



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

*Opinion file  
Ted  
Wright*

BRUCE E. BABBITT  
ATTORNEY GENERAL

November 29, 1977

Mr. Edward L. Gilliam  
Department of Aeronautics  
3000 Sky Harbor Boulevard  
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Re: 77-222 (R76-204)

Dear Mr. Gilliam:

You have asked for an opinion from this office concerning two questions related to the registration and taxation of aircraft vis a vis Indian reservations.

The first question you have asked is whether an aircraft which is based upon and operated solely to and from an Indian reservation within Arizona subject to state registration and lieu tax. Aircraft which are owned and operated by an Indian or an Indian entity wholly within the exterior boundaries of an Indian reservation are exempt from both the state registration requirements and the aircraft in lieu tax. Where the Indian owner wishes to use the aircraft beyond the exterior boundaries of the Indian reservation, it must be registered and the nominal, nondiscriminatory registration fee must be paid, although the basing of the aircraft upon an Indian reservation by the Indian owner will still result in exemption from the aircraft lieu tax. See, e.g. Moe v. The Confederated Salish and Kootenai Tribes of the Flathead Reservation, 425 U.S. 463, 96 S.Ct. 1634, 1639 (1976).

It is important to point out, however, that the lieu tax exemption applies only to aircraft that were owned and operated on a reservation by reservation Indians or reservation Indian enterprises. The question of the taxability of aircraft owned by non-Indians or non-Indian entities and which are based within the State of Arizona, either on or off an Indian reservation, is a separate one. Such aircraft are not exempt from registration or aircraft in lieu taxation unless specifically exempted under A.R.S. § 28-1761. Silas Mason Co. v. Tax Commission of Washington, 302 U.S. 186 (1937); Porter v. Hall, 34 Ariz. 308, 271 P.411 (1928), Cf., Ariz. Atty.Gen. Op. 69-11.

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This brings us to the second part of your question, which is:

Does an aircraft leased without a pilot, fuel or oil to the United States government qualify for exemption from State aircraft registration requirements?

Your question, moreover, involves two specific commercial businesses which, it is presumed, are both non-Indian entities. Although the aircraft in question were originally asserted by the businesses to have been based in Scottsdale, Arizona, those businesses now inform you that it is their position that, since the aircraft in question were under exclusive contract to the United States government and were operated solely to and from ". . . a federal enclave (Indian reservation) . . .", they were not within the jurisdiction of Arizona and were therefore exempt from registration and aircraft in lieu taxes.

For the following reasons, it is the opinion of this office that the aircraft are not entitled to exemption from either the registration or taxation requirements of A.R.S. §§ 28-1761 et seq.

To begin with, the mere fact that property may be based within or present upon an Indian reservation does not establish its exemption from the operation of state law. On the contrary, the U.S. Supreme Court, as well as inferior courts, have long recognized that the states retain the power to exert their sovereignty over non-Indians who undertake activities upon Indian reservations except to the extent that Congress has specifically declared that such an exertion of sovereignty would threaten or frustrate a recognized federal policy or objective. See, e.g., Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation, 392 F.Supp. 1297, 1310 (D.Mont. 1975), Aff'd. 425 U.S. 463, 96 S.Ct. 1634 (1976); Thomas v. Gay, 169 U.S. 264 (1898); Agua Caliente Band of Mission Indians v. County of Riverside, 306 F.Supp. 279 (D.Cal. 1969), Aff'd. 442 F.2d 1184 (9th Cir. 1971), cert. denied 405 U.S. 933 (1972); Kahn v. Arizona State Tax Commission, 16 Ariz. App. 17, 490 P.2d 846 (1971), appeal dismissed 411 U.S. 941 (1973).

Furthermore, the fact that a part of the State of Arizona may be occupied by an Indian reservation does not withdraw such area from the sovereignty of the State of Arizona, and its laws have the same force and effect within the reservation as without it save that they can have only restricted application to

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Indians and Indian enterprises. Silas Mason Co. v. Tax Commission of Washington, supra; Surplus Trading Co. v. Cook, U.S. 647 (1930); Porter v. Hall, supra.

The next question, however, is whether A.R.S. § 28-1761(B) provides an exemption. That statute states:

Aircraft owned and operated exclusively in the public service by the federal government, by the state or by any political subdivision thereof, or by the civil air patrol, or owned and held by a bona fide aircraft dealer solely for the purposes of sale shall be registered, but no tax or registration fee shall be paid on such aircraft.

The fact that the aircraft in question were leased to the federal government might be argued as creating the equivalent of an "ownership" interest in the aircraft by the United States Government, thus entitling the aircraft to an exemption.

The Arizona Supreme Court has, on several occasions, defined the terms "owned" and/or "ownership". For purposes of this opinion, the decision in City of Phoenix v. State of Arizona, 60 Ariz. 369, 137 P.2d 783 (1943) is informative. The court stated, 60 Ariz. at 377:

. . . 'owner' has no technical meaning, but its definition will contract or expand according to the subject matter to which it is applied. As used in statutes it is given the widest variety of construction, usually guided in some measure by the object sought to be accomplished in the particular instance.

Insofar as A.R.S. § 28-1761(B) is concerned, the objective sought to be accomplished therein is to provide for an exemption from taxation, but only upon the stated grounds. In this regard, it must be remembered that not only will a tax exemption exist only where it is specifically created by the Legislature, but also that statutes creating exemptions from taxation must be strictly and narrowly construed in favor of the application of the tax and against allowance of the exemption. See, e.g., Tucson Transit Authority, Inc. v. Nelson, 107 Ariz. 246, 485 P.2d 816 (1971); Geitz v. Webster, 46 Ariz. 261, 50 P.2d 573 (1935); Meredith Corporation v. State Tax Commission, 23 Ariz. App. 152, 531 P.2d 197 (1975); New Cornelia Cooperative Mercantile Co. v. Arizona State Tax Commission, 23 Ariz. App. 324, 533 P.2d 84 (1975).

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In the present case, the non-Indian lessors of the aircraft rather than the United States Government as lessee, hold title to the airplanes. Given the rule of strict interpretation of tax exemption statutes as articulated in the above cited cases, it is apparent that the legislature never intended to grant the exemption here in question to aircraft leased to and operated by the federal government. To extend the exemption to such aircraft would violate the general rule that statutes granting exemptions are to be strictly construed.

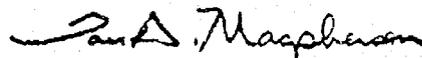
Moreover, since your opinion request makes it clear that a non-Indian entity is the owner of the aircraft in question, the conclusions reached herein are unaffected by the Arizona Supreme Court decision in Francisco v. State of Arizona, 113 Ariz. 427, 556 P.2d 1 (1976).

The lessee herein is not the "owner" as contemplated under A.R.S. § 28-1761(B); the lessors, therefore, cannot claim the exemption. Thus, it is the opinion of this office that the subject aircraft must be registered and the aircraft taxes paid.

Please advise if you require additional information.

Very truly yours,

BRUCE E. BABBITT  
Attorney General



IAN A. MACPHERSON  
Assistant Attorney General

IAM:jrs