



U.S. Department
of Transportation

**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

April 8, 1993

William C. Boston, Esquire
William C. Boston & Associates
1601 Northwest Expressway
Oklahoma City, OK 73118

Dear Mr. Boston:

"U.S. Nexus Requirement"

This responds to your queries concerning whether a security agreement applicable to an aircraft engine of over 750 horsepower is eligible for recording under section 503(a)(2) of the Federal Aviation Act of 1958, 49 U.S.C. app. § 1403 (the 1958 Act) without a U.S. nexus.

We have reviewed the arguments set out in your letters which favor abandoning the FAA's long-standing requirement for such a nexus. We conclude that, while the plain language of the 1958 Act may not require a U.S. nexus, the original rationale remains valid, and we decline to change it.

In your letters you have made various arguments for abandoning the U.S. nexus requirement. The main thrust of your argument is based on application of the "plain meaning" rule of statutory construction to the language of section 503(a)(2). You further argue that there is no indication that Congress intended to deny section 503(a)(2) recording protection to non-U.S. citizen owners of large engines.

Since the "plain meaning" rule is "rather an axiom of experience than a rule of law, . . ." Boston Sand & Gravel Co. v. United States, 278 U.S. 41, 48 (1928), FAA has historically and consistently interpreted section 503(a)(2) in light of Congress' original intent as articulated in the legislative history. Case law indicates that such consistent, long-standing interpretation of a statute by its administering agency shall be given substantial deference. Turner v. Prod, 707 F.2d 1109, 1115, 1116, citing United States v. Rutherford, 442 U.S. 544, 553-54 (1979), and EEOC v. Associated Dry Goods Corp., 449 U.S. 590, 600 n.17 (1981).

Section 503(a)(2) of the 1958 Act requires the Secretary of Transportation to establish and maintain a system for the recording of "any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or

any interest in, any specifically identified aircraft engine or engines of seven hundred and fifty or more rated takeoff horsepower for each such engine . . ."

Little legislative history is available regarding section 503 of the 1958 Act; therefore, because section 503 of the 1958 Act (aside from coverage provided for propellers) is identical to section 503 of the Civil Aeronautics Act of 1938 (as amended by an Act of June 19, 1948, Pub.L. No. 692), we have looked to the legislative history of the 1938 Act for guidance. The best indication of Congress' intent comes from the original version of a 1948 bill which amended the 1938 Act. The original version limited the application of section 503(a)(2) to engines "used or intended to be used by an air carrier, . . ." (Hearing before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 80th Cong., 2nd Sess., on S.2454 and 2455, May 17, 1948, at p.4, statement of Mr. Calkins). However, Congress recognized how difficult application of that test would be, so, instead adopted "a test based on horsepower." Id.

Historically, the FAA has not only applied the horsepower test, but has required the presence of some U.S. nexus before determining that the document is eligible for recording under section 503(a)(2) of the 1958 Act. Requiring a U.S. nexus is consistent with the Congressional intent, which was to permit recordation of instruments pertaining to large engines normally affixed to air carrier aircraft. An "air carrier" as defined in the 1958 Act, (49 App U.S.C. 1301(6)) and predecessor Civil Aeronautics Act of 1938, "means any citizen of the United States . . ."

We would agree that the horsepower test does not in itself limit recordation to security agreements affecting only air carriers or citizens of the United States. (Hearing before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 80th Cong., 2nd Sess., on S.2454 and 2455, May 17, 1948, at p.4, statement of Mr. Calkins) However, there is no indication that Congress intended to assert jurisdiction extraterritorially when it adopted the horsepower test.

Therefore, administratively requiring a U.S. nexus as prerequisite to application of the bare horsepower test prevents extraterritorial application of section 503(a)(2) and forwards the intent of Congress to permit recordation of instruments pertaining to large engines normally affixed to air carrier aircraft.

The limitation on U.S. jurisdiction as addressed in Restatement (Third) of The Foreign Relations Law of The United States § 402 (1986), in part, provides that:

a state has jurisdiction to prescribe law with respect to:

- (1) (a) conduct that, wholly or in substantial part, takes place within its territory;

(b) the status of persons, or interests in things, present within its territory;

(c) conduct outside its territory that has or is intended to have substantial effect within its territory;

(2) the activities, interests, status, or relations of its nationals outside as well as within its territory; and

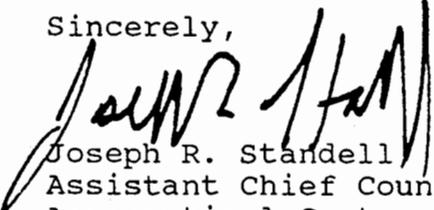
(3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests.

Restatement (Third) of The Foreign Relations Law of The United States § 402 (1986).

From these criteria, FAA concludes that a U.S. nexus is prerequisite to assertion of U.S. jurisdiction. Each of the criteria set out in Section 402 specifically describe situations in which a U.S. nexus, however minimal, is present.

Accordingly, FAA will retain that traditional requirement for a U.S. nexus as prerequisite for recordation under section 503(a)(2) of the 1958 Act.

Sincerely,



Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center