Enclosed are photocopies of such options, which amend the Lease Agreements and which before recording will be revised to indicate the dates of recording and FAA ~~CONVEYANCE~~ registration numbers with respect to the aircraft covered there-
by and will be supplemented by letters of acceptance in the form attached signed in ink by an authorized officer of ANA in order that such options shall be in proper form for recording by the FAA.

Each of the two Lease Agreements has a term of three years. The aggregate rental for the Three Aircraft, the rental for each of which is \$116,700 monthly, is \$12,603,600. The aggregate rental for the Two Aircraft, the rental for each of which is \$118,800 monthly, is \$8,553,600. Accordingly

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the aggregate rental for all of the aircraft for the three-year term is \$21,157,200.

The option price for the Three Aircraft, if the option is exercised on January 1, 1973, is \$5,160,000 each, and the option price for the Two Aircraft, if the option is exercised on January 1, 1973, is \$5,260,000 each. Thus, the aggregate option price for all of the aircraft, if the option is so exercised, is \$26,000,000.

Jetair estimates that the average market value per aircraft on the date the option can first be exercised will be approximately \$5,200,000. (Such figure is stated as an average figure because each of the aircraft will have a slightly different total time and time since overhaul.) Hence, the aggregate market value of all of the aircraft on the date the options first become exercisable will be approximately \$26,000,000.

The foregoing figures are summarized in the following table:

	<u>Aggregate for five aircraft</u>
Original Cost	\$32,306,067
Lease Rentals	21,157,200
Option Price at January 1, 1973	26,000,000
Estimated Market Value at January 1, 1973	26,000,000

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It should be noted that the sum of the aggregate lease rentals plus the aggregate option price amounts to \$47,157,200. Such amount is 146% of the original cost to Jetair of all of the aircraft and 181% of the estimated market value of all of the aircraft on the date the options first become exercisable.

DISCUSSION

The parties to the Lease Agreements believe, and request a ruling by you confirming, that such Lease Agreements as amended by the options constitute genuine leases and will not upon recording of the options by the FAA constitute contracts of "conditional sale" as defined in § 101(16) (b) of the Federal Aviation Act of 1958, as amended.

This viewpoint is evidenced by the fact that the sum of the aggregate lease rentals plus the aggregate option price substantially exceeds the original cost of the aircraft. In fact, the total of such lease rentals and option price is 146% of the original cost of the aircraft and 181% of the estimated market value of all of the aircraft on the date the options first become exercisable.

Stated otherwise, Jetair believes that the Lease Agreements call for monthly lease rentals that are comparable to lease rentals payable under similar leases for

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comparable aircraft where the lessee has no option to purchase. Moreover, the option price, far from being nominal (as might be the case if the Lease Agreements were conditional sales contracts), actually equals the estimated market value of the aircraft on the dates on which the options can be exercised. Clearly, therefore, the Lease Agreements, as amended by the options, contain all of the elements of bona fide leases and bear none of the hallmarks of conditional sales contracts.

Accordingly, the parties believe that they are fully justified in considering the Lease Agreements, as amended by the options, to be genuine leases.

RULINGS REQUESTED

Based on the facts and representations submitted, the following rulings are respectfully requested:

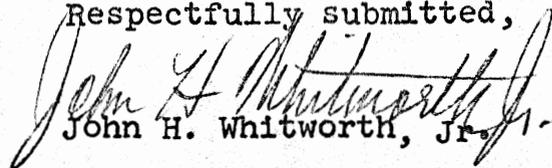
1. The recorded Lease Agreements between Jetair Leasing, Inc. and All Nippon Airways Company, Ltd. covering five Boeing model 727-200 aircraft, as amended by the options to buy such aircraft which are to be recorded, constitute genuine leases and will not upon recording of the options by the FAA be treated by the FAA as contracts of conditional sale.
2. The due recording of the options which amend the recorded Lease Agreements will not affect the present registration of the five aircraft now registered in the name of Jetair Leasing, Inc.

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The foregoing ruling request is submitted in connection with a financing of the five aircraft which is in the process of completion. In connection with that financing, there will be filed with the FAA for recording at least two additional documents: an assignment of lease rentals and a chattel mortgage on the five aircraft. It is anticipated that the closing with respect to the financing and the filing of all the documents described above will occur early in September 1970. In view of the anticipated closing date, some urgency attaches to this ruling request. Accordingly, your earliest consideration of this matter is requested.

If there are any questions in connection with this matter, please telephone, collect, the undersigned or Clive Chandler of this office (212) 344-8000.

Respectfully submitted,


John H. Whitworth, Jr.

Enclosures



Jetair Leasing, Inc.

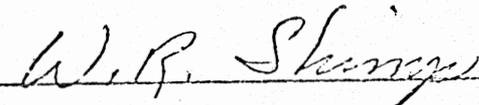
P.O.Box 185 - 3225 N. Harbor Drive - San Diego, California 92112 - Telephone: 714-297-4781

Mr. Tokuji Wakasa
Deputy President
All Nippon Airways Company, Ltd.
2-5, 3-Chome, Kasumigasaki
Chiyoda-ku, Tokyo

Lessor hereby grants to Lessee any option to buy one or more of the 727-254 aircraft on the following dates, January 1, 1973, January 1, 1974 and January 1, 1975. Notification to Lessor of Lessee's intention to exercise the option granted hereby must be received by Lessor One Hundred Twenty (120) days prior to the exercise date selected by Lessee. The option price per aircraft shall be as follows:

January 1, 1973	\$5,160,000.00
January 1, 1974	4,680,000.00
January 1, 1975	4,200,000.00

JETAIR LEASING, INC.



William R. Shimp
Vice President

Date September 2, 1969

[Letterhead of All Nippon Airways Company, Ltd.]

Mr. William R. Shimp,
Jetair Leasing, Inc.,
P. O. Box 185,
San Diego, California 92112.

Dear Mr. Shimp:

This is to acknowledge receipt of your letter dated September 2, 1969 granting to All Nippon Airways Company, Ltd. the option to buy one or more of the three 727-254 aircraft leased to All Nippon Airways Company, Ltd. under lease dated August 25, 1969 and we agree to consider this letter as a part of the lease referred to above.

Tokuji Wakasa
President



Jetair Leasing, Inc.

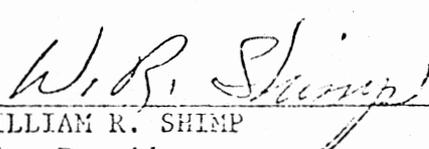
P.O.Box 185 - 3225 N.Harbor Drive - San Diego, California 92112 - Telephone: 714-297-4781

Mr. Tokuji Wakasa
Deputy President
All Nippon Airways Company, Ltd.
2-5, 3-Chome, Kasumigaseki
Chiyoda-ku, Tokyo

Lessor hereby grants to Lessee any option to buy one or both of the 727-254 aircraft on the following dates, January 1, 1973, January 1, 1974 and January 1, 1975. Notification to Lessor of Lessee's intention to exercise the option granted hereby must be received by Lessor One Hundred Twenty (120) days prior to the exercise date selected by Lessee. The option price per aircraft shall be as follows:

January 1, 1973	\$5,260,000.00
January 1, 1974	4,780,000.00
January 1, 1975	4,300,000.00

JETAIR LEASING, INC.



WILLIAM R. SHIMP
Vice President

Date 12/4/1969

[Letterhead of All Nippon Airways Company, Ltd.]

Mr. William R. Shimp,
Jetair Leasing, Inc.,
P.O. Box 185,
San Diego, California 92112.

Dear Mr. Shimp:

This is to acknowledge receipt of your letter dated December 4, 1969 granting to All Nippon Airways Company, Ltd. the option to buy one or more of the two 727-254 aircraft leased to All Nippon Airways Company, Ltd. under lease dated December 4, 1969 and we agree to consider this letter as a part of the lease referred to above.

Tokuji Wakasa
President