



U.S. Department
of Transportation

**Federal Aviation
Administration**

November 17, 1994

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

Preston G. Gaddis II, Esq.
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1800 Mid-America Tower
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Oklahoma City, OK 73102-8273

Dear Mr. Gaddis:

Aircraft N365NZ

Your letter of November 14, 1994 requested our review of a Master Lease and Sublease Agreement between debis Financial Services, Inc., as Lessor, Massachusetts Health and Education Facilities Authority, as Lessee, and New England Life Flight, Inc., as Sub-lessee.

You have requested our opinion as to whether the Master Lease and Sublease Agreement (Master Lease) is recordable by the FAA Aircraft Registry as a security agreement.

Based on our review of the instrument, the Master Lease is recordable as a security instrument, pursuant to Section 503(a) of the Federal Aviation Act of 1958, as amended (now codified at 49 U.S.C. §44107(a)).

While the Master Lease purports to sublease the above referenced aircraft to New England Life Flight, Inc., a basic element of a lease arrangement is absent, in that the Lessor does not own the aircraft. However, because it provides for the assignment of a security interest in the aircraft by a party recognized as the owner, it essentially operates as a security instrument. Specifically, the Master Lease provides that the legal title to the aircraft will be vested in the name of the Sub-lessee. (Reference Section 8.01 of the Master Lease). Incident to this provision, you have represented that the current registered owner will transfer ownership of the aircraft to the Sub-Lessee through a bill of sale. Additionally, the Sub-lessee will grant a security interest in the aircraft to the Lessee, who in turn will assign it to the Lessor. (Reference Section 8.02).

Consequently, although the Master Lease contains the elements of a lease, it cannot be recorded as a lease, since an essential element to a lease arrangement, i.e., the Lessor's ownership of the aircraft, is missing. The instrument, however, can be recorded as a security agreement, since it provides for a transfer and assignment of a security interest therein (Reference Section 8.02). It is understood, based on your representation, that a lease arrangement is substituted for a routine security agreement because of limitation imposed by Massachusetts state law regarding financing by a state government entity.

Accordingly, in so far as the Master Lease provides for ownership of, and the assignment of a security interest in, the aircraft, it affects an interest in an aircraft and, consequently, it meets the requirements of a "conveyance," as defined in Section 101(20) of the Act. As such, the Master Lease is recordable as a security agreement under Section 503(a) of the Act.

Since this matter is the subject of rather unique circumstances and is one of first impression, this response is limited to the specific fact scenario addressed in your request, and should not be considered as having any precedential value for any future opinions.

If you should have questions, or if you wish to discuss this matter, please feel free to contact the undersigned at 954-3296.

Sincerely,

Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center

By: 
Alonso J. Rodriguez
General Attorney