



U.S. Department
of Transportation

**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

December 29, 1995

Preston G. Gaddis II
Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102-8273

Dear Mr. Gaddis:

Truth-in-leasing requirements
Your letter of April 3, 1995

In your letter of April 3, 1995, you ask that we confirm or reject your interpretation that 14 C.F.R. § 91.23(b)(2) exempts a certain lease back transaction from the truth-in-leasing requirements.] I

Background. You describe a sale of a new, unregistered aircraft by a U.S. manufacturer to a leasing company with an immediate lease back to the manufacturer under a "finance lease." You say that the parties did not believe that they had to comply with the general truth-in-leasing requirements because 14 C.F.R. § 91.23(b)(2) exempts contracts of conditional sale pertaining to previously unregistered aircraft. You indicate that the "finance lease" entered into by the parties was such a contract of conditional sale.

Discussion. In describing a "lease," 14 C.F.R. § 91.23(e) excludes "a contract of conditional sale under section 101 of the Federal Aviation Act of 1958."

As you know, the old section 101(19) of the Federal Aviation Act ("Conditional sale") has been recodified without substantive change at 49 U.S.C. § 40102(a)(18). Thereunder a "conditional sales contract" is defined as including a lease of an aircraft under which the lessee agrees to pay an amount substantially equal to the value of the property and will become, or has the option of becoming, the owner of the property on complying with the contract.

It is my understanding that what you refer to as a "finance lease" is one that is intended as security and confers all the risks and rewards of ownership except legal title upon the lessee. (Under the FAA's

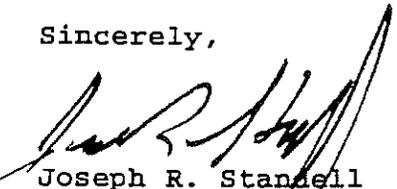
"finance lease" opinion published in the Federal Register on March 26, 1981, if six enumerated characteristics of a "finance lease" are met, the lessee may be considered the owner for aircraft registration purposes. (I assume you refer to "finance lease" in the broader sense, to include a lease with purchase option without all six enumerated characteristics.)

For discussion purposes here, a "finance lease" (in the broader sense) may be considered a "conditional sales contract" qualifying for exemption under 14 C.F.R. § 91.23(b)(2).

Conclusion. Provided that the parties referred to in your letter, in fact, entered into a "finance lease," I concur that the general provisions of 14 C.F.R. § 91.23 do not apply to their transaction.

This opinion has been reviewed in the Office of Chief Counsel and concurred in by the organization having primary interest, the International Affairs and Legal Policy Staff (AGC-7).

Sincerely,



Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center

cc: AFS-700
AFS-750
AGC-7



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non-air → non-air → sub → air
lease carrier

Dear Mr. Gaddis:

Truth-in-leasing air carrier exemption
Your letter of April 4, 1995

This responds to your letter request of April 4, in which, after pointing out apparent differing opinions within the Office of Chief Counsel, you request clarification concerning truth-in-leasing requirements.

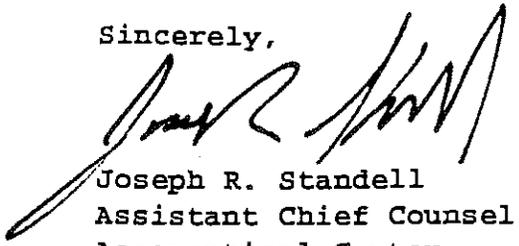
You ask whether the general requirements of 14 C.F.R. § 91.23 pertain to situations in which a U.S. registered aircraft is leased by a non-air carrier to a non-air carrier (head lease) and then immediately subleased to an air carrier (sublease).

You point out that 14 C.F.R. § 91.23(b)(1)(i) exempts air carriers from the requirement to comply with truth-in-leasing. You note that a former FAA Assistant Chief Counsel had informally opined that the regulation was not intended to cover transactions in which aircraft are to be operated by air carriers. However, you also note that others within the Office of Chief Counsel may not agree with such a permissive interpretation.

Section 91.23(b)(1)(i) and (ii) exempt leases and contracts of conditional sale from compliance requirements if either party to the transaction is an air carrier. However, in your fact situation neither party to the head lease is an air carrier. Therefore, the parties to the head lease must comply with the truth-in-leasing requirements. The parties to the sublease do not have to comply since the sublessee is an air carrier.

This opinion has been reviewed in the Office of Chief Counsel and concurred in by the organization having primary interest, the International Affairs and Legal Policy Staff (AGC-7).

Sincerely,



Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center

bcc: AFS-700
AFS-750
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