



U.S. Department of Transportation  
Federal Aviation Administration

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Oklahoma City, Oklahoma 73125

UNCLASSIFIED FACSIMILE MESSAGE

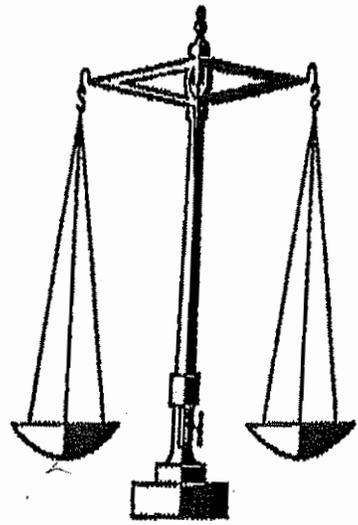
TO: Bill Morgan  
Morgan A/C Title

FAX NUMBER: 787-4570

FROM: AAC-7 - Bruce Carter

(405) 680-3296 or FTS 747-3296

FAX NUMBER: (405) 680-4676 or FTS 747-4676



SUBJECT: Leave/option re  
municipal leases -

MESSAGE:  
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Signature of Approving Official

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AO Form 1770-58 (11/80) (NSN 0052-00-625-2000)

April 23, 1985

Preston C. Gaddis II, Esq.  
Crowe and Dunlevy  
1800 Mid-America Tower  
20 N. Broadway  
Oklahoma City, OK 73102

Re: Aircraft N53993; Lease Agreement/Purchase Contract

Dear Mr. Gaddis:

By letter of April 19, 1985, you forwarded for our review a Lease Agreement/Purchase Contract between Municipal Leasing Corporation as lessor and Ross Aviation, Inc., as lessee covering this aircraft. You state that it is substantially identical in all respects to an instrument submitted to this office for review in June 1984, as a result of which we determined that it was equivalent to a conditional sales contract, requiring registration in the name of the lessee. We have reviewed the Lease Agreement/Purchase Contract and agree that it is essentially identical to the document submitted in June 1984. However, since our opinion was issued, we have taken a contrary view, and no longer consider such contracts to be equivalent to conditional sales contracts.

In interpreting 49 U.S.C. 1301(19), our basic position is that a conditional sales agreement is reached (requiring aircraft registration in the vendee/lessee) when the vendee/lessee contracts to pay a sum substantially equivalent to the value of the aircraft, and is bound to, or has the option of, becoming the owner upon compliance with the terms of the agreement. In the case of an option, this means that the option price, at term, is a nominal sum. While this would appear to be the case here, we must observe the agreement between the parties in that it is really a contract for a term of one year, albeit renewable for nine more, and we look only to the absolute obligation of the vendee/lessee for his obligations during that one year term. Accordingly, since the substantial value of the aircraft is not paid during the first year, and the lessee has the unilateral contract right to exercise the option to renew (as distinguished from the option to purchase), he is not obligated to pay a sum substantially equivalent to the value of the aircraft; ergo, the Lease Agreement/Purchase Contract is not equivalent to a conditional sales contract.



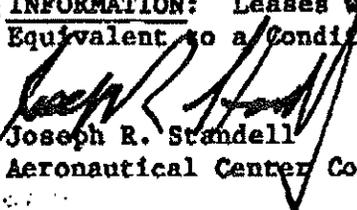


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# Memorandum

Subject: **INFORMATION:** Leases with Option to Purchase  
Equivalent to a Conditional Sales Contract

Date: July 26, 1984

From:   
Joseph R. Standell  
Aeronautical Center Counsel, AAC-7

Reply to  
Attn. of:

To: Manager, Aircraft Registration Branch, AAC-250

We have previously worked with the Registry on interpretation of "Conditional sale" as defined in Section 101(19) of the Act, to include leases with option to purchase where the lessee has the option of becoming the owner upon fulfillment of the terms of the contract, and the option price is less than 10 percent of the value, or lessor's cost at the end of the lease term, the value or cost measured as of the time of entering the lease. This interpretation has been rather universally accepted for aircraft registration, and transactions structured by the public around this interpretation both ways to achieve the intent of the parties.

On at least two occasions (letter to James P. Baker of August 30, 1982; N5248U and N5268U; and letter to William C. Boston, Jr., of June 15, 1984; N66AF), we have interpreted the lease with option provisions of those particular leases to require registration in the name of the lessees (that is, the lease with option was considered to be equivalent to a conditional sales contract), where each lease was for an initial term of one year, with absolute options in the lessee to renew for additional one year terms, all the while getting equity in the aircraft to an eventual full payout, and an ultimate option price of a nominal sum. Further review leads us to believe those opinions should no longer be considered as precedential or binding.

The element of those leases which has caused the redetermination is the initial lease for one year, renewable on yearly bases for each term. In those leases, the lessee was bound for only a year, but he could bind himself for succeeding years, one at a time, until essentially full payout was effected. He could also terminate the lease at the end of any annual term. The Act requires the lessee, or a conditional sales vendee to "contract to pay as compensation a sum substantially equivalent to the value thereof...." A one year lease, we are now persuaded, does not so bind the lessee, even though he has the option of renewals.

Accordingly, we have determined that leases with option to purchase should not be considered as equivalent to conditional sales contracts unless, among

the other elements previously discussed, the lessee is bound by the initial term to pay a sum substantially equivalent to the value of the aircraft. We will no longer look at renewed terms or the totality of terms to establish that payout of the value of the aircraft may take place over the full possible period covered by the lease. Although the opinions of August 30, 1982 and June 15, 1984 will no longer be followed, this opinion is not retroactive.