



U.S. Department
of Transportation
**Federal Aviation
Administration**

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Susan H. Haught, Esq.
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204 North Robinson, Suite 900
Oklahoma City, OK 73102

Dear Ms. Haught:

Incident to the three e-mails you sent me on June 17, 2008, it appears you wish my opinion on the applicability of Sections 91.23 of the Federal Aviation Regulations, Truth in Leasing (TIL), to a proposed series of transactions.

As pertinent here, Section 91.23(a) generally requires inclusion of the TIL clause in leases and conditional sales contract involving U.S. registered large civil aircraft, unless exempted under Section 91.23(b). Section 91.23(b)(1) generally exempts leases or conditional sales when one of the parties is a foreign air carrier or certificated under Part 121, 125, 135 or 141. Section 91.23(b)(2) exempts conditional sales if the aircraft has never been registered prior to execution of the contract.

With the above as background you have two concerns.

1. Does the term "contract of conditional sale" or "conditional sale" (as used in Section 91.23) include a finance lease?

FAA Response: Yes. "Conditional sales contract" as defined at 49 U.S.C. 40102(a)(17)(B)(ii) includes a lease of an aircraft where the lessee "is to become, or has the option of becoming the owner of property on complying with the contract".

As you know, for aircraft registration purposes, FAA has historically treated "finance leases" as being conditional sales. I see no reason why that construction should not equally apply to conditional sales under Section 91.23.

2. You provide a scenario and with respect to the three transactions involved, ask about the requirement to include a TIL clause.

Head Lease: You state "The head lease in the subject cases is a finance lease requiring registration in the name of the lessee thereunder and the aircraft are new Airbus aircraft which have not previously been registered on the U.S. Registry. It seems that the exemption in 91.23(b)(2) would apply then to the head lease."

FAA Response: We agree, provided that the new Airbus aircraft have not been registered anywhere (except per Section 47.61) prior to execution of the contract (I assume that to be the case).

Intermediate Lease: You state, "The intermediate lease is a true lease and the lessee thereunder is not a certificated air carrier. Based upon the reasoning in your Dec. 29, 1995, it appears that the intermediate lease might not be exempt from Sec. 91.23."

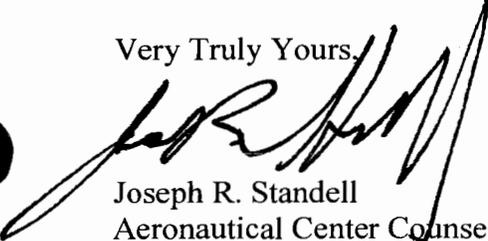
FAA Response: We agree. The TIL clause applies. There is no basis to exempt the lessee. It is not a foreign air carrier or certificated by FAA (Section 91.23(b)(1)) and the transaction is a lease and not a conditional sale (Section 91.23(b)(2)).

Sublease: You state, "The sublease is also a true lease and the lessee thereunder is a foreign air carrier. It seems that the exemption in 91.23(b)(1)(i) would apply."

FAA Response: We agree.

I have been authorized by Paul Greer of the Regulations Division, FAA Office of Chief Counsel, to provide this opinion.

Very Truly Yours,



Joseph R. Standell
Aeronautical Center Counsel

cc:

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Paul Greer (AGC-210)
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