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**Attorney General**  
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Phoenix, Arizona 85007

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BRUCE E. BABBITT  
ATTORNEY GENERAL

September 22, 1975

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**ARIZONA ATTORNEY GENERAL**

Mr. Robert V. Nuss  
Aircraft Registrar  
Aeronautics Division  
Arizona Department of Transportation  
3000 Sky Harbor Blvd.  
Phoenix, Arizona 85034

Dear Mr. Nuss:

This is in response to your request of sometime ago wherein you asked whether a "purchaser" of aircraft is required to satisfy the unpaid registration fees and license taxes of aircraft, for the period before the dates of his "purchase" contracts, where the Department of Transportation, Division of Aeronautics, records its lien with the County Recorder after the dates of the "purchases".

A "purchaser" of aircraft must satisfy or have satisfied the unpaid registration fees and license taxes for the time before the dates of his "purchase" in order that he may obtain, upon payment of the appropriate amount for the current registration fees and current license taxes, a current certificate of registration from the dates of his "purchases". This opinion assumes that the aircraft is required to be registered pursuant to A. R. S. Section 28-1761 (A) and that it is not, pursuant to Arizona Constitution Article 9, Section 15, subject to ad valorem taxes, e. g., Title 42, Arizona Revised Statutes. See A. R. S. Sections 42-136 and 42-701, et seq.

A. R. S. Section 28-1761 (C) provides that no aircraft, for which a license tax is due under A. R. S. Section 28-1765, shall be registered unless the license tax is paid. A. R. S. Section 28-1761 (E) provides that upon payment of the \$5.00 registration fee and license tax (plus interest and penalty if applicable), the Division of Aeronautics shall issue a registration certificate and a license decal. This license decal is required to be displayed on the aircraft at all times and in a manner prescribed by the Division of Aeronautics. The Instructions on the License Tax Decal read:

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Clean surface and apply Decal on the RIGHT HAND SIDE OF THE VERTICAL STABILIZER ABOVE THE HORIZONTAL STABILIZER. In the case of the BEECHCRAFT BONANZA or aircraft of similar type of construction or for aircraft with high stabilizer (AERO-COMMANDER, TWIN BONANZA, etc.) DISPLAY DECAL ON RIGHT HAND SIDE IMMEDIATELY BELOW horizontal stabilizer on fuselage.

The instructions on the Certificate of Registration read:

Card shall at all times be carried in plain sight within the pilot's compartment of the aircraft for which issued.

The fact that the Division of Aeronautics may record its notice of an unpaid registration fee and license tax after the date of a "purchase" does not necessarily make its notice subordinate to such a "purchase". A.R.S. Section 28-1762 (D) provides that a Division's lien is not valid as against a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the time the notice of lien was recorded with the County Recorder. The fact that a person is a mortgagee, pledgee, judgment creditor or purchaser who records before the Division of Aeronautics is not sufficient. Such a person must also be able to be described as "bona fide". A purchaser is given constructive notice of matters as to which the law says he has constructive notice by the recording statutes. See A.R.S. Section 28-1762 (D). A purchaser is also deemed to be put on notice as to what an inspection of the item being "purchased" would reveal.

Despite the federal preemption by 49 U.S.C. Section 1403 and related statutes concerning the registration of conveyances and liens affecting title to aircraft, Lockheed v. G.A.C. Finance Corporation of Camelback, 6 Ariz. App. 539, 434 P 2d 655 (1967), held that state law determined the validity of title documents and matters affecting notice and the question of whether a person was a bona fide purchaser. Lockheed further held that an aircraft seller's lack of possession places the "purchaser" on notice that a third party might have a prior right to the aircraft.

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A "purchaser" of an aircraft on which the registration fees and license taxes have not been paid would be given notice of this delinquency by the absence of a current certificate of registration being displayed on the pilot's compartment and also by the absence of a current license decal being displayed on the outside of the plane. A "purchaser" is not a "bona fide" purchaser when an examination of the subject matter of the sale itself would reveal the outstanding liabilities due the Division of Aeronautics.

A person who fails to exercise due diligence in order to avail himself of information that is within his reach is not a "bona fide" purchaser. McEwen v. Peterson, 102 Ariz. 209, 427 P.2d 527 (1967). Such a person has purchased with notice, McEwen, supra. See, also, Tucson Federal Savings & Loan Association v. Sundell, 106 Ariz. 137, 472 P.2d 6 (1970). The absence of a current license decal displayed on the outside of the plane and the absence of a current certificate of registration in the pilot's compartment of the plane put the "purchaser" on notice that the current license tax and registration fee for 1974 may not have been paid. The "purchaser" should have inquired of the Aeronautics Division as to whether the plane's license tax was paid and as to whether the plane was currently registered for 1974. (One of the two purchases is dated January, 1974. The other "purchase" bears a date in January, 1975. As to the latter, the same inquiry should have been made.) The license tax is an in rem liability of the plane. By virtue of the Arizona Constitution, Article 9, Section 15, the license tax is imposed on the plane instead of the traditional ad valorem taxes, e.g., Title 42, A.R.S. See A.R.S. Sections 42-136 and 42-701, et seq. In addition, A.R.S. Section 28-1764 provides that no aircraft for which a registration certificate is required may be purchased, sold, or otherwise transferred without the assignment of the registration certificate. See, also, A.R.S. Section 28-176 (G) which requires an aircraft dealer to have the purchaser, at the time of the purchase, prepare and sign an application for registration (which is required to be immediately forwarded to the Aeronautics Division.) See, also, A.R.S. Sections 28-1762 (A), 1771 and 1772 (B). The "purchase" in January, 1975 is no different as to the notice and duty to inquire of the Aeronautics Division than the "purchase" in December, 1974. A.R.S. Section 28-1761 requires that an aircraft's registration shall be renewed annually for the calendar year before the last day of February (with exceptions not applicable here

and not claimed to be applicable by the "purchaser"). In the absence of a current registration certificate, a person purchasing an airplane in January of a calendar year would be expected to inquire of his "seller" as to the existence of the last prior calendar year's registration certificate.

A person cannot rely on the record title and disregard the rights of a person in possession. Such a person must inquire of the possessor as to the nature of the possessor's occupancy. A failure to inquire is the failure of the care of a reasonable prudent purchaser. Such a neglect would prevent the purchaser from acquiring the rights of a "bona fide" purchaser. The possessor's occupancy amounts to constructive notice. Whitehead v. Foxhill, 13 Alaska 726, 105 F.Supp. 966 (1952). See, also, Fikes v. First Federal Savings & Loan Association of Anchorage, Alaska, 533 P.2d 251 at 258 to 260 (1975). In this case the absence of a current certificate of registration and license decal required the "purchaser" to make inquiry of the Aeronautics Division. Especially is this so where a sale purchase or any other transfer cannot be made without the assignment of the registration certificate. A.R.S. Section 28-1764.

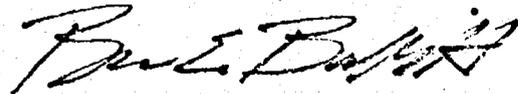
The "purchaser" of the aircraft, which are the subject of this opinion, was or should have been aware of the registration and license tax provisions. He previously had other aircraft registered and the license tax paid during the years 1971 through 1974 both in his individual capacity and on behalf of corporations of which he has been an officer. The principle set forth in this opinion, that a "purchaser" is deemed to have notice of the lack of a current registration and the lack of a current payment of the license tax by the fact that neither the current registration certificate nor a current license tax decal is displayed on the plane, is without doubt applicable to a person who is knowledgeable in such matters.

The registration fee and license tax is also a personal obligation to the extent that a person had or has an interest in the aircraft. However, the registration fee and license tax is also an in rem obligation that runs with and attaches to the aircraft. The registration fee and license tax is a substitute for the usual ad valorem taxes, e. g., Title 42, A.R.S. by virtue of Ariz. Const., Art. 9, Section 15. Furthermore, A.R.S. Section 28-1762 (D) states that the license tax and registration fee shall constitute a lien on the aircraft on

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which they are due from the due date. (The priority provisions of A. R. S. Section 28-1762 (D) are concerned with innocent third parties.) A. R. S. Section 28-1763 authorizes the sheriff to collect the registration fee and license tax by the seizure and the sale of the aircraft. A. R. S. Section 28-1765(A) provides that the license tax is imposed on all aircraft based in this state subject to registration. It further provides that the license tax shall be determined and assessed on the basis of 1% of the fair market value of the aircraft.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce E. Babbitt".

BRUCE E. BABBITT  
Attorney General

BEB:RB:lv