

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 920083

SHORT BROTHERS (USA), INC.,

Appellant,

v.

ARLINGTON COUNTY,

Appellee.

JOINT APPENDIX

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**APPLICATION FOR CORRECTION OF
ERRONEOUS ASSESSMENTS OF BUSINESS LICENSE TAXES**

Short Brothers (USA), Inc. ("Shorts (USA)"), by counsel, states the following in support of its Application:

Nature of Case

1. This is an Application to correct the assessment of business license taxes by Arlington County for the years 1985 and 1986. Shorts (USA) is a wholly owned subsidiary of Short Brothers Limited ("Shorts (Belfast)"). Shorts (Belfast) manufactures and sells aircraft. Shorts (USA) represents its parent in the United States. Arlington County has asserted the right to tax Shorts (USA) with respect to sales and leases of aircraft manufactured by Shorts (Belfast) notwithstanding that those transactions are closed outside Virginia, the aircraft are delivered outside Virginia and never come into Virginia. It is the position of Shorts (USA) that such assessments are contrary to Virginia law and the United States Constitution which prohibits taxation by Virginia or its localities of business done by Shorts (USA) in other states. By this Application, Shorts (USA) seeks (i) correction of the County's erroneous assessments, (ii) a refund of the erroneously assessed license taxes to the extent paid to the County, (iii) exoneration from the payment of erroneously assessed license taxes that have not yet been paid to the County, and (iv) an order restraining the County from collecting all erroneously assessed and unpaid license taxes.

Jurisdiction

2. This Court has jurisdiction of this case pursuant to §§ 58.1-3984, 58.1-3987, and 58.1-3988 of the Code of Virginia

(1950), as amended (the "Virginia Code").

Venue

3. Venue is proper in this Court under Virginia Code § 58.1-3984 because the assessments complained of were made by and in Arlington County.

Parties

4. Applicant is Short Brothers (USA), Inc.

5. Defendant is Arlington County, which assessed the business license taxes contested by this Application.

General Allegations

6. Shorts (USA) is a wholly owned subsidiary of Shorts (Belfast), an English public limited company.

7. Shorts (Belfast) designs and manufactures commuter aircraft in Northern Ireland. Some of those aircraft are sold or leased to regional airline operators in the United States.

8. Under the terms of a representation agreement with its parent, Shorts (USA) demonstrates Shorts aircraft to regional airlines which are prospective purchasers, provides technical services to operators of Shorts aircraft, and owns and leases aircraft.

9. Shorts (USA) sells some aircraft directly to customers.

10. To facilitate the sale of Shorts aircraft, Shorts (USA) also enters into long-term lease transactions which are the economic equivalent of a sale. These transactions involve the sale of the aircraft to a third party lessor that leases the aircraft on a long-term basis back to Shorts (USA) which, in turn, leases the aircraft for a similar term to the airline operator.

11. The primary purpose for these lease transactions is to facilitate sales of Shorts aircraft.

12. In addition to its income from the sale of aircraft, Shorts (USA) also receives miscellaneous income relating to its aircraft sales. This income derives primarily from the sale of spare parts to airline customers and providing flight instruction to customers' pilots.

13. Spare parts are delivered directly to customers from Shorts (Belfast) and are not stored or held in Virginia prior to sale or delivery.

14. Training services are provided outside Virginia by subcontractors located outside Virginia.

15. For the years in issue in this case, Shorts sold or leased aircraft to over twelve airline operators throughout the United States. Only one of those airlines was located in Virginia.

16. Except for sales or leases to its one Virginia airline customer, during the years in issue only one airplane involved in a sale or sale lease back transaction was located in Virginia prior to the transaction. In every other instance, the gross receipts treated as taxable by Arlington County grew out of sales or leases by Shorts (USA) in which (a) the customer was located outside Virginia and (b) the aircraft was never located in Virginia at any time, either before or after the sale.

17. On December 20, 1986, Arlington County assessed Shorts (USA) with additional business license taxes in the following amounts (the "Assessments"):

<u>License Year</u>	<u>Tax</u>
1985	\$11,918.52
1986	16,759.25

18. The Assessments were based on taxing Shorts (USA) as being engaged in a "specialized occupation."

19. Shorts is a wholesale merchant.

20. On February 9, 1987, Shorts (USA) filed a protest with the Arlington County Commissioner of the Revenue protesting the Assessments.

21. For almost two years, Shorts (USA), through its counsel, remained in regular communication with the Commissioner of the Revenue's office, providing additional information as requested and seeking a resolution to this dispute.

22. Counsel for Shorts (USA) was advised by telephone on the day this suit was filed that a favorable resolution of this dispute was not possible. Shorts (USA) has never received a formal reply from the County to its administrative appeal.

23. Shorts (USA) has exhausted its administrative remedies.

24. The Assessments complained of in this case were not due to the willful failure or refusal of Shorts (USA) to furnish Arlington County with any necessary information required by law.

25. The Assessments are erroneous, illegal and invalid for the following reasons:

(a) The business of Shorts (USA) was erroneously classified as a "specialized occupation."

(b) The Assessments are erroneously based on taxing receipts or purchases by Shorts (USA) from Shorts (Belfast).

(c) The Assessments violate Virginia Code § 58.1-3703B(10).

(d) The Assessments tax receipts earned by Shorts (USA) from business conducted outside Virginia and violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

(e) The tax represented by the Assessments is not fairly apportioned to the activities of Shorts (USA) in Virginia, in violation of the Due Process Clause of the Fourteenth Amendment and the Commerce Clause, Article I, section 8 of the United States Constitution.

(f) The Assessments discriminate against interstate commerce in violation of the Commerce Clause, Article I, section 8, of the United States Constitution.

WHEREFORE, Shorts prays for the following relief:

(a) An Order declaring that the Assessments are erroneous to the extent based on receipts or purchases related to the sale or lease of aircraft or aircraft parts or the provision of services outside Virginia.

(b) An Order declaring that the Assessments are erroneous to the extent that any taxable receipts or purchases by Shorts (USA) are not taxed at the rate applicable to wholesale merchants.

(c) An Order declaring that the Assessments are erroneous to the extent based on receipts or purchases from Shorts (Belfast).

(d) An Order pursuant to Virginia Code § 58.1-3987 directing the appropriate Arlington County official to refund to Shorts (USA) any part of the Assessments, including penalties and interest, that is declared to be erroneous by this Court and has been previously paid to the County by Shorts (USA).

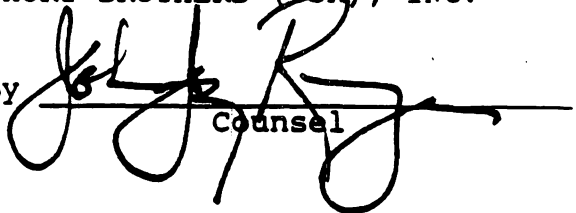
(e) An Order restraining the Arlington County Treasurer and other County officials from collecting any part of the Assessments with respect to the sale or lease of aircraft or other goods or services made to customers outside Virginia and

which do not come into Virginia before delivery or provision to the customer.

(f) An Order granting Shorts (USA) such further relief as may seem just and proper.

SHORT BROTHERS (USA), INC.

By


Counsel

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ANSWER

Defendant, by counsel, has filed a Plea in Bar to so much of this Application that seeks correction of 1985 assessed business license taxes and declines to answer any allegations regarding 1985 business license taxes until the Plea in Bar is decided. Defendant answers the Application for Correction of Erroneous Assessments of Business License Taxes in so far as applies to 1986 taxes by reference to its numbered paragraphs as follows:

Nature of Case

1. Defendant admits this suit is an Application for Correction of 1986 assessed business license taxes and further admits Arlington County through the Commissioner of the Revenue asserts the right to tax applicant on its business gross receipts. Defendant lacks sufficient knowledge to admit or deny that Shorts (USA) is a wholly owned subsidiary of Short Brothers Limited, the nature of Shorts (Belfast) business, the representative capacity of Shorts (USA), the sit of transaction, and the sit of aircraft. The remaining allegations in paragraph 1 are conclusions of law which Defendant is not required to answer.

Jurisdiction

2. Defendant admits this Court has jurisdiction of the application insofar as it seeks correction of 1986 business license tax assessments.

Venue

3. Defendant admits paragraph 3.

Parties

4. Defendant admits paragraph 4.

5. Defendant admits that Arlington County is the Party defendant in suits seeking correction of assessments made by the

Arlington County Commissioner of the Revenue.

General Allegations

6. Defendant admits paragraph 6.

7. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 7.

8. Defendant admits applicant engages in various business activities but lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 8.

9. Defendant admits the allegations in paragraph 9.

10. Defendant admits that applicant engages in the leasing of aircraft but is without sufficient knowledge to admit or deny the remaining allegations in paragraph 10.

11. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 11.

12. Defendant admits applicant receives income from various business activities but is without sufficient knowledge to admit or deny the remaining allegations in paragraph 12.

13. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 13.

14. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 14.

15. Defendant admits applicant sold and leased aircraft to various persons in calendar year 1985, which year's gross receipts are the basis for 1986 business license tax assessments, but defendant is without sufficient knowledge to admit or deny the remaining allegations in paragraph 15.

16. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 16.

17. Defendant admits the Arlington County Commissioner assessed additional 1986 business license taxes in the amount of

\$16,759.25 on December 20, 1986, but declines to answer the remaining allegations in paragraph 17 until defendant's plea in bar to the Application for Correction of 1985 taxes is decided.

18. Defendant denies the allegation in paragraph 18.

- 19. Defendant admits that Applicant derived some of its 1986 taxable gross receipts from wholesale activities but denies this is the sole source of taxable gross receipts for 1986.

20. Defendant admits paragraph 20.

21. Defendant admits paragraph 21.

22. Defendant admits paragraph 22.

23. Defendant admits paragraph 23.

24. Defendant admits paragraph 24.

25. Defendant denies applicant was classified as a specialized occupation and further denies that receipts or purchases by applicant from Shorts (Belfast) were taxed. The remaining allegations in paragraph 25 are conclusions of law which defendant is not required to answer.

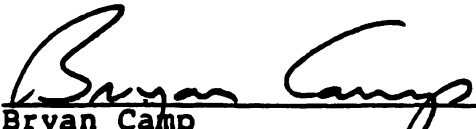
26. Any allegations not specifically admitted, including any allegations in the prayer for relief or elsewhere, are denied.

Accordingly, defendant asks this Court to dismiss this Application with prejudice and for such other relief as is deemed appropriate.

ARLINGTON COUNTY, VIRGINIA

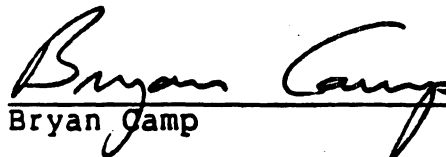
BY COUNSEL

CHARLES G. FLINN
ARLINGTON COUNTY ATTORNEY


Bryan Camp
Assistant County Attorney
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2100 Clarendon Boulevard
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer to Plaintiff's Application for Correction of Erroneous Assessments of License Taxes was mailed, postage prepaid this 24 day of January 1990, to William L.S. Rowe and David S. Lowman, Jr. Hunton & Williams, Post Office Box 1535, Richmond, Virginia 23212 and John Jay Range, Hunton & Williams, 2000 Pennsylvania Avenue, Washington, DC 20006, Counsel for Applicant.


Bryan Camp

**AMENDED APPLICATION FOR CORRECTION OF
ERRONEOUS ASSESSMENT OF BUSINESS LICENSE TAXES**

Short Brothers (USA), Inc., ("Shorts (USA)"), by counsel, states the following in support of its Amended Application:

NATURE OF CASE

1. This is an Amended Application to correct the assessment of business license taxes by Arlington County for the 1986 tax year. Shorts (USA) is a wholly-owned subsidiary of Short Brothers Limited ("Shorts (Belfast)"). Shorts (Belfast) manufactures and sells aircraft. Shorts (USA) represents its parent in the United States. Arlington County has asserted the right to tax Shorts (USA) with respect to sales and leases of aircraft manufactured by Shorts (Belfast) notwithstanding that those transactions are closed outside Virginia, the aircraft are delivered outside Virginia and never come into Virginia. It is the position of Shorts (USA) that such assessment is contrary to Virginia law and the United States Constitution which prohibits taxation by Virginia or its localities of business done by Shorts (USA) in other states. By this Amended Application, Shorts (USA) seeks (i) correction of the County's erroneous assessment, (ii) a refund of the erroneously assessed business license taxes to the extent paid to the County, (iii) exoneration from the payment of erroneously assessed business license taxes that have not yet been paid to the County and (iv) an Order restraining the County from collecting all erroneously assessed and unpaid business license taxes.

JURISDICTION

2. This Court has jurisdiction of this case pursuant to §§ 58.1-3984, 58.1-3987, and 58.1-3988 of the Code of Virginia (1950), as amended (the "Virginia Code").

VENUE

3. Venue is proper in this Court under Virginia Code § 58.1-3984 because the assessment complained of was made by and in Arlington County.

PARTIES

4. Applicant is Short Brothers (USA), Inc.

5. Defendant is Arlington County, which assessed the business license taxes contested by this Amended Application.

GENERAL ALLEGATIONS

6. Shorts (USA) is a wholly-owned subsidiary of Shorts (Belfast), an English public limited company.

7. Shorts (Belfast) designs and manufactures commuter aircraft in Northern Ireland. Some of those aircraft are sold or leased to regional airline operators in the United States.

8. Under the terms of the representation agreement with its parent, Shorts (USA) demonstrates Shorts aircraft to regional airlines which are perspective purchasers, provides technical services to operators of Shorts aircraft, and owns and leases aircraft.

9. Shorts (USA) sells some aircraft directly to customers.

10. To facilitate the sale of Shorts aircraft, Shorts (USA) also enters into long-term lease transactions which are the economic equivalent of a sale. These transactions involve the sale of the aircraft to a third-party lessor that leases the aircraft on a long-term basis back to Shorts (USA) which, in turn, leases the aircraft for a similar term to the airline operator.

11. The primary purpose for these lease transactions is to facilitate the sales of Shorts aircraft.

12. In addition, Shorts (USA) receives certain

miscellaneous income, primarily from the sale or lease of spare parts to airline customers and from aircraft repairs. Spare parts are delivered directly to customers from locations outside Virginia and are not stored or held in Virginia prior to sale or delivery. Further, no purchaser of spare parts was located in Virginia. Aircraft repairs are performed by out-of-state independent contractors while the aircraft are located outside Virginia. Shorts (USA) essentially acts as an agent for the independent contractors to collect the cost of repairs from the airlines.

13. For the tax year at issue in this case, Shorts sold or leased aircraft to more than six commercial airline operators throughout the United States. None of these airlines was located in Virginia.

14. In all instances, the gross receipts treated as taxable by Arlington County grew out of sales or leases by Shorts (USA) in which (a) the customer was located outside Virginia and (b) the aircraft were never located in Virginia at any time, either before or after the sale or lease.

15. On December 20, 1986, Arlington County assessed Shorts (USA) with additional business license taxes for the 1986 tax year in the total amount of \$26,401.19 (the "Assessment"). The County has also sought penalties and interest.

15. The Assessment was based on taxing Shorts (USA) in part as being engaged in a "specialized occupation".

16. Shorts (USA) is a wholesale merchant.

17. On February 9, 1987, Shorts (USA) filed a protest with the Arlington County Commissioner of the Revenue protesting the Assessment.

18. For almost two years, Shorts (USA), through its counsel, remained in regular communication with the Commissioner of the Revenue's Office, providing additional information as requested and seeking a resolution to this dispute.

19. Counsel for Shorts (USA) was advised by telephone on the day this suit was filed that a favorable resolution of this dispute was not possible. Shorts (USA) has never received a formal reply from the County to its administrative appeal.

20. Shorts (USA) has exhausted its administrative remedies.

21. The Assessment complained of in this case was not due to the willful failure or refusal of Shorts (USA) to furnish Arlington County with any necessary information required by law.

22. The Assessment is erroneous, illegal and invalid for the following reasons:

(a) The business of Shorts (USA) was erroneously classified as a "specialized occupation."

(b) The Assessment is erroneously based on taxing receipts or purchases by Shorts (USA) from Shorts (Belfast).

(c) The Assessment violates Virginia Code Section 58.1-3703B(10).

(d) The Assessment taxes receipts earned by Shorts (USA) from business conducted outside Virginia and violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

(e) The tax represented by the Assessment is not fairly apportioned to the activities of Shorts (USA) in Virginia, in violation of the Due Process Clause of the Fourteenth Amendment and the Commerce Clause, Article 1, section 8 of the United States Constitution.

(f) The Assessment discriminates against interstate commerce in violation of the Commerce Clause, Article 1, section 8 of the United States Constitution.

WHEREFORE, Shorts (USA) prays for the following relief:

(a) An Order declaring that the Assessment is erroneous to the extent based on receipts or purchases related to the sale or lease of aircraft or aircraft parts or the provision of services outside Virginia.

(b) An Order declaring that the Assessment is erroneous to the extent that any taxable receipts or purchases by Shorts (USA) are not taxed at the rate applicable to wholesale merchants.

(c) An Order declaring that the Assessment is erroneous to the extent based on receipts or purchases from Shorts (Belfast).

(d) An Order pursuant to Virginia Code Section 58.1-3987 directing the appropriate Arlington County Official to refund to Shorts (USA) any part of the Assessment, including penalties and interests, that is declared to be erroneous by this Court and has been previously paid to the County by Shorts (USA).

(e) An Order restraining the Arlington County Treasurer and other County officials from collecting any part of the Assessment with respect to the sale or lease of aircraft or other goods or services made to customers outside Virginia and which do not come into Virginia before delivery or provision to the customer.

(f) An Order granting Shorts (USA) such further relief as may seem just and proper.

SHORT BROTHERS (USA), INC.

By:


(counsel)

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Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 1990, I hand-delivered a copy of the foregoing **AMENDED APPLICATION FOR CORRECTION OF ERRONEOUS ASSESSMENT OF BUSINESS LICENSE TAXES** to Bryan T. Camp, Esq., Assistant County Attorney, Arlington County, #1 Courthouse Plaza, Suite 403, 2100 Clarendon Boulevard, Arlington, Virginia 22201.


John Jay Range

ANSWER

Defendant, Arlington County, Virginia, by Counsel answers the Amended Application for Correction of Erroneous Assessment of Business License Taxes by reference to its numbered paragraphs as follows:

1. Defendant admits this suit is an Application for Correction of 1986 assessed business license taxes and further admits Arlington County through the Commissioner of the Revenue asserts the right to tax applicant on its gross receipts from engaging in business. Defendant lacks sufficient knowledge to admit or deny that Shorts (USA) is a wholly owned subsidiary of Short Brothers Limited, the nature of Shorts (Belfast) business, the representative capacity of Shorts (USA), the site of transactions, and the site of aircraft. The remaining allegations in paragraph 1 are conclusions of law which Defendant is not required to answer, but if any answer is required, they are denied.

2. Defendant admits this Court has jurisdiction of this amended application insofar as it seeks correction of the 1986 business license tax assessments under §11-59 of the Arlington County Code for the business service occupation of leasing aircraft which tax is in the amount of \$16,759.25 plus penalty and interest. Defendant hereby preserves its objection to the ruling on the plea in bar and denies this court has jurisdiction of any other tax assessments alleged in this case.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. It is admitted that Arlington County is the party defendant in suits seeking correction of assessments made by the Arlington County Commissioner of the Revenue.

6. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 6 and therefore denies them.

7. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 7 and therefore denies them.

8. Defendant admits applicant engages in various business activities but lacks sufficient knowledge to admit or deny the allegations in paragraph 8. The terms of the agreement speak for themselves and require no answer.

9. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 9 and therefore denies them.

10. Defendant admits applicant engages in the leasing of aircraft but is without sufficient knowledge to admit or deny the remaining allegations in paragraph 10 and therefore denies them.

11. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 11 and therefore denies them.

12. Defendant admits applicant receives income from various business activities but is without sufficient knowledge to admit or deny the remaining allegations in paragraph 12 and therefore denies them.

13. Defendant admits applicant leased aircraft to various persons in calendar year 1985, which year's gross receipts are the basis for 1986 business license tax assessments, but defendant is without sufficient knowledge to admit or deny the remaining allegations in paragraph 13 and therefore denies them.

14. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph 14.

15. Defendant admits the Arlington County Commissioner assessed additional 1986 business license taxes in the amount of \$16,759.25 for Arlington Code §11-59 business service activities

and in the amount of \$9,641.94 for Arlington Code §11-62 sales activities plus penalties and interest on both on December 20, 1986, but preserves its objection to the court's jurisdiction to correct the §11-62 tax assessment as it was not challenged within the statute of limitations provided by §58.1-3984 as it was in effect at the time of the 1986 assessments. Defendant denies the allegation in the second paragraph numbered "15."

16. Defendant admits that Applicant derived some of its 1986 taxable gross receipts from wholesale activities but denies this is the sole source of taxable gross receipts for 1986.

17. Defendant admits paragraph 17.

18. Defendant admits paragraph 18.

19. Defendant admits paragraph 19.

20. Defendant admits paragraph 20.

21. Defendant denies paragraph 21.

22. Defendant denies applicant was classified as a specialized occupation and further denies that receipts or purchases by applicant from Shorts (Belfast) were taxed. The remaining allegations in paragraph 22 are conclusions of law which defendant is not required to answer, but if any answer is required, they are denied.

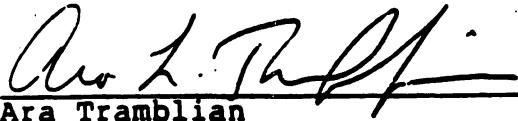
23. Any other allegations whether in the prayer for relief or elsewhere which are not specifically admitted, are denied.

Accordingly, defendant asks this Court to dismiss this Amended Application with prejudice and for such other relief as is deemed appropriate.

ARLINGTON COUNTY, VIRGINIA



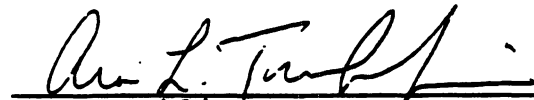
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer to Plaintiff's Amended Application for Correction of Erroneous Assessments of License Taxes was mailed, postage prepaid this 21 day of December, 1990, to William L.S. Rowe and David S. Lowman, Jr. Hunton & Williams, Post Office Box 1535, Richmond, Virginia 23212 and John Jay Range, Hunton & Williams, 2000 Pennsylvania Avenue, Washington, DC 20006, counsel for applicant.


Ara Tramblian

M E M O R A N D U M

**TO: John Jay Range, Esquire
Michael P. McQuillen, Esquire
Counsel for Plaintiffs**

**Ara L. Tramblian, Esquire
Counsel for Defendant**

Statement of Facts

SHORT BROTHERS (USA), INC. ("Short Brothers") challenges the business license tax assessment by the Arlington County Commissioner of Revenue for the 1986 tax year. "Short Brothers" is a Massachusetts corporation and a wholly owned subsidiary of "Short Brothers" (Belfast). "Short Brothers" (Belfast) designs and manufactures commuter airplanes in Northern Ireland. "Short Brothers" represents its parent company by marketing its aircraft in the United States for sale or lease. In the calendar year 1985, "Short Brothers" had two offices, one in California and one in Virginia. The California office was phased out in the early part of 1985.

Both parties agree that the 1986 tax assessment against "Short Brothers" was "in the amount of \$16,759.25 under the business service occupation tax category of the Arlington County License Code" (Stipulation of Fact). The county based its assessment on "Short Brothers'" 1985 gross receipts from the sale and lease of airplanes and aircraft parts outside the Commonwealth of Virginia, an amount totalling \$4,795,499. The County also assessed "Short Brothers" a business license tax in the amount of \$9,641.94 under the wholesale merchant tax category. This figure was based on "Short Brothers'" 1985 gross receipts from the sale of aircraft, \$12,052,424.

For the calendar year 1985 "Short Brothers" allocated one hundred percent (100%) of its 1985 gross receipts to the Arlington, Virginia office. Although all of the sales and leases of aircraft in 1985 were made outside of the Commonwealth of Virginia, Oakley Brooks, President of "Short Brothers (USA), Inc." admitted that Arlington County was the base of operations for all of 'Short Brothers'' lease activity for 1985. In 1985, "Short Brothers'" salesmen were based in Arlington and they contacted customers from Arlington. All of their lease transactions were approved in Arlington, lease documents were generated in Arlington, executed leases were kept in Arlington, and payments on the leases were received in Arlington. Brooks also testified that advertising was generated from Arlington and the advertising directed potential customers to contact the Arlington office. He also admitted that any painting or repair of aircraft was initiated by the Arlington office along with the sale of parts. Furthermore, in reference to the sale of airplanes, documentation was sent to Arlington for review, negotiation was done from Arlington and sale proceeds were sent to the Arlington office.

"Short Brothers" does not dispute the gross receipt amounts or the tax categories applied. However, "Short Brothers" does argue that the tax assessment on out-of-state gross receipts from the sales and leases of aircraft impermissibly burdens interstate commerce in violation of the Commerce and Due Process Clauses of the United States Constitution.

Discussion

"Short Brothers" alleges that the Arlington tax assessment in question was a tax on out-of-state sales and leases and therefore, unduly burdens interstate commerce and violates due process.

However, "Short Brothers" mischaracterizes the tax assessment. The Arlington Ordinances §11-3, and §11-4 provide that an annual license tax shall be levied on persons conducting or engaged in business in Arlington; the tax is imposed upon the privilege of doing business in Arlington. The authority for levying such a "business privilege tax" comes from the Virginia Code §58.1-3703 and 3708. Gross receipts, under Arlington County Code §11-3, are the basis for determining the license tax. This is not a tax on gross receipts, gross receipts are merely the measure.

"Short Brothers" argued at great length in its trial memorandum and at trial that its sales and leases where delivery of the aircraft occurred outside Virginia, i.e. all of its sales and leases for 1985, could not be taxed under §11-3 of the County Code because of the Attorney General's December 14, 1990 Letter Opinion. In that case, a computer company maintained an office in Chesapeake. Salesmen solicited sales from that office but the manufacturing plant, located outside Virginia, delivered the goods. In that opinion, the Attorney General did not state that the place of destination of the goods is the situs of the tax, she did state, however;

Whether only the sales destined for Chesapeake or the sales destined for all of Virginia may form the basis for the tax depends on whether the company has a definite place of business in another Virginia locality with a sufficient nexus to impose the tax on sales destined for that locality.

As applied to "Short Brothers", that opinion indicates that a locality may tax if it has a sufficient nexus to impose the tax on sales with destinations outside the locality. As this memorandum will provide, Arlington does have a sufficient nexus to impose the tax on all "Short Brothers'" gross receipts for 1985.

Furthermore, in the Attorney General's Letter Opinion of

September 11, 1985, the Attorney General stated that the city of Falls Church could tax all of the gross receipts of an organization when its only office was in the city and it had no "tax situs elsewhere". This memorandum will also point out that in 1985, "Short Brothers" had no tax situs other than Arlington.

The Supreme Court cases relied upon primarily by the plaintiff to support its position pre-date the preeminent case authority on business privilege tax, as it relates to interstate commerce, Complete Auto Transit v. Brady, 430 U.S. 274, 97 S.Ct. 1076, reh'g. denied, 97 S.Ct. 1669 (1977), which upheld a Mississippi tax on the privilege of doing business in the state. The Court rejected the rule that a state tax on the privilege of doing business was, per se, unconstitutional when applied to interstate commerce. The Court devised a four part test for analyzing a tax in reference to the Commerce Clause. The Court found that a business privilege tax does not violate the Commerce Clause when it is applied to interstate activity when there is a substantial nexus with the taxing State, it is fairly apportioned, it does not discriminate against interstate commerce, and is fairly related to the services provided by the State.

This court finds that under the Complete Auto test, there is a sufficient nexus between Arlington County and "Short Brothers". The evidence shows that "Short Brothers" not only operated its principal office in Arlington in 1985, but also availed itself of the substantial privilege of doing business in Arlington, see, Mobile Oil Corp. v. Commissioner of Taxes, 445 U.S. 425, 437, 100 S.Ct. 1223, 1231.

The second element of the Complete Auto test is the requirement that the tax be fairly apportioned to prevent multiple taxation. This Court makes the determination that because

Arlington County Code §11-3(b) provides a tax credit when taxes are paid on the same gross receipts in another jurisdiction in Virginia and because of the Commissioner's practice of excluding from gross receipts amounts reported on tax returns to other states or localities "even if no tax has been paid to other jurisdictions", the tax fulfills the fair apportionment requirement". There is no risk of multiple taxation, (Defendant's Trial Memorandum at 20), see, D. H. Holmes Co., Ltd. v. McNamara, 486 U.S. 24, 31, 108 S.Ct. 1619, 1623 (1988). (Where the Court determined that a state taxing scheme was fairly apportioned because it provided a tax credit for taxes paid in another state).

Under the third requirement of the Complete Auto test, a state tax may not discriminate against interstate commerce, that is, it may not favor "in-state business over out-of-state business for no other reason than the location of its business", American Trucking Association, Inc. v. Scheiner, 483 U.S. 266, 286, 107 S.Ct. 2829, 2841 (1987). This court finds that the Arlington business privileges tax, §11-3, does not favor in-state activity over out-of-state activity. Furthermore, the tax was not applied in a discriminatory manner.

The last element of the Complete Auto test requires that the tax be fairly related to the services provided by the taxing entity. The fact that Arlington provides "a number of services that facilitate" "Short Brothers'" "sale of merchandise", for example, police and fire protection, public roads, and mass transit satisfies this requirement, D. H. Holmes Co., Ltd. v. McNamara, 108 S.Ct. 1619, 1624 (1988). In addition, the evidence shows that "Short Brothers" operated its principal place of business in Arlington in 1985 and indeed conducted much of its business from

that office leading this court to the conclusion that "Short Brothers" gained a substantial benefit from the County in conducting business here. Since the phase out of the California office in 1985, it is fair to say that all of the business of "Short Brothers" in the United States was generated or processed through the Arlington office.

This court determines that the four part test as set forth in Complete Auto is met by Arlington County's business privilege tax as applied to "Short Brothers'" 1986 tax year. By satisfying the four elements of the Complete Auto test the County's tax also fulfills the requirements of the Due Process Clause:

The Complete Auto test, while responsive to Commerce Clause dictates, encompasses as well the Due Process requirement that there be 'a minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the state and the intrastate value of the enterprise,' Trinova Corp. v. Michigan Dept. of Treasury 111 S.Ct. 818, 828 (1991).

Conclusion

It is the ruling of this court that the Arlington County business privilege tax as applied to "Short Brothers" in the 1986 tax year did not impermissibly burden interstate commerce in violation of the Commerce Clause or the Due Process Clause. Therefore, "Short Brothers'" application for correction of erroneous assessments of business license taxes is denied.

Counsel for the County shall prepare an order consistent with this Court's ruling, and after obtaining endorsements with exceptions by counsel noted, submit it to chambers for entry by the Court.

DATE:

October 7, 1991.


WILLIAM L. WINSTON

FINAL ORDER

This matter came before the Court for trial, without a jury, on April 8, 1991, on the Amended Application for Correction of Erroneous Assessment of Business License Taxes, the defendant's Answer, the testimony of A. Oakley Brooks and Ronald J. Griffin, the exhibits, written stipulations of certain facts and other evidence, and the memoranda of the parties.

It appearing to the Court upon consideration of the pleadings, the evidence presented at trial, the submissions and arguments of counsel and the post-trial memoranda that the Amended Application for Correction of Erroneous Assessment of Business License Taxes should be denied for the reasons stated in the Court's Memorandum dated October 7, 1991, it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiff's Amended Application for Correction of Erroneous Assessment of Business License Taxes is denied. It is further

ORDERED that the findings of fact and conclusions of law set forth in the Court's Memorandum dated October 7, 1991 are incorporated into this Final Order and made a part hereof for all purposes. It is further


ORDERED that the clerk of the court mail a copy teste of this Final Order to all counsel of record.

THIS ORDER IS FINAL.

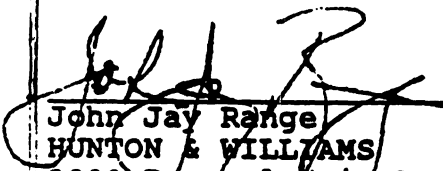
Entered October 10th, 1991.


William L. Winston, Judge

I ask for this:

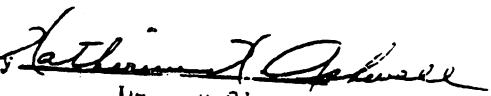

Ara L. Tramblian
Deputy County Attorney
2100 Clarendon Boulevard #403
Arlington, Virginia 22201
Counsel for defendant

Seen and Objected to for the reasons articulated by counsel during argument in open court; for the reasons set out in the pre-trial and post-trial memoranda submitted by counsel; and because of the Court's rulings limiting inquiry into the defendant's administrative policies and procedures for assessing and apportioning business license taxes on out-of-state sales and leases.


John Jay Range
HUNTON & WILLIAMS
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for plaintiff

A COPY,

TESTE: DAVID A. BELL, Clerk

By 
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

- - - - - x
:
SHORT BROTHERS (USA), INC., :
:
Applicant, :
:
vs. : At Law No. 89-1344
:
ARLINGTON COUNTY, :
:
Respondent. :
:
- - - - - x

Arlington, Virginia

Monday, April 8, 1991

The proceedings commenced at 10:10 a.m.

BEFORE:

THE HONORABLE WILLIAM L. WINSTON.

APPEARANCES:

JOHN JAY RANGE, Esq., WILLIAM ROWE, Esq., and
MICHAEL P. MCQUILLEN, Esq., Hunton & Williams,
2000 Pennsylvania Avenue, Northwest,
Washington, D.C. 20036, counsel for the
applicant.

ARA L. TRAMBLIAN, Esq., Deputy County Attorney,
2100 Clarendon Boulevard, Suite 403, Arlington,
Virginia 22201

and

JEAN MARSHALL CRAWFORD, Esq., legal counsel,
Chief Deputy Commissioner of the Revenue, 2100
Clarendon Boulevard, Suite 200, Arlington,
Virginia 22201, counsel for the respondent.

I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS

Arthur Oakley Brooks, Jr.	53	113	143
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Ronald J. Griffin	162	179	
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EXHIBITSPLAINTIFF'S FOR IDENT. IN EVID.

No. 1 (Stipulations of Fact)	52	52
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No. 2 (Representation Agreement)	55	55
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No. 3 (Letter dated 2-9-87)	64	64
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No. 4 (Document)	66	66
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No. 5 (Document)	71	71
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No. 6 (Aircraft Lease Agreement)	76	76
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No. 7 (Document)	88	88
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1		<u>EXHIBITS</u>	(continued)	
2	<u>DEFENDANT'S</u>		<u>FOR IDENT.</u>	<u>IN EVID.</u>
3	No. 1 (Document)		149	149
4	No. 2 (Letter dated 9-22-86)		150	150
5	No. 3 (Income tax return)		151	151
6	No. 4 (Income tax return)		151	151
7	No. 5 (Income tax return)		152	152
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1 P R O C E E D I N G S

2 THE COURT: Let me -- I have had no previous
3 dealings with this case. And I would like to tell you
4 that I'm not familiar with the file. I had no idea
5 that -- who would be trying the case, but -- so we -- I
6 would like for you to understand that in making your
7 presentation.

8 Now, Short Brothers is the applicant or
9 petitioner? It's called applicant under the statute, is
10 it?

11 MR. RANGE: That's correct, Your Honor.

12 THE COURT: All right. And counsel for the
13 applicant are?

14 MR. RANGE: My name is John Jay Range, R-A-N-G-E.

15 THE COURT: R-A --

16 MR. RANGE: N-G-E. As in home, home on the --

17 THE COURT: And it's pronounced range?

18 MR. RANGE: Range.

19 THE COURT: All right.

20 MR. RANGE: To my immediate right is my partner,
21 Mr. William Rowe, R-O-W-E.

22 THE COURT: William Rowe.

23 MR. RANGE: And on the end of the table is my

1 colleague, Mr. Mike McQuillen, M-C-Q-U-I-L-L-E-N.

2 THE COURT: Are you gentlemen all with the same
3 firm?

4 MR. RANGE: Yes, the firm of Hunton & Williams,
5 Your Honor. Your Honor, if I could, I would also like to
6 introduce to the Court Mr. Oakley Brooks in the first row
7 here who is the president of Shorts (USA).

8 THE COURT: Mr. Brooks.

9 MR. RANGE: That's Mr. Brooks.

10 THE COURT: All right.

11 MR. RANGE: Yes, Your Honor. And in back of Mr.
12 Brooks is Mr. Hudack who is a manager with Shorts (USA).

13 THE COURT: All right. Mr. Tramblian, you will
14 be representing the county alone?

15 MR. TRAMBLIAN: Yes, sir.

16 THE COURT: All right.

17 MR. TRAMBLIAN: And, Your Honor, seated with me
18 at counsel table is Jean Crawford from the commissioner of
19 the revenue's office.

20 THE COURT: Yes.

21 All right. Now, have you -- have exhibits been
22 premarked in the case? I take it there will be a number
23 of exhibits.

1 MR. RANGE: Yes, Your Honor. I have all the
2 exhibits. I have not premarked them, no.

3 THE COURT: That's all right. I have sent for a
4 clerk so we can have the exhibits marked as we go along.
5 And will there be numerous exhibits?

6 MR. RANGE: Your Honor, I anticipate in my case
7 in chief having only nine exhibits.

8 MR. TRAMBLIAN: I think we'll have even less than
9 that, five or six.

10 THE COURT: And I believe you told me when I
11 inquired it would be one witness a side?

12 MR. TRAMBLIAN: I believe so.

13 MR. RANGE: That's our present intention, Your
14 Honor.

15 THE COURT: All right. Now, let me inquire. The
16 statutes that are being considered or are to be under
17 consideration are Virginia Code -- it's actually County
18 Code, isn't it?

19 MR. RANGE: Yes, Your Honor. The Virginia Code.
20 It's Section 58.1-3703. And that Virginia Code --

21 THE COURT: 3703?

22 MR. RANGE: 03.

23 THE COURT: All right. Is that the enabling

1 legislation?

2 MR. RANGE: That's correct, Your Honor.

3 THE COURT: And does the local taxing ordinance
4 parallel it in its terms?

5 MR. RANGE: Yes, Your Honor. The state statute
6 authorizes the county to impose a business license tax.
7 And then the County Code has the business license tax.
8 The parties have reached a stipulation on the two sections
9 of the County Code under which Short Brothers was taxed.
10 We were taxed under Section 11-59 of the County Code.

11 THE COURT: 11-59?

12 MR. RANGE: 59.

13 THE COURT: County Code.

14 MR. RANGE: That's correct, Your Honor. And that
15 section of the County Code deals with business service
16 corporations.

17 THE COURT: Business service corporations.

18 MR. RANGE: The second section of the code that
19 Short Brothers was taxed under is 11-62. And that is the
20 wholesale merchant category.

21 THE COURT: Wholesale merchants tax?

22 MR. RANGE: Yes. That's the sale -- that applies
23 to the sale of, in our case, aircraft, because that's what

1 my company sells is aircraft. And that was the tax that
2 was imposed on the sale of aircraft as a wholesale
3 merchant.

4 THE COURT: And would those two be compatible, 55
5 and 62, or is it either or?

6 MR. RANGE: No, Your Honor. The way it works is
7 that the county assesses the tax depending on the nature
8 of the work that you do. And because my company, Short
9 Brothers (USA), is a wholly owned subsidiary of a Belfast,
10 Ireland, company that makes these airplanes -- they
11 represent that company in the U.S.

12 So we have some sales of aircraft which were
13 taxed as wholesale merchants by the county. And we also
14 have other activities. And most important of those is the
15 lease of aircraft. And the lease of the aircraft is what
16 was put into the Section 11-59 category.

17 THE COURT: 55 or 59?

18 MR. RANGE: 59. It's 11-59 and 11-62. And, as I
19 was saying, Your Honor --

20 THE COURT: Is a reading of those particularly
21 necessary? It's not that -- it's a concept we're dealing
22 with, isn't it, rather than the --

23 MR. RANGE: Yes.

1 THE COURT: -- the exact meaning of the statute?

2 MR. RANGE: In fact, the parties have stipulated
3 that we were taxed under those two categories. We don't
4 have a dispute as to whether or not those categories would
5 be correct taxing categories.

6 This case, Your Honor, involves whether or not
7 Short Brothers (USA) should have been taxed at all, not
8 under those two categories but just at all, because we
9 claim --

10 THE COURT: For anything?

11 MR. RANGE: For anything.

12 THE COURT: Sales or leases?

13 MR. RANGE: Exactly.

14 THE COURT: All right.

15 MR. RANGE: Because we claim these were out of
16 the State of Virginia interstate commerce that could not
17 be taxed by the county.

18 THE COURT: Let me suggest then that with that
19 brief opening statement you make your opening statement
20 now.

21 MR. TRAMBLIAN: We would like a rule on
22 witnesses, Your Honor.

23 THE COURT: A rule on witnesses?

Opening Argument of Counsel

1 MR. TRAMBLIAN: Yes, sir.

2 MR. RANGE: Well --

3 THE COURT: Well, if it's one witness a side, who
4 is --

5 MR. RANGE: I don't intend to call Mr. Hudack
6 unless there is an evidentiary problem with anything that
7 he would have to address. I don't have a problem with Mr.
8 Hudack being excused out to the hall, but I do intend to
9 only --

10 THE COURT: You can have someone from your client
11 here to represent their interest in the litigation.
12 You're entitled to have someone from the county here to
13 represent their interest. Who do you have that would be
14 excluded?

15 MR. TRAMBLIAN: To be excluded? We have Mr.
16 Griffin who is sitting right here in the first row.

17 THE COURT: And Ms. Crawford will not testify or
18 will testify?

19 MR. TRAMBLIAN: There is no plan for her to
20 testify, Your Honor.

21 THE COURT: All right. But she would be here on
22 behalf of the county, anyway.

23 MR. TRAMBLIAN: Yes, sir.

1 THE COURT: All right. Well, we don't have --
2 did you call for a clerk?

3 THE DEPUTY: Yes. Mr. McCarthy is supposed to be
4 on his way.

5 THE COURT: All right. Let me have the witnesses
6 come forward and stand behind counsel table who will
7 testify. Will you raise your right hand, please?

8 (Whereupon, two witnesses were sworn.)

9 THE COURT: All right. Now, are these the two
10 witnesses who are to be excluded?

11 MR. RANGE: Mr. Brooks, Your Honor, would be our
12 corporate representative. So we would ask that he not be
13 excluded. Mr. Hudack should be excluded in the event, I
14 guess, that he could be called, although we don't
15 anticipate calling him.

16 THE COURT: All right. He may remain then as a
17 representative of the company. I will ask this witness to
18 be excluded. And Mr. Hudack in the event he is called
19 should be excluded. If he is called, remind me that he
20 was not sworn.

21 All right. Will you come forward? And this
22 gentleman and Mr. Hudack will go with the bailiff. Remain
23 in the witness room until you're called to testify. The

Opening Argument of Counsel

1 contested facts in this, is that the reason for the rule
2 in the case?

3 MR. TRAMBLIAN: I don't believe so, Your Honor,
4 but I don't know. Your Honor, also we have prepared a
5 trial memorandum. I know the other side has.

6 THE COURT: I haven't looked at it. Do you have
7 one, too?

8 MR. RANGE: I have one, Your Honor, if I may
9 approach the bench.

10 THE COURT: Just exchange those.

11 MR. RANGE: We have done that.

12 THE COURT: Leave those with me.

13 Now, you may proceed with your opening
14 statements.

15 MR. RANGE: May it please the Court, again, my
16 name is John Jay Range representing Short Brothers (USA).
17 Your Honor, Short Brothers (USA) is a Massachusetts
18 corporation that is a wholly owned subsidiary of an
19 Ireland company. And that company's name is Short
20 Brothers, Belfast. That's because it's located in
21 Belfast, Ireland.

22 The business of Short Brothers, Belfast, Your
23 Honor, the Ireland company, is to design and manufacture

1 commuter aircraft. And it sells these commuter aircraft
2 worldwide including in the United States.

3 Short Brothers, Belfast, does not have an office
4 in the United States. Instead, it has created this wholly
5 owned subsidiary Short Brothers (USA) to represent its
6 interests in the United States.

7 The primary business of Short Brothers (USA) is
8 to act as the manufacturer's agent for Short Brothers,
9 Belfast, in the United States to demonstrate these Shorts
10 commuter aircraft and to provide support services to the
11 extent that those are required for those aircraft. Short
12 Brothers (USA) also engages in some sales of aircraft.
13 And it engages in certain leases of aircraft.

14 Now, Your Honor, the year that is involved in
15 this particular piece of litigation is tax year 1986. And
16 tax year 1986 actually involves the revenues from calendar
17 year 1985. So throughout the case I'm going to try and
18 refer to tax year 1986 to keep things straight, but we're
19 really going to be talking about events that happened in
20 1985.

21 Now, in the beginning of 1985 Short Brothers had
22 two offices in the United States. One office was located
23 in California. And that was the corporate headquarters.

1 And the other office was located here in Arlington County
2 in Crystal City.

3 In March and April of 1985 Short Brothers (USA)
4 phased out that California office and moved all of its
5 functions to Arlington County in Crystal City. And
6 throughout the remainder of the year in issue here, 1985,
7 the Arlington County office was the only office of Short
8 Brothers.

9 The purpose of that office --

10 THE COURT: 1985 was the year of the phasing out?
11 It began in '85 and concluded in '85?

12 MR. RANGE: That's right. By April of 1985 all
13 the functions had been moved to Arlington.

14 Now, the purpose of the Arlington office of Short
15 Brothers (USA) is to provide administrative services for
16 the work that Short Brothers (USA) does in the United
17 States to represent its parent company, the Belfast
18 corporation.

19 To that end they handle inquiries about Shorts
20 aircraft. They would handle any paperwork that dealt with
21 Shorts aircraft. They would process certain bills and do
22 certain accounting functions. Sales representatives in
23 this office would make sales calls throughout the United

1 States to promote these aircraft.

2 No actual selling occurs in Virginia. This is
3 not like the car dealership where you can go over to this
4 office and look at an airplane and kick the tires and buy
5 it and take it home.

6 In fact, what the evidence will show, Your Honor,
7 is that when an aircraft is manufactured and brought into
8 the United States, it is not brought into Virginia but is
9 delivered to points outside of Virginia.

10 During this 1985 tax year -- excuse me. 1986 tax
11 year, calendar year '85, we did not have any Shorts
12 aircraft located in the State of Virginia. All of the
13 aircraft that were sold were sold to customers outside of
14 the State of Virginia.

15 The aircraft were delivered outside the State of
16 Virginia. The closings for those aircraft occurred
17 outside the State of Virginia. The title to those
18 aircraft transferred outside the State of Virginia. The
19 financing was done outside the State of Virginia.

20 With respect to the leases the same thing is
21 true. The aircraft were delivered to the customers
22 outside of Virginia. The customers are non-Virginia
23 customers. They operated and hangared these aircraft

1 outside the State of Virginia. The closings on the leases
2 were held outside the State of Virginia.

3 Now, let me see if I can set up for the Court
4 what I think the issue in the case is. And I say what I
5 think the issue is, because despite years of
6 administrative protests and the duration of this
7 litigation, frankly we're not really sure why the county
8 doesn't see things our way.

9 We believe that the sole issue that this Court is
10 going to have to address is whether or not these sales and
11 leases are in interstate commerce and, therefore, excluded
12 from taxation by the county or whether the fact that there
13 is an Arlington office and that office is the only office
14 of the corporation during this tax year or most of it
15 authorizes the county to tax all those sales and leases
16 outside of the state. I think, Your Honor, that that is
17 going to be the issue that you're going to have to resolve
18 today.

19 If I can --

20 THE COURT: Those sales are not subjected to the
21 Virginia retail sales tax?

22 MR. RANGE: No, Your Honor, they would not be.
23 And, in fact, there are really two points to be made

1 there. The first one is that the Virginia retail sales
2 statute very clearly would not apply to a state -- to a
3 plane sold outside the state, because you have to tax at
4 the point of delivery.

5 And we contend that that's exactly the position
6 that has to be taken with respect to the Arlington County
7 gross receipts tax; that the gross receipts tax can only
8 be applied to a sale in the State of Virginia. You can't
9 apply it to a sale outside, because the state where the
10 aircraft is delivered is the state that has the right to
11 tax.

12 And we would rely on opinions of the Virginia
13 attorney general. We would rely on the opinions of the
14 circuit courts of Virginia and the federal district courts
15 of Virginia and the Supreme Court of the United States
16 that have very clearly for a number of years -- this is
17 not a new issue -- held that when you've got a sale, you
18 look to the place where the aircraft is delivered to
19 determine where you tax it.

20 THE COURT: Have any of the courts -- and I don't
21 by -- I don't want to interrupt you any more than
22 necessary to clarify this, but in these court decisions on
23 the subject, have any of them addressed the question,

Opening Argument of Counsel

1 though, of not of the taxing of the direct sale itself but
2 the taxing of the doing of business generally rather than
3 the specific sale, you say?

4 MR. RANGE: Yes, Your Honor, I think a number of
5 the cases do talk about that. And, indeed, the attorney
6 general opinions that we will be relying on and referring
7 to and showing Your Honor involve very similar situations
8 to this where you have an office in the State of Virginia,
9 where sales representatives go outside the state and they
10 sell a product outside the state. And --

11 THE COURT: Yes.

12 MR. RANGE: And the question is can you tax in
13 the state because of the service that's provided by these
14 people. Is that the question Your Honor was trying to get
15 to?

16 THE COURT: No. Really I'm not asking where, let
17 us say, two jurisdictions, say, have a gross -- a business
18 privilege tax measured on gross receipts. And you might
19 say you've got competing taxing authorities to get to the
20 same -- not the same sale but the same doing of business;
21 whether we have cases that have credited the payment to a
22 sister state to the attempted charge by the jurisdictional
23 state.

1 MR. RANGE: Your Honor, I don't think the cases
2 come out that way. The way I read the cases is as
3 follows: That you look to the point -- first of all, you
4 have to apportion, is what the cases say, Your Honor. You
5 have to apportion between the out-of-state portion and the
6 in-state portion.

7 And the first point I would make to Your Honor is
8 that, as I'm sure you're aware, the Arlington County gross
9 receipts tax isn't apportioned in any way. It just
10 charges on the total amount of gross receipts.

11 Now, the way you avoid a constitutional problem
12 is that with respect to a sale, for instance, you only
13 charge on the sale that occurs in the state or in the
14 county. You don't charge on the sale that occurs out of
15 the state. That's the very bright line test that the
16 supreme court has set up.

17 They say here's how you apportion which I think
18 is what Your Honor is getting to, how do you divvy it up,
19 because there's no doubt that if we had sold an aircraft
20 in the State of Virginia, our having an office here would
21 have provided the nexus for the county to tax us here on
22 that sale in the state.

23 But when it comes to having, as you say,

Opening Argument of Counsel

1 competing taxing authorities, you have to apportion. And
2 the way the supreme court and the attorney general and the
3 State of Virginia has said you apportion is you look at
4 where did you deliver the aircraft. If you delivered that
5 aircraft in, say, Maryland, Maryland has the right to tax
6 it. If you delivered the aircraft in Virginia, Virginia
7 has the right to tax it.

8 And so you look at the product and where it's
9 delivered, not the service that's rendered, because these
10 people are not buying the service. I mean, they're buying
11 the airplane. They're not really interested in whether or
12 not our accounting function is located in Virginia.

13 If you're going to tax, as we do tax, the product
14 itself, then you've got to look at where the product is
15 delivered or where the product is maintained and hangared.
16 See, because the Arlington County tax isn't rendered on
17 the service itself. It's rendered on the gross receipt
18 that you get when you sell the product or when you lease
19 the product. And that's how we would contend the cases
20 divvy this up, Your Honor.

21 And there's a subsidiary point that I believe I
22 should make to the Court. And that is if you can't divvy
23 it up, you don't have the right to tax it, because that

1 would violate the commerce clause of the constitution. If
2 it wasn't possible to divide what was sold in one state
3 versus the other so that both states could theoretically
4 tax it, then Virginia can't tax it and the other people
5 can't tax it, because you can't have them both taxing.

6 Now, in this instance we claim that there's
7 nothing unconstitutional on the face of the Arlington
8 County Code, because we say that if you only tax these
9 transactions that occur in Virginia, everything is fine.
10 Everything gets apportioned the way the supreme court and
11 the Virginia attorney general says it ought to be done.

12 But if you want to do what the county is seeking
13 to do here -- and that is to say because you have an
14 office in Virginia and because you filed your income tax
15 returns in Virginia and because you, Short Brothers, can't
16 show that you paid any taxes elsewhere we're going to tax
17 all of those transactions in all the other states that you
18 had for the full amount.

19 And that's what you've done. Every sale that we
20 had in Maryland, North Carolina, Pennsylvania, Ohio, New
21 York, every sale, every lease in all these different
22 places they taxed the full amount. These other states
23 have --

Opening Argument of Counsel

1 THE COURT: Included in the gross receipts of
2 Short Brothers (USA) in computing the amount of the
3 business privilege tax?

4 MR. RANGE: Exactly. Exactly. That's exactly
5 it. They didn't attempt to say we'll only tax that which
6 you did in Virginia. They said let's look at all the
7 gross receipts from everywhere in every state. And we're
8 going to tax them all. And that's what we contend, Your
9 Honor, is unconstitutional.

10 They can't do that. The Virginia attorney has
11 said they can't do that. The circuit courts have said
12 they can't do that. And the Supreme Court of the United
13 States has said they can't do that.

14 Now, I want to bring to the Court's attention,
15 because I want to be very candid here, the fact that Short
16 Brothers (USA) in this 1986 tax year that we're talking
17 about filed income tax returns in two places, in
18 California and in Virginia. They didn't attempt to file
19 income tax returns any place else.

20 And I think what the evidence is going to show,
21 Your Honor, is that because much of the revenue comes from
22 this leasing of aircraft Short Brothers doesn't make any
23 money. Every year they lose money, you know, for tax

1 purposes. And as a result of that they don't have on the
2 income tax returns income to California or Virginia.

3 And they didn't attempt to file tax returns in
4 every other state around the country where they filed --
5 where they sold an airplane and where they had a lease,
6 because there was nothing to report. I don't think that
7 that's a relevant fact, but the county has made much of
8 that.

9 The other thing that the county has said is they
10 have --

11 THE COURT: The fact that they had no income in
12 either California or Virginia?

13 MR. RANGE: Well, no. The county's argument that
14 they have raised, Your Honor, that I'm aware of is that
15 because we didn't file, say, an income tax return in
16 Maryland or we didn't file an income tax return in North
17 Carolina or New York that shows that, in fact, we didn't
18 have any nexus to tax up in those jurisdictions.

19 And we argue, no, that's not right. There's a
20 difference between this income tax return where we didn't
21 have any income and we file only where we had offices and
22 the gross receipts tax, because the evidence clearly
23 shows -- and I don't think they're going to be able to

1 dispute -- that the aircraft were sold, delivered out of
2 state; that the leases were out of state. There is just
3 not going to be any real dispute on that point, I don't
4 think.

5 The other thing that they've tried to suggest,
6 Your Honor, is that they wanted us to come forward and
7 show that we had paid a sales tax or a license tax or a
8 gross receipts tax in some of these other jurisdictions
9 where we leased our aircraft or sold our aircraft.

10 And what is important here for the Court to know
11 is that the leases that Short Brothers has with the
12 airlines that operate these aircraft require the airlines
13 themselves to pay all those local taxes.

14 You know, we have a net, net lease situation here
15 where we're leasing these aircraft out. And we don't know
16 what kind of taxes there might be imposed in these other
17 jurisdictions. The airline that works there obviously
18 should know. And so we put the tax burden on them of
19 doing that.

20 And so the county said to Short Brothers -- they
21 said, well, we'll abate the Virginia tax to the extent
22 that you can actually prove to us that you paid taxes in
23 these other jurisdictions. Well, we can't prove that,

1 because we didn't file any tax returns in those
2 jurisdictions, because our leases said that was for the
3 airline operating companies to do.

4 And really more important than that, Your Honor,
5 is the fact that that simply proves the point we've been
6 trying to make all along. Those other jurisdictions are
7 the ones with the primary right to tax. And just because
8 either there -- you know, for instance, suppose the other
9 jurisdiction even exempted that type of thing from a tax.
10 That doesn't mean Arlington can then tax it.

11 And that's really the point we're getting at here
12 is that when there is this nexus in the other states
13 because the aircraft are delivered there or they're leased
14 there and they're operated there, those states have the
15 right to tax and not Arlington. And they shouldn't be
16 able to say to us we won't abate your Virginia tax,
17 because you can't prove that you didn't pay a tax over
18 here.

19 The supreme court cases are very clear on this
20 point. It's the threat of multiple taxation, not actual
21 multiple taxation, that renders the tax unconstitutional.
22 It's the fact that these other states could tax if they
23 wanted to that means that you can't tax that out-of-state

1 sale or the out-of-state lease.

2 And that really is our position, Your Honor, in
3 this case is that I believe the evidence is going to show
4 you that the physical location of these aircraft was
5 always outside of the State of Virginia. And while it's
6 true that we did have some incidental services in the
7 State of Virginia by employees in Virginia, that's not
8 what you look to. You look to the physical location of
9 the aircraft. You look to the delivery. That's the
10 jurisdiction that can tax.

11 And the county should look to that evidence and
12 not be too bogged down in all this stuff about where you
13 filed your income tax returns, because that's not the
14 evidence that decides where the taxing jurisdiction lies.

15 And, Your Honor, unless there are some additional
16 questions that you might have, that concludes my opening
17 statement.

18 THE COURT: No. I take it it would not assist me
19 at all to look at a copy of Sections 59 and 62 to --

20 MR. RANGE: I think Your Honor --

21 MR. TRAMBLIAN: It's not an issue.

22 THE COURT: It is not?

23 MR. TRAMBLIAN: I don't believe so.

1 THE COURT: I was interested in what you said;
2 that these people out here are dealing with the -- Short
3 Brothers (USA) are not interested in purchasing a service
4 in the sense that someone is going to -- professionals
5 would be buying a service.

6 MR. RANGE: Your Honor, may I just elaborate for
7 a second on that point?

8 THE COURT: That's all I was --

9 MR. RANGE: When they sell an aircraft, for
10 instance, or when they lease an aircraft, there may be
11 certain instances where the lessee of the aircraft will
12 want to have their pilots trained to operate that
13 aircraft. And there may be instances where a Virginia
14 employee might go up to assist with respect to some aspect
15 of that training.

16 That's not going to be an issue in this tax year,
17 however, because we didn't have any income from any pilot
18 training in this particular year. In fact, the audit
19 report shows a credit, I think, of like \$2,000 which
20 apparently was some company that didn't take the training
21 and got a credit for that back.

22 But I think that's absolutely the point to be
23 made here, as Your Honor has pointed out, that what these

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1 people are really buying when they buy an aircraft or when
2 they lease an aircraft is the aircraft to run for their
3 airline.

4 The fact that someone from Virginia happens to
5 come up there to sell them the aircraft or to work out the
6 terms of the lease isn't the service they're buying. In
7 other words, for all that customer cares that person could
8 come from New York. They could come from California.
9 They could come over from Ireland. The customer doesn't
10 care about the service. They want the aircraft.

11 And that's why the supreme court and the Virginia
12 attorney general has drawn a very bright line. And they
13 said you've got to look at the state where the aircraft is
14 delivered. That's what counts when you're trying to
15 decide this, because otherwise how would you ever
16 apportion this gross receipts tax? How would you ever
17 decide, well, 17 percent of the aircraft's value should go
18 to Virginia, because this guy made seven phone calls and
19 two letters and a trip out of the state? He can't do it
20 like that.

21 And so we've developed a policy-based decision to
22 look to where the aircraft is located for purposes of the
23 commerce clause of the constitution. And that's how the

1 sales tax statute works. And, you know, the sales tax
2 statute is not really different from a gross receipts tax,
3 because essentially the sales tax is taxing the receipt of
4 the sale. It's the same principle.

5 And we would argue that the same effect ought to
6 be applied. And, indeed, that's what the supreme court
7 has said. And that's what the attorney general of
8 Virginia has said. In a gross receipts tax you look to
9 the point of delivery. You look at that physical
10 possession of the aircraft. That's what you've got to
11 make your decision on. Thank you, Your Honor.

12 THE COURT: All right.

13 MR. TRAMBLIAN: Good morning, Your Honor.

14 THE COURT: Mr. Tramblian.

15 MR. TRAMBLIAN: I think, Your Honor, you zeroed
16 right in on the issue in the case which is the difference
17 between a sales tax or a tax on a transaction and a
18 business privilege tax which is what is at issue here.

19 We're not taxing the transactions. We're taxing
20 Short Brothers for the privilege of doing business in
21 Arlington County. And that makes all the difference in
22 the world in this case.

23 The issue about if they're buying a product or a

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1 service is really irrelevant, because the tax here is not
2 a tax on the sales. It's not a tax on the rentals, but
3 it's a tax on the privilege of doing business in Arlington
4 County.

5 And as everybody agrees for the time in question,
6 they only had one office. And that was here in Arlington.
7 This is the only place they did business. If you buy
8 their theory, they did business everywhere except where
9 their only office was. They did business wherever their
10 planes were but not where all their employees and where
11 their office was. And I think as a matter of common sense
12 that's wrong.

13 It's critical to know and to note that this is a
14 business privilege tax. The County Code at 11 -- Section
15 11-3 says each and all of the taxes hereafter imposed are
16 in cases imposed on the privilege of doing business or
17 exercising a profession, trade or occupation within the
18 county.

19 This is not a sales tax. So the cases that refer
20 to sales tax that talk about the point of destination
21 being the proper place to tax are not applicable. The
22 cases that are applicable, Your Honor, are the cases that
23 talk about a business privilege tax, not a sales tax.

1 As Your Honor noted, I think the facts in this
2 case are not particularly in dispute; but I think the
3 characterization of the facts are in substantial dispute.
4 And I will try to summarize the county's position.

5 As counsel said, this is a challenge to two taxes
6 that were imposed for the tax year 1986. And, as you
7 know, that's measured by the receipts in 1985. This is
8 somewhat confusing, because there are two years involved;
9 but for the purposes of the dollar amounts it's 1985
10 calendar year monies. And it's the 1986 tax.

11 And there are two taxes. One is for the selling
12 of airplanes. And the other is for the rental of
13 airplanes. And I don't believe there's any dispute either
14 as to the categories involved or the dollar figures that
15 have been assessed. And, in fact, you will see from the
16 documents the dollar figures we used were the dollar
17 figures that Short Brothers gave the commissioner of the
18 revenue.

19 The definition of doing business in Virginia is
20 in the Portsmouth case which is in our brief. The
21 definition is engaged in a regular and continuous course
22 of activity for the purpose of making a livelihood or
23 profit.

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1 Now, as a matter of common sense the only place
2 that Short Brothers was engaged in a regular and
3 continuous course of activity was where their office is,
4 but they would have the Court hold that they do continuous
5 and regular business everywhere except their offices,
6 wherever these planes happen to be on a given day.

7 And that doesn't matter for the purposes of a
8 business privilege tax. I don't think there is any
9 dispute as to where the planes were. We have -- I think
10 both sides have made some effort from documents to try to
11 figure out where the planes were.

12 But that really doesn't matter, Your Honor,
13 because we're not taxing the planes. We're taxing Short
14 Brothers for doing business in Arlington County which is
15 the only place they do business.

16 Short Brothers's Arlington office was opened in
17 approximately 1980. And it's been here ever since. In
18 1985, the year that the gross receipts were made, they had
19 an Arlington office that was open for the whole year and a
20 California office which the records show was closed at the
21 end of January 1985. So the California office was open
22 only for a short time at the beginning of 1985. So for
23 all practical purposes the only office was here. And all

1 of the employees were here in Arlington County.

2 Despite the fact that their only office was here
3 and all their employees were here they reported to the
4 commissioner of the revenue that they had no gross
5 receipts for tax purposes. They reported zero. And since
6 their base of operations was here, since all their
7 employees were here, since their office was here that
8 triggered an inquiry as to how they could have no gross
9 receipts when everything was here in Arlington County.

10 So an audit was done. And we have the auditor
11 here just to tell the Court how he did what he did. He
12 looked at their books. And he looked at their tax
13 returns. And a lot of this is new to me, how the tax
14 procedures work. So it was a learning experience for me.

15 There were two -- they filed tax returns in
16 Virginia for the 1985 calendar year. And because of the
17 way taxes are measured that overlaps. The 1984 tax return
18 is the period from March through March of '84 to '85. So
19 the 1984 tax return reflects the first three months of
20 1985. And the 1985 tax return reflects March through
21 March of '86.

22 THE COURT: Their income tax returns that they
23 filed?

1 MR. TRAMBLIAN: Yes. Right. These are the
2 corporate income tax returns that they filed with the
3 state. And if you look at the 1984 income tax return
4 which is the one that covers the first three months of
5 '85, there's a place on there where you have to add -- you
6 can allocate where you got your sales income from. And
7 that's the same money that was taxed as gross receipts.

8 So Short Brothers on their returns can state
9 where the receipts -- the sales monies are attributable
10 from. And you will see on their tax return it says sales
11 100 percent to Virginia. And I think payroll is something
12 like 98 percent to Virginia with two percent to
13 California. And property is something similar, like 98
14 percent.

15 But at that time and before there was a lawsuit
16 and when people were saying it really was the case, it
17 said 100 percent to Virginia. Then when you look at the
18 1985 tax return it's all allocated to Virginia. They
19 didn't file anywhere else. So it's all attributable to
20 Virginia.

21 In addition to looking at the tax returns, the
22 auditor asked Short Brothers for documents. And you will
23 see the documents. And you can see from the documents

1 that they submitted to the commissioner of the revenue for
2 the purposes of this case they attributed all to
3 Arlington.

4 They have California, Virginia offices.
5 California says zero, zero, zero. Virginia has the entire
6 amount of the revenues. So based on their tax returns and
7 based on what Short Brothers told the county the county
8 assessed it this way.

9 And if you look at Arlington County Code Section
10 11-1 which is a very long section, but it's part of
11 subparagraph F -- and this is in the brief -- it says that
12 the calculation of gross receipts must coincide with a
13 system of accounts used by the taxpayer and the method
14 employed by the taxpayer for federal and state income tax
15 purposes. So that says we have to do it the way they do
16 it. And that's what we did.

17 You will also hear testimony, Your Honor, that
18 there is -- the way that gross receipts are calculated for
19 purposes of the tax there can never be double taxation in
20 this case. The commissioner -- if Short Brothers pays tax
21 to any other state, they will be credited for paying that
22 tax.

23 And the commissioner goes even further to say

1 even if they don't pay any tax to other state but merely
2 report income to other state, they will be credited for
3 it. Had they on their Virginia state income tax return
4 allocated 50 percent to Virginia, that's what they would
5 have been taxed. They were taxed the way they told us and
6 the way they told the Virginia Department of Taxation
7 their monies were attributable.

8 Now, Your Honor, we are not -- the county is not
9 taxing Short Brothers merely because they have an office
10 here. They are taxing them because this office in
11 Arlington is their base of operations for all their
12 activities. Everything goes through this office. It's
13 not, as counsel said, a place where incidental services
14 take place. For the lease income all of the salesmen are
15 based in Arlington.

16 THE COURT: Well, they filed their income tax in
17 Virginia?

18 MR. TRAMBLIAN: Yes, sir.

19 THE COURT: Their income tax return. Is it your
20 position that -- well, I take it that it is your position
21 that you've got to be doing business somewhere; is that
22 correct?

23 MR. TRAMBLIAN: Yes, sir. And --

1 THE COURT: If you aren't doing any business
2 anywhere else, you're doing it in Virginia.

3 MR. TRAMBLIAN: I think our argument is stronger
4 than that.

5 THE COURT: It's stronger than that. It's not an
6 elimination of 49 other states.

7 MR. TRAMBLIAN: No, sir. It's what they told us
8 they did. They allocated it all to Virginia. And where
9 you engage in a regular and continuous course of conduct
10 is not where your planes happen to be. It's where your
11 office is and where all these transactions go through.

12 THE COURT: Let me ask you this. Do you think
13 the situation here would be any different if the supplier
14 were a number of airlines rather than just Short Brothers,
15 Belfast?

16 MR. TRAMBLIAN: No, not for the purpose of a
17 business privilege tax.

18 THE COURT: It would not be any different?

19 MR. TRAMBLIAN: No, sir.

20 THE COURT: So this would be analogous to what a
21 brokerage would amount to. If somebody in New York has
22 got something to sell to somebody in Atlanta and they do
23 it through an Arlington broker --

1 MR. TRAMBLIAN: For a business privilege tax,
2 yes. That's --

3 THE COURT: The sale isn't taxable here?

4 MR. TRAMBLIAN: Right.

5 THE COURT: But the privilege of brokering it is
6 taxable here?

7 MR. TRAMBLIAN: Precisely. That's exactly our
8 case, Your Honor. But just so Your Honor understands that
9 this is not --

10 THE COURT: I take it that works with these -- is
11 that applicable to the stock brokers that have offices out
12 here, too? It is?

13 MR. TRAMBLIAN: Yes, sir.

14 THE COURT: They have offices here and all --

15 MR. TRAMBLIAN: Though I think in a lot of cases
16 it's different where there are multiple offices. And in
17 those cases I think the corporations allocate on their
18 state tax returns. So as the code requires we follow the
19 tax return.

20 THE COURT: Does it have offices in a number of
21 places in Virginia?

22 MR. TRAMBLIAN: Right. Here there's no question
23 where they do business, because there's only one office;

1 but so Your Honor knows, the office here is not
2 unconnected to these transactions.

3 As I said, the salesmen are all here. They are
4 told by their superiors in this office that there are
5 planes available. They contact customers. Customers can
6 contact them at the office here. The salesmen can go out
7 to the out-of-state site, but the salesmen do not have
8 authority to make the deals. The salesman has to bring
9 the transaction back to Arlington for approval. Once it's
10 approved in Arlington the documents are generated in
11 Arlington and approved in Arlington.

12 THE COURT: In this case?

13 MR. TRAMBLIAN: Yes. And signed we're not sure
14 where, but it would appear in some cases out of state; but
15 I don't think that matters. When the planes are to be
16 delivered, the salesmen check on delivery by -- we're
17 going to read the deposition of the salesman. It's not
18 very long.

19 He said I would check on sales by walking down
20 the hall in the Crystal City office to see if the plane
21 has been delivered. The executed leases are kept in
22 Arlington County. Under the leases, as all leases have,
23 there's a provision about where you have to send notice

1 under the lease. Notices under the leases have to be sent
2 to Arlington County.

3 The money, the rental monies, are sent to the
4 Arlington County office. And they're monitored in the
5 Arlington County office. Any lease modifications or
6 amendments called into the Arlington office, they're
7 written in Arlington. They're approved in Arlington.

8 So it's not an incidental service. This is the
9 base of operations for these activities. And in his
10 deposition their corporate designee, Mr. Brooks, admitted
11 that the Arlington office was the base of operations for
12 these lease transactions.

13 And some of the cases we've cited about this say
14 a locality can tax an entity for a business privilege tax
15 for revenues generated outside of the township or outside
16 of the city, because the office is the base of operations.
17 And clearly it is here, because there's no other place it
18 could be, because this is where the office is.

19 Short Brothers --

20 THE COURT: But that office has to generate
21 business.

22 MR. TRAMBLIAN: Right. There's no issue that
23 there's another office generating business. There's one

1 office. The advertising that Short Brothers does for
2 customers, it's generated in Arlington. It's billed to
3 Arlington. It's approved in Arlington. And it's paid
4 from Arlington.

5 When in between lease terms Short Brothers has to
6 do painting and repair of its aircraft and put in new
7 parts, it's initiated in Arlington. It's approved in
8 Arlington. It's invoiced in Arlington. It's billed in
9 Arlington. And it's paid from Arlington.

10 For the sale of parts to customers the corporate
11 representative said that that's done through the main
12 office. And he said for 1985 at one point it was in
13 California. And another point it was in Arlington, but he
14 doesn't know when it switched over; but he admitted that
15 the sales of all parts goes through the office.

16 And the sales of airplane, the particular sales
17 in this case, the personnel were sent from Arlington to
18 look at the aircraft to make property descriptions. The
19 person negotiating the sales went from Arlington to -- I
20 think it was Boston to negotiate the sales. Documents
21 were sent to Arlington for review. Negotiations were done
22 between Arlington and Ireland as part of the sale. And
23 the monies from -- the proceeds from the sale came to

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1 Arlington.

2 So there's no issue that the Arlington office had
3 nothing to do with these revenues. It was the base of
4 operations for these revenues which the cases say is
5 the -- a critical -- the critical test.

6 Under the commerce clause, Your Honor -- and
7 that's really the issue in the case -- the argument is
8 made that the assessments here violate the commerce
9 clause. And the argument was made by counsel in opening
10 that since these sales involved interstate commerce they
11 were not excludable, though they're not includable for
12 purpose of taxation. And that's not the test for
13 interstate commerce.

14 In 1977 the United States Supreme Court came down
15 with the real case that decides commerce clause arguments.
16 And in that case they've noted that all the cases decided
17 before 1977 were inconsistent and conflicting. And they
18 said really this is the test from now on.

19 So the cases before 1977 are really questionable
20 authority. And if you look at the cases, they are really
21 not cited. The supreme court said -- the name of the case
22 is Complete Auto Transit versus Brady. And the court --
23 this is a quote from the case.

1 THE COURT: Do you have that in your brief?

2 MR. TRAMBLIAN: Yes, sir.

3 THE COURT: All right.

4 MR. TRAMBLIAN: All of this is in our brief.

5 THE COURT: All right.

6 MR. TRAMBLIAN: The court said in Complete Auto
7 that we are attempting to clarify the apparently
8 conflicting precedence that we have spawned in determining
9 the effect of the commerce clause and state taxation of
10 interstate commerce.

11 And in the Complete Auto case the supreme court
12 set down a four-part test. And I don't think -- and
13 counsel, of course, can argue it. I don't think three of
14 the prongs of the test are at issue. The first prong is
15 nexus; that the taxing entity has to have nexus to tax the
16 transaction. And since their only place of business and
17 their principal place of business is here in Arlington
18 there's really no question that there's nexus. And we've
19 given you the case in the brief.

20 There are two other prongs, discrimination and
21 fair relation. It's in the brief. And I don't think it's
22 disputed. The only issue is fair apportionment. As
23 counsel said, these taxes have to be fairly apportioned so

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1 as to not violate interstate commerce; but there are many
2 ways you can apportion taxes. There is no legislatively
3 or judicially mandated way of apportioning taxes.

4 We have cited to the Court a number of cases that
5 say a tax credit provision such as Arlington has suffices
6 to meet the fair apportionment prong of the case. Because
7 we give a tax credit it's fairly apportioned. There is a
8 supreme court case -- supreme court case and several other
9 cases that say all you have to have is a tax credit like
10 Arlington County has and it's fairly apportioned.

11 THE COURT: Well, are there tax credits applied
12 to this tax?

13 MR. TRAMBLIAN: Yes, sir. If there had been
14 taxes paid elsewhere, they would have been credited.

15 THE COURT: They were not, however?

16 MR. TRAMBLIAN: No.

17 THE COURT: And, hence, there were no credits?

18 MR. TRAMBLIAN: Right.

19 THE COURT: Now, what kind of taxes would there
20 have necessarily been to have met the test of crediting?

21 MR. TRAMBLIAN: If Short Brothers, as they claim,
22 were doing business in all these other states and had paid
23 doing business taxes in these other states, we wouldn't

1 tax it. We'd give a credit.

2 THE COURT: All right. If North Carolina claimed
3 that what they sent down there was taxable under a tax
4 that is parallel to this tax --

5 MR. TRAMBLIAN: Right, but that's not --

6 THE COURT: -- it would be apportioned?

7 MR. TRAMBLIAN: Right. They haven't paid any tax
8 anywhere for this. There is no tax to be credited of any
9 kind. All the --

10 THE COURT: Excuse me.

11 MR. TRAMBLIAN: Sure.

12 THE COURT: If there was a sales tax paid or use
13 taxes or things of that kind in other jurisdictions upon
14 the delivery of the planes, you would say --

15 MR. TRAMBLIAN: I think it would be considered.
16 And the facts would be looked at. I don't think they
17 would -- the commissioner would say absolutely no.

18 THE COURT: Well, but a sales tax, a business
19 privilege tax are not the same kind of tax.

20 MR. TRAMBLIAN: I agree. And I think the
21 conclusion after looking at it would probably be that they
22 are not the same and there shouldn't be a credit; but I
23 think if there had been any sales tax paid anywhere that

1 was presented, it would be considered.

2 But if it appeared when we talked to the other
3 state and examined what was filed that it really was not a
4 business tax, it was clearly a sales tax, there probably
5 would be no credit; but in this case there is no tax paid
6 anywhere of any kind.

7 THE COURT: No sales taxes were paid?

8 MR. TRAMBLIAN: No tax of any kind that's been
9 reported to us. We have asked them in interrogatories
10 where have you been assessed any kind of tax in any other
11 state. And they say nowhere. And we ask them --

12 THE COURT: That doesn't mean that the sale
13 wasn't taxed. It means that this taxpayer didn't pay the
14 tax.

15 MR. TRAMBLIAN: Right. And they said they don't
16 know if anybody else paid the tax.

17 THE COURT: Okay. All right.

18 MR. TRAMBLIAN: So there is no evidence that
19 anybody has paid any tax on any of these transactions.

20 THE COURT: I understand.

21 MR. TRAMBLIAN: All the cases require, Your
22 Honor, is that we give a tax credit for taxes actually
23 paid elsewhere; but we go beyond that and give a credit

1 even if it's reported elsewhere and no taxes are paid. So
2 the commissioner goes beyond what's required.

3 Additionally, to prevail you have to show more
4 than a risk of multiple taxation. The commerce clause
5 cases, Your Honor, the purpose of them is to prevent
6 multiple taxation. And we have cited a number of cases to
7 you in our brief that say merely being subject to a tax in
8 another state is not sufficient to show multiple -- a risk
9 of multiple taxation. It has to be more than being
10 subject to a tax.

11 And in this case they haven't shown anything more
12 than the potential or a speculative possibility of being
13 subject to a tax which is not sufficient. So they haven't
14 proven a risk of multiple taxation, because mere
15 possibility is insufficient.

16 And, Your Honor, I really think, as I said, it
17 comes down to common sense. Where are they doing
18 business? Are they doing business where their base of
19 operations are, where all their transactions pass through,
20 where all their employees are or is it where their planes
21 happen to be on a given day? And I think common sense
22 dictates that it's in Arlington County. And for that
23 reason the taxes were properly assessed.

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1 THE COURT: All right, sir.

2 All right. We can begin now with the witnesses.

3 MR. RANGE: Your Honor, if the Court would like,
4 before I call my first witness, we're going to be relying
5 on two attorney general of Virginia opinions. And I
6 wonder if it might be productive for the Court before it
7 hears that testimony to look at those two opinions.
8 They're very short. One's a page and a half. And the
9 other is four pages long.

10 THE COURT: All right.

11 MR. RANGE: To take a look at those first. Then
12 I can bring my witness on. And I think maybe the case
13 will come a little better into focus.

14 THE COURT: You might keep in mind that I have
15 not -- have not read your memorandum at this time. I did
16 not plan to take time out now to read it. You think it's
17 more important that I read those two opinions there?

18 MR. RANGE: I think so, Your Honor. I mean, the
19 memorandums of both the parties are quite extensive. And
20 there's going to be a lot of reading as far as that goes;
21 but these two opinions are so short. And I think it would
22 be worthwhile for the Court to look at them before it
23 hears the witness's testimony.

1 THE COURT: Have you given those -- are you
2 familiar with them?

3 MR. TRAMBLIAN: I don't know which ones they are.

4 MR. RANGE: I'll give the two copies over to them
5 to take a look at, Your Honor. First let me hand up to
6 the Court -- I have prepared for the Court's purposes a
7 book of the cases that we rely on, Your Honor. There's a
8 little index in the front. The two opinions of the
9 attorney general that we're going to refer to are this one
10 under tab 14 and the next one under tab 15 right there.
11 It's open to the first one.

12 THE COURT: All right. Thank you.
13 If you can make those available --

14 MR. RANGE: I will give a copy right now to
15 counsel.

16 THE COURT: All right.

17 MR. TRAMBLIAN: Your Honor, I'm told we have
18 attorney general opinions, too, that we might submit to
19 the Court at some point when we find them.

20 THE COURT: All right. Did you have something
21 for me to read?

22 MR. TRAMBLIAN: Your Honor, it's in my office.
23 If we can take a break --

Opening Argument of Counsel

1 THE COURT: I will read it later then.

2 MR. TRAMBLIAN: I think we've probably given you
3 enough, but we can give you some more.

4 MR. RANGE: Your Honor, if I could, then I will
5 prepare and bring the case on as follows. First I would
6 like to give to the Court the stipulation of facts that
7 the parties have entered into. You will see that there
8 are three attachments to the stipulation of fact.

9 The first one is the statement of assessment of
10 license taxes for 1986 that pertains to the wholesale
11 merchant category. The second one is the statement of
12 assessment of license taxes that applies to the 11-59
13 business service corporation. And the third one is the
14 audit report of the county.

15 And of particular interest in that is the figures
16 for 1986 that show the revenue from the leases and that
17 show the revenue from sales and the tax imposed on those.
18 And these revenues are stipulated in the stipulation
19 itself as to the amounts so that there is no contest
20 between the parties as to how much revenue and what the
21 tax was on them.

22 MR. TRAMBLIAN: Just for purposes of clarity,
23 Your Honor, you'll see the last two pages -- one says

1 1986. One says 1985. Ignore the one that says '85.
2 That's not part of this case.

3 THE COURT: Okay.

4 MR. TRAMBLIAN: It's confusing, because one
5 year's revenue is '85 for '86; but it is the one that says
6 '86 that's controlling.

7 THE COURT: All right. Fine.

8 MR. RANGE: Your Honor, rather than reading that
9 stipulation into the record I would move that the
10 stipulation that I have just handed you be made an exhibit
11 so that it would be in the record as if we had taken the
12 time to read it into evidence.

13 THE COURT: You've got the subtitles to it marked
14 Exhibits A, B and C. I'm going to take the entire
15 stipulation of fact. And let's call it -- you all have
16 since referred to these people as plaintiffs and
17 defendants. I'm going to call it Plaintiff's No. 1.

18 MR. RANGE: That's fine. If you would, if we
19 could make it Plaintiff's 1.

20 THE COURT: And admitted into evidence.

21 MR. RANGE: Thank you, Your Honor.

22 THE COURT: All right. Without objection.

23

Opening Argument of Counsel

1 (The Stipulations of Fact was marked Plaintiff's
2 Exhibit No. 1 for identification and received
3 in evidence.)

4 MR. RANGE: Your Honor, at this point I would
5 then like to call Mr. Oakley Brooks to the stand to
6 testify on behalf of Short Brothers.

7 THE COURT: All right. That's this gentleman?
8 All right. Come up, please.

9 Now, why don't you do this, if you're going to
10 put that somewhere -- has it been written on or is it to
11 be written on?

12 MR. RANGE: No. I've got a couple of blowups of
13 some exhibits that I will be handing up.

14 THE COURT: That will be put on that? Well, put
15 it where Mr. Tramblian can see it. And I would suggest
16 putting it over more even either toward the window or face
17 it --

18 MR. RANGE: I think if we set it back over here,
19 they should be able to see it. And I believe the writing
20 on the exhibits is large enough, Your Honor, that you'll
21 be able to see it as well.

22 THE COURT: All right.

23 MR. RANGE: And I have -- also I have some small

1 copies of the exhibits that I can hand up to the Court so
2 that --

3 THE COURT: We will admit them into evidence.

4 MR. RANGE: Rather than the blowup, yes.

5 Whereupon,

6 ARTHUR OAKLEY BROOKS, JR.,
7 was called as a witness by and on behalf of the applicant,
8 and having been first duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. RANGE:

12 Q Mr. Brooks, could you please state your full name
13 and address for the Court?

14 A Yes. My name is Arthur Oakley Brooks, Jr.. And
15 my address, home address, is 3032 Cambridge Place,
16 Northwest, Washington, D.C.

17 Q And with whom are you employed, sir?

18 A Short Brothers (USA).

19 Q What is your position there?

20 A I am president.

21 Q How long have you worked at Short Brothers (USA)?

22 A Since January 1st, 1981.

23 Q Have you been the president of Short Brothers tne

1 entire time?

2 A No.

3 Q Can you tell me when you first became the
4 president of Short Brothers?

5 A October 1985.

6 Q What was your initial position with Short
7 Brothers?

8 A Vice-president in sales and marketing.

9 Q And what other positions have you held during
10 your course of employment?

11 A Senior vice-president, executive vice-president
12 and then lastly president.

13 Q Where is Short Brothers (USA) incorporated?

14 A The Commonwealth of Massachusetts.

15 Q And could you describe to the Court the corporate
16 relationship between Short Brothers, Belfast, and Short
17 Brothers (USA)?

18 A Short Brothers (USA) is a wholly owned subsidiary
19 of Short Brothers, PLC, in Belfast.

20 Q Is there a written representation agreement
21 between Short Brothers (USA) and Short Brothers, Belfast?

22 A Yes, there is.

23 MR. RANGE: Your Honor, if I may approach the

1 witness, I would like to hand him a copy of the
2 representation agreement and ask him to identify it.
3 Your Honor, I will hand you a copy of this, the
4 representation agreement, as well as to the witness.

5 BY MR. RANGE:

6 Q Mr. Brooks, can you identify the document that I
7 have just handed you?

8 A Yes. This is the representation agreement
9 between Short Brothers (USA) and Short Brothers, PLC, in
10 Belfast.

11 Q And is that the representation agreement that was
12 in effect for tax year 1986?

13 A Yes.

14 MR. RANGE: Your Honor, I would move into
15 evidence this representation agreement as Plaintiff's
16 Exhibit No. 2.

17 THE COURT: All right. The representation
18 agreement is received in evidence as Plaintiff's Exhibit
19 No. 2 without objection.

20 (The Representation Agreement was marked
21 Plaintiff's Exhibit No. 2 for identification
22 and received in evidence.)

23 THE COURT: Is there any particular part of it

1 that you want to direct attention to or is it -- or is it
2 just to show the status of the --

3 MR. RANGE: It's to show the status and to show
4 that -- there will be some intercompany receipts we will
5 be discussing, Your Honor. And it's just to show that
6 there is a formal representation agreement for these
7 people to act basically as an agent for their parent
8 company.

9 THE COURT: All right.

10 BY MR. RANGE:

11 Q Mr. Brooks, could you describe the type of
12 aircraft that Short Brothers, Belfast, manufactures?

13 A Yes. We manufacture passenger aircraft, 30-seat
14 aircraft for small airlines.

15 Q And where are the aircraft actually manufactured
16 and assembled?

17 A They're manufactured and assembled in Belfast,
18 Northern Ireland.

19 Q Does Short Brothers, Belfast, have any
20 manufacturing facilities or offices in the United States?

21 A No.

22 Q Does Short Brothers (USA) manufacture any
23 aircraft itself?

1 A No.

2 Q Can you describe how the Shorts aircraft are
3 brought from Belfast, Ireland, over to the United States?

4 A Yes. They're flown from Belfast to the United
5 States via Iceland and Greenland and then down through
6 Canada.

7 Q And during this tax year 1986 that's in question
8 here today were any of these Shorts aircraft ever brought
9 directly into Virginia?

10 A No.

11 Q Can you describe for the Court why and when Short
12 Brothers (USA) was created?

13 A Well, Short Brothers (USA) was created in October
14 of 1977. Short Brothers, PLC, had contracted to sell five
15 of these Shorts 330, 30-passenger aircraft to an airline
16 in California called Golden West Airlines.

17 And before Golden West could take delivery of the
18 aircraft they filed a Chapter 11 petition, bankruptcy
19 petition. Because of that they could not arrange
20 financing for the aircraft. However, they had an
21 operating need for the aircraft and believed that they
22 would be able to arrange their affairs so as to come out
23 of bankruptcy.

1 So Short Brothers, PLC, made the decision to
2 lease the aircraft to Golden West until they could finance
3 them. However, due to the provisions of U.S. law a
4 foreign corporation cannot own an aircraft which is
5 operated by a U.S. carrier and registered in the United
6 States.

7 And so Short Brothers, PLC, created Short
8 Brothers (USA). Short Brothers, PLC, then sold the --
9 these five aircraft to Short Brothers (USA). Short
10 Brothers (USA) leased the aircraft to Golden West. So
11 that was the action that brought about the formation of
12 Short Brothers (USA).

13 Q Now, Mr. Brooks, I would like to direct your
14 attention specifically to the 1986 tax year. You
15 understand that we're talking about the calendar year
16 1985. Can you describe for the Court the position you
17 held at the beginning of the 1986 tax year at Short
18 Brothers?

19 A Yes. I was senior vice-president at the
20 beginning of the year.

21 Q And at the beginning of the year where did Short
22 Brothers (USA) have offices?

23 A We had offices in Crystal City, Arlington County,

1 and Newport Beach, California.

2 Q Now, were both of those offices maintained
3 through the course of the year?

4 A No. The Arlington County office was maintained
5 for the course of the year; but we closed the Newport
6 Beach, California, office the end of the first quarter of
7 that year.

8 Q Approximately how many employees did Short
9 Brothers have in tax year 1986?

10 A Well, there were some employees that -- that came
11 and went during the year; but generally we had about 25
12 employees with us at any one time.

13 Q Okay. Now, were all of those employees assigned
14 to the Arlington office in 1986 tax year?

15 A Not all.

16 Q Where else did you have Shorts employees during
17 this 1986 tax year?

18 A We had -- we had three employees in California,
19 two employees in Michigan and two employees in Ohio.

20 THE COURT: What year was that?

21 THE WITNESS: This is calendar 1985.

22 MR. RANGE: This would be the 1986 tax year, Your
23 Honor, calendar year 1985.

1 THE COURT: Excuse me. Would you enumerate the
2 places and number of those employees, please?

3 THE WITNESS: Yes. We had three employees in
4 Newport Beach, California, two, employees in Michigan and
5 two employees in Ohio. And the rest of the employees were
6 in Arlington County.

7 BY MR. RANGE:

8 Q During the 1986 tax year what were Short Brothers
9 (USA) sources of revenue?

10 A The main source of our revenue was our so-called
11 representation fee from our parent in Belfast. Then there
12 was also a source of revenue from -- from the lease of
13 aircraft and the sale of aircraft. And the -- there was
14 some revenue from the sale of parts and some other
15 incidental small sources. /

16 Q Would you describe for the Court the functions of
17 the Short Brothers (USA) office in Crystal City?

18 A Well, our functions are to -- are to represent
19 our parent in its business in the U.S. and administer its
20 activities here in the United States.

21 Q During the 1986 tax year did Short Brothers have
22 any aircraft physically located in Arlington County or
23 Virginia to show potential customers?

1 A No.

2 Q Well, during that tax year could a potential
3 customer go to the Short Brothers office and examine an
4 aircraft and buy it and take it away?

5 A No.

6 Q During that 1986 tax year did Short Brothers own
7 or lease any aircraft hangar facilities anywhere in the
8 State of Virginia?

9 A No.

10 Q Did Short Brothers own or lease any storage areas
11 for aircraft or parts in the State of Virginia?

12 A No.

13 Q Did Short Brothers have any landing right
14 agreements or use agreements with any fixed bases of
15 operation or airports in the State of Virginia?

16 A No.

17 Q Did Short Brothers itself operate any planes in
18 the State of Virginia during the 1986 tax year?

19 A No.

20 Q Was Short Brothers (USA) audited by Arlington
21 County for the 1986 tax year?

22 A Yes.

23 Q Did you cooperate with the county in order to

1 facilitate that audit?

2 A Yes.

3 Q Did you provide the county with the information
4 that they requested to conduct their audit to the extent
5 that you had it?

6 A Yes.

7 Q Would you have provided any additional
8 information to the county if they had requested?

9 A Yes.

10 Q Did the county ever ask for anything that you
11 refused to give them?

12 A Not that I'm aware of, no.

13 Q Was Short Brothers assessed any additional
14 business license taxes in 1986 as a result of the county's
15 audit?

16 A Yes.

17 MR. RANGE: If I may approach the witness, Your
18 Honor.

19 BY MR. RANGE:

20 Q Mr. Brooks, may I show you the stipulation of
21 fact that the parties have entered into that has been
22 marked as Exhibit 1 and ask you if you could take a look
23 at the assessments that are attached thereto as A and B

1 and tell me whether or not those are the additional
2 assessments that you received from Arlington County.

3 A Yes, they are.

4 Q Okay. And has Short Brothers paid the taxes that
5 are shown on those assessments?

6 A Yes.

7 Q Did Short Brothers file a protest to the payment
8 of additional taxes?

9 A Yes, we did.

10 MR. RANGE: And, Your Honor, with your permission
11 I would like to approach the witness.

12 THE COURT: Yes, sir.

13 You stated, Mr. Brooks, that the time of the
14 audit was in '86, was it not?

15 THE WITNESS: Yes. Your Honor, I'm -- I can't
16 remember exactly when it was. It was for that year.

17 THE COURT: It was for the taxable period under
18 consideration in this case?

19 THE WITNESS: That's correct.

20 THE COURT: All right.

21 MR. RANGE: Your Honor, a copy for you.

22 BY MR. RANGE:

23 Q Mr. Brooks, I would ask you to examine the

1 document that I have just handed you. And can you
2 identify for the Court what that document is?

3 A It's a letter from Mr. Rowe, William Rowe, of
4 Hunton & Williams to Geraldine Whiting, the commissioner
5 of revenue, dated February 9th, 1987.

6 Q Okay. And is that the protest that you asked Mr.
7 Rowe to file on behalf of Short Brothers to the additional
8 assessment of taxes?

9 A Yes.

10 MR. RANGE: Your Honor, I would ask that this
11 letter of February 9 be admitted into evidence as Exhibit
12 3, Plaintiff's Exhibit 3.

13 THE COURT: Plaintiff's Exhibit No. 3 is received
14 in evidence without objection.

15 (The letter dated 2-9-87 was marked Plaintiff's
16 Exhibit No. 3 for identification and received
17 in evidence.)

18 BY MR. RANGE:

19 Q Mr. Brooks, did the commissioner of revenue ever
20 rule on your administrative protest that's been marked as
21 Exhibit No. 3?

22 A No, not that I'm aware of.

23 Q You have before you the stipulation of fact. And

1 I would like to direct your attention to the Exhibit 3
2 that's attached to that exhibit that's marked Exhibit 1 or
3 I guess it's Exhibit C, the third attachment.

4 And I would like to specifically direct your
5 attention to the category that's shown on the last page of
6 that for aircraft lease rentals. And it shows aircraft
7 lease rentals to Henson, Sunbird, Penn, Comair, Chautauque
8 and Fisher Brothers Airlines.

9 Are you familiar with the aircraft that Short
10 Brothers (USA) leased to these airline companies during
11 the 1986 tax year?

12 A Yes.

13 Q At my request, Mr. Brooks, have you prepared a
14 chart that shows the aircraft leased by Short Brothers
15 (USA) to these airlines?

16 A Yes.

17 MR. RANGE: Your Honor, I'm going to hand you and
18 the witness a small version of this chart. And I have an
19 enlargement of the chart as well.

20 BY MR. RANGE:

21 Q Mr. Brooks, directing your attention to the
22 easel, is the document on the easel an enlargement of the
23 chart that I asked you to prepare?

Direct Examination of Mr. Brooks

1 A Yes.

2 Q Was the information used to prepare this chart
3 derived from Short Brothers business records maintained in
4 the ordinary course of business?

5 A Yes.

6 MR. RANGE: Your Honor, I would move the
7 admission of the chart as Plaintiff's Exhibit No. 4.

8 THE COURT: All right. Let me look at it for
9 just a moment, please.

10 Plaintiff's Exhibit No. 4 is received in evidence
11 without objection.

12 (The document was marked Plaintiff's Exhibit No.
13 4 for identification and received in evidence.)

14 BY MR. RANGE:

15 Q Now, Mr. Brooks, could you describe generally for
16 the Court what is depicted on Plaintiff's No. 4?

17 A It's a recitation of the movement of the aircraft
18 during that year, during calendar year 1985, between
19 various airlines and repair and overhaul facilities to
20 other airlines.

21 Q All right. And the chart itself shows the
22 aircraft number, the date and then the place of delivery
23 and return; is that correct?

1 A That's correct.

2 Q Okay. Now, the dates there indicate -- of
3 course, are all 1985 dates. And that's because this is
4 the -- the events during 1985 are what leads to the 1986
5 tax; is that correct?

6 A That's correct.

7 Q Could you describe for the Court who Short
8 Brothers's customers are?

9 A Our customers are smaller airlines, so-called
10 regional airlines, that are engaged in interstate
11 commerce.

12 Q And is that true for your customers to whom you
13 both leased and sold aircraft?

14 A That's correct.

15 Q Could you describe for the Court how a typical
16 leasing arrangement would be structured for the lease of a
17 Short Brothers aircraft starting out with the arrangements
18 that Short Brothers (USA) would make with a bank or a
19 financing agency for funds to purchase the aircraft?

20 A We -- we generally used one of three different
21 arrangements for the financing of the aircraft. One of
22 the arrangements was that the -- our parent, Short
23 Brothers, PLC, would sell the aircraft to a large

1 financial institution like General Electric Credit. And
2 General Electric Credit in that case would become the
3 owner of the aircraft for title and tax purposes.

4 THE COURT: Who would sell it, did you say?

5 THE WITNESS: Our parent, Short Brothers, PLC.

6 And then as part of the transaction General Electric
7 Credit in this case would lease the aircraft to Short
8 Brothers (USA). And Short Brothers (USA) would lease the
9 aircraft on to the airline.

10 So our parent, the manufacturer, sells the
11 aircraft to the financial institution. The financial
12 institution leases it to Shorts (USA), the subsidiary, the
13 U.S. corporation. And we lease the aircraft to the
14 airline. And we did that for new aircraft.

15 For used aircraft that had already been in
16 service Shorts (USA) that was the owner of those aircraft
17 would sell the aircraft to a financial institution. The
18 financial institution would then lease the aircraft back
19 to Shorts (USA). And Shorts (USA) would lease the
20 aircraft on to the airline.

21 And then the third method of financing that was
22 used was that Short Brothers, PLC, the Belfast parent, in
23 one or two instances sold the aircraft to Shorts (USA).

1 And a financial institution would provide mortgage money,
2 purchase money, financing to Short Brothers (USA).

3 BY MR. RANGE:

4 Q Where did the negotiations for these sales and
5 leases typically take place?

6 A Well, in the -- in the case that I mentioned with
7 respect to General Electric Credit, those discussions took
8 place in -- at their headquarters in Stanford,
9 Connecticut, and at their offices in New York City.

10 Q Did any of those negotiations take place in
11 Virginia?

12 A No, they did not.

13 MR. TRAMBLIAN: Your Honor, I'm going to object
14 to the relevancy of this, because we're not taxing any of
15 these kind of -- any revenues from these transactions that
16 he's saying took place elsewhere.

17 MR. RANGE: Your Honor, what I'm trying to do is
18 just to give the Court the background as to how Shorts
19 acquires these airplanes. I'm not contesting that they
20 taxed that.

21 MR. TRAMBLIAN: With that understanding I will
22 withdraw the objection.

23 THE COURT: All right, sir. The objection is

1 withdrawn.

2 BY MR. RANGE:

3 Q Who drafted the documents for the sale and
4 financing of these aircraft we've been discussing?

5 A With respect to the General Electric Credit
6 documents, the -- the purchase and sale agreements are
7 drafted by our parent, Shorts, PLC, just their basic
8 purchase and sale agreement.

9 And the lease documents were drafted in part by
10 General Electric Credit counsel and in part by Shorts
11 counsel in the U.S., Ropes & Gray. That's based in
12 Boston, Massachusetts.

13 Q And where was the financing for the purchase of
14 these aircraft arranged?

15 A Well, it was arranged through discussions with
16 General Electric Credit at their -- at their offices in
17 Stanford or New York.

18 Q Mr. Brooks, I'm going to hand you an aircraft
19 lease that's dated December 1, 1981, between General
20 Electric Credit and Short Brothers. Can you identify for
21 the Court what that document is, sir?

22 A Well, this is a -- this is a lease pertaining to
23 a particular 330 aircraft, registration or serial number,

1 excuse me, 3071. And this lease would have been put in
2 place after Short Brothers, PLC, sold the aircraft to
3 General Electric Credit. General Electric Credit then
4 leased the aircraft to Short Brothers (USA). So this is
5 the -- this is the second part of the transaction.

6 THE COURT: And then you would sublease it to a
7 customer?

8 THE WITNESS: That's correct.

9 BY MR. RANGE:

10 Q That was my next question. Is this the head
11 lease that goes in front of the lease to the customer?

12 A That's correct.

13 MR. RANGE: All right. Your Honor, I would move
14 this head lease into evidence as Plaintiff's No. 5 for
15 identification.

16 THE COURT: All right. Plaintiff's No. 5. You
17 move it into evidence?

18 MR. RANGE: Yes, sir.

19 THE COURT: Received in evidence without
20 objection.

21 (The document was marked Plaintiff's Exhibit No.
22 5 for identification and received in evidence.)

23

1 BY MR. RANGE:

2 Q Mr. Brooks, could you describe the procedure that
3 Shorts (USA) would follow to then lease the aircraft that
4 it obtained under this head lease to an airline operator?

5 A Well, as part of our sales and leasing efforts we
6 would -- when we're visiting one of our either customers
7 or prospective customers we would suggest to them that as
8 an alternate way of procuring aircraft -- when I say
9 alternate, to buying new aircraft; that if it suited their
10 operation they might wish to lease an aircraft.

11 Q Okay. Does Short Brothers have a regular
12 practice or procedure for how it goes about negotiating
13 these leases?

14 A Yes. We visit with the airlines at their base
15 since they are the customer and discuss with them the
16 terms and negotiate the terms at their base of operations.

17 Q So then the leases that are depicted on Exhibit 4
18 would typically be negotiated outside the State of
19 Virginia at the location of the customer?

20 A Yes.

21 Q During the 1986 tax year did any of the airline
22 operators ever come to Virginia to negotiate on these
23 leases?

1 A No.

2 Q What happens after you reach an agreement on the
3 terms of --

4 THE COURT: May I inquire of something here?
5 Between leasing and sales which predominates in the
6 subsidiary's business?

7 THE WITNESS: Well, to the extent the subsidiary
8 becomes involved, we become involved mainly in the leasing
9 transaction. The -- where the airline desires to purchase
10 the aircraft directly, they will purchase it directly from
11 the parent. So overall --

12 THE COURT: With -- with this company -- with
13 this company doing nothing in between?

14 THE WITNESS: It's not fair to say nothing, Your
15 Honor, because as part of our sales calls what we seek to
16 do with an airline is decide whether it wishes to buy or
17 lease. And for various corporate strategic reasons they
18 make the decision one way or the other.

19 And if they decide to -- to buy, then they'll buy
20 directly from the parent. And if they decide to lease --
21 in fact, without over complicating it, they have the
22 alternative of having a leasing company that's wholly
23 unrelated to Shorts to finance the aircraft. Some may

1 think they can get a better rate by going elsewhere.

2 So Short Brothers (USA) would only get involved
3 to the extent we have aircraft for lease and the terms are
4 acceptable to them. So it's a long answer to a simple
5 question, but it's -- there are various alternatives for
6 the airlines to follow.

7 BY MR. RANGE:

8 Q After you had a lease with an airline did that --
9 did that lease have to be approved somewhere?

10 A Yes. We have a -- a credit committee in Belfast
11 at our parent.

12 Q So the lease would go to Belfast to have the
13 terms of it approved?

14 A That's correct.

15 Q During the 1986 tax year did Short Brothers (USA)
16 have a regular practice or procedure about where the
17 leases would be signed?

18 A Yes. We -- we found it was advisable to have --
19 schedule a closing at the airline to make sure that all
20 the documents were executed at the same time.

21 Q During the 1986 tax year did Short Brothers have
22 a regular practice or procedure for delivering leased
23 aircraft to the operators?

1 A Well, our -- our procedure was really to do it
2 one of two ways, again, depending on what the customer was
3 comfortable with and happy with. We would either deliver
4 the aircraft directly to the customer's base of operations
5 or if the aircraft had had some repair or maintenance work
6 done since its previous airline lessee, often the airline
7 would wish to take delivery of the aircraft at the
8 maintenance facility where the work was done.

9 In that way if the operator -- the new operator
10 was not satisfied that the maintenance and repair work was
11 done satisfactorily, it could be done by the same
12 maintenance base without having to fly it back and forth.

13 THE COURT: When you mentioned a moment ago that
14 after the credit committee in Belfast would act on the
15 lease, either approve or disapprove -- if they approved
16 it, there would be what you would call a closing. And I
17 think you've said at the airline.

18 THE WITNESS: Correct.

19 THE COURT: And by that do you mean at the home
20 office of the company that -- of the customer?

21 THE WITNESS: That's correct.

22 BY MR. RANGE:

23 Q Mr. Brooks, I've handed you an aircraft lease

1 agreement. And could you please identify that document
2 for the Court?

3 A It's an aircraft lease agreement dated January
4 10th, 1985, between Short Brothers (USA) and Henson
5 Aviation for the lease of one 330 aircraft which is, in
6 fact, the first aircraft noted on the schedule of leases.

7 MR. RANGE: Your Honor, I would move into
8 evidence as Plaintiff's No. 6 the aircraft lease
9 agreement.

10 THE COURT: Plaintiff's No. -- Exhibit No. 6 is
11 received in evidence without objection.

12 (The Aircraft Lease Agreement was marked
13 Plaintiff's Exhibit No. 6 for identification
14 and received in evidence.)

15 BY MR. RANGE:

16 Q Mr. Brooks, is the lease that's been marked as
17 Plaintiff's Exhibit No. 6 typical of the lease agreements
18 that Short Brothers (USA) would enter into with its
19 airline customers?

20 A Yes, it is.

21 Q Okay. And I would like to direct your attention
22 to the last page of the lease where you have a receipt for
23 aircraft that shows the date of the delivery of the

1 aircraft as January 11, 1985. Do you see that, sir?

2 A Yes.

3 Q Okay. Is that also depicted on our chart that's
4 been marked as Exhibit 4? And I will direct your
5 attention now to the first line.

6 A Yes, it is.

7 Q Okay. So this is the lease then that refers to
8 aircraft 3002?

9 A That's correct.

10 Q Okay. Again directing your attention to the
11 chart that's been marked as Exhibit 4, where is Henson --

12 THE COURT: Excuse me. What were you
13 demonstrating by reference to that exhibit?

14 MR. RANGE: Your Honor, what I was showing is
15 that that lease that we had as Exhibit 6 --

16 THE COURT: Yes.

17 MR. RANGE: -- refers to aircraft SH3002. You
18 can see that at the bottom of the first page. And that is
19 the aircraft that is the first aircraft shown on our
20 chart.

21 THE COURT: Oh, all right.

22 MR. RANGE: And if you look, Your Honor --

23 THE COURT: And that's a direct lease from -- or

1 a sublease, say, from the USA company to a local airline
2 rather than a regional airline.

3 MR. RANGE: Right. To Henson Aviation as shown
4 on the chart.

5 THE COURT: All right.

6 MR. RANGE: Okay.

7 THE COURT: Yes.

8 MR. RANGE: And the other thing I was showing,
9 Your Honor, is that the last page of Exhibit 6 which is
10 that receipt page --

11 THE COURT: Yes.

12 MR. RANGE: -- that page there shows that the
13 aircraft was delivered to Allentown, Pennsylvania, on
14 January 11, 1985. And I was having Mr. Brooks tie in the
15 fact that, of course, that's all depicted on our chart
16 here.

17 THE COURT: All right.

18 BY MR. RANGE:

19 Q Now, Mr. Brooks, directing your attention to
20 Exhibit 4, where is the office of Henson Airlines located?

21 A They're in Salisbury, Maryland.

22 Q Were any of the aircraft that you leased to
23 Henson Airlines ever stored, delivered or returned at any

1 location in Arlington County or the Commonwealth of
2 Virginia during this 1986 tax year?

3 A No.

4 Q Where were the aircraft that you leased at Henson
5 Airlines principally hangared and operated during the 1986
6 tax year?

7 A Henson's base of operations is in Salisbury,
8 Maryland.

9 Q Now, let me direct your attention again to the
10 chart. And it shows on there Pennsylvania Airlines. Can
11 you tell me, Mr. Brooks, where is Pennsylvania Airlines's
12 business located?

13 A It's in Middletown, Pennsylvania.

14 Q And were any of the aircraft that you leased to
15 Pennsylvania Airlines ever stored, delivered or returned
16 to any place in the Commonwealth of Virginia?

17 A No.

18 Q Where were those aircraft at Penn Airlines
19 primarily hangared and operated from?

20 A In Middletown, Pennsylvania.

21 Q Let me direct your attention to Exhibit 4 here to
22 Comair, Incorporated. Can you tell me where Comair's
23 place of business is located?

1 A It's in Cincinnati, Ohio.

2 Q Were any of the aircraft that you leased to
3 Comair ever stored or delivered or returned to the
4 Commonwealth of Virginia?

5 A No.

6 Q Where were the aircraft that you leased to Comair
7 principally hangared and operated?

8 A Cincinnati, Ohio.

9 Q Okay. Let me direct your attention next to
10 Chautauque Airlines as shown on page 3 of the exhibit.
11 Where is Chautauque Airlines's office located?

12 A Jamestown, New York.

13 Q Now, were any of the aircraft that you leased to
14 Chautauque Airlines ever stored or delivered or returned
15 to anywhere in the Commonwealth of Virginia?

16 A No.

17 Q And those airlines -- those aircraft that you
18 leased to Chautauque, where were they principally hangared
19 and operated from?

20 A Jamestown, New York.

21 Q And finally let me direct your attention to
22 Fisher Brothers also shown on this page of Exhibit 4.
23 Where is Fisher Brothers's office located?

1 A They're in Galion, Ohio.

2 Q Now, were any of the aircraft that you leased to
3 Fisher Brothers ever stored or delivered or returned to
4 the State of Virginia?

5 A No.

6 Q Okay. Where were the aircraft that you leased to
7 Fisher Brothers primarily hangared and operated?

8 A In Galion, Ohio.

9 Q Okay. What about Sunbird Airlines? Where is
10 their principal place of business located?

11 A They're in Charlotte, North Carolina.

12 Q Okay. And were any of the aircraft that you
13 leased to Sunbird ever stored or delivered or hangared
14 anywhere in the place of Virginia -- the State of
15 Virginia.

16 A No.

17 Q And where were those aircraft primarily operated
18 and hangared?

19 A Charlotte, North Carolina.

20 Q Does Exhibit 4 here reflect all of the lease
21 transactions for Short Brothers (USA) during the 1986 tax
22 year?

23 A Yes.

1 Q Now, except for the amounts that you testified
2 that you had paid --

3 THE COURT: In no instance were any of them
4 delivered in Virginia nor is the customer's place of
5 business in Virginia?

6 THE WITNESS: That's correct.

7 BY MR. RANGE:

8 Q Except for the amounts that you testified that
9 you paid to Arlington County for business license taxes
10 did Short Brothers (USA) pay any sales or use or business
11 license taxes on these aircraft that were leased?

12 A No, we did not.

13 Q Can you tell me why Short Brothers (USA) doesn't
14 pay any business or license taxes on these aircraft that
15 are leased out?

16 A There's a specific provision of the lease which
17 requires that the lessee, the airline, is responsible for
18 paying all such taxes.

19 Q So that the legal obligation is transferred from
20 Short Brothers (USA) to its lessee to pay that tax?

21 A That's correct.

22 MR. TRAMBLIAN: I will object to asking the
23 witness for what the legal obligations or legal

1 conclusions are. To the extent he knows, that's fine.

2 THE COURT: Well, as a matter of interest -- I
3 don't think that's dispositive of the question before us,
4 though. But as a matter of interest tell me what
5 paragraph we're talking about in which of these exhibits.

6 THE WITNESS: Your Honor, on -- on the sublease
7 which is Exhibit 6.

8 THE COURT: Henson?

9 THE WITNESS: That's right. If you turn to
10 page -- the page marked 14.

11 THE COURT: All right.

12 THE WITNESS: Which is paragraph 10.

13 THE COURT: 10. Thank you.

14 THE WITNESS: That starts the paragraph.

15 MR. RANGE: Had you finished with that paragraph,
16 Your Honor?

17 THE COURT: Yes. Yes.

18 BY MR. RANGE:

19 Q Now, Mr. Brooks, in accordance with the provision
20 of the lease that the airlines themselves will pay the
21 taxes that might be due on the use of these taxes
22 including gross -- the use of the aircraft including gross
23 receipts tax, do you know whether or not these airlines

1 are, in fact, paying the taxes?

2 A No, I do not.

3 Q All right. So when counsel for the county stated
4 in their opening statement that none of these taxes had
5 been paid, you don't know for a fact whether or not that's
6 true or not?

7 MR. TRAMBLIAN: Your Honor, that's not what I
8 said in my opening; but it doesn't really matter. What I
9 said -- what I said was they have said they don't know.
10 So, therefore, there is no evidence that anyone has paid
11 taxes anywhere else.

12 MR. RANGE: My point simply is that we don't know
13 for a fact one way or the other whether taxes have been
14 paid, because the obligation is not on Shorts (USA) but
15 has been transferred to its airline customers.

16 THE WITNESS: That's correct. This is a standard
17 provision in leases. And the -- the obligation is passed
18 on. And typically a lessor does not follow that
19 particular transaction.

20 BY MR. RANGE:

21 Q Mr. Brooks, can you tell me -- was it necessary
22 at any time during this 1986 tax year to have any of your
23 aircraft repainted?

1 A Yes.

2 Q Where were the contractors located that did the
3 repainting?

4 A We typically during that time used several
5 contractors; one in Wellsville, New York; one in
6 Georgetown, Delaware; one in Mena, Arkansas. Then
7 occasionally in Oklahoma City, Oklahoma.

8 Q Was it necessary during the 1980 tax year -- '86
9 tax year to have any of your aircraft repaired?

10 A Yes.

11 Q Does Short Brothers have any of its own employees
12 perform repairs on the aircraft?

13 A No, specifically not.

14 Q And let me skip back for a second. Does Short
15 Brothers ever do any of its own painting on its aircraft?

16 A No.

17 Q So the painting work is always contracted out?

18 A That's correct.

19 Q And did you have any painting contractors in the
20 State of Virginia during the tax year?

21 A No.

22 Q And now with respect to these repair contractors,
23 could you identify for the Court where they're located?

1 A Well, the principal one we used was Suburban
2 Airlines in -- in Allentown, Pennsylvania. And then we
3 also used on occasion Pennsylvania Airlines in Middletown,
4 Pennsylvania.

5 Q Did you have any repair contractors located in
6 the State of Virginia during the tax year?

7 A No.

8 Q Mr. Brooks, if I could, let me direct your
9 attention back to the first exhibit which is the
10 stipulation and have you take a look at the last page of
11 that which identifies aircraft sales with revenues of
12 \$12,052,424.

13 MR. RANGE: And, Your Honor, for your guidance
14 that's down at the bottom.

15 THE COURT: Isn't this the page you said to
16 ignore?

17 MR. TRAMBLIAN: Ignore the one before it that
18 says 1985 at the top.

19 MR. RANGE: The last page of the exhibit, Your
20 Honor, should say '86 at the top.

21 THE COURT: The last page says '86.

22 MR. RANGE: Right. Correct. That's --

23 THE COURT: That's the one you want?

1 MR. RANGE: That's correct.

2 THE COURT: The one before that ignore?

3 MR. RANGE: Right. That's because '85 refers to
4 '84 calendar year.

5 THE COURT: I understand. '85 is out of the
6 case.

7 MR. RANGE: That's right.

8 THE COURT: All right.

9 BY MR. RANGE:

10 Q Now, Mr. Brooks, do you see on there the aircraft
11 sale revenue that I'm referring to?

12 A Yes.

13 Q Okay. Are you personally familiar with the sales
14 of aircraft that Short Brothers had during the 1986 tax
15 year?

16 A Yes.

17 Q Mr. Brooks, did you prepare at my request a chart
18 showing the sales of aircraft for Short Brothers (USA)
19 during the 1986 tax year?

20 A Yes.

21 Q And was that chart prepared from the business
22 records of Short Brothers (USA) that are maintained in the
23 ordinary course of business?

1 A Yes.

2 MR. RANGE: Your Honor, I would like to move into
3 evidence as Exhibit 7 the Short Brothers (USA) aircraft
4 sales chart.

5 THE COURT: Plaintiff's Exhibit No. 7 is received
6 in evidence without objection.

7 (The document was marked Plaintiff's Exhibit No.
8 7 for identification and received in evidence.)

9 BY MR. RANGE:

10 Q Mr. Brooks, could you please describe for us the
11 sales of the five Shorts aircraft to Chancellor
12 Corporation that are identified on Exhibit 7?

13 A Yes. Those are five 330 aircraft that were owned
14 by Short Brothers (USA). And there came a time in 1985
15 when our parent, Short Brothers, PLC, in Belfast wanted
16 to -- I will use the term monetize our ownership in those
17 aircraft which meant that they wished to sell the aircraft
18 to a financial institution and derive the cash from the
19 ownership of those aircraft and then subsequently lease
20 them into the market.

21 So that decision from Belfast came to us towards
22 the middle of 1985. And we sought a financial institution
23 that would be willing to buy these aircraft and lease them

1 back to Shorts (USA).

2 Q Can you tell me, sir, where Chancellor's offices
3 are located?

4 A They're in Boston, Massachusetts.

5 Q And did Chancellor have any offices in Virginia
6 in the 1986 tax year?

7 A No.

8 Q How did you locate Chancellor Corporation as a
9 potential purchaser of these Shorts aircraft?

10 A They were brought to us by a financing broker.

11 Q And what was the name of the financing broker?

12 A Their name was Savance, S-A-V-A-N-C-E,
13 Corporation.

14 Q And where is Savance Corporation located?

15 A They're located in Chicago, Illinois.

16 Q And do they have any offices in Virginia?

17 A No.

18 Q Can you tell me, sir, where the contracts for the
19 sale of these five aircraft to Chancellor were negotiated?

20 A In Boston.

21 Q Okay. And did you personally participate in the
22 negotiations of those sales contracts?

23 A Yes.

1 Q Did representatives of Chancellor or Savance ever
2 come to Virginia to participate in any negotiations for
3 the sale of these aircraft?

4 A No.

5 Q Can you tell me who prepared the documents for
6 the sale of these aircraft?

7 A They were Chancellor documents.

8 Q Can you tell me who owned the aircraft
9 immediately prior to the sale?

10 A Short Brothers (USA).

11 Q And did Short Brothers (USA) transfer the title
12 to the aircraft to Chancellor?

13 A Yes.

14 Q And when and where did that occur?

15 A The closing for this transaction occurred at our
16 corporate counsel Ropes & Gray's offices in Boston in
17 December of 1985.

18 Q Let me direct your attention now, sir, to the
19 sale of the Convairs on Plaintiff's Exhibit 7. Can you
20 describe that transaction for the Court?

21 A Yes. Short Brothers, PLC, Belfast sold new
22 aircraft to another airline called Simmons Airlines and as
23 part of that transaction took in trade these two Convair

1 580 aircraft. And Short Brothers, PLC, assigned their
2 rights to these aircraft to Short Brothers (USA). And so
3 Short Brothers -- Short Brothers (USA) took title to the
4 aircraft. And then we subsequently sold the aircraft to
5 the Yohanans.

6 Q Where did the -- where are the Yohanans located?

7 A Burlingame, California.

8 Q Now, was the sale of the aircraft to the Yohanans
9 for a business or for a personal use?

10 A Business.

11 Q Okay. What was the business they were going to
12 be in?

13 A They were to start a new airline in California.

14 Q Okay. Where did the negotiations for the sale of
15 these Convair aircraft to the Yohanans take place?

16 A In Burlingame, California.

17 Q Did Shorts (USA) convey the title to these
18 aircraft at the closing to the Yohanans?

19 A Yes.

20 Q And where was the closing held?

21 A In Burlingame, California.

22 Q Where were the aircraft delivered to the
23 Yohanans?

1 A In Phoenix, Arizona.

2 Q Were the planes that were sold to the Yohanans at
3 any time ever in the State of Virginia?

4 A No.

5 Q Did the Yohanans ever come to the State of
6 Virginia for this transaction?

7 A No.

8 Q Are all of the sales for Shorts (USA) during the
9 1986 tax year shown on Exhibit 7?

10 A Yes.

11 Q Did Short Brothers (USA) pay any sales tax
12 arising out of the sale of any of these aircraft during
13 the 1986 tax year?

14 A No.

15 Q And can you describe for the Court why it is that
16 you did not pay any of those taxes?

17 A To begin with, the -- the -- we made sure that
18 the aircraft were located in jurisdictions where there was
19 no sales tax due on the sale of the aircraft.

20 Q So you deliberately selected a jurisdiction to
21 have the closing in so that there would not be a tax
22 imposed on these aircraft?

23 A That's correct.

1 Q Mr. Brooks, if I could, I would like to direct
2 your attention back again to the stipulation of fact the
3 parties entered into and particularly to the last page of
4 the county audit report where it indicates the --

5 THE COURT: Excuse me. Before you go onto
6 that --

7 MR. RANGE: Sure.

8 THE COURT: -- those two figures at the foot of
9 Plaintiff's Exhibit No. 7 --

10 MR. RANGE: Yes, sir.

11 THE COURT: -- what do they represent?

12 MR. RANGE: Your Honor, those are the numbers
13 that come off the stipulation of facts. This number,
14 \$12,052,424 --

15 THE COURT: Yes.

16 MR. RANGE: -- that is the gross amount of the
17 purchase price of these seven aircraft that the parties
18 have stipulated to.

19 THE COURT: Yes.

20 MR. RANGE: And then this \$9,641.94 is the tax
21 due in the wholesale merchant category.

22 MR. TRAMBLIAN: It's taxed at eight cents per
23 hundred. That's how you get to it.

1 THE COURT: And they were taxed as a wholesale
2 merchant there, because it was a sale?

3 MR. RANGE: Correct, Your Honor. The leases --

4 THE COURT: If it had been a lease, it would have
5 been as under the others -- other section of the code as a
6 special category of business or something.

7 MR. TRAMBLIAN: Right. Well, the category lists
8 all sorts of categories, one of which is renting
9 airplanes. So they fall in there.

10 MR. RANGE: That's right. And there is no
11 dispute about that. We don't contest that.

12 THE COURT: But they don't put selling airplanes
13 under that --

14 MR. TRAMBLIAN: No.

15 THE COURT: Does the same rate apply?

16 MR. TRAMBLIAN: No. Selling is much cheaper than
17 renting. I think it's 35 cents a hundred on leasing and
18 eight cents a hundred on selling at wholesale.

19 BY MR. RANGE:

20 Q Mr. Brooks, again I was directing your attention
21 to the stipulation of facts and particularly to the last
22 page where we have the county audit report for 1986
23 revenue. And do you see the income there that's

1 attributable to sales and leases of parts?

2 A Yes.

3 Q Okay. And for the Court how much is that there?

4 A \$72,244.

5 Q Okay. Now, are you familiar with Short Brothers
6 (USA) sales and leases of parts in the 1986 tax year?

7 A Yes.

8 Q Is it part of Short Brothers (USA)'s regular
9 business to sell or lease parts for Short Brothers,
10 Belfast?

11 A It's a very incidental part of our business.

12 Q Could you describe how an operator of a Short
13 Brothers aircraft would typically go about getting parts
14 for his aircraft?

15 A There -- there are basically two broad
16 categories. When a -- when an operator first takes
17 delivery of our aircraft, they make an initial
18 provisioning of parts. And that initial provisioning is
19 procured, purchased from the parent in Belfast.

20 After that initial provisioning Shorts, PLC, has
21 an arrangement with British Aerospace based in the United
22 States to sell parts subsequent to the initial
23 provisioning. So if the airline would wish to buy parts

1 subsequent to the initial provisioning, they would go to
2 British Aerospace.

3 There's, in fact, a subpart of that category.
4 The airlines can also go directly to the part vendor, the
5 company that made the part, and buy directly from that
6 vendor.

7 Q How would Short Brothers (USA) acquire these
8 incidental parts that are reflected on the county's audit?

9 A In the course of our business as we take -- as
10 aircraft come off lease or go on lease and as airlines
11 decide they want to have different types of aircraft and
12 so decide not to have -- not to operate our aircraft any
13 more -- as we are visiting with the airlines in those
14 instances very often they have parts left over which they
15 can't sell. And so we take them over for them and put
16 them into our own inventory, but the amounts are really
17 very small.

18 Q Well, you said the amounts are small. Give the
19 Court some idea how much would, say, a starter generator
20 for a Shorts aircraft cost.

21 A Well, to even go -- to answer that question, a
22 starter generator is a machine that helps start the
23 engine. And a new starter generator is some \$35,000. A

1 new engine, for instance, is -- is over \$400,000. So seen
2 in that context the fact that we did \$72,000 worth of
3 parts sales in this year is really very incidental.

4 Q The parts that you did sell, where were they
5 physically located?

6 A We kept them at Suburban Airlines in Allentown,
7 Pennsylvania.

8 Q Where did Suburban store them within its
9 facilities?

10 A Well, they had a -- they gave us a room in their
11 large hangar facility in which to put our parts with a
12 locked door.

13 Q Okay. Were any of the parts that you sold during
14 the 1986 tax year kept in the State of Virginia?

15 A No.

16 Q How would an operator who is interested in
17 getting one of these parts that Short Brothers (USA) had
18 go about acquiring it?

19 A Well, it's a very -- because the amounts are so
20 small it was a very informal process. Our -- our
21 technical representatives regularly visit the airlines.
22 When they were at a particular airline they might find out
23 that that airline needed, the case you rose, a starter

1 generator.

2 And if we found out they were having trouble
3 getting a starter generator, if we happened to have a
4 starter generator in -- in Allentown, we would then ship
5 the starter generator to that airline.

6 Q So for the parts that were sold, were they
7 shipped directly from Allentown, Pennsylvania, to the
8 customer?

9 A That's correct.

10 Q All right. And did you have any customers that
11 you sold parts to located anywhere in the State of
12 Virginia?

13 A No.

14 Q So that all the parts sales would generate from
15 Pennsylvania to go some place outside of the State of
16 Virginia?

17 A That's correct.

18 Q Now, let me direct your attention --

19 THE COURT: You're going to another subject, are
20 you?

21 MR. RANGE: Yes.

22 THE COURT: Let's take a very short recess, about
23 five minutes.

1 MR. RANGE: Fine. Thank you.

2 (Whereupon, a short recess was taken.)

3 BY MR. RANGE:

4 Q Mr. Brooks, if I could, I would like to direct
5 your attention again to the stipulation of facts that's
6 Exhibit 1 and particularly to the last page of that where
7 the item agency fee appears with a charge of \$15,128. Are
8 you familiar with that fee, sir?

9 A I am -- I am partially familiar with that fee.

10 Q Okay. Could you describe for me why you say
11 you're partially familiar with it?

12 MR. TRAMBLIAN: Your Honor --

13 THE COURT: Yes.

14 MR. TRAMBLIAN: Excuse me. Before this goes on,
15 we're going to have an objection to this. And I will tell
16 you why. And you can proceed as you wish. This agency
17 fee of -- we are now aware is being --

18 THE COURT: Where is it in here?

19 MR. TRAMBLIAN: It's in -- it's in about the
20 middle of the page.

21 THE COURT: Middle of what page?

22 MR. TRAMBLIAN: Last page.

23 THE COURT: All right.

1 MR. TRAMBLIAN: It's on line nine.

2 THE COURT: All right. Yes. Agency fees,
3 15,128. Right.

4 MR. TRAMBLIAN: Yes. It's not a big issue in the
5 case. The tax -- the total tax on this is \$50; but this
6 is being claimed, we understand, as an affiliate receipt
7 that the county did not have authority to assess.

8 The problem is this agency fee was reported to
9 the commissioner when Short Brothers reported all these
10 figures to the commissioner as a non-affiliate fee. When
11 we deposed Mr. Brooks he had no idea what this fee was and
12 couldn't explain what it was. And now they want to
13 testify that it's an affiliate receipt that's exempt
14 from --

15 THE COURT: That you concede would not be
16 taxable?

17 MR. TRAMBLIAN: Yes, sir; but we never had any
18 information upon which to reach that conclusion.

19 THE COURT: All right. Well, with that let it
20 come -- let it come in and with that explanation. I
21 understand it.

22 MR. TRAMBLIAN: Fine, Your Honor.

23 THE COURT: Is that acceptable?

1 MR. RANGE: Yes, Your Honor. I mean, we pled
2 that this was a representation fee that should not be
3 taxed in our application; but it is true that at the
4 deposition Mr. Brooks could not recall what this minor
5 item of income was. He has subsequently since then gone
6 back and identified at least, as he says, partially what
7 it is. And we would like to put that evidence on for the
8 Court.

9 THE COURT: All right.

10 BY MR. RANGE:

11 Q Mr. Brooks, could you tell us what your
12 understanding of this agency fee is as it is reflected on
13 the Short Brothers books?

14 A Well, this is -- as has been said during the
15 deposition with the county, I could not recall what it
16 was. We went back and looked at the books from this year
17 and were able to determine that the fee was recorded in
18 our books in physically the same place as we record our
19 receipts from our Belfast parent under our representation
20 arrangement.

21 We also -- well, that's -- that's where it was
22 physically; but we were -- we were not able to find an
23 actual description of it.

1 Q Is there any difference between the
2 representation fee and the agency fee as reflected in the
3 books?

4 A Yes. Whereas the representation fees are -- are
5 also cash transactions -- we receive cash from the -- from
6 our parent to -- to pay our expenses -- there was no cash
7 shown received for this \$15,128, merely a credit on the
8 intercompany accounts.

9 Q Does Short Brothers (USA) sell or lease anything
10 to Short Brothers, Belfast, that would generate income on
11 its books?

12 A No, we do not.

13 Q So the only money Short Brothers (USA) receives
14 from Short Brothers, Belfast, is for the purpose of
15 offsetting Short Brothers (USA)'s expenses in representing
16 Short Brothers, Belfast?

17 MR. TRAMBLIAN: Your Honor --

18 A Yes.

19 MR. TRAMBLIAN: -- I object to the leading
20 question.

21 THE COURT: The objection is sustained.

22 BY MR. RANGE:

23 Q Okay. Mr. Brooks, could you tell us --

1 THE COURT: Let me ask you. Was the
2 representation fee paid by the parent company?

3 THE WITNESS: Yes.

4 THE COURT: To whom was this credit attributed
5 for the agency fee?

6 THE WITNESS: Well, it was -- it was a credit
7 that -- that was given to us -- that the parent gave to
8 the subsidiary on our intercompany accounting book.

9 THE COURT: It's got to come from somewhere. So
10 it would come from the parent?

11 THE WITNESS: Yes, it came from the parent.
12 That's correct.

13 BY MR. RANGE:

14 Q Mr. Brooks, does Short Brothers (USA) receive --
15 well, strike that.

16 Can you describe for me whether Short Brothers
17 (USA) receives any income from Short Brothers, Belfast,
18 for anything other than its duties as representing the
19 parent in the United States?

20 A We do not.

21 Q And does Short Brothers (USA) contend that this
22 agency fee should be treated as a representation fee?

23 A Yes.

1 Q Now, let me direct your attention again, Mr.
2 Brooks, to the stipulation of facts in the income category
3 on the last page there that shows aircraft repairs of
4 \$188,050.

5 MR. RANGE: And, Your Honor, again, that's the
6 last page of the stipulation of facts that we've been
7 referring to.

8 BY MR. RANGE:

9 Q Are you familiar with this revenue, Mr. Brooks?

10 A I am now. When -- during the deposition with the
11 county I was not -- I did not remember what it was.

12 Q Does Short Brothers --

13 THE COURT: Where were you on the last page then?

14 MR. RANGE: There's the category there, Your
15 Honor --

16 MR. TRAMBLIAN: It's line 10.

17 THE COURT: 10? All right.

18 MR. RANGE: It has aircraft repairs, \$188,050.

19 THE COURT: Yes.

20 BY MR. RANGE:

21 Q Now, Mr. Brooks, does Short Brothers (USA) repair
22 any aircraft using its own employees?

23 A No, we do not.

1 Q What does the aircraft repair revenue represent?

2 A On occasion as the aircraft will move from
3 airline to airline, from lessee to lessee there is work
4 that needs to be done on the aircraft, repair, maintenance
5 work.

6 There are times when the airline that is giving
7 up the aircraft acknowledges that there is work that has
8 to be done on the aircraft but either does not have the
9 facilities or if it has the facilities does not have the
10 manpower, the time to do the work.

11 So what we do on occasion is to have the work
12 performed at a third-party maintenance base and, in
13 affect, act as the agent for the airline that's giving up
14 the aircraft. We have the work done. It's billed to
15 Short Brothers (USA). And we contemporaneously bill the
16 airline that asked us as their agent to do the work.

17 MR. TRAMBLIAN: Your Honor, at this point let me
18 state my objection to this testimony. This is a new
19 argument that's being -- that was presented to us for the
20 first time today; that some of these fees are
21 pass-throughs that they are not liable for as their gross
22 receipts. It was not pleaded. And the first time we even
23 heard about it was in today's brief that they gave us.

1 We couldn't do discovery on it, because we didn't
2 know about it. And we don't have any background to
3 litigate this issue, because it was raised for the first
4 time today.

5 MR. RANGE: Your Honor, if I may address that.
6 In fact, the county has suspected all along that this is
7 pass-through revenue. In the deposition they asked
8 whether or not this was pass-through revenue. And Mr.
9 Brooks simply didn't know. He's gone back and checked
10 that now.

11 They certainly when they looked at all of our
12 books could have determined as much from those books as we
13 did. And I regret that Mr. Brooks didn't know the answer
14 then, but he knows it now. They certainly are entitled to
15 cross-examine him here today to determine anything they
16 need to know about that.

17 THE COURT: Of course, you've been into this for
18 a long time in preparing your case, but you feel there is
19 great significance in the fact that they would be acting
20 in a representative capacity for other people other than
21 Brooks -- other than the Short Brothers, Belfast?

22 MR. TRAMBLIAN: To the extent, Your Honor, they
23 claim that they're doing it as an agent and, therefore,

1 are not liable that was not pleaded. We had no notice of
2 this issue.

3 THE COURT: Well, there will be no other day to
4 hear this. And this is for one year. And if you have
5 evidence of your own on the subject, you will be able to
6 bring it up; but I'm not going to exclude it from evidence
7 at a hearing of this kind.

8 MR. RANGE: Thank you, Your Honor.

9 THE COURT: All right.

10 BY MR. RANGE:

11 Q Mr. Brooks, is the aircraft repair revenue, in
12 fact, a disbursement that Short Brothers (USA) advanced on
13 behalf of the airline operating companies?

14 MR. TRAMBLIAN: I object to the leading question,
15 Your Honor.

16 THE COURT: The objection is sustained.

17 MR. RANGE: I'm sorry, Your Honor. I'll rephrase
18 it.

19 BY MR. RANGE:

20 Q Could you describe, Mr. Brooks, what the nature
21 of the entry for the \$188,050 is on your books?

22 A Yes. Well, inasmuch as we were acting as the
23 airline's agent we would have the work done. And the

1 third-party maintenance organization would bill Short
2 Brothers (USA). And Short Brothers (USA) would pay the
3 bill and bill the airline that had given up the aircraft
4 that asked us to have the work done. And we would then
5 receive the monies back from the airline that asked us to
6 have the work done.

7 Q Is there a provision in the lease that requires
8 the lessee airline to return the aircraft in satisfactory
9 condition?

10 A Yes, there is.

11 Q Now, Mr. Brooks, are you familiar with the income
12 tax returns that Short Brothers (USA) has filed?

13 A Yes.

14 Q Did Short Brothers (USA) file a 1985 federal
15 income tax return?

16 A Yes.

17 Q Okay. Did that federal income tax return show
18 any revenue for Short Brothers -- or show any income for
19 Short Brothers (USA) that was taxable for tax purposes?

20 A No.

21 Q In fact, did you show a loss?

22 A Yes.

23 Q In what states did Short Brothers (USA) file

1 income tax returns for 1985?

2 A We filed income taxes -- income tax returns in
3 Virginia and California.

4 Q Why did you file income tax returns in Virginia
5 and California?

6 A Because those were the two places we had offices.

7 Q Did your California income tax return show any
8 income that was taxable?

9 A No.

10 Q Did it show a loss?

11 A Yes.

12 Q And how about your Virginia income tax return?
13 Did you show a loss there as well?

14 A Yes.

15 Q Would there be expenses associated with filing
16 income tax returns in other states where Short Brothers
17 was doing business?

18 A Yes.

19 Q Why didn't you file income tax returns in other
20 states?

21 A Well, we -- we were a loss making corporation.
22 So we figured there would be no taxes due. And so it was
23 not worthwhile going through and filing the returns.

1 Q Did you all consult a tax attorney or a tax
2 accountant about that?

3 A No, we did not.

4 Q Do you know why Short Brothers income was
5 allocated between California and Virginia in the manner
6 that it was?

7 A No, I do not.

8 Q Did Short Brothers file returns in Virginia in
9 the years prior to 1985 showing that it had no income?

10 A Yes.

11 Q And prior to the filing of its income tax returns
12 in Virginia had Short Brothers advised Arlington County
13 through its attorneys that it took the position that
14 out-of-state sales and leases of aircraft were not subject
15 to the Arlington County business license tax?

16 A Yes, we did so in 1983.

17 MR. RANGE: Thank you, Your Honor. I don't have
18 any further questions of this witness right now.

19 MR. TRAMBLIAN: Your Honor, for purposes of the
20 Court's information I think I will probably need half an
21 hour or 45 minutes.

22 THE COURT: Would you prefer to begin it and end
23 it in one session rather than --

1 MR. TRAMBLIAN: Yes, sir.

2 THE COURT: -- break it? Let's recess now for
3 lunch for one hour and come back at about 10 minutes of
4 2:00 and take up with the cross-examination at that time.

5 MR. TRAMBLIAN: Thank you, Your Honor.

6 THE COURT: All right, sir.

7 (At 12:50 p.m. the trial was recessed to
8 reconvene at 1:50 p.m.)
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1 AFTERNOON SESSION (2:00 p.m.)

2 THE COURT: Mr. Brooks, come back up.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right, sir.

5 MR. TRAMBLIAN: Your Honor, we found a copy of
6 the attorney general's opinion and would submit it at this
7 time.

8 THE COURT: Thank you.

9 MR. TRAMBLIAN: Thank you, Your Honor.

10 THE COURT: Do you want me to stop now and look
11 through it or not?

12 MR. TRAMBLIAN: Only if Your Honor wants to.

13 THE COURT: Well, I will.

14 MR. TRAMBLIAN: Your Honor, for purposes of
15 speeding it up, the part that's relevant is the bottom of
16 page 312 at section four.

17 THE COURT: All right.

18 MR. TRAMBLIAN: May I proceed, Your Honor?

19 THE COURT: You may proceed.

20 Whereupon,

21 ARTHUR OAKLEY BROOKS, JR.,

22 having been previously sworn, was further examined and
23 testified as follows:

1 CROSS-EXAMINATION

2 BY MR. TRAMBLIAN:

3 Q Mr. Brooks, the California office that was open
4 for the first part of 1985, how many employees did that
5 office have?

6 A There were three employees.

7 Q And none of the employees in that office had any
8 role in sales or leases of aircraft by Shorts in 1985, did
9 they?

10 A Yes. They -- well, two out of the three did.
11 Mr. Austin who was the president of the company and then
12 Mr. Hollenbeck who was a salesman.

13 Q Who is the salesperson in the office?

14 A Mr. Hollenbeck.

15 Q Do you remember coming to the commissioner's
16 office for a deposition on March 21st, 1991?

17 A Yes.

18 Q I'm on page 13, line four. Question -- do you
19 remember me asking you -- asking you, question, who was
20 that one salesperson? Answer, his name was Bill
21 Hollenbeck. Question, do you know if he made any sales in
22 1985? Well, yes. I know that he did not make any sales.
23 I mean, none of us -- none of us really, you know, made

1 sales of aircraft, per se.

2 And then skipping down to line 16, do you
3 remember me asking you, do you know if he was involved in
4 any of the sales or leases of planes that Shorts concluded
5 in 1985? And your answer was I don't remember that he was
6 involved.

7 Do you remember saying that?

8 A Yes.

9 Q Who was the other person in the California office
10 other than Mr. Hollenbeck?

11 A Mr. Austin.

12 Q And did Mr. Austin -- Mr. Austin had no part in
13 sales or leases of Shorts aircraft in 1985, did he?

14 A Yes, he did.

15 THE COURT: Now, are you asking him whether he
16 made sales or had to do with sales?

17 MR. TRAMBLIAN: The question was if he was
18 involved in the sales or the leases of planes.

19 THE COURT: In trying to sell them and not making
20 the sale or -- or playing some role in a sale that someone
21 else consummated?

22 MR. TRAMBLIAN: Any role. If he was involved at
23 all.

1 MR. RANGE: Your Honor, I think I'm going to have
2 to object at this point, because he has asked one question
3 on direct here. And that is did they have any role
4 whatsoever. And in the deposition he asked a more narrow
5 role, namely, did they actually sell an airplane in 1986.

6 THE COURT: Then he asked him if he had any role.
7 And he answered that question the way he did here. He was
8 not asked the other question here.

9 MR. RANGE: I think it's improper for him to try
10 to impeach --

11 THE COURT: It's not impeachment.

12 MR. TRAMBLIAN: I'm sorry. I thought I read the
13 question -- let me ask it that way.

14 THE COURT: He answered it the way -- here the
15 way he answered it there if I was listening correctly.

16 BY MR. TRAMBLIAN:

17 Q I'm sorry. I thought I read it the same way in
18 the deposition. Let me read it now. Let me ask the
19 question, Mr. Brooks. Was Mr. Hollenbeck, the salesperson
20 in the California office, involved in any of the sales or
21 leases of planes that Shorts concluded in 1985?

22 A He may well have been involved in some -- some
23 West Air transactions, but I -- I really can't remember.

1 This was, you know, six years ago. And salesmen do --
2 salesmen work on -- on a number of transactions, some of
3 which close in a particular year and some which go on to
4 another year. So whether Mr. Hollenbeck was involved in
5 anything that actually closed in 1980 -- calendar 1985
6 I -- I can't remember.

7 Q How about Mr. Austin? Did Mr. Austin play any
8 part in any of the sales or leases that Short Brothers
9 concluded in 1985?

10 A Well, I believe Mr. Austin played a part in the
11 lease of an aircraft to Chautauque, because he had a very
12 close relationship with Mr. Hall who was the president of
13 Chautauque.

14 Q I'm on page 14, line six. Do you remember me
15 asking you in your deposition, did Mr. Austin play any
16 part in any of the sales or leases that Short Brothers
17 concluded in 1985?

18 And your answer was I don't remember that he made
19 any of the sales visits then; but it wouldn't be fair to
20 say that he didn't play a part, because it's very much a
21 relationship business. So the fact that he was president
22 allowed him to play a part.

23 And the follow-up question, do you have any

1 specifics as to any part that he might have played in any
2 of the transactions? Answer, no, I don't.

3 Do you remember saying that?

4 A Yes.

5 Q Who was the third person in the California
6 office?

7 A There was a Ms. Umscheid, U-M-S-C-H-E-I-D.

8 Q She did not play any part in any of the sales or
9 leases in 1985, did she?

10 A No.

11 Q The two employees in Michigan, they were not --
12 there was not an office rented in Michigan, was there?

13 A No, we did not rent an office. We were given an
14 office at one of our airlines.

15 Q And who were the two employees who were in
16 Michigan?

17 A Mr. Keusher -- I can't remember how to spell his
18 name -- and Mr. Loser, L-O-S-E-R.

19 Q Did Mr. Keusher play any part in the sales or
20 leases of aircraft in 1985 by Shorts (USA)?

21 A No. He was a technical representative.

22 Q And the other employee was a Mr. Loser,
23 L-O-S-E-R?

1 A Right.

2 Q Did he play any role in sales or leases of
3 aircraft by Shorts (USA) in 1985?

4 A No. He was a technical representative.

5 Q You also testified there were two employees in
6 Ohio; is that correct?

7 A Yes.

8 Q Those two employees were there to facilitate the
9 sales of aircraft to the United States Air Force, weren't
10 they?

11 A That's correct.

12 Q And no aircraft were sold to the Air Force in
13 1985, were they?

14 A We sold 18 aircraft to the U.S. Air Force. And I
15 can't remember when we actually closed -- closed the sale.
16 It was -- it was during those years, but -- and when I say
17 we I mean Short Brothers, PLC. They were sold directly
18 from Short Brothers, PLC, to the U.S. Air Force. Whether
19 we closed them in 1985 or not I cannot remember.

20 Q Short Brothers (USA) didn't sell any airplanes to
21 the United States Air Force in 1985?

22 A Well, to the extent we were involved with the
23 U.S. Air Force and if they closed during 1985 -- and I

1 cannot now remember whether they closed then -- we would
2 have played the same sort of role with them as we played
3 with any of our other customers.

4 Q But it was -- the sale was from PL -- Shorts,
5 PLC, to the customer; correct?

6 A Yes, just as many of the civil sales were
7 directly from Short Brothers, PLC, to the airlines.

8 Q The Crystal City office, that's the base of
9 operations for lease transactions, isn't it?

10 A Yes. It's one of the -- during that year we had
11 two offices, of course.

12 Q In 1985 was the Crystal City office the base of
13 operations for Shorts (USA)'s lease transactions?

14 A It was -- after we closed the California office
15 it was the only office. And up until then it was one of
16 the two offices engaged in business.

17 Q Now, the financing arrangements that you
18 testified to between Shorts and General Electric Credit
19 Corporation, those transactions were not taxed by
20 Arlington County, were they?

21 A No.

22 Q In the calendar year 1985 did Shorts (USA) rent
23 any office space anywhere other than California and

1 Arlington?

2 A I'm just hesitating to -- trying to remember
3 whether we rented space in Ohio. At the -- and I believe
4 we did rent a space for Mr. Wolf and his assistant
5 adjacent to the -- to the Air Force base in Ohio but
6 subject to check.

7 Q Now, you testified on direct examination that the
8 possibility of leasing aircraft was brought up by salesmen
9 when they were visiting customers; is that correct?

10 A Correct.

11 Q Didn't customers also call the Arlington office?

12 A To do what?

13 Q If they were interested in leasing an aircraft?

14 A Well, unfortunately what we found is that we
15 don't get many calls. We have to visit the offices.
16 So --

17 Q My question is: Don't customers sometimes call
18 the Crystal City office if they're interested in leasing
19 aircraft from Shorts (USA)?

20 A It would be incorrect to say they never do, but
21 I -- I can't remember an occasion when that happened.

22 Q And often customers would call the parent company
23 instead of Shorts (USA), didn't they?

1 A That's correct.

2 Q And of the times they called, half the time
3 instead of calling Shorts -- Shorts, the parent, they
4 would call Shorts (USA), wouldn't they?

5 A Yes, any one of our two offices in the -- in the
6 U.S.

7 Q And, in fact, salespersons based in Arlington
8 would often contact customers to see if they were
9 interested in renting planes, wouldn't they?

10 A That's correct.

11 Q They might call from the Arlington office to a
12 customer?

13 A They might, yes.

14 Q Or the salesmen might write a letter from
15 Arlington to the customer inquiring about interest in
16 renting a plane, wouldn't they?

17 A Not really. What -- what the salesmen would do
18 is that they would call the customer to see if they might
19 be available for a sales visit. One doesn't sell or lease
20 airplanes over the phone.

21 Q But they would also write letters to the
22 customers, wouldn't they?

23 A Well, I -- just as you don't -- you don't sell or

1 lease airplanes over the phone, you don't do it by letter.
2 You go out to the customer and sit down with them and
3 work -- try to work out some arrangement.

4 Q But the point of initiating contact -- wouldn't
5 salesmen write letters from Arlington to customers to
6 inquire if they were interested in renting aircraft?

7 A They would -- they would call the customer to see
8 if they were available to come out and see them at which
9 time they would explore the various alternative ways the
10 customer might want to use our aircraft.

11 Q Is your answer that they wouldn't write letters
12 to customers?

13 A I cannot remember an instance when they wrote a
14 letter to a customer asking them if they wanted to lease
15 an aircraft.

16 Q Do you remember -- this is page 84, line six. Do
17 you remember me asking you in your deposition, question,
18 so in those cases where Shorts (USA) contacted airlines
19 typically somebody, one of the salesmen, would call from
20 Arlington and say we want to talk with you about business?
21 Is that typically how it would start?

22 And your answer, yes, or write them a letter;
23 but, yes, you contact them and say we would like to come

1 down and visit you.

2 Do you remember giving me that answer?

3 A Yes. It sounds like exactly what I just gave
4 now.

5 Q Now, when salesmen would go out -- well, let me
6 ask you first. Where were all the salesmen based in 1985?

7 A Well, except for Mr. Hollenbeck and Mr. Austin
8 who acted in a sales capacity while he was still president
9 they were all based in Arlington.

10 Q And when a salesman would go out and talk to a
11 customer on site, the salesman didn't have authority to
12 make a deal, did he?

13 A Well, if -- frankly it depended on the -- on the
14 particular case. It's -- it's incorrect to say they
15 didn't have absolute authority or authority to make a
16 deal.

17 Q But typically they had to bring the transaction
18 back to Arlington for approval, didn't they?

19 A Typically, yes.

20 Q Now, you also testified on direct examination
21 that a credit committee in Belfast had to approve, also.

22 A Yes.

23 Q How was the credit committee in Belfast made

1 aware of a pending deal?

2 A We would send them the -- the copy of the lease.

3 Q Where would you send them the copy of the lease
4 from?

5 A From Arlington County.

6 Q I believe you testified on direct examination
7 that the leases were always signed at the airline; is that
8 correct?

9 A Yes.

10 Q Do you remember the lease agreement of April
11 15th, 1985, between Short Brothers (USA) and Sunbird
12 Airlines? 1984.

13 A If it was one of the -- yes, one of the leases
14 there.

15 Q And was that particular lease signed by both
16 parties at the site?

17 A I can't remember where we signed that.

18 MR. TRAMBLIAN: Your Honor, if I may approach the
19 witness.

20 BY MR. TRAMBLIAN:

21 Q I'm handing you a copy of the lease. And I'm
22 turning to page 29 which is the signature page. And I ask
23 if you can explain to me why it was signed by Short

1 Brothers (USA) on April 11th, 1985, but not signed by
2 Sunbird Airlines until five days later on April 15th,
3 1985.

4 THE COURT: Which exhibit is this?

5 MR. TRAMBLIAN: It's not in evidence, Your Honor.

6 A I can't remember.

7 BY MR. TRAMBLIAN:

8 Q The closing didn't take four days, did it?

9 A I don't remember.

10 Q But the lease does show that it was signed four
11 days apart, doesn't it?

12 A The dates are four days apart on that -- on the
13 lease, yes.

14 Q How about the consent to sublease for that same
15 plane between Mississippi Valley Airlines and Short
16 Brothers (USA) and Sunbird Airlines in 1984 which is on
17 the chart? Do you remember if that was all signed in the
18 same place?

19 A I can't remember the -- the instance.

20 Q Let me show you a copy of the signature page
21 which is page 5. Doesn't it show that it was signed by
22 Short Brothers on April 11th, 1985, by Sunbird Airlines on
23 April 15th, 1985, and Mississippi Valley Airlines on April

1 19th, 1985?

2 A Yes, that's what it shows.

3 Q And do you have any explanation why it took a
4 total of eight days to get it signed by all parties?

5 A No.

6 Q Isn't it possible that the lease was mailed back
7 to Arlington and signed in Arlington?

8 A It's possible, yes.

9 THE COURT: Are those documents going to be
10 identified and put in evidence or not?

11 MR. TRAMBLIAN: Your Honor, if we can have a
12 stipulation --

13 THE COURT: I'm not asking that they be. I did
14 have a question I was going to ask. Do any of them show
15 on them the place of signature?

16 MR. TRAMBLIAN: None of them do.

17 THE COURT: And none of them have notarizations
18 on them?

19 MR. TRAMBLIAN: No. Most of them are not dated.

20 THE COURT: All right. That's my question.

21 MR. TRAMBLIAN: The signatures are not dated.
22 The ones I have asked about, Your Honor, the signatures
23 were dated. If we can have a stipulation that that's what

1 the leases say, we don't need to clutter the record with
2 them, with a big stack of documents.

3 THE COURT: They say what they say.

4 MR. RANGE: Yeah. I think it's been established
5 on the cross. I don't have a problem. I think he's
6 established what it said. And I don't have a problem with
7 that, Your Honor.

8 MR. TRAMBLIAN: We don't need to make a big pile
9 of documents.

10 BY MR. TRAMBLIAN:

11 Q Now, once an agreement was approved didn't Daniel
12 Frix in the Arlington office prepare the lease documents?

13 A He did, yes, prepare some of them. Yes.

14 Q And the documents he prepared in Arlington had to
15 be approved by his superiors in Arlington, didn't they?

16 A Yes, for those documents that he prepared.

17 Q And modifications or amendments to the lease,
18 weren't they also written and approved in the Arlington
19 office?

20 A Not all of them. All of the General Electric
21 Credit airplanes we had -- we do not prepare those.

22 Q All right. Arlington didn't tax those
23 transactions.

1 A No. I mean the leases. Certain of these leases
2 were leases -- subleases involved with General Electric
3 Credit aircraft. And we did not prepare those documents.

4 Q Didn't you have to approve lease modifications?

5 A Well, you asked me if we prepared all the -- all
6 the subleases. So I was responding to that.

7 Q Okay. If a lessee wanted to come in and modify
8 their lease, wouldn't you have to approve the
9 modification?

10 A Do you mean me specifically or the -- or the
11 office?

12 Q Anyone in the office.

13 A Yes, one of us would.

14 Q And the documents were generated in the office,
15 weren't they?

16 A Not the ones pertaining to subleases for the
17 General Electric Credit aircraft.

18 Q Well, how about -- who would prepare the
19 documents to modify a lease by extending its term?

20 A It's -- I would just have to ask to see the
21 particular case.

22 THE COURT: Mr. Tramblian, you just made a
23 statement, a side statement. It wasn't a question, but

1 you said we didn't tax it. I think you meant you didn't
2 include something in the gross --

3 MR. TRAMBLIAN: Yes, sir.

4 THE COURT: -- for tax purposes.

5 MR. TRAMBLIAN: Right.

6 THE COURT: And which transaction was it? Now,
7 the one from Belfast to General Electric finance --

8 MR. TRAMBLIAN: Was not taxed.

9 THE COURT: -- would have nothing to do with
10 that.

11 MR. TRAMBLIAN: No, sir.

12 THE COURT: All right. Now, that's a sale;
13 right?

14 MR. TRAMBLIAN: Yes, sir.

15 THE COURT: Then you've got this lease that they
16 call a -- a head lease. That --

17 MR. TRAMBLIAN: Yes, sir.

18 THE COURT: -- comes to the Short Brothers (USA).

19 MR. TRAMBLIAN: That --

20 THE COURT: You didn't include that.

21 MR. TRAMBLIAN: No, sir.

22 THE COURT: All right. Then the lease out to
23 somebody in Pennsylvania or California, you did include

1 that.

2 MR. TRAMBLIAN: Yes. The ones that are shown on
3 the last page of that stipulation. I think there are five
4 or six airlines listed. If you would turn to the last
5 page --

6 THE COURT: Exhibit No. 1?

7 MR. TRAMBLIAN: Yes, the very last page. Right.
8 The last page. See, there? Numbers one through six are
9 the six lessees whose rental payments were included in the
10 gross receipts.

11 THE COURT: Whose?

12 MR. TRAMBLIAN: Whose payments for renting the
13 planes was included in the gross receipts. The rentals
14 from Shorts (USA) to these six airlines was included.

15 THE COURT: Yes.

16 BY MR. TRAMBLIAN:

17 Q Do you remember me asking you in your
18 deposition -- this is page 103, line 22 -- who would
19 prepare the documents to extend -- to modify the lease by
20 extending its term? And your answer, well, for something
21 like that Dan Frix would have gotten to the point where he
22 was preparing it. So Dan Frix would prepare the
23 extension.

1 A Yes.

2 Q Do you remember saying that?

3 A Yes.

4 Q And who is Dan Frix?

5 A He was our manager of accounting at the time.

6 Q And he was based in the Arlington office?

7 A Yes.

8 Q And when he would prepare those extensions, he
9 would prepare it in Arlington; right?

10 A When he prepared extensions, yes. He was not the
11 only one that prepared extensions.

12 Q Where were the executed leases kept?

13 A We kept them in our office.

14 Q In Arlington?

15 A Yes.

16 Q And --

17 A I should say we -- there were some that were kept
18 in California. So up -- while the California office was
19 open they may have had some pieces out there, but they
20 were subsequently moved to Arlington.

21 Q And the notices on the leases that were required
22 to be given -- the lessees had to give you the notice in
23 Arlington, didn't they?

1 A Yes.

2 Q And the rent payments or the revenues from the
3 lease of aircraft were sent to the Arlington office,
4 weren't they?

5 A I should correct one of the -- one of the -- one
6 of my answers. And perhaps it would be helpful for me to
7 clarify. Where I say some of the leases were modified by
8 Shorts and some other -- what I'm referring to, because it
9 also pertains to this notice question that you just asked;
10 is that on the General Electric aircraft which were six
11 out of the 14 aircraft that are listed here, the
12 complexities of those leases required that our corporate
13 counsel, Ropes & Gray, prepare the subleases.

14 So that when I've said, yes, we prepare some of
15 them, I meant that we prepared the changes and
16 modifications in the subleases for those aircraft that
17 were not General Electric Credit aircraft. The notice
18 section, again subject to check -- I have a feeling that
19 the notice section in the General Electric Credit leases
20 was -- and again subject to check. I think they were
21 California subsequently moved to Arlington when the
22 California office closed.

23 Q I don't mean to interrupt you, Mr. Brooks, but

1 the General Electric Credit Corporation leases were not
2 included in the gross receipts tax, were they?

3 MR. RANGE: Your Honor, I object --

4 A They were.

5 MR. RANGE: -- to him going back and trying to
6 attack the testimony of the witness by arguing that they
7 were not included in the credit. He's trying to show that
8 lease extensions were drafted in Arlington.

9 And the witness is testifying that lease
10 extensions were not drafted in Arlington for those
11 aircraft that were subleased under a head lease from GECC.
12 And I think it's inappropriate for him to try to prevent
13 the witness from testifying to those facts.

14 MR. TRAMBLIAN: Your Honor, it's not a pending
15 question. This is the witness going on. And I let him go
16 on, but it -- if his counsel wants to ask him on
17 redirect --

18 THE COURT: You ask the question now.

19 BY MR. TRAMBLIAN:

20 Q Mr. Brooks, the payments for -- from the lessees
21 for rental of the aircraft, they were sent to the
22 Arlington office, weren't they?

23 A No, not uniformly. We -- we much prefer that

1 they wire transfer the lease payments to our account in
2 the District. So I -- I'd have to go through each one and
3 look back at the records to see where they actually sent
4 the lease payments.

5 Q Weren't some also sent to the Arlington office?

6 A I'm sure some were, yes.

7 Q And didn't employees in the Arlington office have
8 the responsibility to monitor lease payments to make sure
9 they came in?

10 A Yes.

11 Q The contracts for repainting or repairing the
12 aircraft, did Shorts (USA) contract directly with the
13 contractor?

14 A Yes.

15 Q And bills for the work done were sent to the
16 Arlington office, weren't they?

17 A That's correct.

18 Q And the bills were approved in the Arlington
19 office, weren't they?

20 A Yes.

21 Q And the bills were paid from the Arlington
22 office, weren't they?

23 A Yes.

1 Q And that's true for both the repainting and the
2 repair of the aircraft; correct?

3 A Yes.

4 Q The sales of the planes to Chancellor
5 Corporation, didn't employees from the Arlington office
6 have to go to the site to prepare descriptions of the
7 aircraft for the deal?

8 A Yes.

9 Q And weren't documents for the deal sent for
10 review to the Arlington office?

11 A Yes.

12 Q And weren't discussions between Shorts (USA) and
13 Shorts, PLC, done from the Arlington office?

14 A Yes.

15 Q And the monies that Short Brothers (USA) received
16 from the sales, didn't they go to the Arlington office?

17 A I can't remember where they went, but I'm sure
18 that for sums that big they were probably wire transferred
19 to ~~our~~ account in -- in the District. We would not have
20 just taken a check for that amount.

21 Q And the funds that are wired to the account in
22 the District of Columbia, that's monitored from the
23 Arlington office, isn't it?

1 A Yes.

2 Q You also testified about the sale or lease of
3 parts on your direct examination. Weren't the sale or
4 lease of parts by Short Brothers (USA) done through the
5 Arlington or California office in 1985?

6 A Yes.

7 Q In fact, they were invoiced to the Arlington or
8 California office in 1985, weren't they?

9 A Do you mean -- do you mean from the California
10 office?

11 Q I'm sorry. They were invoiced from the Arlington
12 or California office in 1985, weren't they?

13 A That's correct.

14 Q And the payment for the parts was received
15 through the Arlington or California office, wasn't it?

16 A Yes.

17 Q And you don't have any recollection of what
18 percentage of the parts income Short Brothers received in
19 1985 was through the California office or the Arlington
20 office, do you?

21 A No, I don't.

22 MR. RANGE: Object to the question, Your Honor.
23 It suggests to the witness that the revenue is

1 attributable either to California or to Virginia when, in
2 fact, our argument is that the revenue would be taxable by
3 the jurisdictions where the parts were located which in
4 this case would be Pennsylvania. I think it's an improper
5 question.

6 MR. TRAMBLIAN: The witness already testified
7 that they went either through the Arlington or California
8 office.

9 MR. RANGE: No, the witness did not testify that.
10 The witness testified on direct that the parts were
11 shipped from Pennsylvania to the customer outside
12 Virginia. All he has testified to here is that the
13 invoice for that went in or out of the Virginia office.
14 And I don't think it's appropriate for counsel then to ask
15 him the nexus of the tax.

16 MR. TRAMBLIAN: I'm not asking him the nexus of
17 the tax. I'm asking him --

18 THE COURT: I didn't know that to be his question
19 at all.

20 MR. TRAMBLIAN: Could I have the question read
21 back, please?

22 THE COURT: No.

23 MR. TRAMBLIAN: I'm sorry.

1 THE COURT: Proceed.

2 BY MR. TRAMBLIAN:

3 Q Did you understand the question, Mr. Brooks?

4 THE COURT: Or you may restate it.

5 MR. TRAMBLIAN: I would rather have it read back,
6 Your Honor.

7 THE COURT: All right.

8 (The testimony was read as follows:

9 "Q And you don't have any recollection of what
10 percentage of the parts income Short Brothers received
11 in 1985 was through the California office or the
12 Arlington office, do you?

13 "A No, I don't.")

14 MR. RANGE: I renew my objection, Your Honor.

15 THE COURT: I'm sorry.

16 MR. RANGE: Your Honor, my objection there is to
17 the use of the word income through those offices. If he
18 wants to ask what percent was billed or invoiced through
19 these two offices --

20 THE COURT: Through those offices.

21 MR. RANGE: Pardon me?

22 THE COURT: Through those offices.

23 MR. RANGE: Right. What was invoiced or billed

1 to those offices I have no objection to.

2 THE COURT: The objection is sustained.

3 BY MR. TRAMBLIAN:

4 Q Mr. Brooks, you don't have any knowledge, do you,
5 of whether the sale of parts was invoiced or billed
6 through the California or the Arlington office as a
7 breakdown for 1985? Do you?

8 A No.

9 Q It could have been 100 percent billed or invoiced
10 through the Arlington office in 1985, couldn't it?

11 A I just don't remember.

12 Q As to the agency fee that you testified to, in
13 your deposition you had no idea what that agency fee was,
14 did you?

15 A Correct.

16 Q The \$188,000 figure for repairs of aircraft, who
17 contracted with the company that did the repair work?

18 A Whoever was the -- whoever the individual was who
19 was in charge of technical services then which I believe
20 was Mr. Spillman.

21 Q Was it Short Brothers (USA) who contracted with
22 the company that did the work?

23 A Yes.

1 Q It was not the lessee, was it?

2 A In this case -- well, you raise -- you raise an
3 alternative, because I cannot remember, sir, whether -- in
4 each case whether we arranged the work or whether we told
5 them to get it done. And they said, okay, we'll get it
6 done with a particular maintenance facility. And we said
7 fine, arrange it, have them bill it to us. And we'll bill
8 it back to you. I just -- I can't remember the -- the --
9 in each case what happened. Both -- both have been known
10 to happen.

11 Q Well, you don't have any recollection of which
12 way it was done for this \$188,000 in 1985?

13 A No, not in each case. No.

14 Q Well, was there any case where the Short Brothers
15 (USA) contracted directly with the contractor in 1985?

16 A Yes, I'm sure there were cases. Yes.

17 Q And in those cases the contractor would be
18 looking to Short Brothers (USA) for payment; correct?

19 A That's correct.

20 Q And when the contractor would send the bill under
21 those contracts he would send it to the Arlington office,
22 wouldn't he?

23 A Yes.

1 Q And the bill would be approved in the Arlington
2 office, wouldn't it?

3 A Yes.

4 Q And payment would be remitted from the Arlington
5 office, wouldn't it?

6 A Yes.

7 Q Now, Short Brothers (USA) engaged in advertising
8 in 1985, didn't they?

9 A Yes.

10 Q And you would contract with an advertising
11 company that was outside the state to do the advertising
12 work; correct?

13 A That's correct.

14 Q And they would bill you in Arlington for the
15 work, wouldn't they?

16 A Yes.

17 Q And you would pay them from Arlington?

18 A Yes.

19 Q And your advertisements said to contact Short
20 Brothers (USA) in Arlington, didn't it?

21 A Yes.

22 Q For the 1985 gross receipts, did any other state
23 or locality tax Short Brothers on its gross receipts?

1 A No.

2 Q Did any other locality threaten to tax Short
3 Brothers on its gross receipts?

4 A Well, I can't remember that. We -- we from time
5 to time over the years -- and you asked me for a
6 definitive answer, but over the years from time to time we
7 would receive notice from the owner of the aircraft
8 that -- that a particular taxing authority had contacted
9 them as the owner in which case we pass it on to the
10 lessee. So as to whether something happened in 1985 along
11 those lines, I can't remember; but it could well have
12 been.

13 Q But you don't have any specific recollection that
14 it ever did?

15 A No, I don't.

16 Q Did Short Brothers in 1985 pay taxes on any of
17 the sums included in their gross receipts to any other
18 locality?

19 A No.

20 Q After 1985 why did Short Brothers begin reporting
21 its gross receipts to Arlington County?

22 THE COURT: Beginning when?

23 MR. TRAMBLIAN: After the 1985 tax year.

1 BY MR. TRAMBLIAN:

2 Q Why did Short Brothers start for the first time
3 reporting its gross receipts to Arlington County?

4 A I can't answer that question. I don't -- I don't
5 remember why we decided to do that.

6 MR. TRAMBLIAN: I don't have any other questions,
7 Your Honor. Thank you, Mr. Brooks.

8 THE COURT: All right.

9 MR. RANGE: Your Honor, I just have one question
10 on redirect.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MR. RANGE:

14 Q And that is, Mr. Brooks, Mr. Tramblian has
15 suggested to you that some of the aircraft leases were
16 mailed into Arlington County and signed by Short Brothers
17 in Arlington County. Even if that occurred, were any of
18 the planes ever delivered, hangared, operated or
19 maintained in Virginia?

20 A No.

21 MR. RANGE: Thank you.

22 THE COURT: You may resume your seat, sir.

23 THE WITNESS: Thank you.

1 (The witness left the stand.)

2 THE COURT: Do you have any other witnesses?

3 MR. RANGE: No, Your Honor.

4 THE COURT: And did you present all of your
5 exhibits? I believe you went through No. 7.

6 MR. RANGE: That's correct, Your Honor. That is
7 all of the exhibits that Short Brothers will offer.

8 THE COURT: The only reason I remind you of it, I
9 thought you mentioned a number like nine when I asked
10 you --

11 MR. RANGE: That's correct, Your Honor. And what
12 happened is the stipulation has the first three in there.
13 And we counted that as just one.

14 THE COURT: Fine. All of your exhibits have been
15 received into evidence. And the plaintiff rests. Are you
16 ready to proceed?

17 MR. TRAMBLIAN: Yes, Your Honor. We at this time
18 would make a motion to strike the plaintiff's case. Under
19 the cases interpreting the commerce clause you have to
20 show that you -- there is more than a risk of multiple
21 taxation.

22 The cases interpreting the commerce clause say
23 that the purpose of the commerce clause is to prevent

1 double taxation. There has been no evidence presented
2 whatsoever that Short Brothers (USA) was subject to
3 anything more than a possible, potential --

4 THE COURT: Well, is there any other theory that
5 they would not be liable other than an interpretation of
6 the commerce clause?

7 MR. TRAMBLIAN: Your Honor, the only things pled
8 are the due process and the commerce clauses. They don't
9 dispute the categories that they have been assessed under
10 or the amounts of the gross receipts.

11 THE COURT: I don't believe he has concluded his
12 motion.

13 MR. RANGE: Okay.

14 MR. TRAMBLIAN: Your Honor, we cited the cases at
15 page 22 of our brief that say you have to do more than
16 show a mere risk of double taxation. That's page 22.
17 It's undisputed in this case that Short Brothers has paid
18 no taxes on its gross receipts anywhere except for
19 Arlington.

20 They have only been assessed in Arlington. They
21 haven't filed tax returns anywhere else. And they haven't
22 paid taxes anywhere else. And there is no evidence that
23 they have been subject to a tax anywhere else.

1 In the cases we've cited some of the cases have
2 gone so far as to say that you have to show actual
3 multiple taxation for the commerce clause to be
4 implicated. Certainly they have not done that. The other
5 cases say that you have to do more than show the
6 possibility of being subject to a tax elsewhere. And that
7 hasn't been done.

8 And for those reasons, Your Honor, since they
9 haven't proven one element of what they have to show to
10 satisfy the commerce clause we would ask that their case
11 be stricken.

12 MR. RANGE: Your Honor, if you will turn to page
13 23 of their brief where they cite the cases regarding
14 actual multiple taxation, you will note that each and
15 every one of the cases is a state court decision. There
16 is a directly applicable United States Supreme Court case
17 holding directly to the contrary.

18 That case, Your Honor -- there actually are
19 several, but I would direct your attention to the Armco
20 case that is in the book of documents that I have handed
21 up to you under tab two. And if you would like, I can
22 direct you specifically to page 644 of that opinion. Your
23 Honor, if I could direct your attention to the language on

1 pages 644 and 645 of the Armco --

2 THE COURT: I thought you said 644.

3 MR. RANGE: 644 and 645.

4 THE COURT: And I'm reading on 644.

5 MR. RANGE: Okay. It starts there with the
6 language that says appellees suggest --

7 THE COURT: That's what I'm reading.

8 MR. RANGE: -- that we should require them to
9 prove actual discriminatory -- discriminatory impact.

10 THE COURT: I'll read it. All right.

11 MR. RANGE: And, Your Honor, if you will take a
12 look at page 646 which is the first paragraph of Justice
13 Rehnquist's dissent, what you will see there is that
14 Justice Rehnquist dissents from this concept that they
15 would have to -- that they would have to prove only the
16 risk. He says you ought to have to prove the real thing,
17 but the majority says not. The risk is all that it takes.

18 If I could also direct the Court's attention to
19 the next case that I have cited. That's the Mobil Oil
20 Corporation case. We contend that that case as well holds
21 that the mere risk of multiple taxation is sufficient.

22 THE COURT: Let me say this, gentlemen. I am
23 going to read your briefs. And I would like to hear the

1 case. It may be decided on the law and the weight of the
2 evidence; but I think the thing that should be done now is
3 to hear all of the evidence, read the briefs then decide
4 the case based upon the law and the evidence.

5 And in order to do that the Court will overrule
6 the motion to strike and consider it in the opinion or in
7 the decision, the final decision, in the case.

8 MR. TRAMBLIAN: That's fine, Your Honor.

9 THE COURT: And the defendant preserves his
10 position to rely on the theories advanced here and not
11 lose that position by virtue of presenting evidence.

12 MR. TRAMBLIAN: Fine, Your Honor. Thank you.

13 THE COURT: Yes.

14 MR. TRAMBLIAN: We have some exhibits. I would
15 just like to have them marked now if I could.

16 THE COURT: Yes. Pass them up. And I will mark
17 them.

18 MR. TRAMBLIAN: And let me go through them with
19 you, Your Honor.

20 THE COURT: Short Brothers analysis of '83
21 through '85 gross receipts.

22 MR. TRAMBLIAN: That would be No. 1.

23 THE COURT: Defendant's No. 1.

Argument of Counsel

1 MR. TRAMBLIAN: The plaintiffs have asked that
2 this be attached to it. And I don't have any objection to
3 that. The plaintiffs have asked that this be attached or
4 submitted with it. And that's fine with me. That
5 apparently is a cover letter that went with this.

6 THE COURT: All right.

7 MR. TRAMBLIAN: So that would be part of No. 1.

8 THE COURT: And you are submitting it?

9 MR. TRAMBLIAN: Yes, sir.

10 THE COURT: All right.

11 MR. TRAMBLIAN: No. 2 --

12 THE COURT: Including the paper attached to it?

13 MR. TRAMBLIAN: Yes, sir.

14 THE COURT: All right. Defendant's No. 1. Is
15 that to be received in evidence now?

16 MR. TRAMBLIAN: I would move it.

17 THE COURT: Without objection?

18 MR. RANGE: No objection receiving that into
19 evidence, Your Honor.

20 (The document was marked Defendant's Exhibit No.

21 1 for identification and received in evidence.)

22 MR. TRAMBLIAN: Exhibit No. 2, Your Honor, is the
23 next document in the pile that's clipped to -- that's in

Argument of Counsel

1 **this pile. That's all the exhibits in that pile.**

2 **THE COURT: Oh, I see.**

3 **MR. TRAMBLIAN: That letter that says Shorts**
4 **dated September 22, 1986, would be our No. 2.**

5 **THE COURT: The letter from Shorts to Mr. Griffin**
6 **of the commissioner's office?**

7 **MR. TRAMBLIAN: Yes, sir. And I would move its**
8 **admission, also.**

9 **THE COURT: Defendant's No. 2.**

10 **MR. RANGE: No objection to that, Your Honor.**

11 **THE COURT: Received in evidence.**

12 **(The letter dated 9-22-86 was marked Defendant's**
13 **Exhibit No. 2 for identification and received**
14 **in evidence.)**

15 **MR. TRAMBLIAN: No. 3, Your Honor, is the**
16 **California corporation franchisor income tax return. And**
17 **I would move its admission at this time.**

18 **THE COURT: That's for -- that goes into and**
19 **includes the first quarter of '85.**

20 **MR. TRAMBLIAN: Right. If you would read right**
21 **under here, it says for the calendar year 1984, fiscal**
22 **year beginning April 1, '84, ending March 31, '85.**

23 **THE COURT: Defendant's No. 3 received in**

1 evidence.

2 MR. RANGE: No objection to that, Your Honor.

3 (The income tax return was marked Defendant's
4 Exhibit No. 3 for identification and received
5 in evidence.)

6 THE COURT: So this is for the fiscal year?

7 MR. TRAMBLIAN: Right.

8 THE COURT: All right.

9 MR. TRAMBLIAN: The next one is the 1984 Virginia
10 corporation income tax return. The same dates apply. We
11 would ask that that be admitted as No. 4.

12 THE COURT: Is that the same period of time?

13 MR. TRAMBLIAN: Yes.

14 THE COURT: Yes. Defendant's No. 4.

15 MR. RANGE: No objection, Your Honor.

16 THE COURT: Received in evidence.

17 (The income tax return was marked Defendant's
18 Exhibit No. 4 for identification and received
19 in evidence.)

20 MR. TRAMBLIAN: Was No. 3 received in evidence,
21 Your Honor? I don't know if you said it.

22 THE COURT: I did and initialed it.

23 MR. TRAMBLIAN: Thank you.

1 THE COURT: Defendant's No. 4 is received in
2 evidence.

3 MR. TRAMBLIAN: No. 5, Your Honor, is the
4 Virginia corporation income tax return for 1985.

5 THE COURT: All right. That's received in
6 evidence without objection.

7 (The income tax return was marked Defendant's
8 Exhibit No. 5 for identification and received
9 in evidence.)

10 MR. TRAMBLIAN: No. 6, Your Honor, is
11 interrogatory -- I'm sorry. Is Short Brothers's answer to
12 Interrogatory No. 4 which is on the next page. And I
13 would move it into evidence.

14 THE COURT: Is that all that's to be admitted?

15 MR. TRAMBLIAN: Yes. No. 4 which shows where
16 their --

17 THE COURT: Do you want me to put a mark on here
18 to show --

19 MR. TRAMBLIAN: Yes, sir. I would move it into
20 evidence, Your Honor.

21 THE COURT: And Interrogatory No. 5 does not come
22 in?

23 MR. TRAMBLIAN: No, sir.

1 THE COURT: All right. That's Defendant's No. --
2 Exhibit No. 6.

3 MR. TRAMBLIAN: 6.

4 THE COURT: And that's received in evidence
5 without objection.

6 (The interrogatory answer was marked Defendant's
7 Exhibit No. 6 for identification and received
8 in evidence.)

9 MR. TRAMBLIAN: For Exhibit No. 7 it's Short
10 Brothers's answers to Interrogatory No. 2, 3, 4 and not
11 No. 1. And I would move No. 7 into evidence.

12 THE COURT: 2, 3 and 4. That takes it through to
13 the end --

14 MR. TRAMBLIAN: Right.

15 THE COURT: -- of the paper.

16 MR. TRAMBLIAN: Right.

17 THE COURT: All right. That's Defendant's No. 7.
18 And that's received in evidence.

19 (The interrogatory answers were marked
20 Defendant's Exhibit No. 7 for identification
21 and received in evidence.)

22 MR. TRAMBLIAN: And the last one, Your Honor, is
23 No. 8 which is the answer to Interrogatory No. 1 which is

1 the only one.

2 THE COURT: All right.

3 MR. TRAMBLIAN: And I would move it into
4 evidence.

5 THE COURT: Defendant's No. 8 is received in
6 evidence without objection.

7 (The interrogatory answer was marked Defendant's
8 Exhibit No. 8 for identification and received
9 in evidence.)

10 MR. TRAMBLIAN: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 MR. TRAMBLIAN: Your Honor, we have one witness.
13 And we also have the reading of a deposition of a witness
14 who is out of the country. Who would read -- who would
15 you have read the responses or would you just rather us
16 submit it to you for your own reading?

17 THE COURT: Is it going to be the entire
18 deposition? How long is it?

19 MR. TRAMBLIAN: I think it would take about 20
20 minutes to read. It's portions of the deposition. It's
21 not the entire deposition.

22 THE COURT: It skips around from here to there?

23 MR. TRAMBLIAN: Yes. Yes.

1 THE COURT: Back and forth?

2 MR. TRAMBLIAN: Well, not back and forth but as
3 it goes on.

4 THE COURT: No. I mean goes through and skips.
5 Yes.

6 MR. TRAMBLIAN: Yes.

7 THE COURT: Well, I certainly would like to have
8 you -- is there any objection to his marking it and
9 leaving it with me -- marking only the part that is in
10 evidence?

11 MR. RANGE: No, Your Honor.

12 THE COURT: If you would prefer not, I will
13 assure you I would not go into that portion of it that is
14 not in evidence.

15 MR. RANGE: Your Honor, I don't have any problem
16 with that with the one exception. That is, as you know,
17 under the rules all objections are preserved except as to
18 the form of the question.

19 And since I don't know what portions they would
20 now propose to put in, I think it might be a very
21 effective procedure if he would simply designate the parts
22 they want to put in. And then if I have an objection to
23 any of those questions, I will send that in.

1 THE COURT: Do you have an extra copy that each
2 of you can have one and I have one?

3 MR. TRAMBLIAN: I don't have it with me, Your
4 Honor. I thought we were going to read it, but I'm trying
5 to speed it along.

6 THE COURT: There was not one filed with the
7 Court?

8 MR. TRAMBLIAN: You would have to ask the court
9 reporter.

10 THE COURT: I don't --

11 MR. TRAMBLIAN: I don't believe it was filed with
12 the Court, Your Honor.

13 MR. RANGE: Your Honor, if it's agreeable, why
14 don't we simply have --

15 THE COURT: If I'm going to be ruling on
16 objections, it is easier for me to have it before me if
17 you're skipping about.

18 MR. TRAMBLIAN: Why don't we read it, Your Honor.
19 I think it would make it easier if that's all agreeable.
20 If Your Honor would prefer to read it, that's fine.

21 THE COURT: And then have me rule on it as we go
22 along?

23 MR. TRAMBLIAN: Yes, sir.

1 THE COURT: And I won't have it in front of me.

2 MR. TRAMBLIAN: I can give you a copy.

3 THE COURT: That would be fine.

4 MR. TRAMBLIAN: But it's not marked for the parts
5 I want.

6 THE COURT: May I mark it as you go along?

7 MR. TRAMBLIAN: Certainly. Your Honor, who would
8 you have read it?

9 THE COURT: Whoever you like.

10 MR. TRAMBLIAN: I know it's usually the court
11 clerk.

12 MR. RANGE: We can have Ms. Crawford read it if
13 she'd like.

14 THE COURT: You may have Ms. Crawford read it if
15 you want.

16 MR. TRAMBLIAN: May I approach the bench, Your
17 Honor?

18 THE COURT: Yes. And if you want her to read it
19 from down there if she keeps her voice up --

20 MR. TRAMBLIAN: That's fine.

21 THE COURT: -- it would be all right. Read it
22 loud enough so that the reporter and I can hear it.

23 MR. TRAMBLIAN: All right. We're on page 4. I

1 will read the question.

2 (Mr. Tramblian read the questions and Ms.

3 Crawford read the answers, as follows:)

4 Q Would you state your full name, please?

5 A Ronald Gardner Crawford.

6 Q Mr. Crawford, are you currently employed?

7 A Yes.

8 Q With whom?

9 A Short Brothers (USA).

10 Q What is your current job with Short Brothers?

11 A I am the vice-president of sales and marketing.

12 MR. TRAMBLIAN: Now skipping down to line 21.

13 Q What position did you hold with Shorts in 1985?

14 A I was a regional sales manager.

15 MR. RANGE: Your Honor, I have an objection to
16 them skipping down to that line. They are cutting out the
17 portion of his history where he indicates the period of
18 time where he's been employed. And I don't think it's
19 appropriate to leave that out.

20 MR. TRAMBLIAN: I don't think it matters; but if
21 they want to read it in, that's fine, Your Honor.

22 THE COURT: All right. It will remain in to save
23 the continuity of it. All right.

1 MR. RANGE: Thank you, Your Honor.

2 MR. TRAMBLIAN: Your Honor, I would like to skip
3 now down to page 5, line 17.

4 Q And in 1985 as regional --

5 THE COURT: Did you want to --

6 MR. RANGE: Your Honor, I thought they were going
7 to be moving through large blocks. If they're just going
8 to skip a question and an answer here and there, I do have
9 an objection to that. I don't think they should be
10 allowed to pick line by line and leave out the previous
11 line. It destroys the continuity of the deposition.

12 THE COURT: Let me ask you this. This deposition
13 is nothing but a 37-page deposition. And when I get to
14 consider my notes, read your briefs and your authorities
15 for the decision, reading that is no big task. And I
16 would like to know, though, where your principal
17 objections are, those that count substantively in this
18 case.

19 MR. RANGE: I would be delighted to send the
20 Court with a copy to Mr. Tramblian a letter identifying
21 whether I have any objections to any of the questions.
22 And with that you could read the entire deposition. And
23 that would solve our problem. And we won't have to do it

1 here.

2 THE COURT: You would not be prepared now to look
3 at it or you don't recall now?

4 MR. TRAMBLIAN: There were very few objections,
5 anyway.

6 MR. RANGE: Yeah, there are a few objections.
7 And I'm afraid, Your Honor, it would take longer for me to
8 read through the whole thing now than it would be simply
9 for me to send a note to you. It may be I don't have any
10 once I go back and look at it.

11 MR. TRAMBLIAN: Your Honor, we will move that
12 into evidence.

13 THE COURT: All right. Subject to the objections
14 that will be received this will be received then as --
15 shall I receive it as an exhibit?

16 MR. TRAMBLIAN: Yes, sir. No. 9, if you would,
17 please.

18 THE COURT: 8?

19 MR. TRAMBLIAN: No. 9. I believe 9.

20 MR. RANGE: I don't think --

21 MR. TRAMBLIAN: We went up to 8.

22 MR. RANGE: We did? Okay. You're right.

23 THE COURT: Defendant's No. 9. Was this a person

1 who worked in the office of the company in Crystal City?

2 MR. TRAMBLIAN: Yes. He was the regional sales
3 manager in 1985. And he was involved in a number of the
4 leases.

5 THE COURT: Does he describe the nature of the
6 operation there that was conducted out of that building --
7 out of that office, that is, numerically and --

8 MR. TRAMBLIAN: No, Your Honor. He talks -- if I
9 can generalize, he talks about how he would do the lease
10 transactions. For example, he would go out to the site
11 and negotiate it and have to bring the terms back for
12 approval; some of the stuff that's been covered, but some
13 of it hasn't.

14 THE COURT: All right. This is in evidence.

15 (The deposition was marked Defendant's Exhibit
16 No. 9 for identification and received in
17 evidence.)

18 MR. TRAMBLIAN: We would call next, Your Honor,
19 Ron Griffin.

20 THE COURT: All right. You were sworn this
21 morning?

22 THE WITNESS: Yes.

23 THE COURT: All right. Have a seat. All right.

1 Yes.

2 MR. TRAMBLIAN: Thank you, Your Honor.

3 Whereupon,

4 RONALD J. GRIFFIN,

5 was called as a witness by and on behalf of the
6 respondent, and having been first duly sworn, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. TRAMBLIAN:

10 Q Would you please state your name?

11 A Ronald J. Griffin.

12 Q Mr. Griffin, what is your current occupation?

13 A Tax auditor with the Arlington County
14 commissioner of revenue's office.

15 Q I think you are going to have to keep your voice
16 up.

17 A Okay.

18 Q How long have you been a tax auditor in the
19 commissioner of revenue's office?

20 A Six years.

21 Q Could you briefly describe your educational
22 background after high school, please?

23 A I have a B.A. degree in economics from the

1 University of the District of Columbia as well as two
2 years at Howard University.

3 Q Could you describe, please, what the duties of a
4 tax auditor are?

5 A I collect cigarette tax revenues for the county.
6 I also go out into the field to audit businesses for gross
7 receipts. Number one is to make sure that they are
8 classified correctly. Number two is to make sure that
9 they are reporting gross receipts correctly to the county.

10 Q Were you involved in the audit of Short
11 Brothers --

12 A Yes.

13 Q -- in 1986?

14 A Yes.

15 Q Do you know what triggered the audit?

16 A They were reporting zero gross receipts to the
17 county for business license tax purposes.

18 Q And why would that trigger an inquiry?

19 A We have found previously that all companies that
20 have offices here -- revenue is generated by those --
21 those locations.

22 Q Did you review the books of Short Brothers?

23 A Yes.

1 Q Did you review any tax returns?

2 A Yes.

3 MR. RANGE: Your Honor, may I just make an
4 objection? He's apparently testifying about other audits
5 that have been conducted of other businesses and
6 attributing that to Short Brothers which I think is wholly
7 inappropriate.

8 THE COURT: The objection is sustained --

9 MR. TRAMBLIAN: Fine, Your Honor.

10 THE COURT: -- to the one question and answer of
11 what has been found in the past with people who report
12 zero gross receipts.

13 MR. TRAMBLIAN: Yes, sir. And the question was
14 only to show why the thing started.

15 THE COURT: Yes.

16 MR. TRAMBLIAN: No other purpose.

17 BY MR. TRAMBLIAN:

18 Q Did you review any of Short Brothers's tax --
19 state tax returns?

20 A Yes. I reviewed '82 through '86 tax returns.

21 Q Why did you review the tax returns?

22 A The tax returns are legal documents. Secondly,
23 they also -- it will allow us or not to tax them -- double

1 tax them.

2 Q How does reviewing the tax returns allow you to
3 not double tax Short Brothers?

4 A If they are reporting gross receipts to another
5 jurisdiction or taxing authority, we will allow them to
6 deduct that from the gross receipts reported to Arlington
7 County.

8 Q If in your review of the documents you found that
9 Short Brothers had paid taxes to any other locality either
10 state or municipality, what would you do?

11 MR. RANGE: Objection, Your Honor.

12 THE COURT: The objection is sustained.

13 BY MR. TRAMBLIAN:

14 Q In your review of Short Brothers's tax returns,
15 Mr. Griffin, did you find whether or not Short Brothers
16 had paid taxes on their gross receipts to any locality or
17 state other than Arlington County?

18 MR. RANGE: Objection, Your Honor. We have not
19 established a foundation that you can determine from those
20 state tax returns whether a locality had assessed a tax.
21 You can't tell from looking at the state tax return
22 whether a locality --

23 THE COURT: Well, I wouldn't draw any inference

1 from that that they should have paid any tax. He's just
2 reporting a fact that he -- from looking at the return you
3 saw no payments.

4 MR. RANGE: But there is no line on the return to
5 show a payment to, say, Lancaster County, Pennsylvania.
6 So looking at the return wouldn't prove that fact. And I
7 object to him asking from the return could he determine
8 and did he see any payment of taxes to them, because you
9 couldn't find that out from that return.

10 MR. TRAMBLIAN: Your Honor, rather than debate it
11 let me ask it in another way.

12 BY MR. TRAMBLIAN:

13 Q Did you review any documents other than the books
14 of Short Brothers, their tax returns -- and their tax
15 returns?

16 A Income statements. Also we received some
17 correspondence from them that we asked for some
18 clarifications.

19 Q All right. In any of the documentation provided
20 to you by Short Brothers did they -- was anything
21 presented that showed to you that they had paid taxes on
22 their gross receipts anywhere except Arlington County?

23 A No.

1 Q If from the documents they presented to you there
2 was evidence that they had paid taxes on their gross
3 receipts in any other locality, how would you have treated
4 that?

5 MR. RANGE: I object again to the question, Your
6 Honor.

7 THE COURT: Well, what is it?

8 MR. RANGE: Well, he's asking this witness to
9 speculate. There has been no establishment of how they
10 would treat that situation. He's simply asking him to
11 speculate; if something had happened and didn't happen,
12 what would you have done. And I think it's inappropriate
13 for that to occur.

14 MR. TRAMBLIAN: Your Honor, I'm just trying to
15 establish how they treated the information they had.

16 THE COURT: Well --

17 MR. TRAMBLIAN: Let me ask it another way.

18 THE COURT: -- how they treat it doesn't make it
19 so. It will be what the law provides that will determine
20 whether the tax will be assessed or not assessed. Would
21 that not be correct?

22 MR. TRAMBLIAN: Except, Your Honor, all I'm
23 trying to do is establish how they treat gross receipts.

1 I'm trying to get this witness to tell the Court that if a
2 taxpayer pays income tax -- or tax on its gross receipts
3 in any other locality or reports it anywhere else, it will
4 be credited against the taxes due Arlington. That's all
5 I'm trying to get from him.

6 THE COURT: I thought we had been going on that
7 assumption from the very beginning of everything that's
8 been said here, have we not --

9 MR. TRAMBLIAN: If that will be stipulated --

10 THE COURT: -- in the argument or in the opening
11 statements and all and in response to the questions that I
12 had asked?

13 MR. TRAMBLIAN: If it will be stipulated to, we
14 will have our record, Your Honor.

15 MR. RANGE: I'm not sure what I'm being asked to
16 stipulate to. There's no question that from the outset,
17 Your Honor, the county has said to us prove to us that you
18 paid a tax some place else. And, of course, we have been
19 unable to do that, because we don't have the tax returns.

20 THE COURT: The tax that parallels this tax, that
21 is, a gross receipts, business privilege tax.

22 MR. RANGE: No. They have asked for anything.
23 They have asked for state income tax returns. They've

Direct Examination of Mr. Griffin

1 asked for local returns. They've asked for exemptions
2 from local taxes. And we have told them that the lease
3 says the lessee pays that. We don't have that
4 information. And that much I agree to. Now, this thing
5 about the credit is a different story.

6 THE COURT: Let me ask you then whether your
7 client has paid any or not.

8 MR. RANGE: Right. And the answer is, no, my
9 client has not paid any except to Arlington County.

10 THE COURT: All right. Can he answer that? Can
11 he not answer that here?

12 MR. RANGE: I don't think this witness has any
13 personal knowledge of --

14 THE COURT: From looking at the return?

15 MR. RANGE: He couldn't, because the return won't
16 show it. That's my point.

17 THE COURT: Would not show anywhere on the return
18 the payment to another jurisdiction --

19 MR. RANGE: For --

20 THE COURT: -- of this tax to show a credit for
21 it?

22 MR. TRAMBLIAN: One of our exhibits, their
23 interrogatory answer, says they haven't paid taxes

1 anywhere else. And they don't know if anybody has.

2 MR. RANGE: And that's fine. I admit that's my
3 answer; but this witness can't talk about that, because he
4 doesn't know about that.

5 THE COURT: The objection is sustained.

6 BY MR. TRAMBLIAN:

7 Q Mr. Griffin, when you audit gross receipts
8 returns, how does the commissioner of the revenue's office
9 treat a factual showing that the taxpayer has paid taxes
10 on its gross receipts to a locality other than Arlington
11 County or a state other than Virginia?

12 MR. RANGE: Objection, Your Honor. Again we've
13 got nothing but conjecture and speculation.

14 MR. TRAMBLIAN: Your Honor, it's the procedure.
15 I don't know how else to get the procedure and practice of
16 the office into evidence.

17 MR. RANGE: We haven't laid a foundation for
18 that, Your Honor.

19 THE COURT: Do you mean of whether he knows the
20 procedure or what?

21 MR. RANGE: Well, we haven't laid a foundation,
22 Your Honor, that there is a procedure; that he knows about
23 it or that there is a statutory authority for the

1 procedure. I mean, they're trying to say that --

2 THE COURT: I don't think there would be
3 statutory authority for it.

4 MR. TRAMBLIAN: I'm just asking him what is the
5 procedure. It's a perfectly proper question.

6 MR. RANGE: Again I object on a foundation basis.

7 THE COURT: If there is a procedure.

8 MR. TRAMBLIAN: Well, that's why I asked.

9 THE WITNESS: Could you repeat that?

10 BY MR. TRAMBLIAN:

11 Q Yes. What is the procedure in the commissioner
12 of the revenue's office when auditing a taxpayer on its
13 gross receipts when the taxpayer provides documentation
14 that shows that it's paid taxes on its gross receipts in
15 another locality or in another state other than Arlington?

16 MR. RANGE: Object because it's leading, Your
17 Honor, and also object because again there's no
18 foundation.

19 MR. TRAMBLIAN: Your Honor, the question is what
20 is the procedure. That is not a leading question.

21 MR. RANGE: All the rest of it was leading where
22 he fed him the information.

23 THE COURT: Let him answer the question so we can

1 move on. The objection is overruled.

2 A We will allow the revenue that is allocated or
3 paid on to another jurisdiction to be deducted from the
4 gross receipts reported to Arlington County.

5 BY MR. TRAMBLIAN:

6 Q And what would be the practice of the
7 commissioner of the revenue's office in cases where the
8 taxpayer has not actually paid taxes to some other
9 jurisdiction but has reported that income to another state
10 or county?

11 A We will also allow that deduction as well.

12 MR. RANGE: Same objection.

13 THE COURT: Well --

14 MR. TRAMBLIAN: Was it overruled, Your Honor?

15 THE COURT: No, it was not. I do have a question
16 of the relevance of either of them, because neither are
17 this case.

18 MR. TRAMBLIAN: But, Your Honor, it goes to show
19 that there can never be any multiple taxation in this
20 case. And it goes to show that it is properly
21 apportioned, because the cases say if you have a credit
22 provision like this which I'm trying to get into evidence,
23 you meet the fair apportionment prong of the Complete Auto

1 test.

2 THE COURT: Proceed.

3 MR. TRAMBLIAN: Does the witness's answer to the
4 last question stand?

5 THE COURT: Yes, it stands.

6 MR. TRAMBLIAN: Thank you.

7 BY MR. TRAMBLIAN:

8 Q Mr. Griffin, in reviewing the documents that you
9 referred to was there any evidence that Short Brothers
10 reported any of its income to any other state other than
11 Virginia for the 1985 year?

12 A No.

13 Q How did you determine that?

14 A Again, we go back to tax returns that show
15 nothing was apportioned to any other state other than the
16 State of Virginia. Secondly, we received the
17 correspondence which asked them to break the -- the
18 revenues from fiscal year to calendar year. And that also
19 showed that they apportioned no income to any other state.

20 MR. TRAMBLIAN: May I approach the witness, Your
21 Honor? May I approach the witness?

22 THE COURT: Yes.
23

1 BY MR. TRAMBLIAN:

2 Q Mr. Griffin, I'm handing you what's been admitted
3 into evidence as Defendant's Exhibit 4 which is a copy of
4 the Virginia corporation income tax return for 1984.

5 A Okay.

6 Q Where on the -- that document did you find the
7 information you referred to about where they allocated
8 their sales?

9 A On this sheet there's a -- a sheet called an
10 apportionment schedule.

11 MR. TRAMBLIAN: Let the record show that the
12 witness is referring to page 3 of Exhibit No. 4.

13 A And on the return it --

14 THE COURT: Page 3?

15 MR. TRAMBLIAN: Of Exhibit 4. Top of the page,
16 Your Honor. It says multi-state corporation.

17 THE COURT: All right.

18 BY MR. TRAMBLIAN:

19 What line of page 3 were you referring to, Mr.
20 Griffin?

21 A Line eight.

22 Q And what does line eight say?

23 A It shows that a hundred percent of their sales

Direct Examination of Mr. Griffin

1 was allocated to the State of Virginia.

2 Q And what period of time did Exhibit No. 4 cover?

3 A April 1st, '84, through March 31, 1985. It shows
4 the first three years -- the first three months of
5 calendar year 1985.

6 Q All right. I'm going to ask you now to look at
7 Defendant's Exhibit No. 5 which is the Virginia
8 corporation income tax return for 1985. What did that
9 document tell you about where Short Brothers allocated its
10 income?

11 A It has no apportionment schedule on -- in this
12 document.

13 Q As an auditor what does it mean to you when
14 there's no apportionment schedule?

15 A That a hundred percent of the gross receipts
16 should be reported to -- to the State of Virginia.

17 Q I'm now going to hand you what's been marked and
18 received into evidence as Defendant's Exhibit No. 1 and
19 No. 2 and ask if you can identify those documents.

20 A Yes, I can.

21 Q What are they?

22 A They are -- these are correspondence that were
23 sent back from Short Brothers that was clarifying some

1 information we requested.

2 Q Exhibit No. 1, did the county or did Short
3 Brothers prepare the items that are typed onto the page?

4 A Short Brothers.

5 Q And who made the marks, the pencil and pen marks,
6 on the document?

7 A I did.

8 Q For Exhibit No. 2, who made the handwritten
9 notations on Exhibit No. 2?

10 A I did.

11 Q And did looking at Exhibit No. 1 or Exhibit No. 2
12 assist you in determining where Short Brothers's gross
13 receipts for calendar year 1985 should be allocated?

14 A Yes.

15 Q How did they help you?

16 A On the second page on Exhibit No. 1, I guess.

17 MR. TRAMBLIAN: Let the record show the witness
18 is referring to page 2 of Defendant's Exhibit No. 1.

19 BY MR. TRAMBLIAN:

20 Q And what on page number 2 of Exhibit No. 1
21 assisted you?

22 A D shows that California had zero gross receipts
23 reported. And total gross receipts was reported to the

1 **State of Virginia.**

2 **Q Thank you.**

3 **Based, Mr. Griffin, on your review of all these**
4 **documents what was your conclusion as to your audit of**
5 **Short Brothers?**

6 **MR. RANGE: Objection, Your Honor.**

7 **THE COURT: What?**

8 **MR. RANGE: He's asked the witness to draw a**
9 **conclusion as to the audit of Short Brothers. And he**
10 **hasn't identified what he is asking him specifically to**
11 **draw a conclusion about.**

12 **MR. TRAMBLIAN: Your Honor, I'll rephrase it so**
13 **we can get through this.**

14 **BY MR. TRAMBLIAN:**

15 **Q What did you do after you looked at all the**
16 **documents from Short Brothers?**

17 **A We taxed Short Brothers 100 percent of the gross**
18 **receipts that was reported to Virginia.**

19 **MR. TRAMBLIAN: Thank you. That's all. If I may**
20 **approach the witness again, Your Honor.**

21 **THE COURT: Which exhibit are you --**

22 **MR. TRAMBLIAN: No. 1.**

23

1 BY MR. TRAMBLIAN:

2 Q If you would look at page 2 of Exhibit No. 1,
3 there is a listing for agency fees. How did you treat
4 that?

5 THE COURT: Which page are you on?

6 MR. TRAMBLIAN: Number 2.

7 A It's under C. Agency fees were treated as part
8 of the leasing income. The reason why, because --

9 BY MR. TRAMBLIAN:

10 Q Why didn't you treat it as an affiliate payment?

11 A Because it is not listed under the affiliate
12 payment by Short Brothers.

13 Q Did Short Brothers list their receipts from
14 affiliates somewhere else on this document?

15 A Yes.

16 Q Where is that?

17 A A on the first page.

18 Q On page 1 of Exhibit 1?

19 A Yes.

20 MR. TRAMBLIAN: Thank you. That's all, Your
21 Honor. Thank you, Mr. Griffin.

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CROSS-EXAMINATION

BY MR. RANGE:

Q Mr. Griffin, can you tell me when you first started as an auditor for Arlington County?

A 1985.

Q Okay. Do you recall what month in 1985?

A I believe it was May of 1985.

Q Do you recall when you went to do the audit on Short Brothers?

A I can't recall specifically, but it was in 1986.

Q Had you ever audited prior to that audit of Short Brothers (USA) a U.S. corporation that worked as a representative for a foreign corporation?

A Yes.

Q Okay. Did you receive any special training for auditing those types of companies?

A No.

Q Did you receive any special training as an auditor for determining what factors you ought to look at in order to ascertain where a company had a taxable nexus?

MR. TRAMBLIAN: Your Honor, I'm going to object to the question to the extent it asks the witness for a legal conclusion as to what taxable nexus is.

Cross Examination of Mr. Griffin

1 THE COURT: Well, he wasn't -- he didn't express
2 any opinions, did he, Mr. Range?

3 MR. RANGE: No, although I think it's perfectly
4 legitimate to ask the witness if he knows what a taxable
5 nexus is.

6 THE COURT: Your question really would be to
7 impeach him as an expert if he were asked opinion
8 questions. He was here as a fact witness.

9 MR. RANGE: And my question really goes to
10 whether he looked at the right facts. Did he get the
11 training he needed to look at the right facts?

12 THE COURT: I think you can ask him those
13 questions. All right.

14 BY MR. RANGE:

15 Q And that really is my question. Did you receive
16 any special training from the county as to what factors
17 you ought to look at when conducting an audit to determine
18 whether a company had a nexus outside of Virginia?

19 A Special training? No. May I --

20 Q Okay. Well, what kind of training did you
21 receive in terms of what factors you should look for?

22 A Well, I base it on office policy.

23 Q I see. And what is the office policy for what

1 factors you should look for to determine whether a company
2 has a taxable nexus some place other than Virginia?

3 A Our policy is to review income statement, tax
4 returns or any other documents that would provide evidence
5 by the taxpayer that they do have a -- are paying gross
6 receipts in another jurisdiction.

7 Q Well, what other documents besides income tax
8 statements would show taxable nexus in another
9 jurisdiction?

10 MR. TRAMBLIAN: Objection to asking the witness
11 what would constitute taxable nexus in another
12 jurisdiction. That's a legal conclusion he's asking for.

13 MR. RANGE: Your Honor, I'm not asking that. I'm
14 asking what documents he would look at to find the
15 factors.

16 THE COURT: That would have led you to do
17 something different from what you did in this case is what
18 you're asking him.

19 MR. TRAMBLIAN: That's an appropriate question.

20 MR. RANGE: That's my question, Your Honor.

21 A In each case it would be different. I couldn't
22 tell you what we would have to look for. Each case would
23 be different. As we go in we realize that the -- the

Cross Examination of Mr. Griffin

1 situation is not the same.

2 BY MR. RANGE:

3 Q Well, you mentioned an office policy. Is this a
4 written policy?

5 A No.

6 Q Is it an oral policy?

7 A It is a -- an oral policy. May I correct myself?

8 Q It's an oral policy?

9 A Yes.

10 Q Okay. Well, can you tell me, sir, in your own
11 words exactly what is the policy?

12 A Well, we -- let me say when I say it's an oral
13 policy, we also go by County Code which states that we can
14 look at tax returns and allow deductions. Basically
15 that's what we go by. And the policy is we allow
16 deductions when you show that you have filed revenue --
17 have filed for showing that revenue has been generated in
18 or another jurisdiction.

19  And what County Code provision are you talking
20 about now, sir?

21 A It's 11-3, I believe.

22 MR. RANGE: Okay. Section 11-3. If I may
23 approach the witness, Your Honor.

1 THE COURT: Yes.

2 BY MR. RANGE:

3 Q Is this the section of the County Code, Section
4 11-3, that you're referring to?

5 A Yes.

6 Q Okay. And this is the section that you say
7 allows you to give a deduction or a credit for taxes in a
8 foreign jurisdiction?

9 MR. TRAMBLIAN: That's not what he said, Your
10 Honor. That's mischaracterizing the witness's testimony.

11 THE COURT: Well, ask him the question. Ask him
12 the basic question again.

13 MR. RANGE: Sure.

14 BY MR. RANGE:

15 Q What is it that this section of the code allows
16 you to do?

17 MR. TRAMBLIAN: Your Honor, you can read the code
18 as well as everybody else. I don't know the point of
19 ~~ask~~ the witness to read the code to the Court and
20 ~~explain~~ to the Court what it means, because the Court can
21 read it.

22 MR. RANGE: Your Honor, he's testified that they
23 have an interpretation based on this. And I think I'm

Cross Examination of Mr. Griffin

1 entitled to inquire into it.

2 THE COURT: I think if what Mr. Griffin has based
3 his action on is an internal policy in that office, I
4 think counsel is entitled to explore that on
5 cross-examination to determine what the policy is that led
6 him to do what he did; not argue with him about whether
7 it's a correct policy or not. It's not his policy or
8 whatever policy it is.

9 MR. TRAMBLIAN: And the question is asking him
10 what in the code authorizes you to do this. That's not a
11 proper question.

12 THE COURT: The objection is sustained to that.

13 BY MR. RANGE:

14 Q All right. Well, Mr. Griffin, you testified that
15 there is a provision of the County Code that allows you to
16 have a deduction, I believe is the word you used, for your
17 taxes. Did I get that correct?

18 A It's a deduction for revenues reported to another
19 tax jurisdiction.

20 Q Okay. And what other taxing jurisdictions are
21 included within that?

22 A In -- within our policy?

23 Q Right.

1 A Other counties, other states, other foreign
2 countries, if necessary, if they have proof.

3 MR. TRAMBLIAN: The witness -- you need to speak
4 up.

5 THE WITNESS: I'm sorry.

6 BY MR. RANGE:

7 Q Do you see the language here in Section 11-3 that
8 refers to a foreign taxing jurisdiction?

9 A Yes.

10 MR. TRAMBLIAN: Your Honor, we're right back
11 where we were. You can read the code. And I think this
12 is pointless to ask the witness to try and interpret the
13 County Code. He's not an attorney.

14 MR. RANGE: I am not asking for an
15 interpretation, but the witness says that based on this
16 provision of the County Code they can give a deduction.
17 And I want to know -- he has referenced the foreign
18 jurisdiction statement here. There is a definition of
19 ~~foreign~~ jurisdiction. And I want to inquire into it.

20 THE COURT: The objection is sustained. The
21 objection -- excuse me. The objection is overruled. You
22 may proceed.

23

Cross Examination of Mr. Griffin

1 BY MR. RANGE:

2 Q Mr. Griffin, you see here that it says taxing
3 foreign jurisdiction in Section 11-3.

4 A Yes.

5 Q Could you read for the Court, please, the last
6 paragraph of Section 11-3 where it defines a foreign
7 taxing jurisdiction?

8 MR. TRAMBLIAN: Your Honor, do we need to be here
9 all day having the code read into evidence? I think we
10 can -- this is a pointless exercise. And I object.

11 MR. RANGE: Your Honor, it certainly is not
12 pointless.

13 THE COURT: Well, let me see it.

14 MR. RANGE: I'll hand it up. The point is, Your
15 Honor, that the witness has testified --

16 THE COURT: You may proceed. You are familiar --
17 you are thoroughly familiar with this. If you would like
18 to read it again, you may. Familiarize yourself with it.

19 THE WITNESS: Okay.

20 BY MR. RANGE:

21 Q If you could just read the bottom paragraph.
22 Yes, sir.

23 A In this connection the term foreign taxing

1 jurisdiction shall be construed as limited to other
2 counties, cities, towns of the Commonwealth of Virginia.

3 Q Is it the policy of the commissioner of revenue
4 of Arlington that Section 11-3 authorizes a credit or
5 deduction for taxes paid in a foreign jurisdiction?

6 THE COURT: What's the -- let me ask you this.
7 What's the relevance of that when it's not a factor in the
8 case whether it's the county, city or town in Virginia or
9 a state in the United States or another country in the
10 world?

11 MR. RANGE: Your Honor, let me tell you what I
12 believe the relevance of all this is.

13 THE COURT: All right.

14 MR. RANGE: They say that they have an
15 administrative credit or deduction that they allow. Okay.
16 And they say that this statutory --

17 THE COURT: And it's been testified to. If you
18 paid any tax.

19 MR. RANGE: Right. And our position is, Your
20 Honor, first of all, that they have no statutory authority
21 to adopt an administrative credit. The Lorillard case out
22 of the Virginia Supreme Court says that they can't adopt a
23 practice that is not authorized by a state statute. There

1 is no state statute that authorizes it.

2 I believe they have further testified that they
3 have authority to give this credit or deduction based on
4 this section of the County Code.

5 THE COURT: Suppose it's required by federal law.

6 MR. RANGE: What's required by federal law?

7 THE COURT: The granting of a -- relief where
8 it's to another jurisdiction of the United States.

9 MR. RANGE: I believe, Your Honor --

10 THE COURT: Whatever the state code says, the
11 federal law would prevail. And the cases interpreting it
12 prevail.

13 MR. RANGE: That's absolutely correct, Your
14 Honor. If the constitution requires that there be
15 apportionment, then there has to be apportionment. They
16 are suggesting that they have authority to apportion this
17 gross receipts tax.

18 And one of the things they base that on, if I
19 understand the witness's testimony, is this section of the
20 County Code. And my argument simply is this section of
21 the County Code states only that they have authority to
22 apportion within the jurisdiction of Virginia, not
23 without.

1 THE COURT: Well, might that not become relevant
2 if they had -- if there had been an apportionment
3 available without the Commonwealth which was not taken
4 advantage of because of that section? If you follow what
5 I'm saying. That is, that he had denied an apportionment
6 because of that section.

7 MR. RANGE: My argument is that that section
8 gives them no authority to apportion anything outside the
9 state. By its face it only applies to inside the State of
10 Virginia apportionment. And I think I'm entitled --

11 THE COURT: Are you saying it's unconstitutional
12 on its face?

13 MR. RANGE: No. I'm saying that if they have
14 adopted a policy of outside the State of Virginia
15 apportionment based on this, that policy is inappropriate
16 and incorrect and without authority, because the County
17 Code doesn't give them that authority.

18 And that's the purpose for my asking him this
19 line of questioning about is this inside or outside. And
20 I'm willing to rest if we can simply clear up the issue as
21 I believe he has said; that they claim they have a right
22 to give a deduction based on this County Code provision.

23 MR. TRAMBLIAN: Your Honor, this witness is just

1 testifying to what the practice is. He's not a lawyer to
2 sit here and tell us what the authority for it is. That's
3 something we can argue to the Court.

4 MR. RANGE: Sure. And I'm only asking if that is
5 their practice to give a deduction based on this
6 provision.

7 MR. TRAMBLIAN: If he knows what section it's
8 based on. He is not the witness for this.

9 THE COURT: Well, that's what you object to, his
10 interpretation of the code. Now, look, we're going to
11 move this on. He may testify to what the practice is down
12 in the commissioner's office regardless of what it's based
13 on.

14 BY MR. RANGE:

15 Q Is it the practice of the commissioner's office
16 to give a credit or a deduction based on taxing by foreign
17 jurisdictions? And by foreign I mean outside the State of
18 Virginia.

19 A I don't understand what you mean by taxing.

20 Q Is it the practice of the commissioner of revenue
21 to give a credit or a deduction for taxes that are paid
22 outside the State of Virginia?

23 A Yes.

1 Q And could you describe for me exactly what your
2 understanding is of that policy? When do you apply it?

3 A Again, if a company provides proof such as tax
4 return or some other document showing that they have
5 reported revenue in another jurisdiction, we will allow
6 the deduction of that revenue reported to that taxing
7 authority.

8 Q Thank you.

9 As the auditor in this case did you determine
10 where any of the customers of Short Brothers were located?

11 A No.

12 Q Why not?

13 A That wasn't my concern during the audit.

14 Q Well, is it important for you to know the
15 location of the delivery of the Shorts aircraft that are
16 sold?

17 A It's important for me to know whether they are
18 reporting gross receipts to another taxing authority.

19 Q Was it important for you to know whether the
20 aircraft that Shorts leased to its customers were located
21 in Virginia or outside of Virginia?

22 A Again, it was only my -- it was only --

23 THE COURT: He's an auditor. He doesn't assess

Cross Examination of Mr. Griffin

1 these taxes, Mr. Range. He's auditing it and passing it
2 on to others who review it. And then I guess it's passed
3 on to others for legal opinions, but this man is not here
4 to give legal opinions. And he doesn't have the authority
5 under the law of Virginia to assess the tax.

6 MR. RANGE: Your Honor, I understand that; but
7 there's a real problem here, because they say their policy
8 is based on tax --

9 THE COURT: He audited these returns and went
10 over the information furnished by your client and reached
11 the conclusion that he did which resulted in the action
12 that they took.

13 MR. RANGE: Well, Your Honor, I'm not sure. Do
14 you agree with me that there is no policy that's been
15 applied here? I mean, it seems to me that if they claim
16 there's a policy, I ought to be able to explore that.

17 THE COURT: Well, you weren't doing it then with
18 that line of questioning.

19 MR. RANGE: Well, let me ask my question another
20 way perhaps.

21 THE COURT: All of those questions would have to
22 do with legal training and an understanding of the supreme
23 court cases and the power to tax.

1 MR. RANGE: I really don't think that's the case,
2 Your Honor. I think if this man has failed --

3 THE COURT: Those questions --

4 MR. RANGE: -- to look at the relevant factors
5 such as where the aircraft were located when they were
6 sold, that's a fact I should bring out in
7 cross-examination. I will try and move along quickly,
8 though. Perhaps I can do it more expediently than I have.

9 BY MR. RANGE:

10 Q Mr. Griffin, do you have any information to
11 suggest that the airplanes that Shorts (USA) leased to its
12 customers were ever delivered in the State of Virginia or
13 ever stored in the State of Virginia or ever returned to
14 the State of Virginia?

15 A During the audit I was not given that
16 information.

17 Q Did you ask for that information, sir?

18 A No.

19 THE COURT: I think, though, you ought to keep in
20 mind that he is an auditor who works with the numbers that
21 are given to him, the papers that are given to him, and is
22 not an investigator. Maybe I'm misunderstanding his
23 function there.

1 MR. RANGE: Your Honor, my --

2 THE COURT: I don't think it's his business to go
3 out and do the things your question is about.

4 MR. RANGE: Your Honor, they did go out and do
5 precisely that. They asked for income information.

6 THE COURT: There may have been, indeed, people
7 that did that. I'm not saying -- you're asking this
8 witness whether he did it or not.

9 BY MR. RANGE:

10 Q Mr. Griffin, did you uncover any information in
11 the course of your audit to suggest that any of the
12 aircraft that Short Brothers (USA) sold were delivered in
13 the State of Virginia?

14 A No.

15 Q Mr. Griffin, can you tell me who developed the
16 policy that you referred to in your testimony here today?

17 A My supervisor.

18 Q And who is that?

19 A Ms. Ruth Donnalley.

20 Q Okay. And do you know when the policy was first
21 adopted?

22 A When I came on in 1985, I believe they were using
23 it at that time.

1 Q And can you tell me, sir, whether any steps are
2 taken to notify the taxpayers of this policy?

3 A No. Not initially, no.

4 Q Would there be any way for Short Brothers (USA)
5 to know at the time that it drafted its leases that placed
6 the tax -- the burden to pay gross receipts tax on its
7 lessees that there was this policy of the Arlington
8 commissioner of revenue?

9 MR. TRAMBLIAN: Your Honor, how can this witness
10 know what Short Brothers might be able to know? I object.

11 THE COURT: The objection is sustained.

12 BY MR. RANGE:

13 Q Mr. Griffin, earlier in your testimony when you
14 talked about factors that you might consider other than
15 taxes -- do you recall that testimony?

16 A Yeah.

17 Q And you said you'd have to look at that set of
18 facts in a given case.

19 ~~MA~~ Yes.

20 Q Okay. Now, let's take the situation where a
21 customer is located outside the State of Virginia.

22 MR. TRAMBLIAN: Your Honor, this is --
23

Cross Examination of Mr. Griffin

1 BY MR. RANGE:

2 Q And we have a sale to that customer outside of
3 the State of Virginia where the aircraft involved was
4 never in the State of Virginia and then was delivered to
5 the customer outside the State of Virginia.

6 Does the policy that you have referred to here
7 give the taxpayer a credit or a deduction for that
8 situation?

9 MR. TRAMBLIAN: I object to the question, because
10 it's not this case. It's a hypothetical that has nothing
11 to do with the facts of this case. He has not given his
12 opinion. He's testified as to the facts of what he did.
13 It's not a proper question.

14 THE COURT: Objection sustained.

15 BY MR. RANGE:

16 Q Mr. Griffin, at the time that you assessed the
17 tax against Short Brothers (USA) were you aware of the
18 fact that all of the aircraft that were sold were sold to
19 customers located outside the State of Virginia and
20 delivered to customers outside the State of Virginia?

21 A I was not aware of that.

22 Q Were you aware of the fact that for the lease
23 income that you assessed all of the lessees were located

1 outside the State of Virginia and the aircraft were
2 delivered to these lessees outside the State of Virginia?

3 MR. TRAMBLIAN: Asked and answered. We went
4 through this a few minutes ago.

5 THE COURT: Objection sustained.

6 BY MR. RANGE:

7 Q Mr. Griffin, I would like to direct your
8 attention to page 2 of the Exhibit No. 1.

9 MR. RANGE: Yes. That would be it right there,
10 Your Honor. The second page.

11 THE COURT: Page 2?

12 MR. RANGE: Right.

13 BY MR. RANGE:

14 Q And I particularly would like to direct your
15 attention to item D where it says allocation of receipts
16 in A, B and C above between California and Virginia
17 offices. And you're referring there to the allocation of
18 income; is that correct?

19 A Again, I did not write this, sir.

20 Q Okay.

21 A I believe these are allocations A, B, C between
22 California and Virginia.

23 Q And the allocation we're talking about there on

1 those income tax returns was an allocation of net income
2 taxes, not gross receipts; is that correct?

3 A I believe on the income tax returns it will say
4 sales.

5 Q All right.

6 A Not net income. It says sales.

7 Q Do you know whether that is the income -- well,
8 strike that.

9 On the income tax returns that you looked at for
10 Short Brothers am I correct that the allocation you talked
11 about between Virginia and California was made for
12 purposes of the net income tax?

13 A No, sir, it's not.

14 MR. TRAMBLIAN: Your Honor, he didn't prepare the
15 document. He doesn't know their purpose in doing it. He
16 just testified what he had on the document. He's asking
17 him why did Short Brothers do it this way. And this
18 witness doesn't know the answer.

19 MR. RANGE: That's not my question, Your Honor.
20 I'm simply asking isn't it true that the income tax he
21 looked at, the returns, show an allocation of net income
22 tax, not an allocation of gross receipts.

23 MR. TRAMBLIAN: And he answered that and said no.

1 And the next question was why was it done this way.

2 THE COURT: Well, the question as to why they did
3 it that way, if that was your question --

4 MR. RANGE: No, I didn't ask that.

5 THE COURT: -- the objection is sustained; but as
6 to the question that you did ask and he answered, the
7 objection is overruled if there was an objection.

8 MR. TRAMBLIAN: No. It's been asked and
9 answered.

10 MR. RANGE: I guess, Your Honor, I'm confused now
11 at this point. The question really is --

12 THE COURT: No. The question and the answer
13 stand as to the allocation on the income taxes that he
14 reviewed between California and Virginia of net income.
15 And that's what was being allocated.

16 MR. RANGE: Right. And if that's --

17 THE COURT: And he understands that they were
18 from income taxes and that that was what was being
19 allocated between those two states.

20 THE WITNESS: The sales were allocated between
21 the two states. The sales were allocated between the two
22 states. It says on the --

23 THE COURT: Items A, B and C.

Cross Examination of Mr. Griffin

1 MR. RANGE: The sales on the net income tax.

2 MR. TRAMBLIAN: We're on a different document,
3 Your Honor. I think we're on Exhibit No. 4.

4 THE COURT: The income tax return.

5 MR. TRAMBLIAN: The Virginia corporate income tax
6 return for 1984, page 3.

7 THE COURT: All right. Yes.

8 MR. RANGE: Maybe I can wrap this up, Your Honor.

9 BY MR. RANGE:

10 Q The question I have is that on that document when
11 you refer to the sales, what we're talking about is the
12 sales that were reported on the net income tax return?

13 A I don't understand what you mean net income tax
14 return.

15 THE COURT: Just call it the income tax return
16 whether you --

17 MR. RANGE: Okay.

18 THE WITNESS: Okay. The income tax return from
19 my opinion when we look at the allocation from it shows
20 total allocated -- total income for the company. It shows
21 income allocated to the state -- within and without the
22 state.

23 It shows zero being allocated to -- on the

1 California return it shows zero being allocated to
2 California. And on the Virginia tax return it shows 100
3 percent of the gross receipts reported by the state -- by
4 the company to the State of Virginia. And since they only
5 had one office, that was Arlington, Virginia. That's how
6 we interpreted it.

7 MR. RANGE: I don't have any further questions,
8 Your Honor.

9 MR. TRAMBLIAN: No questions, Your Honor.

10 THE COURT: May this witness be excused?

11 MR. TRAMBLIAN: That is our case.

12 THE COURT: You're excused and free to go.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 THE COURT: All right. The defendant rests. All
16 of your exhibits are marked and are in evidence.

17 MR. TRAMBLIAN: Yes, sir. I think 1 through 9.

18 THE COURT: Right. The deposition is in. And
19 the stipulation is in. And you will send me some
20 objections to portions of the deposition if you find them
21 to be objectionable on reflection.

22 MR. RANGE: That's correct, Your Honor.

23 THE COURT: Do you gentlemen wish to argue the

1 case orally at this time or how do you wish to proceed
2 with that?

3 MR. RANGE: Your Honor, I am prepared to argue
4 the case orally.

5 THE COURT: All right.

6 MR. RANGE: It may very well be that after you're
7 finished you're going to want to read these briefs. It
8 may be appropriate, I guess, if the parties probably want
9 to file replies to each other's brief so that you'll have
10 the benefit of our thoughts on each other's brief.

11 THE COURT: All right. And you would like oral
12 argument now?

13 MR. RANGE: Yes, Your Honor.

14 THE COURT: That's fine. Do you want a few
15 minutes, a couple minutes to organize yourself?

16 MR. RANGE: I'm prepared to go right now.

17 THE COURT: All right, sir.

18 MR. RANGE: Your Honor, I'm going to try to be
19 short given the heat in the room and the lateness of the
20 hour and the fact that I know you're going to go back to
21 chambers, but let me try and focus in on a few highlights
22 that I think you ought to keep in mind.

23 First I would like to keep straight the concept

1 of a service versus a product. Okay. We had some
2 discussion earlier today about brokers and how you go
3 about the gross receipts tax on a broker. Please bear in
4 mind that there is a difference between, you know,
5 brokers, lawyers, accountants and the sale or the lease of
6 a product. We're measuring two different things.

7 In the instance of the broker the gross receipts
8 tax is imposed on the broker's commission from a sale.
9 Okay. That's a very important distinction. How you
10 measure the tax makes all the difference in the world as
11 to whether it's properly apportioned.

12 Here the county says now we're taxing the
13 privilege of doing business in Arlington County. And,
14 Your Honor, we concede that they can tax us on the
15 privilege of doing business in Arlington County, but how
16 do they measure that? They measured it by all of our
17 sales revenue outside of the state and all of our lease
18 revenue outside of the state. Therein lies the problem.

19 They are not taxing a service. They're taxing
20 this product, the sale of our aircraft, the lease of this
21 aircraft. And when you do that, Your Honor, you have to
22 look at the place of the delivery, the place where the
23 aircraft is principally hangared and stored.

1 I think, Your Honor, there is a very good quote
2 from the Trizona Corporation case versus Michigan
3 Department of Treasury. And that's a 1991 supreme court
4 case. It's in our book of cases before you. And the
5 quote that I would like the Court to focus on is it says a
6 tax on sleeping measured by the number of shoes you have
7 in your closet is a tax on shoes.

8 And that's what the supreme court is saying here
9 is you've got to look at what the people are taxing. If
10 they say they're taxing sleep but they tax you based on
11 the shoes in the closet, that's a tax on shoes.

12 And if they say that they're taxing the service
13 that's done at Arlington County but they base that tax as
14 they did on this number right here, all the sales outside
15 of the state and they base it on all the leases outside of
16 the state, that's not a tax on services. That's a tax on
17 the sale and on the lease.

18 Now, let's take a look, Your Honor, at that first
19 attorney general opinion that I passed up to you, the one
20 that's from Mary Sue Terry dated the 14th of December,
21 1990

22 THE COURT: What was that? Tab 14?

23 MR. RANGE: Yes, Your Honor. Tab 14, I believe.

1 I would like to direct Your Honor to the factual statement
2 that the attorney general puts out there, because I think
3 the facts there are very, very similar to what we're
4 talking about here.

5 First of all, this is a gross receipts tax. It's
6 not a sales tax. This is a gross receipts tax, the same
7 as what we have here in Arlington County, only this one
8 involved the City of Chesapeake. And the facts were that
9 the corporation manufactured and sold computers and
10 computer equipment.

11 It maintained an office in Chesapeake where
12 salesmen who are employees of the corporation would
13 operate out of. And these salesmen would go out and
14 solicit customers and present them with catalogs and
15 brochures and attempt to get the customers to buy the
16 product.

17 After the product was sold to a customer these
18 salesmen might go back out again and help the customer set
19 the product up, show them how to operate it. The salesmen
20 earned a salary and a commission for the work they were
21 doing down there in Chesapeake, Virginia.

22 Now, Your Honor, that is very, very similar to
23 the situation we have here. We have this office in

1 Arlington County where we have salesmen who go out of the
2 state and in other tax years around the state and sold
3 aircraft in Virginia but not in this year. And they would
4 go out and they would solicit these customers to buy
5 aircraft. They would negotiate the contracts out there.
6 They would get the leases all signed. And they would
7 provide some customer service, okay, very, very similar
8 situation to this case right here.

9 Now, what did the attorney general say you could
10 tax? Well, if you look at page 5 of the opinion, Your
11 Honor, page 5 starts out -- are you finding it there, Your
12 Honor?

13 THE COURT: Not too well. Page 5 of this
14 opinion?

15 MR. TRAMBLIAN: It seems to be missing page 2 and
16 4.

17 THE COURT: I have three pages.

18 MR. RANGE: Well, that's not helpful, is it? Let
19 me see if I can get you a full copy, Your Honor. I'm
20 sorry. It didn't do much good to hand you an opinion --
21 it probably didn't make much sense to you either.

22 I'm sorry, Your Honor. Wonders of the modern
23 xerox machine. I'm going to apologize. This is going to

1 be a telefaxed copy of it, but it does have all five
2 pages. I will have to get you all another copy. I'm
3 sorry. Let me direct your attention now to page 5.

4 THE COURT: All right. Thank you. You want me
5 to begin reading on because a license tax?

6 MR. RANGE: Is based on the privilege of doing
7 business.

8 THE COURT: I have that --

9 MR. RANGE: Okay.

10 THE COURT: -- in the original that you did give
11 me.

12 MR. RANGE: Okay. Great. Well, that's what I
13 want to focus on. Given those facts that we had there the
14 attorney general says because a license tax is based on
15 the privilege of doing business within the jurisdiction,
16 the amount of the tax imposed must bear a rational
17 relationship to the type and amount of business conducted
18 within that jurisdiction.

19 Based on the facts you present it is my opinion
20 that the proper basis for the wholesale license tax is the
21 sales price of the merchandise sold by the salesmen in the
22 Chesapeake office and delivered to a purchaser in
23 Chesapeake or in Virginia depending on the circumstances.

Closing Argument of Counsel

1 And then here is the critical sentence. In
2 interstate sales transactions when the various components
3 of the transaction occur in different states, the state of
4 destination of the property sold has the authority to
5 impose a tax on revenues generated from that transaction.

6 Your Honor, that's precisely our argument. And
7 that can be demonstrated, Your Honor, from taking a look
8 at this chart right here. If we had a sale to a customer
9 in Virginia, we would concede that they have the right to
10 tax that sale; but because the sales were all to customers
11 outside of Virginia and the aircraft were delivered
12 outside Virginia and the title transferred outside the
13 State of Virginia those other states have the right to
14 tax, not Virginia.

15 The second attorney general opinion that I gave
16 you up there, Your Honor, involves a service. In that
17 particular instance --

18 THE COURT: Now -- excuse me, but before you go
19 further on that --

20 MR. RANGE: Sure.

21 THE COURT: And you can then pick up with that.
22 That would mean then that the tax would be based on the
23 full gross amount of that sale even though they simply

1 arranged the sale, so to speak, or brokered it.

2 MR. RANGE: That's --

3 THE COURT: You would use the whole gross amount
4 of it.

5 MR. RANGE: The county has charged a tax on the
6 whole gross amount.

7 THE COURT: I understand that which is a point
8 you were making a little bit ago in comparing it, for
9 example, to securities offices where they wouldn't put the
10 tax on the volume of the -- the value of the shares going
11 through there but on the gross receipts of their
12 commissions.

13 MR. RANGE: Right. Precisely the difference,
14 Your Honor, if I understand your question.

15 THE COURT: But here if you limit it to the
16 intrastate business which you say would be valid, you
17 would still be basing the tax at that rate on the full
18 amount of the sales price.

19 MR. RANGE: Yes, Your Honor. Let us say that
20 this aircraft was a one million dollar airplane.

21 THE COURT: But just -- let's say they didn't do
22 anything but sell them in Virginia. They didn't do any
23 interstate business.

Closing Argument of Counsel

1 MR. RANGE: Okay.

2 THE COURT: Maybe they were in some place like
3 Texas where you just deal there; be right in the center of
4 that and sell to nobody but Texans. And they had a
5 healthy tax on them. Then all of the -- your gross
6 receipts would be taxed at that high license rate.

7 MR. RANGE: That's correct, Your Honor.

8 In other words, if all these airplanes here had
9 been sold in Virginia, undisputed that they would have the
10 right to charge all 12 million dollars of that as their
11 gross receipts or merchants rate of eight cents on the
12 dollar.

13 THE COURT: Okay.

14 MR. RANGE: That's really the kernel of the
15 argument; that if I took out this word out of state and I
16 put in that these were Virginia aircraft sales, they would
17 have the right to tax 12 million dollars at eight cents on
18 the hundred for that tax.

19 But when they go out of state, that's when we say
20 they can't do it; that they have to apportion this tax.
21 And the only way you can apportion this gross receipts tax
22 is by looking at out of state versus in state. And that's
23 what they haven't done. They have done it on the whole

1 ~~kitten~~ caboodle everywhere in the country.

2 Okay. Your Honor, the second attorney general
3 opinion really goes to the same point. It simply says
4 that when you have -- in that instance the company had a
5 Loudoun county business license tax imposed on it. And
6 they were doing business in Maryland. And I believe they
7 were also doing business in D.C. And the question was how
8 do you go about the tax.

9 And the attorney general said, well, you can only
10 tax that portion that's in Virginia. And then, of course,
11 they've got there the subsidiary issue. If you've got
12 multiple locations in Virginia, how do you divvy it up
13 within Virginia? But both of these attorney general
14 opinions are very consistent in terms of talking about in
15 state versus out of state.

16 Did Your Honor have any other questions about
17 those attorney general opinions?

18 THE COURT: No.

19 MR. RANGE: Okay. I guess the one point I would
20 want to make, Your Honor, is that with respect to the
21 attorney general opinion that the county passed up to
22 you -- take a look at that. That's clearly a service
23 case, not a property case.

1 Again, it's very different when you've got to
2 look at what they're taxing. If they were taxing the
3 commissions that my salesmen made in the Arlington County
4 office, that would be one thing; but they're not. They're
5 taxing all of the aircraft sales.

6 Okay. Your Honor, I would like to next address
7 your attention to a circuit court case that was decided in
8 Chesterfield, Virginia, in 1983 by Judge Daffron. And
9 that one is in your book at tab 13.

10 MR. TRAMBLIAN: Do you have another copy?

11 MR. RANGE: Sure. You can look right over my
12 shoulder. Your Honor, what the -- it's a two-page letter
13 opinion there. And what that involves is the American
14 Sterilizer Company had an office in Chesterfield,
15 Virginia. And that was a sales office where sales
16 representatives would go to a five-state area to sell
17 American Sterilizer's products.

18 And like the office that Short Brothers had this
19 ~~isn't~~ the kind of office where you could go in and buy the
20 product right off the street. This is one of those where
21 they had to go out and promote the product outside of the
22 state. They would sign a contract. And then the product
23 there would be shipped from outside of Virginia to a

1 customer outside of Virginia.

2 There were also instances where the product was
3 shipped from outside of Virginia to a customer inside
4 Virginia. And what Judge Daffron said is that with
5 respect to those sales in the State of Virginia no
6 problem. There's a taxable nexus. That's okay. With
7 respect to those sales outside of Virginia, however,
8 different story.

9 Judge Daffron says the commissioner -- this is on
10 page 2 -- may not assess a business license tax upon the
11 proceeds of sales out of the State of Virginia because of
12 lack of apportionment and the possibility of multiple tax
13 burdens on interstate commerce.

14 Again, Your Honor, exactly the same situation
15 that we have here in terms of an office that promotes the
16 selling but all the sales occurring outside of the state.
17 The next case that I would draw your attention to, Your
18 Honor, is the In Re: Vecco case which is in your book at
19 tab number 10.

20 THE COURT: Um-hum.

21 MR. RANGE: Okay.

22 THE COURT: Virginia bankruptcy.

23 MR. RANGE: Virginia bankruptcy. It's Judge

Closing Argument of Counsel

1 Bostetter. And that case there cites to the supreme court
2 cases that I'll be talking about later, but again you have
3 a situation there where you had a contractor this time.
4 And the contractor had its sole office -- and that's
5 what's important about this case -- its sole office in
6 Fairfax County; but it does work in D.C., in Maryland and
7 Virginia.

8 And what Judge Bostetter says is it's okay to tax
9 that activity that you do in Virginia, but you can't tax
10 that activity in Maryland and in D.C. That's out of
11 state. You can't tax that activity.

12 Okay. And you heard earlier that Mr. Tramblian
13 talked to you about the four-part test for apportionment.
14 On page 345 of Judge Bostetter's decision he also sets out
15 that four-part test there; that there's got to be the
16 substantial nexus; that it's got to be fairly apportioned.
17 It can't discriminate. And it's got to be related to the
18 services provided in the state. And even though he
19 applies that four-part test, he concludes that you can't
20 tax the gross receipts -- and that's what this is, a gross
21 receipts tax -- in D.C. and in Maryland. You can only do
22 it in Virginia.

23 Now, Your Honor, I realize it's getting late; but

1 I do want to tell you quickly about two supreme court
2 cases that we rely on. The first one is the case of Evco
3 versus Jones. And that one is in your book at page 5
4 or -- excuse me. Tab five. It is a very short decision,
5 Your Honor. It's unusual that you get short decisions out
6 of the supreme court, but it is a supreme court decision.

7 Okay. Let me tell you very quickly, Your Honor,
8 what that Evco case involved, because the facts in that
9 case again are very similar to our case. In Evco the
10 taxpayer was a New Mexico corporation that employed in its
11 office in New Mexico some artists and some writers to
12 design instructional materials such as books and films and
13 magazines for school use. And all the work in designing
14 and producing those instructional materials occurred in
15 New Mexico, but they had salespeople that went outside of
16 New Mexico and sold the product outside of New Mexico.

17 And that's a gross receipts tax case here. And
18 the supreme court said, no, that with respect to those
19 sales outside of the State of New Mexico you can't tax,
20 because there is a burden placed on interstate commerce
21 since the point of delivery is what controls.

22 And that, I think, is really the lesson to be
23 learned from that case is that when you have a gross

1 receipts tax, it's the income that you earn from the sale
2 of the property in the other state. If it's in another
3 state, you can't tax it. You can only tax it in your own
4 state.

5 Your Honor, the last supreme court case that I
6 will draw your attention to --

7 THE COURT: And that is gross receipts. Gross
8 receipts.

9 MR. TRAMBLIAN: Sales tax, Your Honor. Sales tax
10 case.

11 MR. RANGE: Your Honor, I believe it's a gross
12 receipts tax. The first sentence of the opinion --

13 THE COURT: Well, it says the commissioner of
14 revenue for New Mexico levied the state's emergency school
15 tax and its gross receipts tax on the total proceeds Evco
16 received from these contracts.

17 MR. TRAMBLIAN: But it was a tax on gross
18 receipts of sales.

19 MR. RANGE: Well, that's what they've done here
20 is a gross receipts of sales.

21 MR. TRAMBLIAN: It's a sales tax. It's not a
22 business privilege tax. The company appealed from the
23 assessment of sales taxes by the commissioner of revenue.

1 THE COURT: Yes. But all of these gross receipts
2 tax are a tax on the gross receipts of the product which
3 the office is dealing with whether it's legal services,
4 brokerage, this, whatever it is. The rates are supposed
5 to pick up the disparity that would naturally flow from
6 using that single measuring stick as you see, of course.

7 But -- and a major part of your complaint is that
8 it didn't work that way in this case. The difference in
9 rates didn't have that effect here.

10 MR. RANGE: No, Your Honor. There is no attempt,
11 if I understand your question, to distinguish on a rate
12 basis between in state and out of state. Is that what
13 you --

14 THE COURT: No. All I'm saying is that the
15 harshness of the tax, the concept of the gross receipts
16 tax, is alleviated usually by varying the rate of the tax
17 depending on the nature of the gross receipts.

18 MR. RANGE: I don't believe that's correct, Your
19 Honor. I mean, it is true that they tax gross receipts at
20 different levels for different activities; but I think
21 from the taxpayer's point of view whether it's 35 cents or
22 eight cents there is no scheme that's involved in that in
23 terms of what's less harsh or more harsh.

1 THE COURT: All right.

2 MR. RANGE: If I think we're connecting on that
3 one. Now, it -- unfortunately we don't have anything to
4 say about what the county selects as the rate. We're
5 stuck with that. And that really isn't part of the
6 argument.

7 THE COURT: But it is a great deal difference,
8 say, between a company that's leasing a large apartment,
9 for example, as a law firm or someone dealing in services.
10 Go ahead.

11 MR. RANGE: Sure. Okay. Your Honor, I don't
12 want to spend a lot of time on it, because it is getting
13 late. And I want the county to have its shot as well; but
14 they talked about the Complete Auto versus Brady case, the
15 supreme court case that was decided after this Evco case
16 and after the Gwin, White case.

17 And the two points that I would like Your Honor
18 to write down and to take back with him when he thinks
19 about that case are first that Complete Auto versus Brady
20 case says you've got to apportion.

21 THE COURT: Complete Auto?

22 MR. RANGE: Right. Versus Brady, B-R-A-D-Y.

23 THE COURT: Requires?

1 MR. RANGE: Apportionment of taxes between in
2 state and out of state. Okay. You have to somehow
3 apportion so that you can figure out what's fair to tax in
4 Virginia versus what's fair to tax elsewhere.

5 The second thing is that that case when you look
6 at it didn't involve a situation here where you've got the
7 discrimination between the in state and the out of state
8 commerce, because all that was involved in that particular
9 case was a situation of an intrastate shipment from one
10 point to another.

11 And I think the supreme court was pretty clear
12 about when it overturned the particular -- well, it didn't
13 overturn; when it sustained the tax in that case that the
14 tax didn't work a discriminatory effect. So if you look
15 at those two points, I think you'll see that that case
16 while a very important supreme court case doesn't really
17 touch upon our situation here.

18 Finally, Your Honor, let me just talk briefly
19 about this issue of apportionment, because I think that
20 the county has said a great deal about how it apportions.
21 And the Court needs to be aware of a number of cases and
22 statutes regarding that.

23 The first point is that I would contend that the

1 fact that the county says it gives us this credit for the
2 taxes paid out of state proves my point. My point being
3 they don't have the right to tax that. It's that other
4 state.

5 And so they always back down. If you report --
6 if you pay a tax in another state, they say we back off.
7 We don't tax. In fact, their position, they say, is that
8 even if you don't pay the tax, you simply report the
9 income in another state, they don't tax it.

10 Now, why is that? I say it's because they don't
11 have the right to tax that, because it's an interstate
12 sale. And they know that other jurisdiction has the right
13 to tax it, not them.

14 The second point I would make with respect to
15 this apportionment argument, Your Honor, is that in a
16 supreme court case, Commonwealth versus Lorillard
17 Company -- and it's in your book at tab 12 -- the supreme
18 court --

19 THE COURT: Lorillard against Commonwealth?

20 MR. RANGE: Well, Commonwealth versus P.
21 Lorillard, L-O-R-I-L-L-A-R-D, Company case.

22 THE COURT: And you are citing a Virginia cite on
23 that?

1 MR. RANGE: Right. It is 129 Virginia 74. Okay.
2 And particularly, Your Honor, page 83. The problem in
3 that case, Your Honor, was how they were going to
4 apportion income between in state and out of state.

5 THE COURT: Income.

6 MR. RANGE: That's an income case, Your Honor.

7 THE COURT: Yeah.

8 MR. RANGE: Okay.

9 THE COURT: Yes.

10 MR. RANGE: And it's heading nine there. And
11 what occurred is that there was a technical problem with
12 the Virginia statute; that it didn't authorize the
13 allocation of in-state versus out-of-state income. And so
14 the taxing authority there, the commissioner of revenue,
15 says, well, I'm going to adopt a rule of my own that
16 allows me to apportion between in state and out of state
17 so that I'm not double taxing.

18 And what the supreme court said was you can't do
19 that. Only the legislature can give you the authority to
20 develop that kind of apportionment scheme. Since the
21 legislature hadn't given them that authority, the
22 commissioner couldn't do it.

23 In this case, Your Honor, there is no statutory

Closing Argument of Counsel

1 authority for the commissioner of revenue of Arlington
2 County to adopt some type of administrative apportionment.
3 So when they talk about how they've got this internal
4 policy or procedure that protects us from double taxation
5 because they look at the tax returns and if we can prove
6 that we paid the tax in the other jurisdiction or if we
7 reported the income in the other jurisdiction they back
8 off, that is not something they have the authority to do.

9 The reason we went into the detail with Mr.
10 Griffin on that Virginia Code -- the Arlington County Code
11 Section 11-3 is that they have apparently been trying to
12 argue that that gives them the authority to give this
13 credit or this deduction; but as you can see when you read
14 it, it only referred to the authority to do that within
15 the State of Virginia. That's all the authority that the
16 Code of Virginia gives.

17 The Code of Virginia does give the county
18 authority to apportion its gross receipts tax between
19 Arlington and Fairfax or Arlington and Henrico or a county
20 such as that; but it gives them no authority to adopt a
21 scheme of apportionment between Arlington County and the
22 State of Maryland or North Carolina. And so for them to
23 come in and suggest to you that they've got this scheme I

1 suggest is without statutory authority and on its face,
2 per se, invalid.

3 Your Honor, rather than go on any further,
4 because I know you'll be reading the briefs, I will be
5 glad to address any questions you have. And then I'll be
6 prepared to sit down and give the county its chance.

7 THE COURT: No. I will proceed to hear the
8 argument. Thank you.

9 MR. TRAMBLIAN: Thank you, Your Honor. I would
10 like to go through the authorities that were cited to you
11 just now. The first one was the attorney general's
12 opinion dated December 14th, 1990, the one that was
13 missing two pages.

14 THE COURT: Yes.

15 MR. TRAMBLIAN: If you look at it, he read you a
16 sentence on the last page; but he didn't read you the very
17 next sentence.

18 THE COURT: The last one or -- under tab 14?

19 MR. TRAMBLIAN: December 14th, '90.

20 THE COURT: All right.

21 MR. TRAMBLIAN: And this was a business license,
22 business privilege tax case. He read you the sentence
23 that starts out based on the facts you present it's my

Closing Argument of Counsel

1 opinion that the proper basis for the wholesale license
2 tax --

3 THE COURT: Which one are you reading me?

4 MR. TRAMBLIAN: It's December 14th, 1990, the one
5 that was missing pages.

6 THE COURT: Yes.

7 MR. TRAMBLIAN: The page 5.

8 THE COURT: All right.

9 MR. TRAMBLIAN: He read you the sentence that
10 starts in the -- about the fourth line of that last
11 paragraph it says based on --

12 THE COURT: Yes.

13 MR. TRAMBLIAN: He didn't read you the next
14 sentence.

15 THE COURT: Let me read it.

16 MR. TRAMBLIAN: He read you up to the case
17 citations.

18 THE COURT: Yes.

19 MR. TRAMBLIAN: The next sentence that's key says
20 whether only the sales destined for Chesapeake or the
21 sales destined for all of Virginia may form the basis for
22 the tax depends on whether the company has a definite
23 place of business in another Virginia locality with

1 sufficient nexus to impose the tax on the sales destined
2 for the locality.

3 This says the destination is not critical. For a
4 business privilege tax it depends if you have a definite
5 place of business. That's exactly the county's position,
6 Your Honor. The next attorney general's opinion that he
7 cited was the December 1, 1978, case.

8 THE COURT: Yes.

9 MR. TRAMBLIAN: Which again on page 2 define what
10 doing business was, was as a continuous and regular course
11 of dealing at one location would seem to constitute each
12 such location to be a definite place of business in
13 Arlington County.

14 It's undisputed they don't have a place of
15 business anywhere else. And in this particular case they
16 went down -- the last paragraph says, therefore, to the
17 extent that Arlington County actually and legally imposed
18 a business license tax on this contractor Loudoun County
19 must allow the taxpayer to deduct the gross receipts
20 already taxed from the base against which Loudoun County
21 imposes the tax. So a tax credit was required. That's
22 exactly what Arlington County does.

23 The attorney general's opinion that we submitted

Closing Argument of Counsel

1 to the Court which was the September 11th, 1989, opinion
2 involved a business privilege tax on a company that was
3 based only in one location in Falls Church and would
4 conduct seminars outside of the state.

5 And the attorney general said not that the only
6 place they could tax is where you do the seminars. The
7 attorney general said all of it can be included in
8 Virginia or in Falls Church for purposes of gross
9 receipts, because they haven't established a tax situs
10 elsewhere, because they haven't established they're doing
11 business anywhere else.

12 The Virginia Circuit Court case did not talk
13 about a tax credit. And it said there are problems
14 because of lack of apportionment. And it's the county's
15 position that the tax credit is apportionment.

16 The bankruptcy case that was cited was a case
17 where a company filed tax returns in the other states and
18 Fairfax County wouldn't let them have a credit. And the
19 bankruptcy court ordered Fairfax County to give them a
20 credit for those taxes paid elsewhere. So that's really
21 not applicable.

22 Finally, this argument that the commissioner has
23 no authority to apportion taxes, I think really the

1 plaintiffs have argued themselves into a corner. They
2 want the Court to say because the taxes were not
3 apportioned, they were not proper; but then they say the
4 commissioner does not have the power to apportion. It's
5 illogical. And certainly, as the Court noted earlier,
6 federal law controls.

7 The United States Supreme Court has said that you
8 have to apportion under the U.S. constitution. That's
9 what controls. And either if it's -- if the federal law
10 requires apportionment, we have to follow it. And if it
11 doesn't, they don't have anything to complain about.

12 Your Honor, we've been through all the little
13 details of this case. It's a business privilege tax. And
14 we've given you the cases in our brief. There is one
15 case, for example, in a township in Pennsylvania. There
16 was an automobile leasing company that would lease cars.
17 And they tried to claim that -- and this was a business
18 privilege tax case, not a sales tax case.

19 They tried to claim that the township could not
20 tax them on leases for cars that were signed outside the
21 township and delivered outside the township; exactly this
22 argument that is being presented today. And the court
23 held that since the transactions run through the local

Closing Argument of Counsel

1 office, the local office has the authority to tax all the
2 gross receipts whether or not the transactions were
3 consummated outside of the township. And that's precisely
4 our case.

5 Since it's a business privilege tax and since the
6 county is allowed to impose its gross receipts on all the
7 gross receipts for doing business when they don't have any
8 other place of operation, we turn to the commerce clause
9 argument.

10 And we've given the Court all the cases that say
11 all you need to do for apportionment is give a tax credit.
12 Arlington County goes beyond giving a tax credit. Even if
13 you don't pay taxes somewhere else but you report it, the
14 county won't tax it.

15 So the county goes well beyond what is required
16 by the constitution. And there is no -- there is no
17 authority anywhere that dictates how the county will
18 apportion taxes. This is a perfectly legitimate way to do
19 it. And the courts have said so.

20 Your Honor, it is all in our briefs; but you
21 heard what Mr. Brooks said. This is the base of
22 operations for this company. Everything goes through the
23 office. It's where they conduct all their operations.

1 And that's why the business privilege tax is properly
2 imposed. Thank you.

3 MR. RANGE: Your Honor, very briefly. Just to
4 clear up on the first attorney general opinion, you know,
5 he said I didn't read you the next sentence, the next
6 sentence where they talk about whether the sale is
7 destined for Chesapeake or sales destined for all of
8 Virginia may form the basis for the tax depends on whether
9 the company has a definite place in Virginia -- a definite
10 place of business in another Virginia locality with a
11 sufficient nexus to impose a tax on sales. And then it
12 cites that 58.1-3708.

13 Your Honor, this is the problem we talked about
14 earlier. Section 57 -- 58.1-3708 talks about when a
15 company has multiple offices within the State of Virginia.
16 What you have to do then is apportion among the various
17 Virginia localities which one can get taxed.

18 And all the attorney general was saying there is
19 that when you've got multiple places of business in the
20 State of Virginia, you've got to look to find where the
21 offices are and apportion those sales. So that's really
22 the point I want to make about the attorney general
23 opinion; is that I don't think that sentence has anything

Closing Argument of Counsel

1 to ~~do~~ about out of state versus in state. That is solely
2 intrastate.

3 And it says if you've got two offices, then
4 you've got to somehow allocate between the two offices how
5 you're going to divvy up the gross receipts. And the
6 Supreme Court of Virginia there has said if you've got
7 multiple offices in the State of Virginia, you look to
8 which office is attributed to the sale. And you divide
9 them up in that manner.

10 THE COURT: He was pointing out that next
11 sentence in interstate sales transactions.

12 MR. RANGE: Right. I rely on the sentence that
13 says in interstate sales transactions. When the various
14 components of a transaction occur in different states, the
15 state of destination of the property sold has the
16 authority to impose a tax on revenues generated from that
17 transaction. That's the sentence I rely on, Your Honor.

18 THE COURT: All right.

19 MR. RANGE: And he goes on to the next sentence
20 which I believe just is interstate of Virginia.

21 THE COURT: All right. Which you say requires
22 apportionment within the state.

23 MR. RANGE: Right.

1 THE COURT: All right.

2 MR. RANGE: And the key thing there, Your Honor,
3 is that Section 58.1-3708 is a specific delegation of
4 authority from the legislature to apportion within the
5 state. And one thing they can't point you to is any
6 specific delegation of authority from the legislature for
7 Ms. Crawford or Ms. Whiting to develop this internal
8 office procedure that allows them to apportion in the
9 manner they've talked about.

10 THE COURT: All right.

11 MR. RANGE: Okay.

12 THE COURT: You deal with all this in your brief?

13 MR. RANGE: Yes, we have, Your Honor. And the
14 replies that the parties will file will cover it. So the
15 final thought I want to leave you with is I suggest when
16 you look at these cases that deal with services versus
17 products and sales I think the rule you'll find is that
18 when you deal with a service, the office is what's key.
19 Yes, tax based on where the office is located.

20 When you deal with a sale -- and the leases here
21 are effectively sales. They're defined that way by the
22 Virginia taxing code -- then you have to look to the place
23 of delivery. And that's what this attorney general

1 opinion says here, because this is a privilege of doing
2 business tax. It says that right there. And the
3 privilege of doing business has to be divvied up when
4 you're talking about the sale of a product based on the
5 destination. And the destination here is outside the
6 State of Virginia. Thank you, Your Honor.

7 THE COURT: All right.

8 MR. RANGE: Should we set a date perhaps that --

9 THE COURT: Yeah. Did you all wish to file
10 simultaneous responses to each other's trial memoranda?

11 MR. RANGE: Yes, Your Honor. I think that would
12 be desirable. Two weeks is the date proposed by the
13 county.

14 THE COURT: Fine. Two weeks. Fine. Have it in
15 then by the end of the day on the 22nd.

16 MR. RANGE: Very good.

17 THE COURT: That's Monday.

18 MR. RANGE: Thank you, Your Honor.

19 THE COURT: Yes, indeed. And then you won't
20 attempt to respond to each other then?

21 MR. RANGE: I think it's time to cut the
22 paperwork off.

23 THE COURT: You may, though. I assume you all

1 will want to comment on the evidence then in your briefs
2 as well as take note of what each other has in here or
3 supplement what you have in here. All right. You are all
4 excused. Thank you very much.

5 MR. TRAMBLIAN: Thank you, Your Honor.

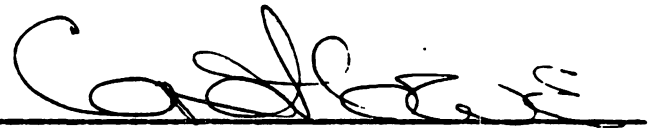
6 THE COURT: Yes.

7 (At 4:30 p.m. the proceedings in the
8 above-entitled matter were concluded.)
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CERTIFICATE OF REPORTER

I, Carol A. Lowe, do hereby certify that the foregoing proceedings were taken by me in stenotype and thereafter reduced to typewriting under my supervision; that said proceedings are a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Given under my hand this 11th day of November, 1991.



Carol A. Lowe,
Registered Professional Reporter

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

SHORT BROTHERS (USA), INC.,)	
)	
Plaintiff,)	
)	
v.)	Law No. 89-1344
)	
ARLINGTON COUNTY,)	
)	
Defendant.)	

STIPULATIONS OF FACT

The parties, by counsel, for the purposes of this action only, hereby stipulate to the following matters of fact:

1. On December 20, 1986, Arlington County (the County) assessed business license taxes against Short Brothers (USA), Inc. (Short Brothers) for the 1986 tax year under both the "business service occupation" tax category of the Arlington County License Code, § 11-59, and the "wholesale merchant" tax category of the Arlington County License Code, § 11-62.
2. The County's 1986 business license tax assessment against Short Brothers was in the amount of \$16,759.25 under the business service occupation tax category of the Arlington County License Code.
3. The County based its 1986 business license tax assessment against Short Brothers under the business service occupation tax category on Short Brothers' 1985 gross receipts totalling \$4,795,499. These 1985 gross receipts consisted of \$1,191,376 in revenue from Henson Airlines, \$795,551 in revenue

Page #1
MTW

from Sunbird Airlines, \$878,800 in revenue from Pennsylvania Airlines, \$1,273,808 in revenue from Comair, \$35,546 from Chautauqua Airlines, \$347,685 from Fischer Brothers Airlines, \$72,244 from the sale/lease of aircraft parts, \$15,128 from agency fees, \$188,050 from aircraft repairs, a credit of \$2,881 from training fees, and \$192 from other revenue.

4. The County's 1986 business license tax assessment against Short Brothers under the wholesale merchant tax category of the Arlington County License Code was in the total amount of \$9,641.94.

5. The County's 1986 business license tax assessment against Short Brothers under the wholesale merchant tax category was based on Short Brothers' 1985 gross receipts totalling \$12,052,424. Gross receipts taxed under the wholesale merchant tax category in 1986 consisted entirely of revenue from the sale of aircraft in 1985.

6. The document attached hereto as Exhibit A is a true copy of the County's business license tax assessment against Short Brothers under the business service occupation tax category of the County License Code for the 1986 tax year. The admissibility in evidence of Exhibit A is uncontested.

7. The document attached hereto as Exhibit B is a true copy of the County's business license tax assessment against Short Brothers under the wholesale merchant tax category of the

County License Code for the 1986 tax year. The admissibility in evidence of Exhibit B is uncontested.

8. The document attached hereto as Exhibit C is a true copy of the Business License Audit Report and work papers compiled by the County from Short Brothers' books of account and documents provided by Short Brothers and used to calculate the business license taxes assessed against Short Brothers for both the 1985 and 1986 tax years under the business service occupation and wholesale merchant tax categories. The admissibility in evidence of Exhibit C is uncontested.

SHORT BROTHERS (USA), INC.

By: 

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ARLINGTON COUNTY

By: 

Counsel

12500

Ara Tramblian
Deputy County Attorney
Arlington County #1
Courthouse Plaza, Suite 403
2100 Clarendon Boulevard
Arlington, Virginia 22201
(703) 358-3100

STATEMENT OF ASSESSMENT OF LICENSE TAXES FOR YEAR INDICATED

License taxes are hereby assessed in accordance with the provisions of the Arlington
Business Privilege License Ordinance.

956461510 8

License Year 1986 Type of License WHOLESALE MERCHANT
Basis of Assessment:

ADJUSTMENT BASIS: 12,052,424

Date Assessed: DECEMBER 20, 1986
Date Due: DECEMBER 20, 1986
Taxes Due: 9,641.94
Penalty: 0.00
Interest: 0.00
Total: 9,641.94

SHORT BROTHERS USA INC
2011 S CRYSTAL DR #713
ARLINGTON VA 22202

NOTE: IF THIS ASSESSMENT IS NOT PAID WITHIN
15 DAYS OF THE ABOVE DATE, A PENALTY
OF 10% OF THE TAX DUE OR \$10.00,
WHICHEVER IS GREATER, WILL BE ADDED.
INTEREST SHALL BEGIN TO ACCRUE FROM
THE 1ST DAY OF THE MONTH FOLLOWING THE
MONTH IN WHICH PAYMENT IS DUE, UNTIL
PAYMENT IS MADE.

Make check payable to the TREASURER OF ARLINGTON
COUNTY. Return payment with this notice to: Treasurer of
Arlington County, Arlington County, Virginia 22201.

Tax Assessed Page No. 4155 Line 05

FORM 60-15
5/79

STATEMENT OF ASSESSMENT OF LICENSE TAXES FOR YEAR INDICATED

856461500 1

License taxes are hereby assessed in accordance with the provisions of the Arlington
Business Privilege License Ordinance.

License Year <u>1986</u>	Type of License <u>SPECIALIZED OCCUPAT</u>	Date Assessed: <u>DECEMBER 20, 1986</u>
Basis of Assessment:		Date Due: <u>DECEMBER 20, 1986</u>
ADJUSTMENT BASIS: 4,795,499		Taxes Due: <u>16,759.25</u>
		Penalty: <u>0.00</u>
		Interest: <u>0.00</u>
		Total: <u>16,759.25</u>

SHORT BROTHERS USA, INC.
2011 S CRYSTAL DR #713
ARLINGTON VA 22202

NOTE: IF THIS ASSESSMENT IS NOT PAID WITHIN
15 DAYS OF THE ABOVE DATE, A PENALTY
OF 10% OF THE TAX DUE UP TO \$10.00,
WHICHEVER IS GREATER, WILL BE ADDED.
INTEREST SHALL BEGIN TO ACCRUE FROM
THE 1ST DAY OF THE MONTH FOLLOWING THE
MONTH IN WHICH PAYMENT IS DUE, UNTIL
PAYMENT IS MADE.

Make check payable to the TREASURER OF ARLINGTON
COUNTY. Return payment with this notice to: Treasurer of
Arlington County, Arlington County, Virginia 22201.

Tax Assessed Page No. 5155 Line 03

Licensee Name
Trade Name
Business Address
Contact Person
Contact Phone Number

Short Brothers
same as licensee
201F S. Crystal Dr. #713
Mr. Jerry L. Sharp
769-5555

AUDIT RESULTS

LICENSE CLASS	11-59	11-62	11-	11-	TOTAL
BLTX NUMBER	856461500	856461510			
TAX YEAR 1986	16,759.25	9,641.94			26,401.19
TAX YEAR 1985	11,918.52	1,344.00			13,262.52
TAX YEAR 19					
TAX YEAR 19					
TOTALS	28,677.77	10,985.94			39,663.71

COMMENTS

General:

Short Brothers USA, Inc. is a wholly owned subsidiary of Short of Belfast. IT derives its revenue from the sell and lease of aircraft, sell and lease of parts, aircraft repair, agency fees and training fees. IT operates on a fiscal year (April 1 - March 31) accounting period. It uses the accrual method of accounting. Short Brothers has filed for a minimum licensed since it began operation in Arlington County. This office has been a sales office until 1985, when the corporate head quarters relocated here from Calif. We found that in 1985, this organization reported to Virginia and California that all activities were attributable to the Arlington office. Yet it report to the county that it did not have sales that could be attributable to the Arlington office. Even though the corporate head quarters was located

Ronald J. Griffin
12/4/86

Tax Auditor

Supervisor

Date

Licensee Name _____

Trade Name _____

Business Address _____

Contact Person _____

Contact Phone Number _____

AUDIT RESULTS

LICENSE CLASS	11-	11-	11-	11-	TOTAL
BLTX NUMBER					
TAX YEAR 19					
TAX YEAR 19					
TAX YEAR 19					
TAX YEAR 19					
TOTALS					

COMMENTS

in Arlington exclusively in 1985, they still filed for a minimum license in 1984

Result of audit:

After examining the Tax returns, income statements and other documentation, we excluded affiliation payments from Belfast Co. both years. then proceeded to Tax Aircraft lease, other income, agency fees, aircraft repair and Training fee income for both years. Also sales of aircraft was traced and an account for the wholesale of these items were opened (11-62). In 1985 the total tax due was \$13,26 and in 1984 it was \$26,401.19 this resulted in a total tax liability of \$39,463.71 for both years.

Tax Auditor

Date

Supervisor

Date

1985

Prepared By
Approved By

459 aircraft Lease Rental

1	Suburban Airlines	52121
2	Westair	24323
3	Penn Airlines	22122
4	Comair	545224
5	Sunbird	20000
6	Fischer Brothers	21000
7	MVA	54050
8	Mid-South	12629
9	ATAir	40967
10	VGE NEAL	22960
11	Sunbelt	1774
12	Norcomair	45000
13		3236878

16	Sales / Lease of Parts	61679
17	Agency Fees	48281
18	Aircraft Repairs	56822
19	Training Fees	7734
20	Other	1038
21		175554

23		3236878
24		175554
25		3412432

26		35
27	TAX Due	1194352
28	Tax paid	2500
29	Net Tax Due	1191852

11-62 sales A/c

1680000

08

Total Tax Due 139400

Shorl Brothers 1986

Approved by:
Accounted by:

11-59 Aircraft Lease Totals

1	Henson Air Line	117,376		
2	Sunbird Air Line	79,551		
3	Penn Airline	273,800		
4	Comair	127,800		
5	Chautauqua	35,546		
6	Fischer Brother	347,685		
7		452,276		
8	Sales/Lease of Parts		72,241	
9	Agency Fees		15,128	
10	Aircraft repairs		18,850	
11	Training Fees		< 2,881 >	
12	Other		192	
13			272,733	
14				
15				452,276
16				272,733
17				479,549
18				.35
19			Tax Due	167,842.5
20			Tax paid	2,500
21			Net Tax Due	167,592.5

11-62 Sales A/c

23		120,524.24		
24				
25				
26			08	
27	Total Tax Due	964,194		

Shorts continue

REPRESENTATION AGREEMENT

THE AGREEMENT dated this 1st day of April, 1984.

BETWEEN

SHORT BROTHERS PLC, a Northern Ireland public limited company ("Shorts (Belfast)"), and

SHORT BROTHERS (USA), INC., a Massachusetts corporation, ("Shorts (USA)").

WHEREAS

- (A) Shorts (Belfast) is engaged in the production and sale world-wide of aircraft and missiles, including the Shorts Model SD3-30 and SD3-60 aircraft (singly or in the plural referred to herein as the "Aircraft");
- (B) Shorts (USA), a wholly-owned subsidiary of Shorts (Belfast), has by agreement with Shorts (Belfast) since its organization on October 17, 1977 engaged in the following activities:
 - (1) the demonstration of Aircraft to, and the solicitation of purchase orders therefor from, operators authorized to operate Aircraft in the United States ("U.S. Operators") with a view to inducing U.S. Operators to acquire the Aircraft;
 - (2) the provision to U.S. Operators of after-delivery technical support services;
 - (3) the ownership and leasing of certain Aircraft and certain engines;
 - (4) the provision of certain general marketing and contract support for Shorts (Belfast) and certain of its other subsidiaries;
 - (5) the representation of Shorts (Belfast) in connection with the purchase by the armed services of the United States of America of military equipment developed or manufactured by Shorts (Belfast) and in connection with the development, manufacture and sale of aerostructures; and
 - (6) the participation on behalf of or as the representative of Shorts (Belfast) in organizations of international manufacturers of aviation and aerospace products and services.

- (C) In the course of all of the activities referred to in (B) above, Shorts (USA) has conducted its own business and has acted for its own account, without having authority to act as an agent for Shorts (Belfast) or any of Shorts (Belfast)'s other subsidiaries and specifically without having authority to enter into any contractual arrangement on behalf of Shorts (Belfast) or any such subsidiary; and
- (D) For the purposes of setting out the terms of the agreement between Shorts (USA) and Shorts (Belfast) with respect generally to the services Shorts (USA) will provide to Shorts (Belfast) and the compensation payable by Shorts (Belfast) to Shorts (USA) for the provision of such services, each of the parties hereto deems it to be in its best interest to enter into this Agreement.

WITNESSETH and it is hereby agreed as follows:-

1. In consideration of the mutual covenants herein contained, the parties hereto confirm their agreement that Shorts (USA) shall carry out the following services:
 - (a) Identify U.S. Operators who wish or are likely to wish to acquire the Aircraft, together with any related spare engines or parts and other equipment manufactured or supplied by Shorts (Belfast) (the "Aircraft Package") and, in accordance with the overall marketing objectives of Shorts (Belfast) and criteria determined by Shorts (Belfast), use its best endeavours to solicit orders from such U.S. Operators for consideration by Shorts (Belfast).
 - (b) In respect of U.S. Operators who do not wish to acquire Aircraft on the basis of purchase contracts pursuant to which the purchase price is payable on or before delivery, elicit from such U.S. Operators the U.S. Operators' preferred form of financing and obtain such historical forecast and other data which evidences the current and future financial status of such U.S. Operator as Shorts (Belfast) and its other subsidiaries may from time to time require for evaluation of the same.
 - (c) In connection with its marketing efforts described at Clause 1(a), Shorts (USA) shall, to the extent practicable, lease or sublease aircraft either owned or leased by Shorts (USA) to U.S. Operators.

- (d) In respect of U.S. Operators where agreement to acquire Aircraft by such U.S. Operators would be conditional upon the counterpurchase from such U.S. Operators of used aircraft and related equipment to which such U.S. Operator has title:
- (i) evaluate at Shorts (Belfast)'s request the technical specifications and standard of those used aircraft and related equipment and, having due regard to their age and condition, advise Shorts (Belfast) as to the price which can be recovered on resale thereof, the cost of any reasonably necessary refurbishment, the purchase price acceptable to the seller and the likely time which will elapse between prospective purchase and subsequent resale; and
 - (ii) in the event that Shorts (Belfast) subsequently agrees to enter into any such counterpurchase arrangement and requests that Shorts (USA) purchase such aircraft for resale in the United States, purchase such used aircraft and related equipment from Shorts (Belfast) and dispose of those used aircraft and related equipment for its own account within the United States. The price and terms of the purchase of any such used aircraft acquired by Shorts (USA) shall be mutually agreed by Shorts (USA) and Shorts (Belfast) taking into consideration, among other factors, the age and condition of the aircraft, the price Shorts (Belfast) has agreed to pay to the U.S. Operator, and current market conditions in the U.S.A. with respect to such aircraft and the estimated resale price therefor. In all cases, the price paid by Shorts (USA) for such used aircraft shall be an amount estimated by the parties to this agreement to permit Shorts (USA) to recover, after direct expenses, not less than the price paid by Shorts (Belfast) plus standard brokerage fees.
- (e) In certain instances, in the course of sales of Aircraft, Shorts (Belfast) may agree to provide a quick change unit engine ("QCU") and/or spare parts under a lease/option or secured financing arrangement. Shorts (USA) shall, if requested by Shorts (Belfast), purchase the QCU or spare parts from Shorts (Belfast) and provide the same to the U.S. Operator on terms intended to provide to

Shorts (USA) an operating profit on the transaction.

- (f) Shorts (USA) will represent Shorts (Belfast) before the armed services and governmental agencies of the United States of America in connection with the preparation of proposals for the development, manufacture and sale of military equipment and products and before certain manufacturers of aircraft for which Shorts (Belfast) may act as a subcontractor in the development, manufacture and sale of aerostructures.
 - (g) Shorts (USA) will participate on behalf of Shorts (Belfast) or will represent Shorts (Belfast) in organizations of international aviation and aerospace manufacturers, including organizations which represent the interests of foreign manufacturers within the United States of America.
 - (h) Shorts (USA) carry out any other general marketing and product support activities in the United States to and for Shorts (Belfast) and its other subsidiaries as requested from time to time by Shorts (Belfast).
2. In consideration of the services which Shorts (USA) has agreed to perform under Clause 1 above, Shorts (Belfast) agrees to compensate Shorts (USA) by payment of an annual fee (the "Fee") in an amount equal to the sum of all costs and expenses incurred by Shorts (USA) in each of its fiscal years in connection with these services (including all costs and expenses of providing after-sale support services to purchasers of the Aircraft, to the extent not reimbursed to Shorts (USA) by such purchasers and/or sublessees of aircraft) plus, all general and administrative expenses and other overhead costs reasonably incurred by Shorts (USA), plus, a profit margin of 5% on the aggregate of all such costs.

3. Computation and Payment of Fee

The fee for services provided by Shorts (USA) shall consist of basic and additional fees.

The basic fee shall be computed and paid as follows:

At or around the beginning of each fiscal year, Shorts (USA) shall estimate the total costs associated with its operations for the year, net of any reimbursements anticipated to be received from U.S. airline customers

for rentals and/or sales of aircraft, spare parts, QCU's, etc. This estimate shall be submitted to Shorts (Belfast) for review and shall be negotiated by Shorts (Belfast) and Shorts (USA). When these costs have been agreed, a profit margin equal to 5% of Shorts (USA) net costs and expenses shall be added which together with the net costs shall constitute the basic fee. This fee shall be payable monthly in accordance with Shorts (USA) estimate of its monthly agreed costs of operations.

During the year, circumstances may arise which require Shorts (USA) to deviate from its estimate of annual operations. Such circumstances may include, but are not limited to, the request for additional services by Shorts (Belfast), changes in circumstances, etc. Collectively, these items constitute additional fees which shall be negotiated between Shorts (Belfast) and Shorts (USA) at the time, and are payable within 30 days.

4. Term

This agreement shall be coterminous with the period during which Shorts (USA) shall be authorised to carry out these services and shall terminate, with an equitable adjustment of the Fee being made for any portion of a fiscal year of Shorts (USA) then expired, by Shorts (Belfast) giving notice to Shorts (USA) to terminate such authorisation. This agreement supersedes the Representation Agreement entered into between the parties on 31st August, 1978.

5. Notices

Any notice which by the terms of this Agreement is required or provided to be given shall be deemed to have been given by being sent by mail, or delivered, to the following address:

If to Shorts (Belfast), to it at the following address:

Short Brothers PLC
P. O. Box 241
Airport Road
Belfast BT3 9DZ
Northern Ireland

Attention: The Secretary

If to Shorts (USA), to it at the following address:

Short Brothers (USA), Inc.
2011 Crystal Drive
Suite 713
Arlington, Virginia 22202-3702
U.S.A.

Attention: President

or to such other address and persons as the addressee shall have specified by notice from time to time.

6. Entire Agreement; No Oral Changes

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, superseding all prior understanding and writings related thereto, and may not be changed orally.

7. Miscellaneous

The headings in this Agreement are for convenience of reference only and shall not alter or otherwise affect the meaning hereof. This Agreement may be executed in any number of counterparts which together shall constitute one instrument. This Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts and shall bind and inure to the benefits of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed, all as of the date first written above.

SHORT BROTHERS PLC

BY 

SHORT BROTHERS (USA), INC.

BY 

HUNTON & WILLIAMS

707 EAST MAIN STREET

P.O. BOX 1535

RICHMOND, VIRGINIA 23218

TELEPHONE 804-788-8200

TELEX 6844251

February 9, 1987

2000 PENNSYLVANIA AVENUE, N.W.
P. O. BOX 10000
WASHINGTON, D. C. 20006
TELEPHONE 202-652-1800

FIRST VIRGINIA BANK TOWER
P. O. BOX 3688
NORFOLK, VIRGINIA 23514
TELEPHONE 804-625-5501
TELEX 755628

3080 CHAIN BRIDGE ROAD
P. O. BOX 1147
FAIRFAX, VIRGINIA 22030
TELEPHONE 703-352-2200

100 PARK AVENUE
NEW YORK, NEW YORK 10001
TELEPHONE 212-308-1000
TELEX 434548 HUNT UI

ONE HANNOVER SQUARE
P. O. BOX 108
RALEIGH, NORTH CAROLINA 27601
TELEPHONE 919-898-3000

FIRST TENNESSEE BANK BUILDING
P. O. BOX 981
KNOXVILLE, TENNESSEE 37901
TELEPHONE 615-637-4311

FILE NO. 34006.2

DIRECT DIAL NO 804 788- {

Geraldine M. Whiting
Commissioner of the Revenue
Arlington County Courthouse
Arlington, Virginia 22201

Short Brothers (USA) , Inc.
Arlington County License Taxes

Dear Ms. Whiting:

On behalf of Short Brothers (USA), Inc. ("Shorts (USA)"), we hereby apply to you pursuant to Virginia Code § 58.1-3980 for correction of an erroneous assessment of business license taxes for the years 1985 and 1986. Copies of the assessments dated December 20, 1986, are attached hereto as Exhibit A.

Your auditors have treated Shorts (USA) as a wholesale merchant with respect to part of its gross receipts and as a "specialized occupation" with respect to the balance of the receipts now in issue. Notwithstanding that Shorts (USA) derives its receipts from throughout the United States, your auditors have treated all of its receipts as taxable by Arlington County. We respectfully submit that

HUNTON & WILLIAMS

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the auditors' determinations are incorrect for the following reasons:

1. Shorts (USA) is a wholesale merchant and has been incorrectly classified under the "specialized occupation" category.

2. As a matter of both Virginia and federal law, Arlington County may not tax sales by Shorts (USA) outside the Commonwealth of Virginia.

FACTS

Shorts (USA) is a wholly owned subsidiary of Short Brothers, an English public limited company ("Shorts (Belfast)"). Shorts (Belfast) designs and manufactures commuter aircraft in Northern Ireland. Some of these aircraft are sold or leased to regional airline operators in the United States.

Under the terms of a representation agreement with its parent, Shorts (USA) demonstrates Shorts aircraft to regional airlines which are prospective purchasers or lessees, provides technical services to operators of Shorts aircraft, and owns and leases aircraft. As detailed in previous correspondence with your office, some of Shorts (USA)'s gross receipts are from Shorts (Belfast), and some are from the sale or lease of aircraft to airline operators.

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Your office has recognized that the intercompany receipts are not subject to tax under Virginia Code § 58.1-3703 B(10). Almost all the receipts treated as taxable by your auditors relate to the sale or lease by Shorts (USA) of aircraft manufactured by Shorts (Belfast). In all but one of these instances, the sale or lease was made to a commercial airline operator located outside Virginia.

As a general proposition, Shorts (USA) sells aircraft in one of two ways. First, some of its aircraft sales are made directly to customers. Your auditors have correctly classified Shorts (USA) as a wholesale merchant with respect to these sales. In addition, there are circumstances in which an airline operator is unable to purchase aircraft for cash and, in order to make the sale, Shorts (USA) will enter into a long-term lease transaction which is the economic equivalent of a sale. These transactions involve the sale of the aircraft to a third party lessor (e.g., General Electric Credit Corporation) which leases the aircraft on a long-term basis to Shorts (USA) which, in turn, leases the aircraft for a similar term to the airline operator. This lease structure has a number of benefits to the parties. For Shorts (USA), the most important benefit is that it enables it to make the sale. The financial institution receives certain federal tax benefits which

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enable it to offer favorable monthly payment terms to Shorts (USA) which are passed through to Shorts (USA)'s airline customer.

You should note that in the lease arrangement described above, Shorts (USA) leases from the financial institution and re-leases to the airline operator. This structure is for two reasons essential to the marketing of Shorts aircraft to regional airline operators. First, notwithstanding ownership of the aircraft by a financial institution Shorts (USA) is, as in any sale, the entity with which the commercial airline transacts business. Thus, that commercial customer looks directly to Shorts (USA) for all warranty, service and repair work with respect to the aircraft it operates. Second, the presence of Shorts (USA) as the lessee from the financial institution means that the financial institution is relieved of day-to-day administration of a lease to an operator and that the financial institution can look to Shorts' credit for the payment of rent.

In addition to its income from the sale of aircraft as described above, Shorts (USA) also receives miscellaneous income from other sources. As described below with respect to two types of income, these sources generally relate to sales of aircraft by Shorts (USA).

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1. Sale of parts -- These are parts sold by Shorts (USA) to airline customers. As a general rule, these parts are purchased by Shorts (USA) and shipped directly by the manufacturer to the airline customer.

2. Training costs -- Shorts (USA) is required to offer both ground and flight instruction to customers. Your auditors have picked up a small amount of such gross receipts as taxable. These particular receipts represented training obtained from a third party for a customer and billed at cost to the customer by Shorts (USA). The training services were not provided by Shorts (USA) employees, nor were they provided in the Commonwealth of Virginia.

The gross receipts of Shorts (USA) for the years 1984 - 1985 (on which the 1985 and 1986 taxes are measured) reflect sales by Shorts (USA) to over twelve airline operators located throughout the United States. Only one of those airlines was located in the Commonwealth of Virginia. In addition, one airplane involved in a sale leaseback transaction was located in Manassas prior to the transaction. In every other instance, the income treated by your auditors as taxable in Virginia grew out of sales by Shorts (USA) to customers in other states. None of the aircraft giving rise to those sales was located in Virginia at any time, either before or after the sale.

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DISCUSSION

Based on the facts outlined above, we think it apparent that Shorts (USA) should be classified by Arlington County as a wholesale merchant with respect to all of the gross receipts at issue in this audit. The sole business from which these receipts derive is selling goods to institutional, commercial or industrial users. That is a wholesale merchant as traditionally defined by the Virginia Supreme Court and as defined by § 11-1(m) of the Arlington County Code. See also Arlington County Code § 11-62.

Your auditors have provided no indication of their reason for classifying Shorts (USA), in part, in a "specialized occupation." Perhaps the confusion stems from the activity of Shorts (USA) in representing Shorts (Belfast). You have, however, previously determined that those receipts are not taxable. The remaining business activities of Shorts (USA) are not at all like the business activities of an accountant, actuary, advertising agent, or the other professionals listed in Arlington County Code § 11-57(B). That section has a listing for a "sales agent", but Shorts (USA) is not a sales agent. As to the receipts here in issue, Shorts (USA) is a principal selling goods it owns.

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If there were any doubt as to this conclusion, that doubt must be resolved in favor of the taxpayer. E.g., Commonwealth Natural Resources, Inc. v. Commonwealth, 219 Va. 529, 537-38 (1978); City of Richmond v. Boscher, 197 Va. 182, 187 (1955). There is, however, no doubt. With respect to the receipts in issue in this audit, Shorts (USA)'s business is that of a wholesale merchant.

Taxable Receipts. As a matter of both federal and Virginia law, Arlington County may not tax Shorts (USA) with respect to sales made outside Virginia. This is true whether Shorts (USA) is classified as a wholesale merchant or in some other category.

Virginia Code § 58.1-3703B(10) prohibits the taxation of receipts by a subsidiary from its parent corporation. Your auditors have recognized that this exemption is applicable with respect to part of Shorts (USA)'s income. That statute, however, provides specifically with respect to wholesale merchants as follows:

This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated corporation on those sales by the affiliated corporation to a nonaffiliated person, company, or corporation, notwithstanding the fact that the wholesale merchants license tax would be based upon purchases from an affiliated corporation. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated person, company or corporation.

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As used in this paragraph, the term "sales by the affiliated corporation to a nonaffiliated person, company or corporation" shall mean sales by the affiliated corporation to a nonaffiliated person, company or corporation where goods sold by the affiliated corporation or its agent are manufactured or stored in Commonwealth prior to their delivery to the nonaffiliated person, company or corporation... (Emphasis added).

The plain language of this statute prohibits Arlington County from taxing Shorts (USA) except to the extent that goods sold by Shorts (USA) are either manufactured or stored in Virginia prior to their delivery to customers. As detailed in the facts above, the aircraft sold by Shorts (USA) were not manufactured in Virginia nor were they stored in Virginia. Thus, Virginia Code § 58.1-3703 B(10) prohibits Arlington County from taxing receipts from those sales.

Although we believe the assessments in this case are erroneous as a matter of Virginia law, the assessments are also prohibited by the United States Constitution. It is this constitutional restriction that Virginia Code § 58.1-3703 B(10) expressly recognizes in the case of wholesale merchants.

Under the decisions of the United States Supreme Court, a gross receipts tax such as Arlington County's is valid only:

[W]hen the tax is applied to an activity with a substantial nexus with the taxing State, is

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fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state. (Emphasis added.)

Complete Auto Transit v. Brady, 430 U.S. 274, 279 (1977).

Your auditors have made absolutely no attempt to provide for an apportionment of the taxable gross receipts in this case. Instead, they have taxed all of the gross receipts of Shorts (USA) without regard to where the sales activity occurred or the property was sold. Such an application is clearly unconstitutional. E.g., Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434 (1939) (holding unconstitutional a wholesale merchant's tax measured by sales shipped to another state); Evco v. Jones, 409 U.S. 91 (1972) (holding unconstitutional New Mexico's attempt to tax receipts from property sold to out of state clients).

Two recent Virginia decisions are also on point. In re Vecco Construction Inds., 33 B.R. 343 (E.D. Va. 1983) concerned Fairfax County's attempt to subject a bankrupt contractor to that county's business license tax based on its entire gross receipts. Part of those gross receipts were for business done in Virginia and part for business done in Maryland and the District of Columbia. The Bankruptcy Court for the Eastern District of Virginia (sitting

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in Alexandria) held the county's tax unconstitutional to the extent it sought to tax business activity outside Virginia.

Similarly, in American Sterilizer Company v. Chesterfield County Judge Daffron found that county's attempt to tax sales made outside Virginia by a wholesale merchant unconstitutional. The taxpayer in that case maintained a sales office in Chesterfield County. Its inventory was located in Pennsylvania. The county attempted to tax American Sterilizer's gross receipts from all sales made through the office, just as your auditors have attempted to tax Shorts (USA) with respect to all sales made throughout the United States. The circuit court held:

The commissioner may not assess a business license tax upon the proceeds of sales out of the state of Virginia because of lack of apportionment and the possibility of multiple tax burdens on interstate commerce.

A copy of Judge Daffron's opinion is enclosed for your reference.

Your auditors have suggested that they are entitled to tax all of Shorts (USA)'s gross receipts except to the extent those gross receipts are in fact taxed elsewhere. That is an incorrect statement of the law. The United States Supreme Court has held that the risk of multiple taxation is all that must exist in order to require a locality to apportion its tax. See Mobil Oil Corp. v.

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Commissioner, 445 U.S. 425 (1980). In this case, Shorts (USA) sells to customers throughout the United States, and any locality wishing to tax it must apportion the tax. You will note that this is the identical conclusion reached by Judge Daffron in the enclosed Virginia circuit court opinion. A Virginia county can tax sales only to the extent made within Virginia.

For the reasons outlined above, we believe the assessments recently issued by your auditors are erroneous and should be revised both to change the classification under which Shorts (USA) is taxed and also to revise the statement of taxable gross receipts. The only gross receipts taxable by Arlington County are those attributable to Short USA's sales of aircraft or parts stored in Virginia or delivered to customers in Virginia.

I look forward to hearing from you concerning this matter. Thank you for your assistance.

Sincerely yours,

William L. S. Rowe

119/930
Enclosures
cc: A. Oakley Brooks
Jerry L. Sharp
Robert L. Nutt

STATEMENT OF ASSESSMENT OF LICENSE TAXES FOR YEAR INDICATED

License taxes are hereby assessed in accordance with the provisions of the Arlington Business Privilege License Ordinance.

856461500 1

License Year 1985 Type of License SPECIALIZED OCCUPAT
 Basis of Assessment: ADJUSTMENT BASIS: 3,412,432

Date Assessed: DECEMBER 20, 1986
 Date Due: DECEMBER 20, 1986
 Taxes Due: 11,918.52 + 4.00
 Penalty: 0.00
 Interest: 0.00
 Total: 11,918.52

SHORT BROTHERS USA INC
 2011 S CRYSTAL DR #713
 ARLINGTON VA 22202

NOTE: IF THIS ASSESSMENT IS NOT PAID WITHIN 15 DAYS OF THE ABOVE DATE, A PENALTY OF 10% OF THE TAX DUE OR \$10.00, WHICHEVER IS GREATER, WILL BE ADDED. INTEREST SHALL BEGIN TO ACCRUE FROM THE 1ST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH PAYMENT IS DUE, UNTIL PAYMENT IS MADE.

Make check payable to the TREASURER OF ARLINGTON COUNTY. Return payment with this notice to: Treasurer of Arlington County, Arlington County, Virginia 22201.

Tax Assessed Page No. 5155 Line 02

FORM 60-12
 5/82

STATEMENT OF ASSESSMENT OF LICENSE TAXES FOR YEAR INDICATED

License taxes are hereby assessed in accordance with the provisions of the Arlington Business Privilege License Ordinance.

856461500 1

License Year 1986 Type of License SPECIALIZED OCCUPAT
 Basis of Assessment: ADJUSTMENT BASIS: 4,795,499

Date Assessed: DECEMBER 20, 1986
 Date Due: DECEMBER 20, 1986
 Taxes Due: 16,759.25
 Penalty: 0.00
 Interest: 0.00
 Total: 16,759.25

SHORT BROTHERS USA INC
 2011 S CRYSTAL DR #713
 ARLINGTON VA 22202

NOTE: IF THIS ASSESSMENT IS NOT PAID WITHIN 15 DAYS OF THE ABOVE DATE, A PENALTY OF 10% OF THE TAX DUE OR \$10.00, WHICHEVER IS GREATER, WILL BE ADDED. INTEREST SHALL BEGIN TO ACCRUE FROM THE 1ST DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH PAYMENT IS DUE, UNTIL PAYMENT IS MADE.

Make check payable to the TREASURER OF ARLINGTON COUNTY. Return payment with this notice to: Treasurer of Arlington County, Arlington County, Virginia 22201.

Tax Assessed Page No. 5155 Line 03

Short Brothers (USA), Inc. Aircraft Leases - Tax Year 1986

<u>Aircraft</u>	<u>Dates</u>	<u>Customer Name and Address</u>	<u>Place of Delivery</u>	<u>Place of Return</u>
SH3002	01/11/85 to 12/30/85	Henson Aviation Salisbury, MD	Allentown, PA	Allentown, PA
SH3013	01/01/85 to 02/08/85	Suburban Airlines Allentown, PA	Allentown, PA for storage and repair	Allentown, PA
	02/08/85 to 03/09/85	Palmer Airmotive, Ltd. Wellsville, NY	Wellsville, NY for repainting	Wellsville, NY
	03/09/85 to 03/14/86	Henson Aviation Salisbury, MD	Salisbury, MD	Allentown, PA
SH3015	01/01/85 to 03/11/85	Pennsylvania Airlines Middletown, PA	Middletown, PA for storage and repairs	Middletown, PA
	03/11/85 to 04/04/85	Palmer Airmotive, Ltd. Wellsville, NY	Wellsville, NY for repainting	Wellsville, NY
	04/04/85 to 11/19/85	Henson Aviation Salisbury, MD	Salisbury, MD	Allentown, PA
	11/19/85 to 12/30/85	Goodner Brothers Mena, AR	Mena, AR for repainting	Mena, AR

<u>Aircraft</u>	<u>Dates</u>	<u>Customer Name and Address</u>	<u>Place of Delivery</u>	<u>Place of Return</u>
SH3017	11/16/84 to 12/31/85	Sunbird Airlines Charlotte, NC	Allentown, PA	Allentown, PA
SH3018	10/01/84 to 02/28/85	Westair Commuter Airlines Chico, CA	Chico, CA	Chico, CA
	02/28/85 to 03/01/85	Mississippi Valley Airlines Moline, IL	Moline, IL	Moline, IL
	03/01/85 to 06/07/85	Henson Aviation Salisbury, MD	Salisbury, MD for storage and repairs	Salisbury, MD
	06/07/85 to 12/31/85	Sunbird Airlines Charlotte, NC	Charlotte, NC	Allentown, PA
SH3071	10/11/82 to 10/15/87	Pennsylvania Airlines Middletown, PA	Middletown, PA	Middletown, PA
SH3072	05/01/82 to 12/31/91	Comair, Inc. Cincinnati, OH	Delivered to Comair prior to 1985	Remained with Comair into 1986
SH3074	10/11/82 to 10/15/87	Pennsylvania Airlines Middletown, PA	Middletown, PA	Middletown, PA
SH3079	08/29/83 to 08/31/85	Comair, Inc. Cincinnati, OH	Delivered to Comair prior to 1985	Unable to determine

<u>Aircraft</u>	<u>Dates</u>	<u>Customer Name and Address</u>	<u>Place of Delivery</u>	<u>Place of Return</u>
SH3079	08/31/85 to 08/31/86	Henson Aviation Salisbury, MD	Salisbury, MD	Allentown, PA
SH3080	11/29/84 to 01/31/85	Chautauqua Airlines Jamestown, NY	Allentown, PA	Allentown, PA
	02/01/85 to 11/18/85	Fisher Brothers Galion, OH	Galion, OH	Allentown, PA
	11/18/85 to 12/19/85	Suburban Airlines Allentown, PA	Allentown, PA for storage and repair	Allentown, PA
	12/19/85 to 12/31/85	Henson Aviation Salisbury, MD	Salisbury, MD	Remained with Henson into 1986
SH3081	06/01/82 to 07/31/87	Comair, Inc. Cincinnati, OH	Allentown, PA	Allentown, PA
SH3089	06/28/84 to 04/12/85	Comair, Inc. Cincinnati, OH	Allentown, PA	Cincinnati, OH
	04/12/85 to 07/08/85	Suburban Airlines, Allentown, PA	Allentown, PA for storage and repairs	Allentown, PA
	07/08/85 to 10/11/85	Fischer Brothers Galion, OH	Allentown, PA	Allentown, PA

<u>Aircraft</u>	<u>Dates</u>	<u>Customer Name and Address</u>	<u>Place of Delivery</u>	<u>Place of Return</u>
SH3089	11/19/85 to 12/31/85	Henson Aviation Salisbury, MD	Unable to determine	Remained with Henson into 1986
SH3096	08/09/85	Purchase from Shorts (PLC)	United Kingdom	N/A
	08/12/85 to 08/16/85	Suburban Airlines Allentown, PA	Allentown, PA	Allentown, PA
	08/16/85 to 08/15/86	Sunbird Airlines Charlotte, NC	Charlotte, NC	Allentown, PA

AIRCRAFT LEASE

dated as of

December 1, 1981

between

GENERAL ELECTRIC CREDIT CORPORATION

as Lessor,

and

SHORT BROTHERS (USA), INC.

as Lessee

ONE SHORTS SD3-30

Manufacturer's Serial Number SH 3071

United States Registration Number N-2679U

100921

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AIRCRAFT LEASE

The AIRCRAFT LEASE dated as of December 1, 1981 (the "Lease") between GENERAL ELECTRIC CREDIT CORPORATION (the "Lessor") and SHORT BROTHERS (USA), INC. (the "Lessee").

SECTION 1. DEFINITIONS; CONSTRUCTION OF REFERENCES; GOVERNING LAW.

In this Lease, unless the context otherwise requires:

(a) All references in this Lease to designated Sections and other subdivisions are to designated Sections and other subdivisions of this Lease, and the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.

(b) Certain terms as used in this Lease are defined in Exhibit A hereto, and such definitions are hereby incorporated herein and made a part hereof as though set forth herein in full. The terms defined in this Lease and in Exhibit A hereto shall, for purposes of this Lease and all Exhibits hereto, have the meanings assigned to them and shall include the plural as well as the singular.

(c) Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

(d) This Lease has been delivered in the State of New York and shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 2. ACCEPTANCE AND LEASE OF AIRCRAFT.

Subject to the satisfaction of the terms and conditions of Section 5 hereof, the Lessor hereby agrees to accept delivery from the Manufacturer under the Purchase Documents and simultaneously to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the Aircraft pursuant to the terms and conditions of this lease. Upon satisfaction of the aforementioned terms and conditions

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and delivery of the Aircraft to the Lessor from the Manufacturer on the Delivery Date, the Lessee will cause an authorized representative of the Lessee to inspect the same and, if the Aircraft is found to be in good order, the Lessee, as Lessor's agent and on its own behalf as Lessee hereunder, will accept delivery of the Aircraft from the Manufacturer and execute and deliver a Lease Supplement with respect thereto (provided however, that any acceptance by the Lessee from the Manufacturer shall constitute acceptance of the Aircraft for the purposes of this Lease whether or not a Lease Supplement is so executed). Upon execution and delivery by the Lessee of the Lease Supplement describing the Aircraft, such Aircraft shall be subject to the terms and conditions of this Lease.

SECTION 3. TERM AND RENT.

(a) The term of this Lease shall begin on the Delivery Date and shall end on the Expiration Date, unless this Lease shall have been terminated, or the term of this Lease shall have been extended, by the terms hereof.

(b) The Lessee shall pay to the Lessor as basic rent (herein referred to as "Basic Rent") the following:

(1) on the Interim Rent Date, an amount equal to the Daily Lease Rate Factor multiplied by the Lessor's Cost of the Aircraft, for each day elapsed from, and including, the Delivery Date with respect to the Aircraft to, but excluding, the Interim Rent Date;

(2) on the First Basic Rent Date, an amount equal to the Basic Lease Rate Factor multiplied by the Lessor's Cost of the Aircraft; and

(3) on each Basic Rent Date thereafter to, and including, the Last Basic Rent Date, an amount equal to the Basic Lease Rate Factor multiplied by the Lessor's Cost of the Aircraft;

The Lessee agrees not to prepay any payment of Basic Rent.

(c) The Lessee shall pay to the Lessor the following amounts (herein referred to as "Supplemental Rent" and, together with all Basic Rent, as "Rent"):

(1) on demand, any amount payable hereunder (other than Basic Rent, Casualty Value and Termination Value) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease to the Lessor or others;

(2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value; and

(3) on demand, to the extent permitted by applicable law, interest (computed on the basis of a 360-day year on the days actually elapsed) at the Late Payment Rate on any payment of Basic Rent, Casualty Value or Termination Value not paid when due for any period during which the same shall be overdue.

The expiration or other termination of the Lessee's obligation to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent.

(d) In the event that the Airframe has been utilized for more than 53,500 take-off and landing cycles during the term of this Lease, then the Lessee shall pay to the Lessor as Supplemental Rent on each Basic Rent Date thereafter an amount equal to .000012 times Lessor's Cost for each such cycle by which the total number of such cycles for the Airframe exceeds the sum of (i) 53,500 plus (ii) the number of such cycles for which Supplemental Rent pursuant to this Section 3(d) has been paid.

(e) All payments of Rent hereunder shall be made in immediately available funds (denominated in the then lawful coin or currency of the United States of America) no later than 1:00 P.M. New York, New York time on the date payable hereunder and shall be paid to the Lessor by wire transfer through the Federal Reserve to Hartford National Bank & Trust Company, 777 Main Street, Hartford, Connecticut 06115, for credit to General Electric Credit Corporation, Account No. 044-036-3436 with advice that the deposit is Re: Short Brothers, 12/1/81(a), or at such other address or to such other Person as the Lessor may direct by notice in writing to the Lessee. Payments of Rent which are due on a day which is not a Business Day may be paid on the next Business Day.

SECTION 4. LIMITED APPOINTMENT OF AGENT.

(a) Limited Appointment of Authorized Agent. Solely for purposes of accepting delivery of the Aircraft from the Manufacturer, the Lessor hereby appoints the Lessee as authorized representative of the Lessor. Until such authority shall have been terminated pursuant to paragraph (b) of this Section, such authorized representative shall be authorized to take possession of the Aircraft upon the delivery thereof to the Lessee by the Manufacturer, to accept on behalf of the Lessor all Purchase Documents, if any, delivered at such time with respect to the Aircraft, either to accept delivery of the Aircraft on behalf of the Lessor if it is found to be in good order or to return and to take such other action on behalf of the Lessor as shall be required to accept

delivery of the Aircraft. The Lessee hereby agrees (i) that acceptance of delivery of the Aircraft by the Lessee as such authorized representative shall, without further act, irrevocably constitute acknowledgment by the Lessee that the condition of the Aircraft is as represented for all the purposes of this Lease, (ii) that execution and delivery of the Lease Supplement shall irrevocably constitute acceptance of such Aircraft for all purposes of this Lease.

(b) Termination of Appointment of Authorized Agent. The authority of the authorized representative granted pursuant to paragraph (a) of this Section shall terminate upon the earlier of (i) acceptance of the Aircraft by the Lessee on behalf of the Lessor, or (ii) notice to the Lessee by the Lessor revoking the

SECTION 5. CONDITIONS PRECEDENT TO PURCHASE AND LEASE OF AIRCRAFT.

(a) Anything contained in this Lease to the contrary notwithstanding, the Aircraft shall not be purchased or paid for by the Lessor or leased by the Lessor to the Lessee until the following conditions precedent have been fulfilled on or prior to the Delivery Date:

(1) The Lessee has given written or telegraphic notice to the Lessor at least five Business Days prior to the Delivery Date specifying the date of such Delivery Date, the amount of the Lessor's Cost, the FAA registration mark for the Aircraft and the Manufacturer's serial number of the Airframe and each Engine and Propeller constituting part of the Aircraft.

(2) The agreements, certificates and other documents specified in the Appendix and in Exhibit E to this Lease Agreement shall have been executed, delivered and/or obtained in form and substance satisfactory to the Lessor.

(3) The Lessor has received evidence satisfactory in form and substance to it as to the following:

(A) the Lessor will, upon payment, receive good and marketable title to the Airframe and each Engine constituting part of the Aircraft, free and clear of all Liens and interests other than the Liens and interests permitted by Section 10 hereof;

(B) the Aircraft has been duly certified by the Federal Aviation Administration as to type and is in a condition to permit an airworthiness certificate to be issued;

(C) this Lease and the Lease Supplement relating to the Aircraft are with FAA Counsel, are in appropriate form and are properly executed so as to be acceptable for filing for recordation with the Federal Aviation Administration pursuant to the Federal Aviation Act; and

(D) application for registration of the Aircraft in the name of the Lessor is with FAA Counsel, is in appropriate form and is properly executed so as to be acceptable for filing with the Federal Aviation Administration, and the Lessee has temporary or permanent authority to operate the Aircraft.

(4) The Lessor's Cost shall not exceed the Maximum Financing Cost.

(5) The Aircraft shall be in one of the 48 contiguous states of the United States of America.

(6) The Lessor has received a certificate or certificates of the Lessee, dated the Delivery Date, satisfactory in form and substance to Lessor's Counsel, the Articles of Organization, the By-Laws and the authorizing resolutions of the Lessee, as well as the incumbency and specimen signature of the officers of the Lessee executing the Lease and any of the Purchase Documents or other documents or certificates related thereto and to the effect that the representations and warranties of the Lessee set forth in this Lease are true and correct in all material respects on the Delivery Date, with the same effect as though made on the Delivery Date, no Default or Event of Default has occurred and is continuing on the Delivery Date, and the Lessee has satisfied all requirements set forth in this Lease to be satisfied on or prior to the Delivery Date.

(7) The Lessor has received a favorable opinion of Lessee's Counsel, dated the Delivery Date, addressed to it and satisfactory in form and substance to Lessor's Counsel, substantially in the form of Exhibit F hereto.

(8) The Lessor has received in escrow to be delivered upon filing a favorable opinion of FAA Counsel, dated the Delivery Date, addressed to it and satisfactory in form and substance to it, to the effect that:

(A) the FAA Bill of Sale for the Aircraft, delivered by the Manufacturer on such Delivery Date

(the "FAA Bill of Sale"), is in due form, and this Lease and the Lease Supplement are in due form, and are properly executed so as to be acceptable for recording pursuant to and in accordance with the provisions of the Federal Aviation Act, and the FAA Bill of Sale, this Lease and the Lease Supplement have each been duly filed with the Federal Aviation Administration on the Delivery Date;

(B) the AC Form 8050-1 Aircraft Registration Application in the name of the Lessor is in due form for filing pursuant to and in accordance with the provisions of the Federal Aviation Act and has been duly filed with the Federal Aviation Administration on the Delivery Date, and all instruments necessary to cause the Federal Aviation Administration to issue to the Lessor in due course a Certificate of Aircraft Registration covering the Aircraft have been duly filed with the Federal Aviation Administration; and

(C) on the Delivery Date the Lessor possesses the legal title to the Aircraft delivered on the Delivery Date, free and clear of all Liens except (i) Liens permitted by Section 10 hereof and (ii) Liens created by documents filed for recordation pursuant to the Federal Aviation Act, but not shown on indices of filed but unrecorded documents made available to the FAA Counsel prior to the filing for recordation of the FAA Bill of Sale, this Lease and the Lease Supplement;

The opinion furnished pursuant to this clause may state that no opinion is expressed as to laws other than the Federal laws of the United States. Said opinion may also contain a statement to the effect that no opinion is expressed as to Liens which are not perfected with the filing of notice thereof with the Federal Aviation Administration, such as Federal tax liens and Liens arising under Section 1873(a) of Title 29 of the United States Code, and that the examination of the FAA Counsel was limited to such recording records. Upon receipt by the FAA Counsel of evidence of the recordation by the Federal Aviation Administration of the documents referred to in subclause (A) above, the FAA Counsel shall confirm the foregoing opinion as well as render their opinion that such documents have been duly recorded with the Federal Aviation Administration pursuant to and in accordance with the Federal Aviation Act.

(9) The Lessor or counsel satisfactory to the Lessor has received executed copies, or sets of executed counterpart thereof, of the Guarantee, this Lease and the Lease Supplement and photocopies of all Purchase Documents relating to the Aircraft. All of the foregoing documents shall have been duly authorized, executed and delivered by the respective party or parties thereto and the Lessor has received such evidence as such authorization, execution and delivery as it or Lessor's Counsel shall request.

(10) The Lessor has received a favorable opinion of Lessor's Counsel, dated the Delivery Date, addressed to it and satisfactory in form and substance to it, to the effect that the Lease and the Lease Supplement have been duly authorized, executed and delivered by the respective parties thereto and each is a legal, valid and binding obligation of such parties and enforceable in accordance with its terms.

(11) First Dallas (Leasing) Limited has made a loan to the Lessor in an amount at least equal to \$2,388,000 at an interest rate not in excess of 8.75% per annum for which the Lessor shall give as consideration fourteen (14) Notes due at six-month intervals each Note being for an equal principal payment and each Note to provide that it will not be accelerated or modified in any way for any reason other than non-payment thereof by the Lessor in accordance with the terms of said Notes, and that no accelerated or other payment, other than in accordance with the payments specified in said series of Notes, will be demanded or required.

(12) The Lessor has received such other documents, certificates and opinions as it or Lessor's Counsel shall reasonably request.

(b) Each opinion of counsel delivered pursuant to this Section, and each opinion of local counsel relied upon by such counsel, may (i) be subject to appropriate qualification as to applicable bankruptcy or similar laws affecting enforcement of creditors' rights generally, (ii) rely as to matters relating to the laws of jurisdictions other than the United States and the jurisdiction in which counsel is admitted to practice on an opinion of qualified local counsel acceptable to the parties to

whom such relying counsel's opinion is addressed; provided, however, that relying counsel's opinion must state that the addressee of relying counsel's opinion may rely upon such opinion of local counsel, and provided further that such opinion of local counsel shall include a statement to the effect that such local counsel understands and agrees that the addressee of relying counsel's opinion may rely upon such opinion of local counsel as if it were addressed to him; (iii) be limited with respect to indentures, orders, mortgages, contracts or other instruments of which counsel has knowledge, (iv) state that the opinion is subject to qualification regarding the effect of certain laws and judicial decisions upon the enforceability of certain rights and remedies provided in this Lease; provided, however, that the opinion must further state that none of such laws in effect on the date of such opinion and none of such judicial decisions make the rights and remedies provided in this Lease, taken as a whole, inadequate for the realization of the benefits of this Lease, and (v) state that such counsel does not purport to pass upon the application of the registration provisions of the Securities Act of 1933, as amended, or of the "blue sky" or securities laws of any jurisdiction with respect to the interests in the Aircraft. Counsel for the Lessor and Lessee's Counsel are hereby declared to be acceptable local counsel and the opinion of each must state that the others may rely thereon, and when relying on the opinion of any of them as local counsel, relying counsel's opinion need not contain a statement that the addressee of relying counsel's opinion may rely upon such local counsel's opinion. Any counsel giving an opinion pursuant to this Section 5 may rely upon the opinion of any other counsel giving an opinion pursuant to this Section 5 only to the extent that such reliance is necessary to reach the conclusions specified in this Section 5 but only if the conclusions for which reliance is made could not be reached by independent investigation or research.

SECTION 6. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF THE LESSEE.

The Lessee represents, warrants and agrees as follows:

(a) Due Organization. The Lessee is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to carry on its business as currently conducted and to perform its obligations under this Lease, and has the corporate power and authority to hold property under lease and to enter into and perform its obligations under this Lease, the Lease Supplement relating to the Aircraft and any Purchase Documents to which the Lessee is a party. The Lessee covenants and agrees that, except as otherwise provided in paragraph (j) of this Section, the Lessee shall maintain its status as represented and

warranted in this subsection 6(a) throughout the term of the Lease.

(b) Due Authorization; Enforceability; No Violation. This Lease has been duly authorized by all necessary corporate action on the part of the Lessee and does not require any approval of the stockholders of the Lessee, and this Lease has been duly executed and delivered by the Lessee and, assuming due authorization and delivery by the other party thereto, is a legal, valid and binding obligation of the Lessee, enforceable in accordance with their terms. The Lease Supplement relating to the Aircraft and any Purchase Documents to which the Lessee is a party have been authorized by all necessary corporate action on the part of the Lessee and do not require any approval of the stockholders of the Lessee and, upon execution and delivery thereof, will be legal, valid and binding obligations of the Lessee, enforceable in accordance with their terms. The execution and delivery by the Lessee of this Lease, the Lease Supplement relating to the Aircraft and any Purchase Documents to which the Lessee is a party and the performance by it of its obligations under each will not be inconsistent with its charter or By-Laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to or binding on the Lessee, do not and will not contravene any provision of, or constitute a default or result in the creation of any Lien (other than as permitted by Section 6 hereof) under any indenture, mortgage, contract, bank loan, or other instrument to which the Lessee is a party or by which the Lessee is bound, and do not and will not require any approval or action of any trustee or holders of indebtedness or obligations of the Lessee, except such as have been duly obtained.

(c) Government Approvals. No consent or approval or giving of notice to, registration with, or taking of any action in respect of or by, any Federal, state or local governmental authority or agency (including, without limitation, the Civil Aeronautics Board or the Federal Aviation Administration), Person is required with respect to the execution, delivery or performance by the Lessee of this Lease, the Lease Supplement relating to the Aircraft or any of the Purchase Documents to which the Lessee is a party or the consummation of any of the transactions contemplated hereby or thereby, or if any such approval, notice, registration or action is required, it has been duly given or obtained.

(d) Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee in any court or before any governmental board or authority which, if adversely determined, will have a materially adverse effect on either the financial condition of the Lessee or its ability to perform its obligations under this Lease.

or the ability of the Lessee to perform its obligations under this Lease, the Lease Supplement relating to the Aircraft or any of the Purchase Documents to which the Lessee is a party.

(e) Perfection of Title. Except for (i) the registration of the Aircraft pursuant to the Federal Aviation Act of 1958, as amended, (ii) the filing and recordation of this Lease, the Lease Supplement and the FAA Bill of Sale pursuant to the Federal Aviation Act of 1958, as amended, and (iii) the placing on the Airframe and each Engine of the plates (or painted stencil in the case of each Engine) containing the Aircraft Marking referred to in Section 12(f) (iii) hereof, no further filing or recording of any document (including any financing statement with respect hereto under Article 9 of the Uniform Commercial Code) or taking of any other action is necessary or advisable in order to establish and perfect Lessor's title to, and interest in, the Aircraft, the Engines and the Propellers as against the Lessee and any third parties in any applicable jurisdictions within the United States.

(f) Condition of the Aircraft. The Aircraft will be new and when delivered and accepted under this Lease, the Aircraft shall not have been used by any person so as to preclude "the original use of such property" within the meaning of the Code from commencing with the Lessor.

(g) Taxes. The Lessee has filed or caused to be filed all Federal, state and local tax returns which are required to be filed and (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) has paid or caused to be paid all taxes shown to be due and payable on such return or on any assessment received by the Lessee, to the extent that such taxes have become due and payable.

(h) Financial Statements. The balance sheet dated the Balance Sheet Date and the related statement of income and statement of changes in financial position of the consolidated group of companies of which the Lessee is a member (the "Consolidated Group"), heretofore delivered to the Lessor have been prepared in accordance with Generally Accepted Accounting Principles and fairly present the financial position of the Consolidated Group on and as of the date thereof and the results of its operations for the period or periods covered thereby. Since the Balance Sheet Date, there has been no materially adverse change in the financial condition or results of operations of the Consolidated Group except as previously disclosed in writing to the Lessor by the Lessee, in interim financial statements previously furnished to the Lessor or as stated in the Guarantee.

(i) Access to or Furnishing of Information. The Lessee agrees that, on or before the Delivery Date, it shall furnish to

the Lessor such information, financial or otherwise, as the Lessor shall request. The Lessee also agrees to furnish to the Lessor:

(1) within 15 days after the annual general meeting of the Guarantor, an audited balance sheet and statement of changes in financial position of the Consolidated Group at and as of the end of such fiscal year, together with an audited statement of income of the Consolidated Group for such fiscal year;

(2) prior to January 1, 1983 and prior to the first day of each year thereafter during the term of this Lease, a certificate of a duly authorized officer of the Lessee stating that he has reviewed the activities of the Lessee and that, to the best of his knowledge, there exists no Default or Event of Default;

(3) within 150 days after the close of each fiscal year occurring after the date hereof, a preliminary, unaudited, year-end financial statement subject to finalization and to review at the annual general meeting of the Guarantor; and

(4) from time to time, such other information as the Lessor may reasonably request.

(j) Corporate Existence: Merger; Sales, etc.

(1) Except as permitted by paragraph (2) of this subsection (j), Lessee shall at all times maintain its corporate existence and Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate franchise.

(2) The Lessee shall not consolidate or merge with or into any other corporation or sell, convey, transfer or lease substantially all of the property of the Lessee to any Person unless:

(A) the corporation (if other than the Lessee) formed by such consolidation or into which the Lessee is merged or the Person which shall have acquired such property is a corporation organized and existing under the laws of the United States of America or of any state thereof and is wholly owned by the Guarantor;

(B) upon any consolidation or merger of the Lessee with or into any other corporation or corporations (whether or not affiliated with the Lessee) or successive consolidation or mergers in which the Lessee or its successor or

successors shall be a party or parties, or upon any sale, conveyance, transfer or lease of all or substantially all of the property of the Lessee to any other Person, the Lessee will cause the due and punctual payment of all Rent and the due and punctual performance and observance of all covenants and obligations of the Lessee hereunder to be assumed by the corporation (if other than the Lessee) formed by such consolidation, or the corporation into which the Lessee shall have been merged or by the Person which shall have acquired such property; and

(C) prior to the consumation of such sale, conveyance, transfer or lease, the Lessor shall have received an opinion of counsel, satisfactory in form and substance to the Lessor, stating that such sale, conveyance, transfer or lease will not affect the validity or enforceability of the Guarantee and will not cause the Guarantor to be in violation of Section 4 of the Guarantee.

(k) Location of Principal Executive Offices. The principal executive office or principal place of business (as either of such terms is used in Article 9 of the Uniform Commercial Code) of the Lessee is located at 2222 Martin Drive (Suite 255), Irvine, California 92715, and the Lessee agrees to give the Lessor prior written notice of any relocation of said principal executive office or principal place of business from its present location.

(l) Purchase Agreement Obligations. The Lessor has entered into the Purchase Agreement for the purpose of acquiring the Aircraft leased to the Lessee under this Lease and related lease agreements. As an inducement for and in consideration of the entering of the Purchase Agreement by the Lessor, the Lessee covenants that the Lessee shall hold the Lessor harmless from any dispute, charge, payment (other than for the purchase price of the Aircraft) or any other obligation currently owed or which may be owed by the Lessor to the Manufacturer under or by reason of the Purchase Agreement (whether for payment or otherwise other than the purchase price of the Aircraft) during the term of, or by reason of, this Lease.

SECTION 7. NET LEASE.

This Lease is a net lease, and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (the "Abatements") for

any reason whatsoever, including, without limitation, Abatement due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, against the Manufacturer against any other Person for whatever reason. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the obligations of the Lessee be affected, by reason of defect in or damage to, or any loss or destruction of, the Aircraft or any part thereof from whatsoever cause, or the interference with the use thereof by the Lessor (except with respect to Lessor's obligation to provide quiet enjoyment as provided in Section 9 hereof) or any Person, or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of the Lessor and the Lessee that a rent payable by the Lessee hereunder shall be, and continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

SECTION 8. RETURN OF AIRCRAFT.

(a) Condition Upon Return. Upon the expiration or termination of this Lease, the Lessee, at its own risk and expense, shall return to Lessor the Airframe, registered in the name of the Lessee, fully equipped with two (2) Pratt & Whitney PT6A-45R Engines (or engines of the same or another manufacturer, of the same or improved utility, performance and efficiency and suitable for use on the Airframe) duly installed thereon to the Lessor pursuant to the Lessor's instructions set forth under the heading Return of Aircraft in Exhibit C hereto and in the condition in which the Airframe and the Engines or engines are required to be maintained pursuant to Section 12 hereof. The Airframe and the Engines or engines, upon redelivery pursuant hereto, (i) shall be duly certified as an airworthy aircraft by the Federal Aviation Administration, and shall be covered by a current airworthiness certificate, (ii) shall be free and clear of all mortgages, liens, security interests, charges, claims or other encumbrances (the "Liens"), other than Liens either (A) created or granted by the Lessor, including any such Liens created or granted with the purchase or financing of the Aircraft, or (B) resulting from claims against the Lessor not related to the Lessor's ownership of the Aircraft (Liens described in clauses (A) and (B) above being herein referred to as "Lessor's Liens") and (iii) shall be in a condition that all mandatory service bulletins and airworthiness directives required to be performed have been complied with. Upon redelivery of any Engines or engines, in the event that the Lessee does not use a condition-monitored maintenance program with

respect to such Engines or engines, and the Lessee adopts a scheduled shop visit or module change maintenance program with respect to such Engines or engines, the aggregate number of hours of operation on each such Engine or engine remaining until the next scheduled shop visit or module change shall be at least 3500 hours. In the event that the Lessee has adopted a scheduled shop visit or module change program with respect to such Engines or engines and the Lessee does not meet the above conditions with respect to such Engines or engines, the Lessee shall pay the Lessor a dollar amount computed by multiplying (i) the product (x) the Lessee's direct cost (during the preceding twelve months) of such scheduled shop visit or module change and (y) the number of Engines or engines returned by (ii) a fraction of which (A) numerator shall be the difference between 3500 hours in the aggregate for the Engines or engines and the actual aggregate number of hours of operation remaining to the next scheduled shop visit or module change for such Engines or engines, and (B) the denominator shall be the number of hours of time allowable between scheduled shop visits or module changes for such Engines or engines.

(b) Return of Engines. The Lessee represents and warrants that the Lessee will return to Lessor the Engines owned by Lessee with the Airframe, at the expiration or termination of the Lease without limiting the Lessor's rights under Section 18, 17(a), elsewhere in the Lease. In the event that any engine not owned by the Lessor shall be delivered with the returned Airframe as set forth in paragraph (a) of this Section, the Lessee, concurrent with such delivery, will, at its own expense and at no cost to the Lessor, furnish the Lessor with a bill of sale, in form and substance satisfactory to the Lessor, with respect to each such engine and with an opinion of counsel to the Lessee, in form and substance satisfactory to the Lessor, to the effect that, upon such return, the Lessor will acquire full title to such engine and the Lessee shall take such other action as the Lessor may reasonably request and thereupon the Lessor will, at no cost to the Lessee, furnish the Lessee with a bill of sale, in form and substance satisfactory to the Lessee, with respect to an Engine constituting part of the same Aircraft as the Airframe returned but not installed on such Airframe at the time of such Airframe return and with an opinion of Lessor's Counsel to the effect that, upon such transfer, the Lessee will acquire full title to such Engine and the Lessor shall take such other action as the Lessee may reasonably request.

(c) Manuals. The Lessee shall deliver to the Lessor all logs, manuals and data, and inspection, modification and overhaul records, maintenance and inspection programs required to be maintained with respect thereto under applicable rules and regulations of the Federal Aviation Administration.

(d) Storage Upon Return. Upon the expiration or termination of this Lease, the Lessee, upon the written request of the Lessor, will provide the Lessor with free storage facilities for such Aircraft for a period not exceeding 30 days (and at a reasonable charge not in excess of the Lessee's actual cost for any period after 30 days, provided that such storage obligation shall not exceed 120 days) at such location in the continental United States as used by the Lessee for the parking or storage of aircraft as the Lessee may select, and, if reasonably able to, and at the request of the Lessor, the Lessee will provide such facilities for such period, at the expense of the Lessor, at the location for Return of Aircraft. In the event the Aircraft shall not be stored at the location for Return of Aircraft, the Lessee will at its expense, fly such Aircraft within 120 days after the termination of this Lease from such place of storage selected by the Lessee to the location for Return of Aircraft upon receipt of evidence of insurance coverage as set forth in Section 15 hereof. The Lessor, at its own expense, may place such other insurance on such Aircraft as it may deem appropriate.

(e) Overhaul. Immediately prior to the return of the Airframe and Engines or engines at the expiration or termination of this Lease, the Lessee, upon the written request of the Lessor, will overhaul, or arrange for the overhaul of, such Airframe and Engines or engines. Such overhaul shall be done in the same manner and with the same care as used by the Lessee with similar airframes and engines of its own, and, except to the extent the Lessee has agreed to bear such costs pursuant to paragraph (a) of this Section, the Lessor shall reimburse the Lessee for the Lessee's actual costs including transportation to the location of such overhaul in connection with such overhaul and shall not be obligated to pay any Rent during the period of such overhaul.

SECTION 9. WARRANTIES OF THE LESSOR.

(a) The Lessor warrants that during the term of this Lease (i) the Lessor has received whatever title Manufacturer has conveyed, and (ii) provided the Lessor has received good and indefeasible title from the Manufacturer, so long as no Event of Default has occurred, Lessee's use of the Aircraft shall not be interrupted by Lessor or anyone claiming through or under the Lessor, and (iii) Lessor is and will continue to be a "Citizen of the United States" within the meaning of Section 101(16) of the Federal Aviation Act.

(b) The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied with respect to this Lease or the Aircraft, and the Lessor shall not be deemed to have modified in any

respect the obligations of the Lessee pursuant to Section 7 hereof, which obligations are absolute and unconditional. THE LESSEE EXPRESSLY AGREES TO LEASE THE AIRCRAFT "AS IS". THE LESSEE SHALL NOT BE DEEMED TO HAVE MADE, AND THE LESSOR HEREBY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE AIRCRAFT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF MATERIAL OR WORKMANSHIP OF THE AIRCRAFT, ITS VALUE OR AIRWORTHINESS OR CONFORMITY OF THE AIRCRAFT TO THE PROVISIONS AND SPECIFICATIONS OF THE PURCHASE AGREEMENT OR ANY OTHER AGREEMENTS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR STRICT OR ABSOLUTE LIABILITY IN TORT, but the Lessor authorizes the Lessee, at the Lessee's expense, to assert in the name of the Lessor for the benefit of the Lessee, during the term of this Lease, so long as no Event of Default shall have occurred hereunder, all of the Lessor's rights under any applicable Manufacturer's or other vendors' warranty and the Lessor agrees cooperate with the Lessee in asserting such rights; provided, however, that Lessor shall have the right to review and approve in a timely manner any documents, correspondence or pleading bearing its name, and provided further that the Lessee shall indemnify the Lessor and hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. Any amount received by the Lessee as payment under any such warranty shall be applied to restore the Aircraft to the condition required by Section 12 hereof and the excess shall be remitted to the Lessor.

(c) Lessor warrants that there are no liens outstanding on the Aircraft caused by Lessor other than as contemplated herein.

(d) In the event of any Sublease pursuant to Section 17 hereof, the Lessee may assign to the Sublessee (without right to further assign) any warranties otherwise exercisable by the Lessee pursuant to Section 9(b) hereof.

SECTION 10. LIENS.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Aircraft or any part thereof, the Lessor's title thereto or any interest of the Lessor therein (and the Lessee will promptly, at own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of the Lessor as

the Lessee as herein provided, (b) the rights of others under agreements or arrangements to the extent expressly provided by the terms of Sections 12(e) and 17 hereof, (c) Lessor's Liens, (d) Liens for taxes either not yet due or being contested by the Lessee in good faith (and for the payment of which adequate assurances in the Lessor's judgment have been provided the Lessor) with due diligence and by appropriate proceedings, if counsel for the Lessor shall have determined in his sole opinion that the nonpayment of any such tax or the contest of any such payment in such proceedings does not adversely affect the title, property or rights of the Lessor, and (e) inchoate materialmen's, mechanics', workmen's, repairmen's, employees or other like Liens arising in the ordinary course of business of the Lessee and not delinquent (and for the payment of which adequate assurances in the Lessor's judgment have been provided the Lessor).

SECTION 11. TAXES.

The Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against, all license and registration fees, income, franchise, gross receipts, sales, use, excise, personal property, ad valorem, value added, leasing, leasing use, stamp, landing, airport use or other taxes, levies, imposts, duties, charges or withholdings of any nature, including reimbursements required to be made by the Lessor with respect to any tax (other than a reimbursement required by reason of the willful act or omission of the Lessor) pursuant to the Confirming House Contract, together with any penalties, fines or interest thereon (the "Impositions"), arising out of the transactions contemplated by this Lease or the Confirming House Contract and imposed against the Lessor, the Lessee or the Aircraft or any part thereof by any Federal, state, local or foreign government or other taxing authority upon or with respect to the Aircraft or any part thereof or upon the sale, purchase, ownership, delivery, leasing, possession, operation, return, transfer or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease. Nonetheless, if (i) the Lessee shall have given to the Lessor written notice of any such Imposition but only to the extent of such notice, which notice shall state that such Imposition is being contested by the Lessee in good faith with due diligence and by appropriate proceedings and (ii) counsel for the Lessor shall have determined in his sole opinion that the nonpayment of any such tax or the contest of any such payment in such proceedings does not adversely

affect the title, property or rights of the Lessor, then Lessee may choose not to pay the Imposition or to contest such Imposition by (i) resisting payment thereof, (ii) not paying the same except under protest if protest is necessary and proper, or (iii) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. If a claim is made against the Lessee or the Lessor for any Imposition, the party receiving notice of such claim shall promptly notify the other.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section or arising out of this Section, the Lessee will either (after notice to the Lessor) make such report or return in such manner as will show the ownership of the Aircraft or any part thereof in the Lessor's records, send a copy of such report or return to the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. The Lessor agrees to cooperate fully with the Lessee in the preparation of such report or return.

Notwithstanding the foregoing, except as provided in Section 18 hereof, the Lessee shall not be obligated to pay (i) Federal or state taxes measured solely by net income, including minimum tax on items of tax preference, (ii) taxes imposed by reason of any voluntary sale or transfer of ownership by the Lessor of the Aircraft while there exists no Default or Event of Default hereunder, (iii) taxes imposed subsequent to the conclusion of this Lease not relating to matters occurring prior to the end of the lease term and not resulting from the action or inaction of the Lessee or any Sub-lessee and (iv) taxes or other charges in the nature of taxes imposed or measured by the net income of the Lessor.

SECTION 12. REGISTRATION, MAINTENANCE AND OPERATION; COMPLIANCE AND USE; REPLACEMENT PARTS; IMPROVEMENTS; AIRCRAFT MARKING

(a) Registration, Maintenance and Operation. The Lessee at its own cost and expense, shall (i) cause the Aircraft to be registered, from and after the date of the Lease Supplement describing the Aircraft, in the name of the Lessor under the Federal Aviation Act and at all times after such initial registration shall take all affirmative steps which it is capable of taking to continue such registration; (ii) not register or allow the registration of the Aircraft under the laws of any other country; (iii) maintain, inspect, service, repair, overhaul and test the Airframe and each Engine in accordance with the Manufacturer's recommended procedures (A) so as to keep the Airframe and each Engine in as good operating condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, and (B) so as to keep the Aircraft in such operating condition as may be necessary to enable the airworthiness

certification of such Aircraft to be maintained in good stand all times under the Federal Aviation Act; (iv) maintain all logs and other materials required by the Federal Aviation Administration to be maintained in respect of the Airframe and each (v) promptly furnish to the Lessor such information as may be required to enable the Lessor to file any reports required by governmental authority as a result of the Lessor's ownership Aircraft; and (vi) operate the Aircraft in such manner that t of the Airframe and any airframe on which an Engine is instal shall consist solely of flights which shall originate, termin land in the contiguous 48 states of the United States of Amer

(b) Compliance and Use. The Lessee agrees that the Aircraft will be maintained, used and operated in compliance with any and all statutes, laws, ordinances, regulations and mandatory standards or directives of any governmental agency applicable to the maintenance, use or operation thereof, and compliance with any airworthiness certificate, license or registration relating to the Aircraft issued by any agency. The Lessee agrees not to operate or locate the Aircraft, or suffer the Aircraft to be operated or located, in any area which is not included in coverage under any insurance policy required by the terms of Section 15 hereof and to permit the operation or use of the Aircraft by a Sublessee or any other Person only within such area. The Lessee also agrees to operate and use the Airframe or any Engine and to permit the operation or use of the Aircraft by a Sublessee or any other Person only as provided by Section 12(a) hereof. Throughout the term of this Lease, the possession, use and maintenance of the Aircraft shall be at the sole risk and expense of the Lessee. The Aircraft shall not be used in the regular carriage of freight other than as incidental to the carriage of passengers and its configuration shall remain only the carriage of passengers.

(c) Replacement Parts. Except as otherwise provided in the succeeding paragraph (d) of this Section, the Lessee, at its own cost and expense, will promptly replace all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (such substituted parts hereafter called "Replacement Parts"). The Lessee shall notify the Lessor of any Replacement Part having a per item cost of \$100, or more, and shall not install or affix any Replacement Part having a per item cost of \$100,000 or more without first obtaining the written consent of the Lessor. In addition, in the ordinary course of maintenance, service, repair, overhaul or testing, the Lessee may, at its own cost and expense, remove any Parts, whether or worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, provided the Lessee shall, at its own cost and expense, replace such parts as promptly as practicable. All Replacement Parts shall be free and clear of all Liens (except for pooling arrangements to the extent permitted by paragraph (e) of this Section or as otherwise

specifically permitted by this Lease) and shall be in as good operating condition as, and shall have a value and utility at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof. All Parts at any time removed from the Airframe or any Engine shall remain the property of the Lessor, no matter where located, until such time as such Parts shall be replaced by Parts which have been incorporated or installed in or attached to the Airframe or such Engine and which meet the requirements for Replacement Parts specified above, and Lessee shall maintain or cause to be maintained such records as are necessary to identify at any time such Parts as items of equipment owned by Lessor and leased hereunder. Immediately upon any Replacement Part becoming incorporated or installed in or attached to the Airframe or any Engine as above provided, without further act, (i) title to the removed Part shall thereupon vest in the Lessee, free and clear of all rights of the Lessor and shall no longer be deemed a Part hereunder, (ii) title to such Replacement Part shall thereupon vest in the Lessor subject only to a pooling arrangement to the extent permitted by paragraph (e) of this Section, and (iii) such Replacement Part shall become subject to this Lease and be deemed part of the Airframe or Engine, as the case may be, for all purposes hereof to the same extent as the Parts originally incorporated or installed in or attached to the Airframe or such Engine.

(d) Improvements. The Lessee, without expense to the Lessor, shall affix or install any accessory, equipment or device to the Airframe or an Engine or make any improvement, modification, alteration or addition thereto (any such accessory, installed equipment or device, improvement, modification, alteration or addition affixed or installed pursuant to this paragraph being herein referred to as an "Improvement") as may be required from time to time to meet the mandatory standards of the Federal Aviation Administration or other governmental authority. In addition the Lessee, without expense to the Lessor, may from time to time make, affix, or install any Improvement as the Lessee may deem desirable in the proper conduct of its business, provided no Improvement diminishes the value, utility, condition and airworthiness of the Airframe or such Engine below the value, utility, condition and airworthiness thereof immediately prior to the making, affixing or installing of such Improvement, assuming the Airframe or such Engine was then of the value or utility and in the condition and airworthiness required to be maintained by the terms of this Lease. Title to all Parts constituting Improvement shall, without further act, vest in the Lessor; provided, however that, so long as no Default shall have occurred and be continuing at any time prior to the expiration or termination of this Lease, the Lessee may remove any Improvement provided that (i) such

Improvement is in addition to, and not in replacement of or in substitution for, any Part originally incorporated or installed in or attached to the Airframe or such Engine at the time of the delivery thereof hereunder or any Replacement Part, (ii) such Improvement is not required to be incorporated or attached or added to the Airframe or such Engine pursuant to the terms of paragraph (a) of this Section, or the first sentence of this paragraph, and (iii) such Improvement can be readily removed from the Airframe or such Engine without causing material damage and without diminishing or impairing the value, utility, condition or airworthiness which the Airframe or such Engine would have had at such time had such alteration, modification or addition not occurred. Upon the removal by the Lessee of any such Improvement as above provided, title thereto shall, without further act, vest in the Lessee and such Improvement shall no longer be deemed part of the Airframe or Engine from which it was removed. Any Improvement not removed by the Lessee as above provided prior to the return of the Airframe or such Engine to the Lessor hereunder shall remain the property of the Lessor.

(e) Pooling of Parts. Any Part removed from the Airframe or an Engine as provided in paragraph (c) of this Section may be subjected by a Sublessee or the Lessee to a normal pooling arrangement customary in the airline industry entered into the ordinary course of such Sublessee's business with United States certificated air carriers, provided that the Replacement Part shall be incorporated or installed in or attached to such Airframe or Engine in accordance with such paragraph (c) as promptly as possible after the removal of the removed Part. In addition, any Replacement Part when incorporated or installed in or attached to the Airframe or any Engine in accordance with such paragraph (c) may be owned by a United States certificated air carrier subject to such a normal pooling arrangement, provided that the Lessee, at its expense, as promptly thereafter as possible, either (i) causes title to such Replacement Part to vest in the Lessor in accordance with such paragraph (c) by the Lessee acquiring title thereto for the benefit of, and transferring such title to, the Lessor free and clear of all Liens, or (ii) replaces such Replacement Part by incorporating or installing in or attaching to such Airframe or Engine a further Replacement Part owned by the Lessee free and clear of all Liens and by causing title to such further Replacement Part to vest in the Lessor in accordance with such paragraph (c).

(f) Aircraft Marking. The Lessee agrees, at its own cost and expense, to (i) cause the Airframe and the Engines to be kept numbered with the identification or serial number therefor as specified in the Lease Supplement therefor, (ii) maintain the same configuration of the Aircraft as when accepted by the Lessee

hereunder, and (iii) affix and maintain in the Aircraft adjacent to the airworthiness certificate a metal nameplate and on each engine, a painted stencil bearing the Aircraft Marking and such other markings as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to the Aircraft and the rights of the Lessor under this Lease. The Lessee will not place the Aircraft in operation or exercise any control or dominion over the same (other than ferrying operations from Manufacturer to Lessee) until such Aircraft Marking has been placed thereon. The Lessee will replace promptly any such Aircraft Marking which may be removed, defaced or destroyed.

SECTION 13. INSPECTION.

The Lessor shall have the right, but not the duty, to inspect the Aircraft at all reasonable times wherever located, provided that such inspection shall not interfere with Lessee's or any Sublessee's customary operations or use of aircraft. Upon the request of the Lessor, the Lessee shall confirm to the Lessor the location of the Aircraft and shall, at any reasonable time, give Lessor access to the Aircraft, and the Lessee's records pertaining to the Aircraft, available to the Lessor for inspection.

SECTION 14. LOSS OR DESTRUCTION; REQUISITION OF USE.

(a) Event of Loss with Respect to the Aircraft. Upon the occurrence of an Event of Loss with respect to the Airframe, or the Airframe and the Engines and/or engines then installed thereon, the Lessee shall notify the Lessor thereof within 5 days of the date thereof and on the Basic Rent Date next following the date of such Event of Loss, or immediately upon payment by the insurer or government authority, the Lessee shall, either from the insurance proceeds or otherwise, pay to the Lessor the Casualty Value of the Aircraft determined as of the Basic Rent Date immediately preceding such Event of Loss, together with Rent from the date of such preceding Basic Rent Date to the date on which the Event of Loss occurred for each day elapsed in an amount equal to the Daily Lease Rate Factor multiplied by the Lessor's Cost and any other Rent then due and unpaid as of the date of such payment. Upon making such Casualty Value payment in respect thereof and all Rent due and owing with respect thereto, the Lessee's obligation to pay further Basic Rent for the Aircraft shall cease, but the Lessee's obligation to pay Supplemental Rent, if any, for the Aircraft shall remain unchanged. Except in the case of loss, theft, permanent disappearance, or destruction the Lessor shall be entitled to recover possession of the Aircraft, unless possession thereof is required to be delivered to an insurance carrier (other than the Lessee) in order to settle an insurance claim arising out of such Event of Loss. If the insurance policy

so provides, the Lessor shall be entitled to retain any salvage value collected by such insurance carrier in excess of the amount paid to the Lessor by such insurance carrier. The Lessor shall under no duty to the Lessee to pursue any claim against any governmental authority, but the Lessee may at its own cost and expense pursue the same on behalf of the Lessor in such manner as may be satisfactory to the Lessor.

Following payment of the Casualty Value of the Aircraft in accordance with the provisions of this paragraph, the Lessee if possible and permitted by the applicable insurance policies, shall, as agent for the Lessor, dispose of the Aircraft as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an as is, where is basis, without recourse, representation or warranty, express or implied. The Lessee may, after paying the Lessor the amounts specified in this section, retain all amounts of such price up to the Casualty Value paid as provided above, and the Lessee's reasonable costs and expenses of disposition attributable thereto, and shall remit the excess, if any, to the Lessor. With respect to a Requisition or Use of the Airframe, or the Airframe and the Engines and/or engines then installed thereon constituting an Event of Loss, the Lessor agrees that the Lessee shall receive and retain all amounts paid by any governmental authority up to the Casualty Value paid by the Lessee to the Lessor hereunder, and any excess shall be paid over and retained by the Lessor, except that any such excess paid by any governmental authority and designated by such governmental authority as a payment for requisition of leasehold interest shall be retained by the Lessee and except to so long as no Default or Event of Default exists hereunder, Lessee may retain (and Lessor shall pay to Lessee) any requisition hire for the period preceding the date on which such requisition becomes an Event of Loss. Nothing herein shall preclude Lessee from insuring the value of Lessee's leasehold interest and retaining the proceeds of such insurance.

(b) Event of Loss with Respect to an Engine. Upon the occurrence of an Event of Loss with respect to an Engine under circumstances in which there has not occurred an Event of Loss with respect to the Airframe upon which such Engine was installed, the Lessee shall give the Lessor prompt written notice thereof and, without limiting Lessee's obligations under Section 18, shall, within thirty days after the occurrence of such Event of Loss, duly deliver to the Lessor, as replacement for the Engine with respect to which such Event of Loss occurred, title to another engine (or engine of the same or another manufacturer, of the same or improved utility, performance and efficiency and suitable for installation and use on the Airframe) owned by the Lessee free and clear of all liens other than liens permitted by this Lease and having a value and utility at least equal to, and being in as good operating condition as, the Engine with respect to which such Event of Loss occurred.

assuming such Engine was of the value or utility and in the condition and repair required by the terms hereof immediately prior to the occurrence of such Event of Loss. Prior to or at the time of any such conveyance, the Lessee, at its own expense, will (i) furnish the Lessor with a bill of sale, in form and substance satisfactory to the Lessor, with respect to such replacement engine, (ii) cause a supplement hereto, in form and substance satisfactory to the Lessor, to be duly executed by the Lessee and recorded pursuant to the Federal Aviation Act, (iii) furnish the Lessor with such evidence of compliance with the insurance provisions of Section 15 hereof with respect to such replacement engine as the Lessor may reasonably request and (iv) furnish the Lessor with an opinion of counsel to Lessee (and such other evidence of title as the Lessor may reasonably request) to the effect that, upon such conveyance, the Lessor will acquire full title to such replacement engine and that it will be leased hereunder to the same extent as the Engine replaced thereby. Upon full compliance by the Lessee with the terms of this paragraph, the Lessor will transfer to the Lessee, without recourse or warranty, all of the Lessor's right, title and interest, if any, in and to the Engine with respect to which such Event of Loss occurred. For all purposes hereof, each such replacement engine shall, after such conveyance, be deemed part of the property leased hereunder, shall be deemed an "Engine" as defined herein and shall be deemed part of the same Aircraft as was the Engine replaced thereby. No Event of Loss with respect to an Engine under the circumstances contemplated by the terms of this paragraph shall result in any reduction in Basic Rent.

(c) Risk of Loss; No Release of Obligations. Except as provided in this Section, the Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage to the Aircraft or any part thereof or any Event of Loss relating thereto.

SECTION 15. INSURANCE.

(a) Public Liability and Property Damage Insurance. The Lessee will carry or cause to be carried at its own expense public liability (including, without limitation, passenger legal liability) insurance totaling an amount not less than \$50,000,000 and property damage insurance (exclusive of manufacturer's product liability insurance) with respect to the Aircraft (i) in amounts which are not less than the public liability and property damage insurance applicable to similar passenger aircraft and engines which comprise the Lessee's fleet on which the Lessee (or any Sublessee if the Aircraft is subject to a Sublease) carries insurance, (ii) of the type usually carried by corporations engaged in the same or similar business, similarly situated with the Lessee (or any Sublessee if the Aircraft is subject to a Sublease), and owning or operating similar aircraft and engines and which covers

risks of the kind customarily insured against by such corporations and (iii) which is maintained in effect with insurers of recognized responsibility reasonably satisfactory to the Lessor.

(b) Insurance Against Loss or Damage to the Aircraft. The Lessee shall maintain or cause to be maintained in effect at its own expense, with insurers of recognized responsibility reasonably satisfactory to the Lessor, all-risk ground and flight aircraft hull insurance covering the Aircraft, and fire and explosion coverage, including lightning and electrical damage, with respect to any Engines or Parts while removed from the Aircraft which is of the type and in substantially the amount usually carried by corporations engaged in the same or similar business and similarly situated with the Lessee (or any Sublessee if the Aircraft is subject to a Sublease), provided that such insurance shall at all times while the Aircraft is subject to this Lease be for an amount which when paid will be not less than the Casualty Value for the Aircraft from time to time (determined as of the last preceding Basic Rent Date).

The Lessee shall additionally maintain in effect at Lessee's own expense, with insurers of recognized responsibility reasonably satisfactory to the Lessor, war risk, and sabotage and hijacking (air piracy), governmental confiscation and expropriation insurance with respect to the Aircraft when the Aircraft is not within the United States of America, and hijacking and sabotage insurance while the Aircraft is in the United States of America in a face amount of not less than the Casualty Value for the Aircraft from time to time (determined as of the last preceding Basic Rent Date), which insurance shall be in full force and effect upon the Delivery Date and continue in effect throughout the term of this Lease. The insurance required hereunder shall be primary insurance without right of contribution from any other insurance carrier by Lessor and shall not require or provide for any coinsurance.

(c) Lessor as Additional Insured; Notice. Any policy of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policy whether taken by the Lessee, any Sublessee or any Person acting on behalf of either of them (i) shall be amended to name the Lessor as owner of the Aircraft, as additional named insured, as its interest may appear, (ii) with respect to insurance carried in accordance with paragraph (b) covering the Aircraft shall be made payable to the Lessor in the event of any loss in excess of \$100,000 and shall be disbursed by the Lessor to the Lessee or other appropriate Person for payment of the costs actually incurred with respect to repairs to the Aircraft so as to restore it to the operating condition required by Section 12 hereof or shall be disbursed as otherwise required by this Lease, (iii) shall provide that if the insurer cancels such insurance for any reason whatever, or any substantial change is made in the coverage which affects the interest of the Lessor

the same is allowed to lapse for nonpayment of premium or such insurance coverage is reduced, such cancellation, change, lapse or reduction shall not be effective as to the Lessor for thirty days after receipt by the Lessor of written notice by such insurers of such cancellation, change, lapse or reduction and (iv) shall provide that in respect of the interest of the Lessor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee, any Sublessee or any other Person (other than of the Lessor) and shall insure the Lessor's interest, as it appears, regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by the Lessee or any other Person (other than by the Lessor). Each liability policy (i) shall be primary without right of contribution from any other insurance which is carried by the Lessor to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Aircraft and (ii) shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. The Lessee shall arrange for appropriate certification as to the Aircraft as to the satisfaction of the requirements set forth above in this paragraph to be delivered promptly (and in any case not later than the Delivery Date for such Aircraft) to the Lessor by each insurer with respect thereto.

(d) Reports, etc. On or before the Delivery Date of the Aircraft, and at the times specified in Section 6(i)(2), the Lessee shall furnish (and cause the Sublessee to furnish if the Sublessee is also obtaining insurance with respect to the Aircraft) to the Lessor (i) a report by an independent insurance agent or broker describing in reasonable detail the insurance then carried and maintained on the Aircraft and certifying that such insurance complies with the terms hereof and (ii) a certificate of the insurer as to such insurance. The Lessee will advise the Lessor in writing promptly of any default in the payment of any premium and of any other act of omission on the part of the Lessee which might invalidate or render unenforceable, in whole or in part, any insurance on the Aircraft. The Lessee will also advise the Lessor in writing at least 30 days prior to the expiration or termination date of any insurance carried and maintained on the Aircraft pursuant to this Section. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its sole option provide such insurance and, in such event, the Lessee shall, upon demand, reimburse the Lessor, as Supplemental Rent, for the cost thereof, without waiver of any other rights the Lessor may have, and such action by the Lessor shall not be deemed a cure or waiver of any Default or Event of Default hereunder.

SECTION 16. INDEMNIFICATION.

The Lessee assumes liability for, and hereby agrees to indemnify, protect, save and keep harmless the Lessor from any against an

and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims arising out of the active or passive negligence of Lessor and claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever ("Claims") which whether or not the Lessor also be indemnified as to any such Claim by any other Person, in any way relating to or arising out of this Lease or any document contemplated hereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Aircraft or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark, or copyright infringement); provided however, that the Lessee shall not be required to indemnify the Lessor for (a) any Claim in respect of the Aircraft arising from acts or events which occur after possession of the Aircraft has been redelivered to the Lessor in accordance with Section 8 hereof, or (b) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of the Lessor. If any Claim is made against the Lessee or the Lessor, the party receiving notice of such Claim shall promptly notify the other. THE LESSEE AGREES THAT THE LESSOR SHALL NOT BE LIABLE TO THE LESSEE FOR ANY CLAIM CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF THE AIRCRAFT OR ANY PART THEREOF FOR ANY PURPOSE OR ANY DEFICIENCY OR DEFECT THEREIN OR THE USE OR MAINTENANCE THEREOF OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO OR ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY THEREOF OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS, ALL OF WHICH SHALL BE THE RISK AND RESPONSIBILITY OF THE LESSEE.

Notwithstanding the foregoing, the Lessee shall not be obligated by this Section 16 to indemnify the Lessor for: (i) the purchase price of the Aircraft, (ii) fees and expenses of the Lessor's counsel and other costs of Lessor incurred in connection with the preparation, execution and delivery hereof, (iii) principal, interest, fees and expenses of the Lessor owed by the Lessor pursuant to the Confirming House Contract (except as provided in Section 11 hereof), (iv) the matters covered by Section 11 hereof except to the extent provided for therein, (v) the matters covered by Section 18 hereof except to the extent provided for therein, (vi) the direct consequences of the breach by Lessor of any representation or covenant of the Lessor contained herein, (vii) any voluntary sale or transfer of ownership by the Lessor of the Aircraft while there exists no Default or Event of Default hereunder.

SECTION 17. SUBLEASE

(a) Right to Sublease. The Lessee will not, without the prior written consent of the Lessor, assign any of its rights hereunder or sublet or otherwise relinquish possession of the Airframe

or any Engine or install any Engine, or permit any Engine to be installed, on any airframe other than the Airframe; provided that so long as no Default or Event of Default shall have occurred and be continuing and so long as the provisions of Section 15 hereof shall be complied with, the Lessee may, without the prior written consent of the Lessor, sublease the Aircraft subject to the following conditions:

(1) Any Sublessee shall be either a certificated air carrier or a Person to which the FAA has issued an operating certificate which allows such Person to operate the Aircraft;

(2) Any Sublease shall be in writing and shall not contain any term, condition or provision which would permit the Sublessee to engage in any conduct which is not permitted hereunder;

(3) With respect to any Sublease, the Lessee shall send to the Lessor by the method provided in Section 23 hereof (a) a certificate signed by a duly authorized officer of the Lessee stating that such Sublease complies with the provisions of Section 17(a) hereof and (b) a copy of any Sublease upon execution of such Sublease;

(4) Any Sublease (other than a Sublease approved by the Lessor pursuant to Section 17(d) hereof or described in Section 17(e) hereof) shall be expressly subject and subordinate to all the terms of this Lease, including, without limitation, the covenants contained in Section 12 and the Lessor's rights to repossession pursuant to Section 20;

(5) Any Sublease shall provide for the maintenance and insurance of the Aircraft under the same terms as provided herein, and for the avoidance of any use of the Aircraft thereunder if the same would result in the Lessor losing any portion of the Investment Credit referred to in Section 18 hereof, which would otherwise be available to the Lessor;

(6) Any Sublease shall contain a provision comparable to that set forth in paragraph (c) of Section 20 hereof;

(7) ~~No Sublessee shall have the right to further sublease the Aircraft; Amendment No 2~~

(8) Any Sublease shall provide that upon written notice by the Lessor the Sublessee shall pay to the Lessor any rentals and other payments otherwise due to the Lessee under such Sublease. Any Sublease shall further provide, in terms substantially similar to Section 7 hereof, that in the event that the Sublessee is required to make payments to the Lessor hereunder, the Sublessee may not setoff any such payments against any other obligations owed or alleged to be owed by the Lessee or the Lessor or any other Person to such Sublessee;

(9) Lessee shall reimburse and hold harmless L for any costs and expenses incurred by Lessor in connection with any Sublease including, without limitation, the preparation, performance and enforcement thereof;

(10) Any Sublease shall provide that the Aircraft shall not be used except as provided in Section 12(a) hereof;

(11) No Sublease (or renewal permitted under such Sublease) may extend beyond the term of this Lease nor any renewals of any sublease term extend beyond the term hereof;

(12) Any Sublease which is not subordinated as required by Section 17(a)(4) hereof, shall provide that the Sublessee shall provide a certificate to the Lessor in the form of Exhibit G hereto certifying that the Lessee shall make payments to the Lessor without any right of setoff to the Lessor so requests in writing hereof and that Lessee acknowledges the Lessor to be the Owner and Lessor of Aircraft; and

(13) No Sublease may be amended so as to cause the lease as amended not to comply with the provisions of Section 17(a).

Notwithstanding any Sublease, Lessee shall, except as provided in Section 17(d) hereof, remain primarily liable for the performance of this Lease and the Guarantor shall remain primarily obligated for the performance of its obligations under the Guarantee to the same extent as if such sublease had not occurred.

The Lessor shall not give the notice specified in Section 17(a)(8) or take any action pursuant to the certificate referred to in Section 17(a)(12) unless at the time of such notice a Default or Event of Default is existing and continuing hereunder.

The Lessee shall not assign to any Person any of Lessee's rights under any Sublease except as provided in Section 17(c) hereof.

(b) The Lessee and any Sublessee may:

(1) subject any Engine to normal pooling agreements or arrangements in each case customary in the airline industry and entered into by the Lessee or any Sublessee in the ordinary course of its business with one or more United States certificated air carriers provided that no transfer of the registration of such Engine shall be effected in connection therewith, and provided, further, that if the Lessor's title to any such Engine shall be divested under any such agreement

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or arrangement, such divestiture shall be deemed to be an Event of Loss with respect to such Engine and the Lessee shall comply with Section 14(b) hereof in respect thereof;

(2) deliver possession of the Airframe or any Engine to the manufacturer thereof for testing or other similar purposes or to any organization for service, repair, maintenance or overhaul work on such Airframe or Engine or any part thereof or for alterations or modifications in or additions to such Airframe or Engine to the extent required or permitted by the terms of Section 12 hereof;

(3) install an Engine on an airframe owned by the Lessee or any Sublessee free and clear of all Liens, except (i) those of the type permitted under clauses (d) and (e) of Section 10 hereof and (ii) those which apply only to the engines (other than Engines), appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment (other than Parts) installed on such airframe (but not to the airframe as an entirety);

(4) install an Engine on an airframe leased to the Lessee or any Sublessee or purchased or owned by the Lessee or any Sublessee subject to a conditional sale or other security agreement, provided that such airframe is free and clear of all Liens except ~~(i) the rights of the parties to the lease or conditional sale of other security agreement covering such airframe, that such airframe is free and clear of all Liens except~~ (i) the rights of the parties to the lease or conditional sale of other security agreement covering such airframe, (ii) Liens which insofar as they relate to such Engine are subordinate and junior in all respects to the rights of the Lessor hereunder and (iii) Liens of the type permitted by clause (3) above;

(5) install any engine on an airframe owned by the Lessee or any Sublessee, leased by the Lessee or any Sublessee or purchased or owned by the Lessee or any Sublessee subject to a conditional sale or other security agreement under circumstances where neither clause (3) nor clause (4) above is applicable, provided that such installation shall be deemed an Event of Loss with respect to such Engine and the Lessee shall comply with Section 14(b) hereof in respect thereof, the Lessor not intending hereby to waive any right or interest it may have to or in such Engine under applicable law until compliance by the Lessee with such Section 14(b); and

(6) to the extent permitted by Section 12(e) hereof, subject any appliances, parts or other equipment owned by the Lessor and removed from such Airframe to any pooling arrangement referred to in said Section;

and provided, further, that the rights of any transferee possession by reason of a transfer permitted by this Section shall be the subject and subordinate to, all the terms of Lease, including, without limitation, the covenants contained in Section 12 and the Lessor's rights to repossession pursuant to Section 20, and the Lessee shall remain primarily liable for the performance of all of the terms of this Lease to the same extent as if such transfer had not occurred. No pooling agreement, or other relinquishment of possession of the Aircraft or any Engine shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder.

(c) Assignment of Subleases. The Lessee hereby covenants, agrees, pledges, assigns, transfers and sets over unto the Lessor and hereby creates a security interest in the Lessor, and to mortgage, pledge, assign, transfer and set over unto the Lessor and to create a security interest in the Lessor, as security for the payment and performance of all of the Lessee's obligations under this Lease, the following: (a) all the Lessee's right, title and interest as sublessor in, to and under all Subleases together with all rights, powers, privileges and other benefits of the Lessee as sublessor under the Subleases, including but not limited to the Lessee's right to receive and collect all rentals, liquidated damages and other payments to become payable to or receivable by the Lessee under or pursuant to the provisions of the Subleases and, in addition, (b) all of the Lessee's right to receive and collect all other payments now or hereafter to become payable to the Lessee in respect of all the Aircraft, whether under or pursuant to the provisions of any of the Subleases or otherwise. The Lessor hereby appoints the Lessee its agent to collect and receive any and all of such rentals and other payments and to take any and all actions in respect of the Subleases upon the happening of an Event of Default hereunder. The Lessee represents and warrants that it has not heretofore made and that it will not hereafter make any other assignment of the Subleases or the rentals or the payments payable to or receivable by the Lessee under any of the Subleases. The Lessee shall take such action as may be necessary to perfect the Lessor's security interest in the Subleases assigned pursuant to this Section 17(c) including the filing of financing statements pursuant to the Uniform Commercial Code (or any similar statute in any jurisdiction and the Lessee shall pay the costs associated therewith.

(d) Release of Lessee. If the Lessee should so request, the Lessor shall review the provisions and circumstances of any Sublease and the credit of any Sublessee. If the Lessor, in its sole discretion, finds the Sublease and the credit of the Sublessee to be satisfactory, and provided that applicable law and the Sublessee allow the Lessor to obtain such protection and security as Lessor deems necessary to protect its interests hereunder, the Lessor shall release the Lessee of its obligations hereunder whether or not arising prior to such release of the Lessee. It is agreed that this Section 17(d) imposes no requirements on the standards which the Lessor may use in evaluating any Sublessee or Sublease, including, without limitation, a requirement that the Lessor evaluate the Sublessee or the Sublease in the same manner in which it would evaluate comparable lessees and leases.

(e) Non-Subordination of Certain Leases. The rights of a Sublessee under a Sublease shall not be subordinated to this Lease only in the event that: (i) rent payable under such Sublease equals or exceeds the Basic Rent, (ii) no grace period for the payment of rent under such Sublease exceeds ten (10) days, (iii) insurance, maintenance, liens, defaults, remedies and permitted use provisions of such Sublease bind the Sublessee to at least the same obligations of the Lessee hereunder, and (iv) each and every provision of Section 17 is complied with by Lessee. *Am*

SECTION 18. TAX INDEMNIFICATION.

(a) For United States corporation income tax purposes (and to the extent allowable for state and local tax purposes), the Lessor or the consolidated Federal taxpayer group of which it is a member (all references to the Lessor in this Section 18 include such consolidated Federal taxpayer group) shall be treated as the beneficial owner of the Aircraft and shall be entitled to:

(1) the investment tax credit (the "Investment Credit") under Sections 38 and related sections of the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), with respect to the Aircraft in an amount equal to the percentage of the Lessor's Cost of the Aircraft set forth opposite the heading Investment Credit Percentage in Exhibit C hereto; and

(2) deductions under Section 168 of the Code with respect to the Capitalized Lessor's Cost of the Aircraft, commencing in 1981 and using the percentages set forth in Section 168(b)(1)(A) of the Code for the Aircraft based on the recovery class for the Aircraft set forth in Exhibit C hereto (the "Cost Recovery Deduction").

(b) The Lessee hereby represents, warrants and cove that (i) the entire Capitalized Lessor's Cost of the Aircraft delivered and accepted under this Lease will qualify for the Investment Credit and the Cost Recovery Deduction calculated on the set forth in subparagraphs (a)(1) and (a)(2), respectively, of Section, (ii) at all times during the term of this Lease neither Lessee nor any Sublessee or assignee of the Lessee shall take any action or omit to take any action or permit the use of any item leased hereunder by pooling arrangements or otherwise (whether or not such action or omission is permitted or required by the terms of this Lease) which act or omission, or permission results in the disqualification of the Aircraft or any portion thereof for, or recapture of, all or any portion of the Investment Credit or the Cost Recovery Deduction, (iii) for Federal income tax purposes, amounts includible in the gross income of the Lessor with respect to the Aircraft and all deductions allowable to the Lessor with respect to the Aircraft will be treated as derived from or allocable to sources within the United States, (iv) the Lessee and the consolidated Federal taxpayer group (if any) of which it is a member will file their tax returns, maintain their books and records and otherwise act in a manner that is consistent with the expectations described in paragraph (a) of this Section.

If as a result of a breach of any representation, warranty or covenant of the Lessee contained in the foregoing sentence or elsewhere in this Lease or in the Purchase Documents (x) the Lessor shall determine in good faith based on advice of tax counsel of General Electric Company that it is not entitled to claim on its Federal income tax return the Investment Credit or the Cost Recovery Deduction on the basis described in paragraph (a) of this Section with respect to the Aircraft, or (y) any such Investment Credit or Cost Recovery Deduction claimed on the Federal income tax return of the Lessor is adjusted by the Internal Revenue Service or (z) any such Investment Credit or Depreciation Deduction is recomputed or recaptured pursuant to the Code (such a determination, adjustment, recomputation or recapture is herein called a "Loss"), then the Lessee shall pay to the Lessor as an indemnity and as additional Rent such amount, or from time to time such amounts, as, after deduction of all taxes required to be paid by the Lessor in respect of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of (i) the aggregate additional Federal, state or local income taxes payable by the Lessor from time to time as a result of any such Loss based on the Investment Credit; (ii) interest calculated at the rate of 12% per annum on the tax effect of any Loss resulting from a change in timing of the Cost Recovery Deduction; and (iii) any penalties, interest, additions to tax payable as a result of the Loss. The amount payable to the Lessor pursuant to this paragraph shall be paid upon written demand therefor from the Lessor accompanied by a statement describing in reasonable detail such Loss and the computation of the amount so payable.

(c) Upon receipt of formal notification by Federal or State taxing authorities of a proposed disallowance or adjustment of Investment Credit or the Cost Recovery Deduction for which an amount may be payable by the Lessee in accordance with this Section (hereinafter called a "Disallowance"), the Lessor shall promptly notify the Lessee of such Disallowance. Upon receipt of a written request from the Lessee to contest such Disallowance, and at the Lessee's expense the Lessor shall in good faith use its best efforts (determined in the sole discretion of tax counsel of the General Electric Company to be reasonable, proper and consistent with the overall tax interests of the taxpayer group of which Lessor is a member) to contest such proposed Disallowance. If, at the conclusion of an audit or of such administrative proceedings within the Internal Revenue Service, if any, as Tax Counsel of General Electric Company shall determine in his sole discretion to take, the Internal Revenue Service proposes an adjustment to a tax return of the Lessor for which the Lessee would be required to indemnify the Lessor hereunder and the amount of the indemnity which the Lessee would be required to pay would exceed \$25,000, the Lessor shall promptly notify the Lessee of the proposed adjustment. Upon receipt within 10 days thereafter of a written request to do so from the Lessee, the Lessor shall promptly request independent tax counsel selected by the Lessor and approved by the Lessee for such counsel's opinion whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Lessor to do so, the Lessor shall contest the adjustments in a court of competent jurisdiction selected by Tax Counsel of General Electric Company in his sole discretion. The Lessor shall not be required to take any action set forth in this Section 18(c) unless and until the Lessee shall have agreed to indemnify the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of taking such action and shall have agreed to reimburse the Lessor on demand all out-of-pocket costs and expenses (including the fees and disbursements of independent tax counsel) incurred by the Lessor in connection with taking such action and, if Tax Counsel of General Electric Company determines in his sole discretion to contest the adjustment by a proceeding for refund of amounts paid based on the adjustment, the Lessee shall have advanced to the Lessor an amount equal to the sum of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Lessor of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Lessor shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. At any time, whether before or after commencing to take the action set forth in this Section 18, the Lessor may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor with respect to the adjustment or such portion, as the case may be.

(d) If the Lessee makes both an indemnity payment with respect to the Aircraft for Loss of the Investment Credit or Cost Recovery Deductions under this Section, and also makes either a Casualty Value payment under Section 14 hereof or a Termination Value payment, if applicable under the terms of this Lease, then in such event an appropriate adjustment shall be made, if necessary, to prevent duplication of payment by the Lessee for such Loss of the Investment Credit or Cost Recovery Deductions as calculated under this Section.

(e) In the event and to the extent that the cost or value of any improvement and/or addition (hereinafter called Capital Expenditures) to the Airframe or an Engine made by the Lessee, and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal income tax purposes at any time prior to the time the Aircraft is disposed in a taxable transaction (any such inclusion being hereinafter referred to as an "Inclusion"), then the Basic Rent for the Aircraft shall, at the next succeeding Basic Rent Date, be adjusted by such amount as, in the reasonable opinion of the Lessor, will cause the Lessor's return over the term of this Lease to equal the net economic return that would have been available if said Inclusion had not been required. The Lessee shall, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made any Capital Expenditures, give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost and value thereof.

(f) If any item of income or deduction with respect to the Aircraft shall not be treated as derived from, or allocable to, source within the United States for a given taxable year (any such event hereinafter referred to as a "Foreign Loss"), then the Lessee shall pay to the Lessor as an indemnity, on the next succeeding Basic Rent Date after written notice to the Lessee by the Lessor, such amount as, which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall equal the sum of: (1) the excess of (x) the foreign tax credits which the Lessor would have been entitled to for such year had no such Foreign Loss occurred over (y) the foreign tax credit to which the Lessor was limited as a result of such Foreign Loss and (2) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss.

(g) All of the Lessor's rights and privileges arising from the indemnities contained in this Section shall survive the expiration or other termination of this Lease with respect to matters arising during, or by reason of events occurring during, the term of this Lease and such indemnities are expressly made for the benefit of, and shall be enforceable by, the Lessor, and its successors and assigns.

(h) The Lessee represents that when delivered and accepted under this Lease, the Aircraft will require no improvements, modifications, or additions (other than painting of the Aircraft and ancillary items of removable equipment of a kind that customarily are selected and furnished by purchasers or lessees of such Aircraft) in order to be rendered complete for its intended use by the Lessee.

(i) The Lessee represents that at the time the Aircraft is delivered and accepted under this Lease, the Lessee, and any party related to the Lessee, shall have been fully reimbursed for all costs incurred with respect to the Aircraft and neither the Lessee, any affiliate thereof or any other Person will have made any investment in the Aircraft in violation of Revenue Procedure 75-21, 1975-1 C.B. 715, as modified in Revenue Procedure 79-48, 1979-2 C.B. 529.

(j) The Lessee represents that the purchase price of the Aircraft to the Lessor, in the opinion of the Lessee, supported by a representation of the Manufacturer, is equal to its Fair Market Value on the Delivery Date.

SECTION 19. EVENTS OF DEFAULT ON THE DELIVERY DATE

The term Event of Default, wherever used herein, shall mean any of the following events under this Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Lessee shall fail to make any payment of Rent within 10 days after the same shall become due; or

(b) The Lessee shall fail to carry and maintain, or fail to cause to be carried and maintained, insurance on or with respect to the Aircraft in accordance with the provisions of Section 15 hereof and such failure shall continue unremedied for 10 days after written notice thereof from the Lessor to the Lessee; or

(c) The Lessee shall operate the Aircraft or suffer the Aircraft to be operated at a time when insurance required by the provisions of Section 15 hereof shall not be in effect, or the Lessee shall default in the due observation or performance of Section 6(j)(2) hereof; or

(d) The Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease or any agreement, document or certificate delivered by the Lessee in connection herewith, and such failure shall continue for 20 days after written notice thereof from the Lessor to the Lessee; or

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(e) Any representation or warranty made by the Lessee in this Lease or any agreement, document or certificate delivered by the Lessee in connection herewith or pursuant hereto shall prove to have been incorrect in any material respect; or

(f) The Lessee shall be in default under any obligation (where there is recourse by the obligor(s) against Lessee beyond any security for such obligations) for the payment of borrowed money over \$100,000 in the aggregate, and the applicable grace period with respect thereto shall have expired and the obligations shall not be contested in good faith with due diligence and by appropriate proceedings; or

(g) The Lessee does or shall (except as expressly permitted by the provisions of this Lease) attempt to remove, sell, transfer, encumber, part with possession of, assign or sublet the Aircraft or any part thereof; or

(h) The Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or the Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors; or

(i) The Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding, or the Lessee shall, by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law (other than a law which does not provide for or permit the readjustment or alteration of the Lessee's obligations hereunder) providing for the reorganization or liquidation of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

(j) An order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing, without the consent of the Lessee, a receiver, trustee or liquidator of the Lessee or of any substantial part of its property, or sequestering any substantial part of the property of the Lessee, and any such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of 60 days after the date of entry thereof; or

(k) A petition against the Lessee in a proceeding under applicable bankruptcy laws or other insolvency laws (other than any law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder in each case),

as now or hereafter in effect, shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under provisions of any law (other than any law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder in each case) providing for reorganization or liquidation of corporations which may apply to the Lessee, any court order shall be withdrawn or dismissed within 90 days thereafter, or if, under provisions of any law (other than any law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder in each case) providing for reorganization or liquidation of corporations which may apply to the Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 60 days; or

(l) Final judgment for the payment of money in excess of \$500,000 shall be rendered against the Lessee and the same shall remain undischarged for a period of 90 days during which execution of such judgment shall not be effectively stayed; or

(m) Lessee shall use, cause or knowingly or negligently suffer the Aircraft to be used for any criminal or unlawful purpose; or

(n) The Guarantee shall cease to be effective, be repudiated by the Guarantor, or shall otherwise be rendered unenforceable, by a specific act of the Guarantor thereunder or by any law, statute or action of the government of the United Kingdom of Great Britain and Northern Ireland or otherwise; or

(o) An Event of Default constituting a failure to pay Rent (as defined in such leases) shall be existing and continuing under any of the other four leases dated the date hereof between the Lessor and the Lessee each with respect to the lease by the Lessor to the Lessee of one SD3-30 aircraft.

SECTION 20. REMEDIES.

(a) Subject to the rights of any Sublessees pursuant to Subleases approved by the Lessor under Section 17(d) or specified in Section 17(e) hereof, upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default by written notice to such effect given to the Lessee, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(1) Proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(2) By notice in writing terminate this Lease, whereupon all rights of the Lessee to the use of the Aircraft or any part thereof shall absolutely cease and terminate but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessee, if so requested by the Lessor, shall at its expense promptly return the Aircraft to the possession of the Lessor at such place as the Lessor shall designate in the United States of America or Canada and in the condition required upon the return thereof pursuant to and in accordance with the terms hereof, or the Lessor, at its option, may enter upon the premises where the Aircraft is located and take immediate possession of and remove the same (together with any engine which is not an Engine but which is installed on the Airframe, subject to all of the rights of the owner, lessor, or secured party of such engine, which engine may, at the option of the Lessor, be exchanged with the Lessee, at the Lessee's expense, for an Engine) by summary proceedings or otherwise. In addition, upon the written request of the Lessor, the Lessee, at its expense, will replace any engine installed on the Airframe with an Engine. The Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value of the Aircraft, computed as of the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default. Following the return of the Aircraft to the Lessor pursuant to this paragraph (2) the Lessor shall proceed to sell the Aircraft in such manner by public or private sale as it shall deem appropriate provided that the Lessor may, if it so elects, purchase the Aircraft at such sale for a price not less than the highest bona fide bid made by a person unrelated to Lessor or Lessee. The proceeds of such sale shall be applied by the Lessor (A) first, to pay all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, (B) second, to pay the Lessor an amount equal to any unpaid Rent due and payable and the Casualty Value, to the extent not previously paid, and (C) third, to reimburse the Lessee for the Casualty Value to the extent previously paid by the Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that

all Basic Rent then due and payable with respect to the Aircraft and the Casualty Value in respect of the Aircraft have not been previously paid, the Lessee shall forthwith pay to the Lessor the sum of (i) the amount by which (X) the sum of (a) all Basic Rent-then due and payable with respect to the Aircraft, (b) the Casualty Value or portion thereof not theretofore paid, and (c) the amount payable under clause (A) of the preceding sentence, exceeds (Y) the sale price of the Aircraft, and (ii) interest at the Late Payment Rate on the full amount of the Casualty Value, computed from the date the Casualty Value is payable hereunder until such Casualty Value is paid by the Lessee.

(3) Whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of the rights, powers or privileges under (b) above, the Lessor, by notice to the Lessee specifying a payment date which shall be a Basic Rent Date not earlier than ten days after the date of such notice, may demand that the Lessee pay to the Lessor (and the Lessee hereby agrees that the Lessee will pay to the Lessor) on the payment date specified in such notice, as liquidated damages for loss of the benefit of the bargain, and not as a penalty (in lieu of the Basic Rent due for periods commencing after the Basic Rent Date specified in such notice), any unpaid Basic Rent and Supplemental Rent due for periods up to and including the Basic Rent Date specified in such notice, plus whichever of the following amounts the Lessor, in the Lessor's sole discretion, shall specify in such notice (together with interest on such amounts at the Late Payment Rate from such Basic Rent Date to the date of actual payment): an amount equal to the excess, if any, of the Casualty Value of the Aircraft, computed as of the payment date specified in such notice, over the Fair Market Value of the Aircraft (in which case the Fair Market Value will be computed taking into account the value of the Aircraft while subject to any non-subordinated Sublease which may be in effect with respect to the Aircraft at the time of the occurrence of the Event of Default).

(b) The Lessee shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor by reason of the occurrence of any Event of Default or the exercise of the Lessor's rights, powers, privileges or remedies with respect thereto under the Lease or under the Guarantee.

(c) The Lessee hereby waives to the extent now or hereafter permitted by applicable law, for itself and for its successors and assigns, any and all rights the Lessee or the Lessee's successors or assigns may have under any bankruptcy, insolvency or similar laws, rules or regulations with respect to the continued possession or use of the Aircraft, or payment of Rent therefor, or with respect to the Lease.

(d) The Lessee is specifically prohibited from being a bidder for or purchaser of the Equipment either directly or through an affiliate, subsidiary, agent, nominee or otherwise.

(e) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies, and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

SECTION 21. VOLUNTARY TERMINATION.

(a) Provided that the Aircraft has become obsolete to the Lessee's needs and provided that no Default, Event of Default or Event of Loss shall have occurred and be continuing on either the date of the notice or the Termination Date referred to below, the Lessee shall have the right, at any time on or after the First Termination Date, on at least 180 days' prior written notice to the Lessor, to terminate this Lease, such termination to be effective on the Basic Rent Date next following the expiration of the 180-day notice period (the "Termination Date"). During the period from the giving of such notice until the Termination Date, the Lessor may, and the Lessee, as agent for the Lessor, shall use their best efforts to obtain bids for the purchase of the Aircraft. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. The Lessee may utilize agents for purposes of fulfilling its obligations set forth in this Section. On the Termination Date, the Lessor shall sell the Aircraft, without recourse or warranty, for cash to whomsoever

shall have submitted the highest bid prior to such date and shall transfer to such purchaser all of the Lessor's right, title and interest in and to the Aircraft, and thereupon the Lessee shall deliver the Aircraft to the Lessor in accordance with the terms of Section 8 hereof. The Lessor shall certify in writing to the Lessee (i) the amount of such total sale price, (ii) the expenses incurred by the Lessor in connection with such sale, and (iii) that such total sale price represents the highest bid received by the Lessor for the purchase of the Aircraft. The total sale price realized at such sale shall be retained by the Lessor, and, in addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent payment payable on such date and the amount, if any, by which (A) the Termination Value, computed as of the Termination Date, exceeds (B) the proceeds of such sale less all expenses incurred by the Lessor in connection therewith and the Basic Rent payment then due. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph, the obligation of the Lessee for all Basic Rent accruing hereunder due and payable after, but not on or before, the Termination Date shall cease. In no event may any disposition of the Aircraft pursuant to this Section 21 cause the Aircraft to be acquired by the Lessor or any party related to the Lessee.

(b) Notwithstanding the foregoing, upon receipt of all bona fide bids for the purchase of the Aircraft, the Lessor may elect not to sell the Aircraft to the highest bidder on the Termination Date, in which case the Lessee shall deliver the Aircraft to the Lessor in accordance with the terms of Section 8 hereof. In addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent due on such Termination Date and the amount, if any, by which the Termination Value plus the amount of any expenses incurred by the Lessor directly or indirectly in connection therewith exceeds such highest bid. Upon such redelivery and the payment of such amount, if any, the obligation of the Lessee to pay all Basic Rent accruing under this Lease due and payable after, but not on or before, the Termination Date shall cease.

SECTION 22. FAIR MARKET PURCHASE OPTION

(a) Provided that no Default or Event of Default shall have occurred and be continuing hereunder, prior to 180 days before the expiration of the Term of this Lease, the Lessee shall give notice in writing to the Lessor as to whether or not the Lessee wishes to purchase the Aircraft. If the Lessee wishes to purchase the Aircraft, the purchase price thereof shall be equal to the Fair Market Value of the Aircraft. If Lessee elects to purchase the Aircraft, payment shall be due and payable on the Last Basic Rent Date.

(b) In the event the Lessee exercises such right to purchase the Aircraft, then, upon payment of the purchase price, the Lessor shall, upon receipt of payment for the Aircraft and

upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Aircraft is free and clear of all Liens by or in favor of any Person claiming by, through or under the Lessor) for the Aircraft, and such other documents as may be required to release the Aircraft from the terms and scope of the Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

SECTION 23. NOTICES.

All communications and notices provided for herein shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lessor, at P.O. Box 206 Danbury Road Route 7, Wilton, Connecticut 06897, and (b) if to the Lessee at 2222 Martin Drive (Suite 255), Irvine, California 92715.

SECTION 24. SUCCESSORS, ASSIGNS AND INDEMNIFIED PARTIES.

This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of, and may be enforced by (1) the Lessor and its successors, assigns, agents, servants and personal representatives, and (2) the Lessee and its successors and, to the extent permitted hereunder assigns. The Lessor and its successors, assigns, agents, servants and personal representatives shall be indemnified under and in accordance with the terms of this Lease, including, without limitation, the provisions of Section 9, 11 and 16 hereof.

SECTION 25. AMENDMENTS AND MISCELLANEOUS.

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

(b) All agreements, indemnities, representations and warranties contained in this Lease or any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(c) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render

unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) This Lease represents the entire agreement of the parties hereto with respect to the subject matter hereof and supercedes any and all prior understandings. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Aircraft or Engines, except as Lessee only.

(e) This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts.

(f) The division of this Lease into sections, the provision of a table of contents and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Lease.

(g) This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee. Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. All the rights of Lessor hereunder shall inure to the benefit of Lessor's successors and assigns.

This Lease shall be deemed to have been delivered in the City of New York and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance but excepting the law of the State of New York relating to conflict of laws.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective duly authorized officers.

Lessee - SHORT BROTHERS (USA), INC.

By 

President

Lessor - GENERAL ELECTRIC CREDIT CORPORATION

By 

Manager - Commercial Aircraft Component

Attest:

By 

-44-

100967

AIRCRAFT LEASE AGREEMENT

dated as of

January 10, 1985

between

**SHORT BROTHERS (USA), INC.
as Lessor**

and

**HENSON AVIATION, INC.
as Lessee**

**One Shorts Model SD3-30 Aircraft
Manufacturer's Serial Number SH 3002
FAA Registration Number N-789US**

100061

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THIS AIRCRAFT LEASE AGREEMENT dated as of January 10, 1985 between Short Brothers (USA), Inc., a Massachusetts corporation having its principal place of business at 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202 ("Shorts"), and Henson Aviation, Inc., a Maryland corporation having its principal place of business at Salisbury Wicomico County Regional Airport, Salisbury, Maryland ("Lessee").

W I T N E S S E T H

WHEREAS, Shorts owns one used Model SD3-30 aircraft, equipped with two Pratt & Whitney turboprop engines, all as more fully described in the Lease Supplement attached hereto (the "Aircraft"), and

WHEREAS, the Lessee desires to lease the Aircraft from Shorts, and Shorts is willing to lease the same to Lessee on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

1. Lease of Aircraft.

1.1. Lease of Aircraft. Upon the execution and delivery of the Receipt for Aircraft in the form of Exhibit 1 below, Shorts shall lease the Aircraft to Lessee and Lessee shall hire and let the Aircraft from Shorts, all under the terms and conditions herein provided. As used herein the term "Aircraft" includes the airframe, the Engines and the propellers described in the Lease Supplement and all appliances, components, parts, accessories, radios, instruments and equipment installed on such airframe, Engines and propellers at the time of delivery to Lessee hereunder, and such other appliances, components, parts, accessories, radios, instruments and equipment as are from time to time installed on such airframe, Engines and propellers in accordance with this Lease. As used herein the term "Engine" refers to the engines described in the Lease Supplement.

1.2. Term. The term of this Lease shall begin on the Delivery Date specified in the Receipt for Aircraft and the Lease Supplement and will end on the Termination Date specified in the Lease Supplement, unless earlier terminated in accordance with the terms hereof.

1.3. Condition. Shorts will deliver Aircraft with a valid FAA Certificate of Airworthiness, Certificate of Registration, and ready for flight.

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2. Delivery and Return of Aircraft.

2.1. Delivery. Shorts shall tender the Aircraft for delivery to Lessee at the Delivery Location specified in the Lease Supplement. Lessee will inspect the Aircraft upon such tender and, if the Aircraft is found to be in good order, will accept delivery of the Aircraft from Shorts and will execute a Receipt for Delivery in substantially the form of Exhibit 1 hereto.

2.2. Return. Upon the expiration or termination of the Lease, Lessee shall return the Aircraft to Shorts at the Return Location specified in the Lease Supplement. Upon such return the Aircraft (i) shall be in the condition in which the Aircraft is required to be maintained under the terms of Section 5 hereof and (ii) shall be free and clear of all mortgages, liens, security interests, charges, claims or other encumbrances ("Liens") except Liens created or granted by Shorts. Upon return of the Aircraft Lessee shall return to Shorts all logs and records maintained by Lessee in accordance with Section 3.5 hereof.

Prior to accepting the return of the Aircraft, Shorts shall have the right to inspect the Aircraft and, at its option and expense, to flight test the Aircraft. Shorts shall, prior to acceptance of return, furnish to Lessee written notice of any defects observed during such inspection or flight test and may correct, at the expense of Lessee, any such defects in the Aircraft observed during such inspection or flight which are not promptly corrected by Lessee. Aircraft records required to be transferred per applicable FAR 135.441 or 121.380a are to be in "plain Language form" (ie. either a KARDEX or machine prepared system). These records are to be audited and certified as being accurate and complete by the Lessee before the aircraft is returned to Shorts.

3. Rent. Lessee shall compensate Shorts for Lessee's use and operation of the Aircraft hereunder, as follows:

3.1. Rent. Lessee shall pay basic rent and additional rent to Shorts in the amounts and at the times provided for in the Lease Supplement.

3.2. Method of Payment. All rentals and other monies payable to Shorts hereunder shall be paid either by check recieved on or prior to the due date or by interbank wire transfer of immediately available funds to American Security Bank, 1501 Pennsylvania Avenue, N.W., Washington, D.C. 20013, for credit to Short Brothers (USA), Inc. Account No. 5186498458.

3.3. No Set-Off. The duty of Lessee to make all payments of basic rent and additional rent hereunder shall be absolute and unconditional, and no such payment shall be subject to any set-off, deferment, reduction or other right which Lessee may have against Shorts or any other person for any reason whatsoever, and Lessee shall have no right to terminate this Lease or to be released, relieved or discharged from any duty or liability under this Lease for any reason whatsoever, including without limitation, (a) except as provided in Section 6.6 hereof, any damage to, or loss, requisition or seizure of, the Aircraft, (b) any defect in title, registration, condition, design, operation or fitness for use of the Aircraft, (c) any change, extension, indulgence or other act or omission in respect to any indebtedness of Shorts, or (d) any ineligibility of the Aircraft, or denial of Lessee's right to utilize and route or engage in any trade, whether or not Lessee shall have notice or knowledge of any of the foregoing.

4. Operational Responsibilities of Lessee.

4.1. Control; Compliance and Use. Throughout the term of this Lease, Lessee shall have sole responsibility for and control over the operation of the Aircraft and shall operate, control, maintain and repair the Aircraft during such term at its sole cost and expense. Lessee shall cause the Aircraft to be maintained, used and operated (i) in accordance with all restrictions imposed by the insurance policies required by this Lease to be maintained by Lessee, (ii) in compliance with any and all statutes, laws, ordinances, regulations and mandatory standards or directives of any governmental agency applicable to the maintenance, use or operation thereof, (iii) in compliance with any airworthiness certificate, license or registration relating to the Aircraft issued by any governmental agency; and (iv) in compliance with part 121 (or any successor provisions) of the regulations promulgated and administered by the FAA. Lessee shall operate the aircraft in passenger-carrying service primarily within the states specified in the Lease Supplement and shall not at any time operate or locate the Aircraft, or permit the Aircraft to be operated or located outside the continental United States of America or in any area which is not included in coverage under any insurance policy required by the terms of Section 7 hereof. Lessee shall not remove the Aircraft or any unattached Engine or other item of equipment from Lessee's principal operating base for any period of more than fifteen consecutive days. Lessee shall be responsible for obtaining all federal, state or municipal or other governmental consents and

approvals required for passenger carrying operations of the Aircraft by Lessee, and throughout the term of this Lease, the possession, use and maintenance of the Aircraft shall be at the sole risk and expense of Lessee.

4.2. Crews. Lessee's crews shall operate the Aircraft during the term of this Lease. Such crews shall consist solely of personnel possessing such qualifications and certificates as may be prescribed by applicable FAA regulations and Lessee's procedures and operations specifications for Model SD3-30 aircraft. Lessee shall insure that its flight crews and maintenance and other personnel are properly trained and qualified with respect to the operation and maintenance of the Aircraft.

4.3. Fuel. Lessee shall provide all fuel and fluids for the operation of the Aircraft during the term of this Lease. The quantity of fuel remaining aboard the Aircraft at the time of its delivery hereunder shall be noted on the Receipt for Aircraft and Lessee shall reimburse Shorts therefor at prevailing aviation fuel prices.

4.4. Identification Plates. Lessee agrees not at any time to remove the insignia, plates or other identification in the cockpit of the Aircraft and on each Engine and propeller showing Shorts' title thereto.

4.5. Logs and Records: Inspection. Lessee shall maintain all logs and records relating to the Aircraft and the maintenance and operation thereof, and shall make all necessary or appropriate entries of information therein during or with respect to the term of this Lease for the Aircraft, in accordance with Short Brothers PLC's Airplane Flight Manual and Maintenance Manual, and Suburban Airlines Computerized Aircraft History and Planning System. Shorts shall have the right at any time during Lessee's normal business hours to inspect the Aircraft and such logs and records to determine compliance with the terms of this Lease. Lessee shall also cause to be furnished to Shorts, promptly upon Shorts' request, such information as may be required to enable Shorts to file any reports required by any governmental authority as a result of Shorts' ownership of the Aircraft.

5. Maintenance.

5.1. General Maintenance. Lessee, at its own cost and expense, shall cause the Aircraft to be maintained, inspected, serviced, repaired and tested in accordance with all applicable

Federal Aviation Regulations and other governmental standards (a) so as to keep the Airframe and each Engine in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear and flight hours on the airframe and Engines resulting from the proper use thereof alone excepted, and (b) so as to keep the Aircraft in such operating condition as may be necessary to enable the airworthiness certification of such Aircraft to be maintained in good standing at all times under the Federal Aviation Act. All work to be performed or caused to be performed by Lessee pursuant to this Section 6 shall conform to Short Brothers PLC's Approved Maintenance Manuals and shall be of good quality and shall be performed by qualified personnel duly licensed or qualified to perform the same in accordance with the applicable regulations of the governmental agency having jurisdiction and in keeping with standard airline maintenance procedures.

5.2. Replacement of Parts.

5.2.1. Replacement of Parts. Lessee, at its sole cost and expense, shall promptly replace every part of the Aircraft which may be or become defective, worn out, lost, destroyed, confiscated or in any matter rendered unfit or unavailable for use with a replacement part equal in utility and value to the original part and free and clear of all liens, encumbrances and rights of others. Equipment or parts shall not be removed from the Aircraft except as required for maintenance and repair consistent with the requirements of Section 5.1 hereof and other first class maintenance practices.

5.2.2. Allocable Costs of Replacement. If the cost of any particular part or assemblage of parts required to be replaced as a unit pursuant to this Section 5 exceeds \$1,000, Lessee shall pay the first \$1,000 of the cost of such part or assemblage of parts, and Shorts shall reimburse Lessee for any amount over \$1,000, on a pro rata formula determined as follows: The amount for which Shorts shall reimburse Lessee for each such replacement shall be equal to an amount determined by multiplying the cost of such replacement part or assemblage of parts in excess of \$1,000 by a fraction, the numerator of which shall equal the difference between the number of hours logged on such replacement part or assemblage of parts by Lessee and the expected useful life (expressed in hours and as reasonably determined by Shorts) of the part or assemblage of parts replaced and the denominator of which shall equal the expected useful life of the part or assemblage of parts replaced. With respect to parts costing in excess of \$1,000, Lessee shall use its best efforts to arrange an overhaul or exchange for the part before purchasing a new replacement part. If a new replacement part is

required, Lessee shall purchase the part at the best price available (the best vendor price less discount) to Lessee. Lessee shall notify Shorts in writing prior to the replacement of any part or assemblage of parts having a cost which exceeds \$1,000, except that, in the case of an aircraft-on-ground (AOG) condition, notification to Shorts shall be made as soon as possible after replacement of such parts or assemblage of parts. Lessee shall furnish to Shorts monthly, with the flight hour and engine hour report required by the Lease Supplement, a report in substantially the form set forth in Exhibit 2, setting forth information called for by such form with respect to any part or assemblage of parts having a cost exceeding \$1,000 which was replaced by Lessee during the preceding month.

5.2.3. Engine Maintenance. In the event of Engine removal because of required maintenance, overhaul or failure, Lessee shall be responsible for the cost of removal and reinstallation of such Engine and any "loaner" engine and all shipping charges related to such engines; except that Shorts shall pay the cost of overhaul or repair of the Engine. Shorts will pay the rental cost of a loaner engine, if required. At

5.2.4. Operator Induced Failures. Notwithstanding the provisions of 5.2.2. and 5.2.3., in the event of premature removal of any item installed on the Aircraft due to Lessee's mistreatment or operation outside the limits specified in the flight manual, the cost of repair shall be pro-rated between Shorts and the Lessee based on the reduction in useful life or TBO caused by the Lessee's misuse. The Lessee's share of such cost shall be calculated by multiplying the total costs of the replacement part(s) or the costs of repair or overhaul of the removed part(s), as the case may be, by a fraction the numerator of which shall be the expected useful life or time between overhaul (TBO) of the item (expressed in hours and as reasonably determined by Shorts) minus the total hours or TBO logged on such item at the time of replacement herein and the denominator of which shall be the expected useful or TBO as heretofore stated.

In the event that Shorts shall have incurred any costs pursuant to these provisions, Shorts shall provide an invoice to the Lessee setting forth its costs and its basis for calculation of the Lessee's share. Lessee shall pay to Shorts within ten (10) days following receipt of said invoice the amount due hereunder following the procedures provided at Section 3.2. herein.

5.2.5. Invoice. If no Event of Default shall have occurred and is continuing hereunder, at the expiration or earlier termination of this Lease, Lessee shall provide to Shorts an invoice setting forth the costs theretofore paid by Lessee for all replacement parts or assemblages of parts costing more than \$1,000, together with Lessee's records with respect to the number of hours logged on such parts or assemblages thereof so replaced; and Shorts shall promptly reimburse Lessee for all such costs incurred by Lessee in accordance with the terms of this Lease. Title to parts having an original cost of less than \$1,000 removed from the Aircraft in the ordinary course of maintenance and repair shall pass to Lessee; title to parts having an original cost greater than \$1,000 removed from the Aircraft shall remain with Shorts; title to all replacement parts regardless of cost, shall, immediately upon the installation thereof, pass to Shorts.

5.3. Other Maintenance Provisions.

5.3.1. Structural Change. Lessee shall not make any alteration, modification or addition whatsoever in or to the structure of the Aircraft without the prior written consent of Shorts.

5.3.2. No Abatement. Lessee shall, in accordance with Section 3.3 hereof, remain responsible for, and there shall be no abatement of, the rental payments to be made hereunder, during any period required for maintenance, service, repair, overhaul, improvements, alterations, modifications or rebuilding of the Aircraft, the engines, or any equipment therein.

5.3.3. Transfer of Engines. Lessee agrees that no Engine, when not installed in or on or attached to the Aircraft, shall be installed in or on or attached to any other aircraft without Shorts' prior written consent.

6. Risk of Loss.

6.1. Damage, Destruction or Seizure. In the event that the Aircraft (including, as provided in Section 1.1 hereof, any part thereof) shall suffer any damage, the repair of which is practicable (any such condition being hereinafter referred to as "Damage" or "Damaged"), or shall be lost, stolen, destroyed, irreparably damaged, or rendered permanently unfit for use (any such condition being hereinafter referred to as "Destruction" or "Destroyed") or shall be condemned, confiscated, seized, or have the title or use thereof requisitioned, other than any such requisition for use by authority of the United States government

(any such condition being hereinafter referred to as "Seizure" or "Seized"), during the term of this Lease or while the Aircraft was otherwise in the possession of Lessee (or subsequent to the term of this Lease but as a result of the act, omission or negligence of any person, other than Shorts, during the term of this Lease or while the Aircraft was otherwise in the possession of Lessee), for any reason or by virtue of any cause whatsoever, including as a result of the negligence or alleged wrongful act or omission of Shorts (but not including gross negligence or willful misconduct of Shorts) or any agent or contractor thereof then Lessee shall immediately make the required payments in respect of such Damage, Destruction, or Seizure as hereinafter provided in this Section 6.

6.2. Recovery of Insurance Proceeds. In the event of any such Damage, Destruction or Seizure of the Aircraft or any part thereof, Shorts and Lessee shall proceed diligently and cooperate fully with each other in the recovery of any and all proceeds of insurance with respect thereto required to be carried by Lessee hereunder, and such insurance proceeds shall be payable as hereinafter provided in this Section 6 and in Section 7 hereof. Shorts shall have the right and authorization to conduct and control all negotiations with Lessee's insurers with reference to the determination of whether the Aircraft or any part thereof is Destroyed or merely Damaged or completely Seized or Seized only for a temporary period, and Lessee will cooperate fully with Shorts in connection with such negotiations and will execute and deliver such documents and instruments and to such acts and things as may be required to evidence the authority herein conveyed or to effectuate the purpose of this provision.

6.3. Payment on Destruction. In the event of any Destruction of the Aircraft or any part thereof, Lessee shall notify Shorts of the circumstances and the date of such Destruction, which notice shall be given within three days following such date. Within thirty days following such date of such Destruction (or immediately upon payment by the insurer, if sooner) Lessee shall, either from insurance proceeds or otherwise, pay to Shorts an amount equal to the sum of

- (a) All accrued rentals and other charges in respect of the Aircraft or any part thereof, if any, to the date of such Destruction;
- (b) the insured value of the Aircraft, as specified in the Lease Supplement, or of any part thereof under the policies of insurance required to be maintained by Lessee hereunder (hereinafter referred to as the "Insured Value"); and.

- (c) interest on the unpaid balance of the sum of the amounts referred to in (a) and (b) above at the highest legal rate from the date of such Destruction to the date of receipt of the sums payable hereunder;

less, any insurance proceeds in respect of such Destruction previously paid to Shorts from the insurance required to be carried by Lessee hereunder.

6.4. Payment on Damage. In the event of any Damage to the aircraft or any part thereof, Lessee shall pay to the Additional Assureds, within 30 days after the date of incurrence of such Damage, an amount equal to the cost of effecting all repairs or replacements required properly to correct such Damage, not to exceed, in the case of the Aircraft or any part thereof, the Insured Value thereof, less any insurance proceeds in respect of such Damage previously paid to the Additional Assureds from the insurance required to be carried by Lessee hereunder. The Additional Assureds shall apply such amount to the cost of repairing such Damage.

6.5. Payment on Seizure. In the event of any Seizure of the Aircraft or any part thereof, Lessee shall notify Shorts of the circumstances and date of such Seizure, which notice shall be given within three days following such date. Within thirty days following such date (or immediately upon payment of any condemnation award or insurance proceeds, if sooner), Lessee shall pay to Shorts an amount equal to the sum of

- (a) all accrued rentals and other charges in respect of the Aircraft or any part thereof, if any, to the date of such Seizure;
- (b) any insurance proceeds in respect of such Seizure paid from the insurance required to be carried by Lessee hereunder; and
- (c) all amounts paid to or received by Lessee as condemnation or other awards for such Seizure from any governmental authority.

6.6. Abatement of Rental. In the event of any Destruction or Seizure, the rental and other charges hereunder with respect to the Aircraft or any part thereof so Destroyed or Seized shall abate on the date of such Destruction or Seizure.

6.7. Repair by Lessor. Shorts shall have the right to repair or arrange for the repair of the Aircraft or any part thereof which is Damaged if such repair is not being diligently performed or provided for by Lessee.

7. Insurance.

7.1. Policies of Insurance.

7.1.1. Public Liability and Property Damage Insurance.
Lessee shall maintain at its own expense or will cause to be maintained with respect to the Aircraft (i) public liability insurance (including without limitation passenger legal liability insurance and insurance for strict liability in tort (other than product liability of the manufacturer of the airframe, the engines or any component thereof) having a combined single limit of not less than \$50,000,000 and (ii) property damage liability insurance in amounts and of the type maintained by corporations engaged in the same or similar business, similarly situated with Lessee and owning or operating similar aircraft and engines and which covers risks of the kind customarily insured against by such corporation.

7.1.2. Insurance Against Loss or Damage to the Aircraft.
Lessee shall maintain at its own expenses or will cause to be maintained all-risk ground and flight aircraft hull insurance covering the Aircraft, and fire and explosion coverage, including lightning and electrical damage, with respect to the Aircraft and with respect to the Engines while removed from the Aircraft, of the type and in substantially the amounts maintained by corporations engaged in the same or a similar business, similarly situated with Lessee. Such insurance shall at all times be in an amount which is not less than the Insured Value for the Aircraft specified in the Lease Supplement.

~~Lessee shall also maintain at its own expense or cause to be maintained hijacking and sabotage insurance while the Aircraft is in the United States of America in an amount not less than the Insured Value.~~

All insurance required by this Section 7 hereof shall be maintained with insurers of recognized responsibility reasonably satisfactory to Shorts, shall be in full force and effect upon the Delivery Date and shall continue in effect throughout the term of this Lease.

7.2. Additional Named Insureds: Policy Provision. Any policies of insurance maintained in accordance with this Section 7 and any policies taken out in substitution or replacement for any such policies (i) with respect to all insurance maintained in accordance with Section 7.1.1. hereof, shall be amended to name Shorts, as owner of the Aircraft, and Short Brothers PLC, as an additional named insured (Shorts and Short Brothers PLC being hereinafter referred to as the "Additional Named Insureds"), as their respective interests may appear, (ii) with respect to insurance maintained in accordance with Section 7.1.2 hereof covering the Aircraft, shall name Shorts and Lessee as loss payees, as their respective interests may appear, and shall be payable solely to the account of Shorts for further disbursement to the other loss payee, as their respective interests may appear; provided however, that if no Event of Default shall have occurred and be continuing, insurance proceeds in any amount not exceeding \$10,000 for any single occurrence shall be payable to Lessee, (iii) shall provide that if the insurers cancel such insurance for any reason whatever, or any substantial change is made in the coverage which affects the interests of the Additional Named Insureds, or the same is allowed to lapse for nonpayment of premium or such insurance coverage is reduced, such cancellation, change, lapse or reduction shall not be effective as to any Additional Named Insured for thirty days after receipt by such Additional Named Insured of written notice from such insurers of such cancellation, change, lapse or reduction, (iv) shall provide that, in respect of the interests of the Additional Named Insureds in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person (other than of the relevant Additional Named Insured) and shall insure the interest of each Additional Named Insured, as it appears, regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by the Lessee or any other Person (other than by such Additional Named Insured), (v) shall waive any right of subrogation of the insurers to any right of any of the Additional Named Insureds or any other named insureds having an interest in the Aircraft or its components, (vi) shall waive any right of the insurer to any set-off or counterclaim or any other deduction, whether by attachment or otherwise in respect of any liability of any Additional Named Insured, and (vii) shall provide that no Additional Named Insured shall be deemed to be an operator of the Aircraft or to have any operational responsibility or liability therefor. Each liability policy (i) shall be primary without right of contribution from any other insurance which is carried by any Additional Named Insured to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Aircraft and shall not require or provide for any coinsurance, (ii) shall

expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured, and shall provide that neither of the Additional Named Insureds shall be deemed an operator or to have operational responsibility or liability therefor.

7.3. Prohibition Against Cancellation. Lessee shall not cancel any of the insurance referred to in this Section 7 unless and until similar policies affording similar coverage are in effect, shall not alter any such insurance in a manner reducing the coverage thereof without Shorts' prior written consent, shall not do any act or permit any act to be done impairing or defeating the coverage and shall not mortgage, pledge or hypothecate or sell, assign or transfer its interest in such insurance or in any rights to cancel such insurance or obtain the return of the unearned premiums therefor.

7.4. Operation During Policy Periods. Lessee shall not, and shall not permit, the Aircraft or any part thereof, to be operated, stored or used in or over any area, or during any period, in or with respect to which the insurance required by any provision of this Section 7 shall not be in full force and effect with respect to the Aircraft or part thereof in question, and Lessee shall not operate, use or store the Aircraft or such part thereof or permit the same to be operated, used or stored in such area or during such period until such insurance is again in effect.

7.5. Shorts' Right to Cure. In the event that Lessee shall refuse or fail to keep in force insurance providing the coverage and having the terms and conditions herein provided, Shorts may purchase insurance providing such coverage and having such terms and conditions and charge the cost of the same to Lessee as additional rent.

7.6. Insurer's Certificate. Lessee shall deliver to Shorts on or before the Delivery Date, and at such other times as Shorts may request, a report of an independent insurance agent or broker describing in reasonable detail the insurance carried and maintained on the Aircraft and certifying that such insurance complies with the terms of this Section 7, and a certificate of the insurer as to such insurance.

7.7. Delivery of Policies. Promptly upon receipt of a written request from Shorts, Lessee will deliver to Shorts copies of all policies providing insurance required by Section 7.1 hereof, each duly certified to be a true, complete, and correct copy thereof, as the case may be, by an independent insurance broker (who may be the broker regularly retained by Lessee).

8. Indemnity and Waiver.

8.1. Indemnity. Lessee assumes liability for, and agrees to indemnify, defend, protect, reimburse and save and hold Shorts and Short Brothers PLC harmless from and against any and all claims, losses, liabilities, demands, suits, judgments or causes of action (including without limitation claims arising out of strict, absolute or vicarious liability of Shorts or Short Brothers PLC in tort) and all actions, suits and legal proceedings, whether civil or criminal, penalties, fines and other sanctions, and any costs and expenses in connection therewith, including without limitation attorneys' fees and expenses, of any kind and nature whatsoever ("Claims"), whether or not either Shorts or Short Brothers PLC shall also be indemnified as to any such Claim by any other person, in any way relating to or arising out of this Lease or any document contemplated hereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the ownership, registration, acceptance, delivery, lease, possession, use, operation, maintenance, condition or return, of the Aircraft or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable); provided however, that Lessee shall not be required to indemnify Shorts or Short Brothers PLC for (a) any Claim in respect of the Aircraft arising from acts or events which occur after possession of the Aircraft has been redelivered to Shorts in accordance with Section 2.2 hereof, or (b) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of Shorts or Short Brothers PLC. If any Claim is made against Lessee, Shorts or Short Brothers PLC, the party (or Shorts in the case of notice received by Short Brothers PLC) hereto receiving any notice of such Claim shall promptly notify the other. LESSEE AGREES THAT NEITHER SHORTS NOR SHORT BROTHERS PLC SHALL BE LIABLE TO LESSEE FOR ANY CLAIM CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF THE AIRCRAFT OR ANY PARTY THEREOF FOR ANY PURPOSE OR ANY DEFICIENCY OR DEFECT THEREIN OR THE USE OR MAINTENANCE THEREOF OF ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO OR ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS, ALL OF WHICH SHALL BE THE RISK AND RESPONSIBILITY OF LESSEE. This Section 8.1

is not intended and shall not be construed to require indemnification of Short Brothers PLC for loss or damage, personal injury or death arising out of defects in design or manufacture of the Aircraft.

8.2. Waiver. Lessee hereby waives and releases any claim now or hereafter existing against Shorts or Short Brothers PLC with regard to the Aircraft or any part thereof on account of any and all claims, demands, suits, judgments or causes of action for or on account of or arising out of or in any way connected with injury to or death or any third party or any personnel of Lessee or any loss or damage to property of any third party or the loss of use of any property which may result from or grow or arise in any manner out of the condition, maintenance, use or operation of the Aircraft or any part thereof either in the air or on the ground while leased to or in the possession of Lessee hereunder, or which may be caused by any defect in the Aircraft or any part thereof arising from the material or an article used therein or from the design, testing or use, maintenance, service, repair, overhaul or testing thereof, regardless of when such defect shall be discovered. This Section 8.2 is not intended and shall not be construed as a waiver by Lessee of any claims, demands, suits, judgments or causes of action against Short Brothers PLC for or on account of loss or damage, personal injury or death arising out of defects in design or manufacture of the Aircraft.

9. Assignment; Subleasing; Transfers of Possession.

9.1. Assignment. Neither this Agreement nor any of the rights or obligations of Lessee hereunder shall be assignable or delegable (by operation of law or otherwise) by Lessee. This Lease shall be assignable in whole or in part by Shorts without the consent of Lessee, but no such assignment shall relieve Shorts of its obligations hereunder.

9.2. Subleases; Transfers of Possession. Lessee shall not deliver possession of the Aircraft or any part thereof to any third party (except that Lessee may deliver possession of the Aircraft or any part thereof for maintenance thereon as provided herein) and shall not sublease the Aircraft or any part thereof to any third party.

10. Taxes; Liens.

10.1. Taxes. Lessee agrees promptly to pay when due and to indemnify Shorts for, and to hold Shorts harmless from and against, all license and registration fees, all income,

franchise, gross receipts, sales, use, excise, personal property, ad valorem, value added, leasing, leasing use, stamp, landing, airport use or other taxes, levies, imposts, duties, charges, assessments or withholdings of any nature, together with any penalties, fines or interest thereon, (collectively, "Impositions") arising out of the leasing transaction contemplated hereby and imposed by any governmental or taxing authority upon or with respect to the Aircraft, Lessee or Shorts or upon or with respect to the ownership, delivery, leasing, possession, use, operation, maintenance, repair or return of the Aircraft, or upon the rentals, receipts of earnings arising from the Aircraft, or upon the rentals, receipts and earnings therefrom.

Notwithstanding the foregoing, Lessee shall not be obligated to pay (i) Federal, state or local taxes or other charges in the nature of taxes measured solely by net income of Shorts, (ii) taxes or other charges imposed by reason of any sale or transfer of ownership by Shorts of the Aircraft, other than such a sale or transfer occasioned by any action or omission by Lessee, (iii) taxes or other charges imposed by reason of any assignment or transfer by Shorts of its rights as lessor hereunder while there exists no Default or Event of Default hereunder, (iv) taxes or other charges imposed subsequent to the conclusion of this Lease not relating to matters occurring prior to the end of the lease term and not resulting from the action or inaction of Lessee and (v) taxes or other charges in the nature of taxes imposed or measured by the gross receipts or net income of Shorts arising out of operations or events unrelated to the Lease, any franchise taxes imposed on Shorts and unrelated to its ownership or leasing of the Aircraft, or any franchise taxes imposed on Shorts and unrelated to its leasing of the Aircraft.

If a claim is made against Shorts or Lessee for any Imposition, the party hereto receiving notice of such claim shall promptly notify the other.

10.2. Liens. Title to the Aircraft and any part thereof at any time leased or delivered to Lessee hereunder shall at all times remain in Shorts. Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Aircraft or any part thereof, Shorts' title thereto or any interest of Shorts therein (and Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of Shorts and Lessee as herein provided, (b) Liens created or granted by Shorts, (c) Liens for taxes either not yet due or being contested by Lessee in good faith (and for the payment of which adequate assurances in Shorts' reasonable

judgment have been provided Shorts) with due diligence and by appropriate proceedings, (d) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent, and (e) Liens in respect of judgments or awards against Lessee which have been in force for less than the applicable appeal period so long as execution is not levied or in respect of which Lessee shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review.

Lessee will, if requested by Shorts, at its own cost and expense, cause this Lease and any and all additional instruments which shall be executed pursuant to the terms hereof, so far as permitted by applicable law or regulations, to be noted and to be kept, filed and recorded and to be re-executed, refiled, and rerecorded at all times in such places, within the United States, as may be necessary or as Shorts may reasonably request in order to perfect and preserve Shorts' rights hereunder and the rights of Shorts in respect of third parties or otherwise and will furnish to Shorts, if Shorts shall so request, an opinion of counsel or other evidence satisfactory to Shorts of each such filing or refiling or recordation or rerecording.

Lessee shall from time to time perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by Shorts to establish, maintain and protect the respective rights and remedies of Shorts.

11. Representations, Warranties and Covenants. Lessee represents, warrants and covenants as follows:

11.1. Organization and Standing. Lessee is a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its incorporation, has all requisite corporate power and authority to carry on its business as now conducted, to hold property under lease and to enter into and perform its obligations under this Lease. Lessee holds a certificate of public convenience and necessity issued to it by the CAB and has, or will within thirty days after the Delivery Date obtain, FAA approval of operations specifications authorizing Lessee to operate Shorts Model SD3-30 aircraft. Lessee has duly authorized this Lease and has taken all necessary corporate action so that this Lease constitutes the legal, valid and binding obligation of Lessee it purports to be.

11.2. Governmental Approvals. Except for the filings and recordation of this Lease with the FAA and the filing of appropriate financing statements under the Uniform Commercial Code, no consent or approval of, giving of notice to, registration with, or taking of any other action in respect of or by, any Federal, state or local governmental authority or agency (including, without limitation, the Civil Aeronautics Board or the Federal Aviation Administration), or other person or entity is required with respect to the execution, delivery and performance by Lessee of this Lease or the consummation of any of the transactions by Lessee contemplated hereby or thereby, or if any such approval, notice, registration or action is required, it has been duly given or obtained.

11.3. No Legal Obstacle to Agreement. Neither the execution and delivery of this Lease nor the consummation of any transaction contemplated hereby has constituted or resulted in or will constitute or result in a breach of the provisions of any contract to which Lessee is a party or by which it is bound or of the charter or by-laws of the Lessee or the violation of any law, judgment, decree of governmental order, rule or regulation applicable to Lessee, or result in the creation under any agreement or instrument of any security interest, lien, charge or encumbrance upon any of the assets of the Lessee.

11.4. Location of Chief Executive Offices. The chief executive office or chief place of business (as either of such terms is used in Article 9 of the Uniform Commercial Code) of Lessee is located at the address of such office specified in the Lease Supplement. Lessee shall furnish to Shorts not less than thirty days' prior written notice of any relocation of said principal executive office or principal place of business.

12. Representations and Warranties of Shorts,
Covenant of Quiet Enjoyment

12.1. Representations and Warranties. Shorts is a duly organized and validly existing corporation in good standing under the laws of the jurisdiction of its incorporation, has good and sufficient title to the Aircraft and has taken all requisite corporate action to authorize the execution and delivery of this Lease and the performance of its terms.

12.2. Covenant of Quiet Enjoyment. As long as Lessee shall pay the rentals and other amounts payable by Lessee hereunder as and when the same become due and payable and shall perform and comply with all of the other terms and conditions hereof, neither Shorts nor any person acting on behalf of Shorts or in its stead or claiming by, through or under it will interfere with the peaceful and quiet use and enjoyment of the Aircraft by Lessee during the term of this Lease, which use and enjoyment shall be without hindrance, ejection or molestation by Shorts or any such person.

12.3. Disclaimer. THE WARRANTIES OF SHORTS SET FORTH IN SECTIONS 12.1 AND 12.2 HEREOF ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF SHORTS WHETHER WRITTEN OR ORAL OR EXPRESS OR IMPLIED, AND SHORTS SHALL NOT, BY VIRTUE OF HAVING LEASED OR DELIVERED THE AIRCRAFT HEREUNDER OR OTHERWISE, BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS THE MERCHANTABILITY, FITNESS, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN, THE SAME, NOR SHALL SHORTS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR STRICT OR ABSOLUTE LIABILITY IN TORT.

Lessee shall from time to time perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by Shorts to establish, maintain and protect the rights and remedies of Shorts and to carry out and effect the intents and purposes of this Agreement.

13. Events of Default and Remedies.

13.1. Events of Default. If any one or more of the following events (herein called "Events of Default") shall happen, Shorts may terminate this Agreement and pursue any remedy hereinafter provided or otherwise available to it at law or in equity:

13.1.1. Lessee shall default in any payment required by it to be paid hereunder and such default shall continue for more than ten (10) days after the sum in question shall have become due and payable; or

13.1.2. Lessee shall default in the due observance and performance of any of its obligations under Sections 2.2, 3.1, 4.1, 4.2, 4.5, 5.1, 5.3, 6, 7, 9 and 10 hereof; or

13.1.3. Lessee shall default in the due observance and performance of any other of its obligations hereunder and any such default shall continue unremedied for twenty (20) days after written notice of any such default shall have been given to Lessee by Shorts; or

13.1.4. Any representation or warranty made by Lessee in this Lease or in any certificate, instrument or document furnished in connection with any transactions contemplated hereby shall prove to have been incorrect when made in any material respect; or

13.1.5. Lessee shall fail to make any payment of indebtedness for money borrowed or under the terms of any agreement relating to such indebtedness or under the terms of any lease or purchase money obligations relating to any aircraft and such failure shall continue, without having been duly cured, waived or consented to, beyond the period of grace, if any, therein specified, or any such indebtedness shall be accelerated or declared due and payable prior to the stated maturity thereof.

13.1.6. Lessee shall be involved in financial difficulties as evidenced:

- (a) by its commencement of a voluntary case under Title 11 of the United States Code as from time to time in effect, or by its authorizing, by appropriate proceedings of its board of directors or other governing body, the commencement of such a voluntary case;
- (b) by the filing against it of a petition commencing an involuntary case under said Title 11;
- (c) by the entry of an order for relief against it in any involuntary case commenced under said Title 11;
- (d) by its seeking relief as a debtor under any applicable law, other than said Title 11, of any jurisdiction relating to the liquidation or reorganization of debtors or the modification or alteration of the rights of ~~creditors~~, or by its consenting to or acquiescing in such relief;

- (e) by the entry of an order by a court of competent jurisdiction (i) finding it to be bankrupt or insolvent, (ii) ordering or approving its liquidation, reorganization or any modification or alteration of the rights of its creditors, or (iii) assuming custody of, or appointing a receiver or other custodian for, all or a substantial part of its property; or
- (f) by its making an assignment for the benefit of, or entering into a composition with, its creditors, or appointing or consenting to the appointment of a receiver or other custodian for all or a substantial part of its property or by its failure to pay its debts generally as they become due;

13.2. Remedies. Upon the occurrence of any Event of Default, Shorts may lawfully and peaceably by its agents enter upon the premises of Lessee where the Aircraft may be and take possession of the Aircraft or any part of the same and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental or other charges therefor and otherwise, and shall be entitled to collect, receive and retain all unpaid charges of any kind earned by the Aircraft or any part thereof. Upon the occurrence of any Event of Default Shorts may by notice in writing to Lessee or by such taking possession or withdrawal of the Aircraft cancel or terminate this Lease, whereupon all rights of Lessee to the use of the Aircraft shall absolutely cease and terminate as though this Lease had never been made (but Lessee shall remain liable as provided hereunder to pay all amounts owing hereunder), Lessee shall cease to have any rights or remedies in respect of this Lease, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by Lessee, and no payments theretofore made by Lessee for the rent or use of same or any of it shall, upon the occurrence of any Event of Default and such notice or taking possession or withdrawal by Shorts, give to Lessee any cause or right of action at law or in equity in respect of the Aircraft. Subject to Shorts' obligation under law to mitigate its damages, no such taking possession or withdrawal of the Aircraft by Shorts shall be a bar to the recovery by Shorts from Lessee of rentals then or thereafter due and payable, and Lessee shall be and remain liable for the same until such sums shall have been realized as shall be sufficient for the discharge and payment in full of all sums due hereunder, whether or not they shall have been matured.

13.2.1. Bankruptcy Proceedings. In case there shall be pending proceedings for the bankruptcy or for the reorganization of Lessee under the United States bankruptcy laws or any other similar state or federal bankruptcy or insolvency laws (the "Bankruptcy Laws"), or in case a receiver or trustee shall have been appointed for the property of Lessee, or in case of any other judicial proceedings relative to Lessee, or to the property of Lessee, Shorts, irrespective of whether the rental payments hereunder shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether Shorts shall have made any demand or declaration pursuant to the provisions of this Section, shall be entitled and empowered, intervention in such proceedings or otherwise (i) to file and prove a claim or claims for the entire amount of the rentals and other charges payable hereunder after the date of such claim or claims, and (ii) to file such other papers or documents as may be necessary or advisable in order to have the claims of Shorts (including any claim for reasonable compensation expenses, disbursements, liabilities and advances of Shorts, its agents, attorneys and counsel) allowed in such proceedings. Lessee hereby waives to the extent now or hereafter permitted by applicable law, for itself and for its permitted successors and assigns, any and all rights Lessee or Lessee's permitted successors or assigns may have under any Bankruptcy Laws with respect to the continued possession or use of the Aircraft, or payment of rent therefor, or with respect to this Lease. In furtherance, and not by way of limitation, of the foregoing, in accordance with the provisions of Section 1110 of the United States Bankruptcy code, it is hereby expressly provided that, notwithstanding any other provisions of Chapter 3 of the United States Bankruptcy Code, as amended from time to time, the title or interest of Shorts in, and any right of Shorts to take possession of, the Aircraft in compliance with the provisions of this Lease shall not be affected by the provisions of Chapter 3 of the United States Bankruptcy Code, as from time to time amended.

13.3. Costs of Enforcement. Shorts Right to Perform. Lessee shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by Shorts by reason of the occurrence of any Event of Default or the exercise of Shorts' rights, powers, privileges or remedies with respect thereto under this Lease. In addition to the rights granted to Shorts under Section 7.5 hereof, if Lessee shall fail to comply with any of the covenants herein contained, Shorts may, but shall not be obligated to, make advances to perform the same and take all such action as may be necessary to obtain such performance. Any payment so made by Shorts and all costs and expenses, including without limitation reasonable attorneys' fees

and expenses, incurred in connection therewith (together with interest thereon at the highest rate permitted by applicable law) shall be and become due and payable by Lessee to Shorts as additional rent.

13.4. Surrender of the Aircraft: Specific Performance.

Upon the occurrence of any Event of Default Shorts may demand possession of the Aircraft and Lessee shall, at its own expense, forthwith and in the usual manner, cause the Aircraft to be moved to such point or points as shall reasonably be designated by Shorts and will there deliver or cause to be delivered the same to Shorts. The performance of the foregoing covenant is of the essence of this Agreement and, upon application to any court having jurisdiction in the premises, Shorts shall be entitled to a decree against Lessee requiring the specific performance thereof. Lessee hereby expressly waives any and all claims against Shorts and its agents for damages whatsoever in nature in connection with any retaking of the Aircraft in any reasonable manner.

13.5. Remedies Cumulative. No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Shorts at law or in equity. No express or implied waiver by Shorts of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of Shorts in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies, and any single or partial exercise of any particular right by Shorts shall not exhaust the same or constitute a waiver of any other right provided herein.

14. Broker's Commissions.

This Lease has been made without benefit of a broker or agent, and it is expressly understood that the rental rate has been fixed accordingly. Lessee agrees to indemnify and hold Shorts harmless from and against all claims, demands, liabilities, damages, losses and judgments which may be suffered by, accrue against, be charged to or recoverable from Shorts, and which arise in whole or in part out of Lessee's actions or negotiations with or in respect to agents or brokers.

15. Notices, etc. Any notice or other communication in connection with this Lease shall be deemed to be delivered if in writing addressed as provided below and if either (a) actually delivered at said address or (b) in the case of a letter, three business days shall have elapsed after the same shall have been provided for herein shall be deposited in the United States mail, postage prepaid and registered or certified and addressed to the following address:

(a) if to Shorts, to it at the following address:

Short Brothers (USA), Inc.
1725 Jefferson Davis Highway
Suite 510
Arlington, Virginia 22202

Attention: Mr. A. Oakley Brooks, Jnr.
Senior Vice President

with a copy to:

Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Attention: Robert L. Nutt, Esq.

(b) if to Lessee, to it at the address set forth opposite the heading "Lessee's Principal Place of Business" in the Lease Supplement to the attention of Mr. Richard A. Henson, President.

or, in either case, to such other address as the addressee shall have specified by notice actually received by the addressor.

16. Miscellaneous Provisions.

16.1. Entire Agreement. This Lease together with any other writing signed by the parties expressly stated to be supplementary thereto and together with the instruments and certificates to be delivered pursuant to this Lease constitute the entire agreement between Shorts and Lessee with respect to the subject matter hereof, superseding all prior understandings and writings relating thereto. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Aircraft or Engines, except as Lessee only.

16.1.1 Exception. This Agreement contains no more stringent requirements, and no less benefits on the part of Henson Aviation, Inc. than the original lease submitted at the beginning of our present discussions, a copy of which is attached as Exhibit 5.

16.2. Amendments. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by the duly authorized representatives of Lessee and Shorts.

16.3. Severability. Any provisions of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16.4. Survival of Covenants. All covenants, agreements, representations and warranties made herein and in the exhibits hereto shall be deemed to have been material and relied on by Shorts notwithstanding any investigations made by Shorts or on its behalf, and shall survive the execution and delivery of this Lease and shall continue in full force and effect until all obligations of Lessee hereunder shall have been satisfied in full; and the covenants and agreements made in Sections 8 and 9.1 hereof shall survive the expiration or termination of this Lease.

16.5. Controlling Law. This Lease shall be governed by and construed in accordance with the laws of the state whose laws are specified in the Lease Supplement.

16.6. Counterparts; Headings. This Lease may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect any of the terms hereof.

17. TRUTH IN LEASING CLAUSE.

THE AIRCRAFT, AS EQUIPMENT, BECAME SUBJECT TO THE MAINTENANCE REQUIREMENT OF FAR 91 ON REGISTRATION OF THE AIRCRAFT WITH THE FAA.

THE AIRCRAFT WILL BE MAINTAINED AND INSPECTED UNDER FAR 91 FOR OPERATIONS TO BE CONDUCTED BY LESSEE UNDER THIS LEASE, EXCEPT AT SUCH TIME AS THE AIRCRAFT IS OPERATED BY AN AIR CARRIER HOLDING AN AIR CARRIER OPERATION CERTIFICATE. AT WHICH TIME THE AIRCRAFT WILL BE MAINTAINED AND INSPECTED IN ACCORDANCE WITH FAR'S APPLICABLE AT SUCH TIME TO SUCH AIR CARRIER'S OPERATIONS. DURING THE DURATION OF THIS LEASE LESSEE IS CONSIDERED RESPONSIBLE FOR OPERATIONAL CONTROL OF ALL AIRCRAFT IDENTIFIED AND TO BE OPERATED UNDER THIS LEASE.

AN EXPLANATION OF THE FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA STANDARDS DISTRICT OFFICE.

THE LESSEE CERTIFIES THAT IT IS RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT AND THAT IT UNDERSTANDS ITS RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their names and on their behalf by their respective officers thereunto duly authorized, all as of the date first above written.

SHORT BROTHERS (USA), INC.

By As Brook
Title Vice President

HENSON AVIATION, INC.

By [Signature]
Title President

RECEIPT FOR AIRCRAFT

DELIVERY DATE _____

TIME _____

PLACE _____

Received from Short Brothers (USA), Inc., pursuant to the
Aircraft Lease Agreement between Short Brothers (USA), Inc. and
dated as of
the following:

Total Time

One (1) SD3-30 Model Aircraft

Federal Aviation Administration Registry No. N-____

Manufacturer's Serial No. SH _____

Total Time

Engine Serial Number (#1) _____

Engine Serial Number (#2) _____

Fuel on Board _____ gallons

The undersigned is authorized to accept delivery of the
above-described Aircraft on behalf of
pursuant to the aforesaid Aircraft Lease Agreement.

By: _____

Title: _____

SHORTS 330/360 AIRCRAFT PARTS REPLACEMENT REPORT

TO: Short Brothers (USA), Inc.
1725 Jefferson Davis Highway
Suite 510
Arlington, Virginia 22202

FROM: _____

Date this Report: _____

Please submit this report along with support documentation when parts are procured which cost in excess of \$1,000, pursuant to Section 6.2 of the Aircraft Lease Agreement.

1. COMPONENT REMOVED FROM AIRCRAFT REGISTRATION NO.:

N- _____
Part No.: _____ Serial No.: _____
Description: _____
Aircraft Time/Cycles: _____ Date: _____
Component Time/Cycles: _____ Date: _____

2. CURRENT STATUS OF COMPONENT

Present Location: _____ Date: _____
Returned to Supplier at: _____ Date: _____
Shipped for Overhaul/Repair to: _____ Date: _____
(Copy of PO/Repair Order)
Returned to Shorts: _____ Date: _____

(Copy of Shipping Order)

Allowance if used for exchange: \$ _____
(Copy of Documentation/PO/Invoice, indicating exchange allowance)

3. COMPONENT INSTALLED ON AIRCRAFT REGISTRATION NO.:

N- _____
Part No.: _____ Serial No.: _____
Description: _____
Aircraft Time/Cycles: _____ Date: _____
Component Time/Cycles: _____ Date: _____

Status: NEW/OVERHAULED/REPAIRED (circle)

Price Paid:\$ _____

(Copy of PO and Invoice/Receipt)

Component Obtained from: _____

Date: _____

Was component obtained as an exchange unit? _____

(Enter exchange allowance in Section 2)

4. REPORT PREPARED BY: _____

(Name)

(Title)

REVIEW BY SHORTS: _____

(Name)

(Title)

DETERMINATION BY SHORTS: _____

(Action)

(Authorized by)

SHORTS ACCOUNTING USE: _____

(Date Paid) (Check no. & Amt.) (Account No.)

Lease Supplement

1. Aircraft Description:

Model Number: SD3-30Serial Number: SH 3002Registration Number: N-789USEngine Model Number: PT6A-45REngine Serial Numbers: Left: 84085Right: 84081

2. Term:

Delivery Date: January 11, 1985Termination Date: January 31, 1986

Except that the Lessee shall have the right to terminate this Lease at any time on or after July 31, 1985 provided that the Lessee shall have provided Shorts with at least thirty (30) days written notice of its intention to terminate (early termination). Provided further that, to make an effective termination under this provision, Lessee shall pay to Shorts contemporaneously with its written notice the sum of \$30,000. Said sum shall represent basic rent which shall become immediately due in the event of said early termination.

3. Operation:

States of Operation: Georgia, South Carolina, N. Carolina,
Virginia, West Virginia, Maryland,
Delaware, New Jersey, Pennsylvania,
New York, Connecticut, Rhode Island,
Massachusetts.

4. Delivery Location: Allentown.
Pennsylvania
5. Return Location: Allentown.
Pennsylvania

6. Basic Rent:

Lessee shall pay to Shorts the sum of \$ 30,000 for each calendar one-month rental period during the term of this Lease. The Lessee's obligation for payment of basic rent for the first monthly rental period shall commence the earlier of:

- a. February 1, 1985 or
- b. The date upon which the Lessee places the aircraft into revenue service.

Basic Rent for the first and each succeeding monthly rental period shall be due and payable on the first day of each calendar month. Basic Rent for a partial month will be pro-rated on a daily basis at a rate of \$1,000.00 per day for every day that the aircraft is leased to the Lessee.

7. Additional Rent:

Lessee shall pay to Shorts the sum of \$ 60.00 for each flight hour in excess of the first 100 flight hours (base hours) logged in each monthly rental period. For a partial month, the base hours will be pro-rated on a daily basis. Within ten days after the end of each monthly rental period, Lessee shall furnish to Shorts a report which shall set forth the total number of flight hours logged on the airframe and each engine of the Aircraft during such monthly rental period. Shorts shall invoice Lessee for the amount of such additional rent and Lessee shall pay said invoice within ten days after receipt of such invoice. All flight hours shall be reported in tenths of an hour.

8. Insured Value: \$ 2,100,000
9. Lessee's Principal
Place of Business: Salisbury Wicomico
County Regional Airport
Salisbury, Maryland 21801
10. Governing Law: Maryland

NOTICE TO AIRCRAFT OPERATOR

(California Only)

You are hereby notified that no insurance coverage is being provided to cover your liability for bodily injury and property damage you may cause as an operator of any aircraft covered by our rental agreement.

You are further notified that the Uniform Aircraft Financial Responsibility Act (Part 5 (commencing with Section 24230) of Division 9 of the Public Utilities Code) requires that you be able to post security in an amount up to \$50,000 because of bodily injury or death to one person in any one accident, up to \$100,000 because of bodily injury or death to two or more persons in any one accident, and up to \$50,000 in the event of damage to or destruction of property.

Failure to furnish sufficient security or failure to furnish evidence of proof of ability to respond in damages as required under Section 24325 and Section 24360 of the Public Utilities Code is a misdemeanor.

Receipt of the foregoing notice is hereby acknowledge:

By _____,
President

Handwritten: Hm Contr for

RECEIVED JAN 17 1985

DELIVERY DATE 11 Jan 1985

TIME 7:00 PM

PLACE ALLENTOWN, PA. - ABE AIRPORT

Received from Short Brothers (USA), Inc., pursuant to the Aircraft Lease Agreement between Short Brothers (USA), Inc. and HENSON AIRLINES dated as of 11 JAN. 1985 the following:

One (1) SD3-30 Model Aircraft

Total Time

11963.5 h - 18962 c

Federal Aviation Administration Registry No. N-78945

Manufacturer's Serial No. SH3002

Total Time

Engine Serial Number (#1) 84085

4196.4

Engine Serial Number (#2) 84081

7369.6

Fuel on Board FULL
500 gallons

The undersigned is authorized to accept delivery of the above-described Aircraft on behalf of HENSON AIRLINES pursuant to the aforesaid Aircraft Lease Agreement.

By: Randy H...

Title: CAPTAIN

Short Brothers (USA), Inc. Aircraft Sales - Tax Year 1986

<u>Plane</u>	<u>Purchaser</u>	<u>Location of Purchaser</u>	<u>Date of Sale</u>
SH3002	Chancellor Corp.	Boston, MA	12/30/85
SH3013	Chancellor Corp.	Boston, MA	12/30/85
SH3015	Chancellor Corp.	Boston, MA	12/30/85
SH3017	Chancellor Corp.	Boston, MA	12/30/85
SH3018	Chancellor Corp.	Boston, MA	12/30/85
Convair 580 N-90855	Jesse and Jorita Yohanin	Burlingame, CA	02/27/85
Convair 580 N-90857	Jesse and Jorita Yohanin	Burlingame, CA	02/27/85

-Gross Amount of Out-of-State Aircraft Sales Taxed by Arlington County = \$12,052,424

-Tax Imposed as a Wholesale Merchant by Arlington County = \$ 9,641.94

June 6, 1986

34006.2

8410

By Hand Delivery

Mr. Stephen Jones
Office of the Commissioner
of Revenue
Courthouse
Arlington, Virginia 22201

Short Brothers (USA), Inc.

Dear Mr. Jones:

In line with our telephone conversation Tuesday afternoon, June 3, 1986, I enclose copies of the Form 1120's (Federal income tax returns) for Short Brothers (USA), Inc. for the years ended March 31, 1983, 1984 and 1985. I believe these are the documents you indicated during our telephone conversation that the County wants in connection with Mrs. Whiting's recent summons.

As I indicated during our telephone conversation, I have asked Short Brothers to prepare information showing its gross receipts by various categories on a calendar year basis. Those calculations are also enclosed for your reference. You should note the following points in reviewing the enclosed materials:

1. Two Offices. Until January, 1985, Short Brothers (USA) had two offices in the United States -- its principal office in California and a second office in Arlington County. As noted in my previous correspondence with Mrs. Whiting, a copy of which I recently sent you, the income of Short Brothers (USA) was all received at its Irvine, California office. I believe I am correct in saying that it had no actual receipts in Arlington County in 1983 and 1984.

Mr. Stephen Jones
June 6, 1986
Page 2

2. Receipts from Affiliates. Short Brothers (USA) is a wholly owned subsidiary of Short Brothers Limited. Approximately half of the gross receipts of Short Brothers (USA) are receipts from its parent corporation or other affiliates. Virginia Code § 58.1-3703 B(10) provides that these receipts are not subject to license taxation.

3. Investment Income. You will note on the federal income tax returns that Short Brothers (USA) had significant interest income during the years in question. This passive investment income is not subject to the County's local license tax. See, e.g., Va. Code § 58.1-2600 (definition of "gross receipts").

4. Interstate Commerce. Another significant part of the gross receipts of Short Brothers (USA) consists of income from aircraft rentals. I understand from our client that the lessees of these aircraft operate in interstate commerce, that only one of them (Colgan Airlines) is based in Virginia, that Short Brothers (USA) has not received rental income from Colgan Airlines since 1983, and that the leased aircraft were not delivered to the other customers in Virginia.

We believe the aircraft rental income of Short Brothers (USA) is exempt from the County's gross receipts tax for either or both of two reasons. First, before 1985 the rental income was received at the California office and, therefore, was not subject to Virginia's tax. Second, with the exception of Colgan Airlines in 1983, all of the rental income was with respect to aircraft used in interstate commerce and leased to customers located outside the state of Virginia. Although there are many authorities that could be cited, the enclosed opinion by Judge Daffron for the Circuit Court of Chesterfield County, Virginia is directly on point. In a case involving the applicability of a retail merchants license tax to a business selling to customers both in Virginia and outside Virginia, Judge Daffron held:

The existence of the regional sales office and its activities create a legally sufficient nexus to impose a tax on Amsco, a foreign corporation. The Commissioner of Revenue correctly assessed a Merchants Tax based on gross receipts for sales within the state of Virginia by salesmen working out of

Mr. Stephen Jones
June 6, 1986
Page 3

the Chesterfield office. The Commissioner may not assess a business license tax upon the proceeds of sales out of the state of Virginia because of lack of apportionment and the possibility of multiple tax burdens on interstate commerce. (Emphasis added).

Similarly, Arlington County is not permitted to tax Short Brothers (USA) with respect to its leases of aircraft to customers outside Virginia. The fact that the leased equipment consists of aircraft used in interstate commerce makes this result all the more compelling.

Once you have had a chance to review the enclosed materials, I would appreciate your telephoning me so we can determine how much (if any) tax you believe Short Brothers (USA) owes for the years 1983 - 1986. For the reasons indicated above, we do not believe any additional tax is owed for the years 1983 - 1985 when Short Brothers (USA) had its California office. A small amount of additional tax may be due for the 1986 year (based on 1985 gross receipts) to the extent they are not attributable to (i) receipts from affiliates, (ii) passive investment income or (iii) interstate sales.

Sincerely yours,

William L. S. Rowe

119/930
Enclosures
cc: Geraldine M. Whiting
bc: A. Oakley Brooks, Jr.
Jerry L. Sharp
Robert L. Nutt, Esq.
C. Porter Vaughan, III, Esq.

Short Brothers (USA), Inc.
Analysis of 1983-1985 Gross Receipts

DEPOSITION
EXHIBIT

Books 4

- A) Payments from Affiliates (Belfast)
 B) Aircraft lease rentals and the respective Lessee
 C) A summarization of other income
 D) Split of A), B), and C) between the California and Virginia Locations.

Similar to the 1985 report

	FISCAL YEAR/CALENDAR YEAR		
	1985	1984	1983
Affiliate Payments	3,620,376/ 3,756,417	2,969,877/ 2,842,138	1,620,238/ 3,522,060
Aircraft Lease	3,438,389/ 3,122,766	3,428,431/ 3,236,878	1,646,949/ 3,166,099
Other Income	200,089/ 272,733	234,445/ 175,554	-0-/ 177,958

Calendar Year 1985:

A) Payments from Affiliates (Belfast)

<u>1/01/85</u>	<u>4/01/85</u>	<u>Total</u>
<u>3/31/85</u>	<u>12/31/85</u>	
1,416,221	2,340,196	\$3,756,417

B) Aircraft Lease Rentals and Respective Lessee

	<u>1/01/85</u>	<u>4/01/85</u>	<u>Total</u>
	<u>3/31/85</u>	<u>12/31/85</u>	
Henson Airlines	90,876	1,100,500	\$1,191,376
Sunbird Airlines	89,920	705,631	795,551
Penn. Airlines	202,800	676,000	878,800
Comair	420,000	853,808	1,273,808
Chautauqua	35,546	-	35,546
Fischer Brothers	61,086	286,599	<u>347,685</u>

\$4,522,766

After 1/1/86
\$4,715,111

C) Other Income Summarization

	<u>1/01/85</u> <u>3/31/85</u>	<u>4/01/85</u> <u>12/31/85</u>	<u>Total</u>
Sales/Lease of Parts on Consignment	42,711	29,533	\$ 72,244
Agency Fees	8,009	7,119	15,128
Aircraft Repairs and Damages	33,196	154,854	188,050
Training Fees	(2,881)	-	(2,881)
Others	(13)	205	192
			<u>\$ 272,733</u>

D) Allocation of receipts in A, B, and C above between California and Virginia office

	<u>1/01/85</u> <u>3/31/85</u>	<u>4/01/85</u> <u>12/31/85</u>	<u>Total</u>
California	None	None	\$ -0-
Virginia	2,397,471	6,154,445	<u>8,551,916</u>
			\$8,551,916

Taxable VA Income 94,795,499 (1986 F.I.)

Calendar Year 1984:

A) Payments from Affiliates (Belfast)

	<u>1/01/84</u> <u>3/31/84</u>	<u>4/01/84</u> <u>12/31/84</u>	<u>Total</u>
	637,983	2,204,155	\$2,842,138

B) Aircraft Lease Rentals and Respective Lessee

	<u>1/01/84</u> <u>3/31/84</u>	<u>4/01/84</u> <u>12/31/84</u>	<u>Total</u>
Suburban Airlines	41,880	54,018	\$ 95,898
Westair	-0-	249,323	249,323

Penn. Airlines	210,000	652,020	862,020
Comair	291,476	1,253,750	1,545,226
Sunbird	-0-	20,000	20,000
Fischer Brothers	-0-	210,000	210,000
MVA	-0-	54,050	54,050
NorComair	-0-	45,000	45,000
Mid-South	18,629	-0-	18,629
Aviar	40,998	-0-	40,998
VCE Neal	88,960	-0-	88,960
Sunbelt	6,774	-0-	<u>6,774</u>
			\$3,236,878

C) Other Income Summarization

	<u>1/01/84</u> <u>3/31/84</u>	<u>4/01/84</u> <u>12/31/84</u>	<u>Total</u>
Sales/Lease of Parts on Consignment	-0-	61,679	\$ 61,679
Agency Fees	-0-	48,281	48,281
Aircraft Repairs and Damages	56,487	335	56,822
Training Fees	-0-	7,734	7,734
Other	-0-	1,038	<u>1,038</u>
			\$ 175,554

D) Allocation of Receipts in A, B, and C above between California and Virginia office

	<u>1/01/74</u> <u>3/31/84</u>	<u>4/01/84</u> <u>12/31/84</u>	<u>Total</u>
* California	1,393,187	4,861,383	\$6,254,570
Virginia	None	None	<u>None</u>
			\$6,254,570

* California office closed in January 1985.

Calendar Year 1983

A) Payments from Affiliates (Belfast)

	<u>1/01/83</u> <u>3/31/83</u>	<u>4/01/83</u> <u>12/31/83</u>	<u>Total</u>
	1,190,166	2,331,894	\$3,522,060 /

B) Aircraft Lease Rentals and Respective Lessee.

	<u>1/01/83</u> <u>3/31/83</u>	<u>4/01/83</u> <u>12/31/83</u>	<u>Total</u>
Mid-South	-0-	388,031	\$ 388,031
Aviar	-0-	222,094	222,094
→ Colgan	113,313	105,000	218,313 ←
Vee Neal	-0-	118,098	118,098
Command	118,888	-0-	118,888
Crown Air	34,184	-0-	34,184
Penn. Airlines	-0-	675,600	675,600
Comair	170,000	770,000	940,000
MVA	-0-	320,524	320,524
Sunbelt	-0-	130,367	<u>130,367</u>
			\$3,166,099

218,313
3,166,099

C) Other Income Summarization

	<u>1/01/83</u> <u>3-31-83</u>	<u>4/01/83</u> <u>12/31/83</u>	<u>Total</u>
Aircraft Repairs and Damages	-0-	138,084	\$ 138,084
Agency Fees	-0-	32,981	32,981
Recovery of Bad Debts	-0-	6,893	<u>6,893</u>
			\$ 177,958

12,457

D) Allocation of Receipts in A, B, and C above between California and Virginia office

	<u>1/01/83</u> <u>3/31/83</u>	<u>4/01/83</u> <u>12/31/83</u>	<u>Total</u>
California	1,626,551	5,239,566	\$6,866,117
Virginia	None	None	<u>None</u>
			\$6,866,117

SHORTS

DEPOSITION
EXHIBIT

Brooks 3

September 22, 1986

Mr. Ron Griffin
Tax Auditor
Commission of the Revenue
1400 N. Courthouse Road
Business License Division
Arlington, VA 22201

Dear Ron:

We write in response to the letter dated August 19, 1986 from Geraldine Whiting concerning the discrepancies between the Virginia Tax Returns and the Gross Receipts Analysis submitted by Mr. Rowe. We expect that the information provided below will clear up the confusion.

One of the first reasons the Virginia Tax Returns will vary from the Analysis provided is that the Virginia Tax Returns are reported on a Fiscal Year basis and the Analysis is being provided on a Calendar Year basis. Another reason the Tax Returns and Analysis don't coincide is when Multistate Schedules are filed, the total Sales Factor will be higher than the Total Income reported on Form 1120 due to Other Sales Category being added to the Sales Factor.

When Mr. Rowe and I formulated the letter to you giving an Analysis of the Gross Receipts, we had the amounts listed between Fiscal Year and Calendar Year as restated below.

	<u>Fiscal Year/Calendar Year</u>		
	<u>1985</u>	<u>1984</u>	<u>1983</u>
<i>NOT Taxable</i> Affiliate Payments	{ 3,620,376/ 3,756,417	2,969,877/ 2,842,138	1,620,238/ 3,522,060
Aircraft Lease	3,438,389/ 4,522,766	3,428,431/ 3,236,878	1,646,949/ 3,166,099
Other Income	200,089/ 272,733	234,445/ 175,554	-0-/ 177,958
	\$ 4795,499	\$ 3,412,432	\$ 3,344,057

SHORT BROTHERS (USA), Inc.
2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702
Telephone: (703) 769-5555 TLX: 6712485

Mr. Ron Griffin
September 22, 1986
Page 2 of 5

By referencing the 1984 column above, you can see how the amounts coincides with the Fiscal and/or Calendar amounts reported on the Analysis Report.

We will begin with the amount of \$9,460,190 as reported on the 1984 Tax Return (copy enclosed). This total was composed of the following:

Aircraft Leases (Rents)	3,438,389
Representation Fees	3,620,376
Training	4,853
Inventory Income	1,025
Aircraft Sale(s)	1,680,000
Consigned Parts	104,390
Interest	521,336
Repair Billings	33,531
Agency Fees	56,290
	<u>9,460,190</u>
	=====

Referring to the Fiscal 1985 Aircraft Lease amount above of \$3,438,389, you will see that it is classified as Aircraft Lease Rents and included in the overall Sales Factor of \$9,460,190. The Fiscal 1985 Other Income of \$200,089 is the sum of Training - \$4,853; Inventory Income - \$1,025; Consigned Parts - \$104,390; Repair Billings - \$33,531; Agency Fees - \$56,290 and is also included in the Sales Factor of \$9,460,190.

In order to segregate the amount of \$3,438,389 included in the \$9,460,190 into Calendar Year amounts, you will need to add the columns under 1/1/85 - 3/31/85 listed under "B) Aircraft Lease Rentals and Respective Lessee", and total the columns under 4/1/84 - 12/31/84 under the same sub-heading on the Letter Analysis. By adding those two totals together (\$900,228 + \$2,538,161), one arrives at \$3,438,389. To help make this more understandable, please see the summary below:

Mr. Ron Griffin
September 22, 1986
Page 3 of 5

	<u>1/1/85-</u> <u>3/31/85</u>	<u>4/1/84-</u> <u>12/31/84</u>	<u>Total</u>
Henson Airlines	90,876		
Sunbird Airlines	89,920	20,000	
Penn Airlines	202,800	652,020	
Comair	420,000	1,253,750	
Chautauqua	35,546		
Fischer Bros.	61,086	210,000	
Suburban Airlines		54,018	
Westair		249,323	
MVA		54,050	
NorComair		45,000	
	<u>\$900,228</u>	<u>\$2,538,161</u>	<u>\$3,438,389</u>

Using the same concept as we have illustrated above, the calculations can be shown for 1983.

The Affiliate Receipts are not being presented herein because we have all along contended that these amounts should not be considered taxable as Gross Receipts. The Affiliate Receipts shown as Representation Fees are monies advanced by the Parent of Shorts (Short Brothers, PLC - Belfast) for expenses involved in representing Shorts in the USA market. Shorts also feels the Other Income Category should not be subject to review for taxing purposes either, because most, if not all, items shown are rebills to customers without markups. For example, if Shorts incurs a expense at the request of a customer such as Repairs or Training, these items will appear on our financial records as a Expense and as a Income item in equal amounts; however, Shorts will not receive a markup. Shorts should not be subject to a tax for receiving monies for the exact amount to perform a service to a customer. Reimbursable (TAMSL)

As to why Shorts did not allocate anything to the State of Virginia in the Letter Analysis, the answer is that we did not compare our letter with the Returns. Also, we believed our Analysis to be correct because the California office did not close until January 1985. Thus, Income was not allocated to the State of Virginia until Calendar year 1985.

Mr. Ron Griffin
September 22, 1986
Page 4 of 5

To extend the relation between the Sales amount as reported on the 1983 Tax Return and the Letter Analysis, I would like to make reference to the 1983 Tax Return (enclosed) which shows the apportionment between California and Virginia of \$10,333,609 from the total sale of \$10,544,231. The amount of \$10,544,231 is composed of the following:

Aircraft Leases (Rents)	3,428,431
Representation Fees	2,969,877
Aircraft Sale(s)	3,216,350
Interest	695,128
Repair Billings	194,571
Agency Fees	32,981
Recovery of Bad Debts	6,893

10,544,231

As you can see from the 1983 Tax Return apportionment formula, Virginia's apportionment of \$210,613 was due to the principal business activity (Sales and Marketing) of Short Brothers USA being conducted from the office in Irvine, California. When Mr. Rowe and I formulated the Letter Analysis to you concerning the 1984 receipts, we assumed that California was still being the principal place of business, however as you pointed out, the apportionment of "None" in our letter will not conform to the State Tax Return.

To summarize, it appears the main issue is when did the principal business activity begin in Virginia? As have been indicated on the Tax Returns, the office in California did not close until January 1985. However, before this time, the Virginia Tax Return and the apportionment would indicate the principal activities began in 1984 (Total Fiscal Year Sales factor - 9,460,190).

If we were to further summarize the total based upon a Calendar Year Basis beginning January 1984, through December 1985, Tentative Gross Receipts Tax could be based on the following:

Mr. Ron Griffin
September 22, 1986
Page 5 of 5

	<u>1/1/84- 3/31/84</u>	<u>4/1/84- 12/31/84</u>	<u>1/1/85- 3/31/85</u>	<u>4/1/85- 12/31/85</u>	<u>Total</u>
Henson Airlines			90,876	1,100,500	1,191,376
Sunbird Airlines		20,000	89,920	705,631	815,551
Penn Airlines	210,000	652,020	202,800	676,000	1,740,820
Comair	291,476	1,253,750	420,000	853,808	2,819,034
Chautauqua			35,546		35,546
Fischer Bros.		210,000	61,086	286,599	557,685
Suburban Airlines	41,880	54,018	-	-	95,898
Westair		249,323	-	-	249,323
MVA		54,050	-	-	54,050
NorComair		45,000	-	-	45,000
Mid-South	18,629				18,629
Avair	40,998				40,998
VCE Neal	88,960				88,960
Sunbelt	6,774				6,774
Sale-A/C		1,680,000 ^{2.7}		12,052,424 ^{2.7}	13,732,424
	<u>698,717</u>	<u>4,218,161</u>	<u>900,228</u>	<u>15,674,962</u>	<u>21,492,068</u>
	=====	=====	=====	=====	=====

We expect this summary is responsive to your request. We continue to maintain that the Gross Receipts Tax is not justified and refer you to Mr. Rowe's letter of June 6, 1986 on the point.

Sincerely,

Jerry L. Sharp
Jerry L. Sharp
Manager, Credit & Accounting

*1985 Federal return & will be
in hands of Pricewaterhouse
for 1985*

Dec 30, 1985

*Trans
Trans*

Trans

Trans

Trans

100

CALIFORNIA CORPORATION FRANCHISE OR INCOME TAX RETURN

For calendar year 1984 or Fiscal year beginning April 1, 1984, ending March 31, 1985.

1984

AFFIX PREADDRESSED LABEL

F-0830319 SB6UI

B 03 10/25/77

SHORT BROTHERS (USA), INC.

2011 Crystal Dr., Suite 713

ARLINGTON

VA 22202

DO NOT USE THESE SPACES

CV				
CA				
IC				
CH		AC		
IVE		AC	FC	AC
Remittance				DE

- A. Date incorporated 10/17/77 where? Massachusetts
- B. Accounting Period: ☐ Calendar year ☒ Fiscal year (shown above)
- C. Date began business in California or date income was first derived from California source 10/17/77
- D. Business group code no. (Federal Instructions) 7389
- E. Principal business activity Marketing & Prod. Support Service
- F. Accounting method used Accrual
- G. FIRST RETURN? ☐ New business ☐ Successor to previously existing business (attach name, address, and FEIN of previous business)
- H. FINAL RETURN? ☐ Dissolved ☒ Withdrawn ☐ Merged/Reorganized
Date corporation ceased business or merged/reorganized 1/31/85
- I. Location of principal accounting records Corporate Address
- J. Is income included in a combined report of a unitary group? ☐ Yes ☒ No
(If yes, check) ☐ Without/within California ☐ Wholly within California
- K. Has the federal government redetermined your income tax liability for any prior year(s) which has not previously been reported?
☐ Yes ☒ No Furnish copy of agent's report under separate cover.

- L. If the corporation or its subsidiaries owned real property in California has cumulatively more than 50% of the voting stock (1) been transferred by the corporation, or (2) been acquired by one legal entity or one person during this year? (See Instruction U.) ☐ Yes ☐ No ☒ Not applicable (no real property owned in California)
- M. Did the corporation or combined group pay more than \$100,000 in local personal property taxes and/or business license taxes in California during this income year? ☐ Yes ☒ No
- N. Will net operating loss be carried over to subsequent years under R&TC Section 24417? ☐ Yes ☒ No
If no, show the amount For detailed information, see specific line instructions for lines 36 and 41 on page 4.
- O. At any time during the income year, was more than 50% of voting stock:
(a) of the corporation owned by any single interest? ☒ Yes ☐ No
(b) of another corporation owned by this corporation? ☐ Yes ☒ No
(c) of this and one or more other corporations owned or controlled, directly or indirectly, by the same interests? ☒ Yes ☐ No
If a, b, or c is "yes" furnish statement of ownership. See Stmt One
- P. Have all required information returns (Forms 500) been filed? ☒ Yes ☐ No

Income Tax	44. Net income for State purposes (from line 43 page 2, or line 24, Schedule R (Form 100)).....	44	(20,534)
	45. TAX <u>.....</u> % of amount on line 44 (see Instruction G).....	45	200
Financial Offset	46. Financial corporation offset carryover allowable (see Specific Line Instruction).....	46	
	47. <u>.....</u> % of amount on line 46.....	47	
	48. Net offset. Subtract line 47 from line 46.....	48	
Credits	49. BALANCE. Subtract line 48 from line 45 (not less than the greater of 9.8% x line 44 or minimum tax).....	49	200
	50. Total Credits from page 3, Schedule C.....	50	
Taxes	51. TAX BALANCE (not less than minimum tax if applicable). Subtract line 50 from line 49.....	51	200
	52. Tax on Preference Income (attach Schedule P (Form 100). See Instructions J).....	52	
	53. TOTAL TAX. Add lines 51 and 52.....	53	200
Payments	54. Credits: (a) Overpayment from 1983 allowed as a credit.....	54(a)	
	(b) 1984 estimated tax payments.....	54(b)	
	(c) Paid with application for extension of time to file return.....	54(c)	
	(d) Dissolving/Withdrawing-Not applicable if formed after 1971 (see Instr. P).....	54(d)	
	55. TAX DUE. Subtract line 54 from line 53. PAY AMOUNT WITH RETURN.....	55	200
Balance Due or Refund	56. OVERPAYMENT. Subtract line 53 from line 54.....	56	
	57. Enter amount of line 56 to be credited to 1985 estimated tax.....	57	
	58. Enter amount of line 56 you want refunded.....	58	

Under penalties of perjury, the undersigned declares: I have examined this return, and to my knowledge and belief, it is true, correct and complete

Sign Here	Signature of officer	Title	Date	Telephone ()
Preparer	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's social security number
	Firm's name (or yours, if self-employed) and address	E.I. No. 0		
		Telephone ()		

Make remittance payable to FRANCHISE TAX BOARD - Mail to: FRANCHISE TAX BOARD, SACRAMENTO, CALIFORNIA 95837-0021

Page 1

Line No.				
GROSS INCOME	1.	Gross receipts or gross sales	Less: Returns and allowances	
	2.	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		
	3.	Gross profit		
	4.	Dividends (attach schedule)		
	5.	Interest on obligations of the United States and U.S. instrumentalities		
	6.	Other interest (attach schedule)		
	7.	Gross rents		
	8.	Gross royalties		
	9.	(a) Net capital gains (attach Federal Schedule D (Form 1120))		
		(b) Ordinary gain (loss) (attach Federal Form 4797)		
	10.	Other income (attach schedule)		
11.	TOTAL income (add lines 3 to 10, inclusive)			
Capital loss carryover deducted on line 9(a) must be restored to income on line 32.				
Any net capital loss not reported on line 9(a) may be deducted on line 39.				
DEDUCTIONS	12.	Compensation of officers (Schedule E)		
	13.	Salaries and wages (not deducted elsewhere)		
	14.	Repairs		
	15.	Bad debts (Schedule F if reserve method is used)		
	16.	Rents		
	17.	Taxes (Schedule B)		
	18.	Interest	See Federal Return Attached	
	19.	Contributions (attach schedule)		
	20.	Amortization (Schedule G-FTB 3885)		
	21.	Depreciation (Schedule G-FTB 3885)		
	22.	Depletion (attach schedule)		
	23.	Advertising		
	24.	Pension, profit-sharing, etc., plans		
	25.	Employee benefit plans		
	26.	Other deductions (attach schedule)		
	27.	TOTAL deductions (add lines 12 to 26, inclusive)		
	28.	Net income before State adjustments (subtract line 27 from line 11)		(847,012)
STATE ADJUSTMENTS	29.	Amount deducted for foreign or domestic tax on or according to or measured by income or profits	35,210	
	30.	Amount deducted for tax under the provisions of the Bank and Corporation Tax Law		
	31.	Interest on government obligations		
	32.	Net capital loss carryover deducted on line 9(a)		
	33.	Depreciation in excess of amount allowed under State law (Schedule G)	464,350	
	34.	Amortization in excess of amount allowed under State law (Schedule G)		
	35.	Other additions (attach schedule)		
	36.	Total of lines 28 to 35, inclusive	(347,452)	
	37.	Intercompany dividends to extent paid from business income included in a combined report		
	38.	Other dividends received		
	39.	Capital losses not deducted on line 9(a) (attach schedule)		
	40.	Contributions in excess of allowable federal deduction on line 19		
	41.	Other deductions (attach schedule)		
42.	Total of lines 37 to 41, inclusive			
43.	Net income after State adjustments (subtract line 42 from line 36)		(347,452)	

If all income is derived from sources within this State enter amount of line 43 on line 44, page 1.

If income is derived from sources both within and without this State, complete Schedule R (Form 100) and enter amount of line 24 from Schedule R (Form 100) on line 44, page 1.

SCHEDULE A — COST OF GOODS SOLD

1 Inventory at beginning of year	1
2 Merchandise bought for manufacture or sale	2
3 Salaries and wages	3
4 Other costs (attach schedule)	4
5 Total — Add lines 1 through 4	5
6 Inventory at end of year	6
7 Cost of goods sold — Subtract line 6 from line 5. Enter here and on line 2, page 2	7

Method of inventory valuation ▶

Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory?

☐ Yes ☐ No. If "Yes," attach an explanation. Enter California sales permit number (if any) ▶**SCHEDULE B — TAXES DEDUCTED**

NATURE OF TAX	TAXING AUTHORITY	AMOUNT
Payroll	IRS, CA, VA	53,022
Property	(Note)	3,505
Income	CA	35,210
Licences	(Note)	155
Note: Orange County, CA, Arlington County, VA		
Total Taxes Deducted		91,892

SCHEDULE C — TAX CREDITS

1. Agricultural Irrigation Equipment	
2. Jobs Tax Credit(s)	
3. Energy Conservation	
4. Ridesharing	
5. Alcohol fuel device	
6. Solar Energy	
7. Computer Donation (institution)	
8. Other (attach schedules)	
Total (Enter on page 1, line 30)	

SCHEDULE E — COMPENSATION OF OFFICERS

1. Name of officer	2. Social security number	3. Percent of time devoted to business	Percent of corporation stock owned		6. Amount of compensation
			4. Common	5. Preferred	
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	

Total compensation of officers — Enter here and on line 12, page 2

SCHEDULE F — BAD DEBTS — RESERVE METHOD

1. Income year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve		6. Amount charged against reserve	7. Reserve for bad debts at end of year
			4. Current year's provision	5. Recoveries		
1979						
1980						
1981						
1982						
1983						
1984						

SCHEDULE G — DEPRECIATION AND AMORTIZATION (attach a detailed schedule in support of each of the lines in this schedule)

Part A. DEPRECIATION CLAIMED		1. Under Federal (ADR)	2. Other	Part B. AMORTIZATION CLAIMED	
1. Straight line method			169,350	1. Pollution control facilities	
2. Declining balance method				2. Cogeneration equipment	
3. Sum of years-digits method				3. Alternative Energy Equipment	
4. Based on units of production				4. Research or experimental	
5. Other (specify)				5. Exploration and development	
6. Claimed under ACRS (See note below)			857,025	6. Other (specify)	
7. Total depreciation claimed			1,026,375	7. Total amortization claimed	
8. Allowable for State purposes	State, Two		562,025	8. Allowable for State purposes	
9.* Depreciation adjustment			464,350	9.* Amortization adjustment	
Total of line 9, columns 1 and 2					

* If line 7 is greater than line 8, enter difference at line 9 and also on line 33 or 34, Page 2. If line 8 is greater than line 7, enter difference at line 9 and also on line 41, Page 2. NOTE: California has not adopted the Federal Accelerated Cost Recovery System (ACRS). See exceptions on Form FTS 3885, Depreciation and Amortization.

NOTE: If the Asset Guideline Class method (Fed. Rev. Proc. 77-10) is used for computing depreciation for State purposes, do NOT use the Lower Limit or Upper Limit (ADR) Ranges.

SCHEDULE L - BALANCE SHEET

ASSETS	Beginning of income year		End of income year	
	(A) Amount	(B) Total	(C) Amount	(D) Total
1. Cash				
2. Trade notes and accounts receivable				
(a) Less allowance for bad debts				
3. Inventories				
4. Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5. Other current assets (attach schedule)				
6. Loans to stockholders/officers (attach schedule)				
7. Mortgage and real estate loans				
8. Other investments (attach schedule)				
9. Buildings and other fixed depreciable assets				
(a) Less accumulated depreciation				
10. Depletable assets				
(a) Less accumulated depletion				
11. Land (net of any amortization)				
12. Intangible assets (amortizable only)				
(a) Less accumulated amortization				
13. Other assets (attach schedule)				
14. Total assets				
LIABILITIES AND STOCKHOLDER'S EQUITY				
15. Accounts payable				
16. Mises., notes, bonds payable in less than 1 yr				
17. Other current liabilities (attach schedule)				
18. Loans from stockholders				
19. Mises., notes, bonds payable in 1 yr. or more				
20. Other liabilities (attach schedule)				
21. Capital stock: (a) Preferred stock				
(b) Common stock				
22. Paid-in or capital surplus (attach reconciliation)				
23. Retained earnings—Appropriated (attach sch.)				
24. Retained earnings—Unappropriated				
25. Less cost of treasury stock				
26. Total liabilities and capital				

SCHEDULE M-1 - RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1. Net income per books		7. Income recorded on books this year not included in this return (itemize)	
2. Federal income tax		(a) Tax-exempt interest \$	
3. Excess of capital losses over capital gains	
4. Taxable income not recorded on books this year (itemize)		8. Deduction in this tax return not charged against book income this year (itemize)	
.....		(a) Depreciation \$	
5. Expenses recorded on books this year not deducted in this return (itemize)		(b) Depletion \$	
(a) Depreciation \$	
(b) Depletion \$		9. Total of lines 7 and 8	
.....		10. Income (line 28, Pg. 2) line 6 less line 9	
6. Total of lines 1 through 5			

SCHEDULE M-2 - ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24, Schedule L)

1. Balance at beginning of year		5. Distributions: (a) Cash	
2. Net income per books		(b) Stock	
3. Other increases (itemize)		(c) Property	
.....		6. Other decreases (itemize)	
.....		
.....		7. Total of lines 5 and 6	
4. Total of lines 1, 2 and 3		8. Balance at end of year (line 4 less line 7)	

CALIFORNIA
SCHEDULE R
(Form 100)

SCHEDULE OF APPORTIONMENT AND ALLOCATION OF INCOME

(For Income Years Beginning in 1981 and Later)

For Calendar Year 19 _____

Or for year begun April 1, 19 84, and ended March 31, 19 85

Name		California Corporate Number
Short Brothers (USA), Inc.		256 88201
Number and street		
2011 Crystal Drive, Suite 713		
City or town	State	ZIP code
Arlington,	VA	22202

Attach this form to Corporation Franchise or Income Tax Return (Form 100) and file it with the Franchise Tax Board, Sacramento, California 95837. Complete Schedule R-7, page 4, if applicable (see Instruction 9).

Fill in page 1 and complete all schedules which are appropriate. See instructions on pages 5 through 8.

1. Net income after State adjustments (from Form 100, page 2, line 43)	(347,452)
NONBUSINESS INCOME OR LOSSES	
2. Dividends included in line 1 and not deducted at lines 37 and 38 of return	
3. Interest (attach schedule) <u>Bank account interest</u>	30,919
4. Income (or loss) from rental or property (Schedule R-3)	
5. Royalties (attach schedule)	
6. Gain (or loss) from sale of assets (Schedule R-4)	
7. Partnership income (or loss) (attach schedule)	
8. Miscellaneous income (or loss) (attach schedule)	
9. Total (add lines 2 to 8, inclusive)	30,919
10. Balance (subtract line 9 from line 1)	(378,371)
11. Add: Interest offset (from Schedule R-8, line 7 or line 16)	30,919
12. Business income from sources both within and without this State (add lines 10 and 11)	(347,452)
13. Apportion . <u>5.91</u> % (Schedule R-1) of line 12 as income from business attributable to this State	(20,534)
NONBUSINESS INCOME (OR LOSSES) WHOLLY ATTRIBUTABLE TO CALIFORNIA	
<i>If no income wholly attributable to California, omit lines 14 through 21, enter the amount shown on line 13, on line 22, and complete lines 23 and 24.</i>	
14. Dividends and interest income (taxpayer's commercial domicile in California):	
(a) Dividends (included in line 2 above)	
(b) Interest (included in line 3 above)	
15. Income (or loss) from rental or property (Schedule R-3)	
16. Royalties (attach schedule)	
17. Gain (or loss) from sale of assets (Schedule R-4)	
18. Partnership income (or loss) (attach schedule)	
19. Miscellaneous income (or loss) (attach schedule)	
20. Total (add lines 14 to 19, inclusive)	
21. Less: Interest offset (from line 11) allocated to income included on lines 14(a) and 14(b) (i.e. line 11 multiplied by the ratio of the sum of lines 14(a) and 14(b), above, divided by the sum of lines 2 and 3, above)	
22. Net income for State purposes before contributions adjustment (subtract line 21 from line 20)	(20,534)
23. Contributions adjustment (Schedule R-8. Add to (subtract from) line 22)	(20,534)
24. Net income for State purposes. Enter here and on Form 100 page 1, line 44	

SCHEDULE R-1 — APPORTIONMENT FORMULA

The following information must be submitted by all corporations having income from sources both within and without the State, regardless of method of apportionment used.	TOTAL WITHIN AND WITHOUT THE STATE (a)	TOTAL WITHIN THE STATE (b)	PERCENT WITHIN THE STATE (b) ÷ (a)
1. AVERAGE yearly value of owned real and tangible personal property used in the business. Owned property: (at original cost, see instructions) Exclude property not connected with the business and value of construction in progress.	(Omit cents)	(Omit cents)	
Inventory			
Buildings			
Machinery and equipment	6,759,057	911,631	
Furniture and fixtures	128,973	29,658	
Delivery equipment			
Land			
Other tangible assets (attach schedule) Start	2,841,621	338,747	
Rented property used in the business: Three	24,099,984	1,009,601	
Capitalize per instructions	33,829,635	2,289,637	6.77%
TOTAL PROPERTY VALUES			
2. Wages, salaries, commissions, and other compensation of employees related to business income included in return (if the amount reported in column (b) does not agree with the total compensation reported for California unemployment insurance purposes, attach a detailed explanation.)			
TOTAL WAGES AND SALARIES	926,676	73,327	7.91%
3. Sales (gross receipts, less returns and allowances):			
(a) Sales delivered or shipped to Calif. purchasers:	25,787		
(1) Shipped from outside California		25,787	
(2) Shipped from within California			
(b) Sales shipped from California to:			
(1) The United States Government			
(2) Purchasers in a state where the taxpayer would not be taxable (e.g. under Public Law 86-272)			
(c) Other gross receipts (rents, royalties, interest, etc.)	9,434,403	262,312	
TOTAL SALES	9,460,190	288,099	3.05%
Total percent (sum of the percentages above)			17.73%
Average percent (1/3 of total percent) to line 13, pg.1			5.91%

SCHEDULE R-2 — SALES AND GENERAL QUESTIONNAIRE

- Describe briefly the nature and location(s) of your California business activities, and state the exact title and principal business address of any joint venture or partnership wherever located in which the corporation has an interest. **Marketing office, Irvine, California, office closed January 31, 1985. All property and personnel transferred or disposed of. No other California interest.**
- Does the California sales figure in Schedule R-1 include (1) all sales delivered from California where purchaser is the U.S. Government and (2) all sales delivered from California to states in which this corporation is immune under Public Law 86-272? If not, please explain. **No sales are delivered from California. Question does not apply to our operations.**
- Are the amounts shown on lines 2 through 8 of Schedule R and column (a), Schedule R-1 the same as those reported in returns or returns to other states under the Uniform Division of Income for Tax Purposes Act? If not, please explain (see paragraph 8 of instructions). **Amounts are the same, except Virginia permits the offset of sublease income against rent expense in capitalizing property.**

SCHEDULE R-3 — NET INCOME (OR LOSS) FROM RENTAL OF NONBUSINESS PROPERTY

Not Applicable	TOTAL WITHOUT THE STATE	TOTAL WITHIN THE STATE
Income from rents		
DEDUCTIONS		
Taxes		
Depreciation		
Interest paid to carry indebtedness of income producing property		
Maintenance and upkeep		
Other expenses (attach schedule)		
TOTAL DEDUCTIONS		
Net Income (or Loss) from rents		

SCHEDULE R-4 — PROFIT (OR LOSS) FROM SALE OF NONBUSINESS ASSETS

California sales include (1) real property located in this State, (2) tangible personal property which had a situs in this State at time of sale, or taxpayer is commercially domiciled in this State and not taxable in the state in which the property had a situs at sale, and (3) intangible personal property if taxpayer's commercial domicile is in this State.

DESCRIPTION OF PROPERTY SOLD	SITUS OF PROPERTY	REAL ESTATE AND OTHER TANGIBLE ASSETS		INTANGIBLE ASSETS	
		Profit (or loss) without the State	Profit (or loss) within the State	Profit (or loss) without the State	Profit (or loss) within the State
Not Applicable					
Total Profit (or loss)					

SCHEDULE R-5 — COMPUTATION OF INTEREST OFFSET

(Complete if Schedule R-1 is required. See instruction 7.)

1. Total interest expense	659,185	
2. Less: Nonbusiness interest expense deducted in arriving at lines 2 through 8, page 1, Schedule R (Form 100)		
3. Balance of interest expense (line 1 less line 2)		659,185
4. Total interest income, lines 5, 6 and 31, page 2 of Form 100	521,336	
5. Less: Nonbusiness interest income (line 3, page 1, Schedule R (Form 100)) *	30,919	
6. Business interest income (line 4 less line 5)		490,417
7. Balance (line 3 less line 6). If line 6 exceeds line 3, enter "0" here and on line 11, page 1, Schedule R (Form 100) and do not complete balance of this schedule		168,769
8. Total dividend income	None	
9. Less: Amounts entered on lines 37 and 38, page 2 of return		
10. Balance (line 8 less line 9)		None
11. Business dividend income		
12. Less: Amounts entered on lines 37 and 38, page 2 of return attributable to business dividend income		
13. Net business dividend income (line 11 less line 12)		None
14. Balance (line 10 less line 13)		None
15. Total nonbusiness interest and dividend income (line 5 plus line 14)		30,919
16. Enter here and on line 11, page 1, Schedule R (Form 100), the lesser of line 7 or line 15, above		30,919

If interest and/or dividend income is reported on line 14, page 1, enter on line 21, page 1, the allocable portion of line 16. (See instructions.) If no interest or dividend income is reported on line 14, page 1, do not deduct any interest expense on line 21, page 1.

* If return filed under Chapter 3, include exempt interest deducted on line 41 of Form 100.

SCHEDULE R-6 — DEDUCTIBLE CONTRIBUTIONS ADJUSTMENT

1. Total contributions paid	
2. Net income after State adjustments (line 1, page 1, Schedule R (Form 100))	
3. Portion of dividends deductible under Sections 24402 and 24410 on line 38, page 2 of return	
4. Contributions deducted (from Federal return, plus line 40, page 2 of Form 100)	
5. Total (add lines 2 through 4)	Factor A
6. Five percent of amount entered on line 5	
7. Net income before contributions adjustment (line 22, page 1, Schedule R (Form 100))	
8. Portion of dividends deductible on line 3 if domiciled in California	
9. Contributions deducted (from Federal return, plus line 40, page 2 of Form 100) times apportionment formula percentage (Schedule R-1)	
10. Total (add lines 7 through 9)	Factor B
11. Five percent of amount entered on line 10	
CONTRIBUTIONS ADJUSTMENT	
12. Enter amount shown on line 9 above	
13. Amount of contributions allowable (see limitations below)	
14. Contributions adjustment (line 12 less line 13)	

Enter difference on line 23, page 1, Schedule R (Form 100). If line 13 exceeds line 12, enter a bracketed amount on line 14 and on line 23, page 1, Schedule R (Form 100).

LIMITATIONS

- If line 1 equals or exceeds line 6, allowable contributions are limited to the lesser of line 1, or line 11.
- If line 1 is less than line 6, allowable contributions are limited to that portion of line 1 that Factor B (line 10) is to Factor A (line 5).

Virginia Corporation Income Tax Return

1984

Check <input type="checkbox"/> - A Consolidated return B Combined return C Final return (liquidation or dissolution) D Amended return	Name Short Brothers (USA), Inc.		Official use only	
	Number and street 2011 Crystal Drive, Suite 713			
	City or town, state, and ZIP Code Arlington, VA 22202			
	Date incorporated 10/17/77 State or Country Massachusetts			
Federal Business Code No. 7389		Principal business activity Marketing and product support services		Federal Employer Identification Number 95-3180431

IMPORTANT: ATTACH A COPY OF YOUR FEDERAL RETURN TO THIS RETURN

	Amount
1 Federal taxable income (from attached Federal return)	1 (847,012)
2 (a) ACRS addition (from Part I, Line 1, Form 302)	2(a) 257,108
(b) Additions (from line 27)	(b) 35,210
3 Total (add lines 1, 2(a), and 2(b))	3 (554,694)
4 (a) ACRS subtraction (from Part II, Line 2, Form 302)	4(a)
(b) Subtractions (from line 37)	(b)
5 Total (line 3 minus line 4(a) and 4(b))	5 (554,694)
6 Savings and loan assoc.'s bad debt deduction—Federal allowable percent times line 5	6
7 Virginia taxable income (line 5 minus line 6)	7 (554,694)
8 (a) Income of a multistate corporation subject to Virginia tax (Schedule A)	8(a) (537,231)
(b) Apportionment factor from Schedule A, Line 2, 3, 4, 5, or 10	96.96 %
9 Income tax (6% of line 7 or line 8(a))	9 None
10 Tax Credits	
(a) Neighborhood Assistance Act Credit	
(b) Renewable Energy Credit	
(c) Urban Enterprise Zone Credit	
11 Adjusted Tax	11 None
12 Credits:	
(a) 1984 estimated Virginia income tax payments	
(b) Prior year's overpayment	
(c) Payments with extension request and other payments	
Total credits (add lines (a), (b) and (c))	12
13 Tax due (subtract line 12 from line 11)	13 None
14 Penalty (see instructions)	14
15 Interest (see instructions)	15
16 Addition to the tax (attach Form 541-C)	16
17 Total due (add lines 13, 14, 15 and 16). Attach payment voucher with this amount	17 None
18 Overpayment (if line 12 is larger than line 11 enter overpayment)	18
19 Amount to be credited on 1985 estimated tax	19
20 Amount to be refunded (subtract line 19 from line 18)	20

Mail this return to the Department of Taxation, P. O. Box 1500, Richmond, Virginia 23212 on or before the fifteenth day of the fourth month following the close of the taxable year. Checks should be made payable to the Department of Taxation.

DECLARATION

I, the undersigned president, vice-president, treasurer, assistant treasurer, chief accounting officer, or other officer duly authorized to act, of the corporation for which this return is made, declare under the penalties provided by law that this return (including any accompanying schedules and statements) has been examined by me and is, to the best of my knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the income tax laws of the Commonwealth of Virginia. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

_____ (Date)	_____ (Signature of officer)	_____ (Title)
_____ (Date)	_____ (Individual or firm signature of preparer)	_____ (Address)

PART I — Additions to Federal taxable income (attach schedules):

21	Net income taxes and other taxes which are based on, measured by or computed with reference to net income	21	35,210	
22	Interest on state obligations other than Virginia	22		
23	Savings and loan association's Federal bad debt deduction	23		
24	Unrelated business taxable income as defined by Section 512 of the IRC (to the extent excluded from Line 1, Page 1)	24		
25	The amount of ESOP Credit carryover deducted under Section 404(i) of the IRC	25		
26	Other	26		
27	Total - Enter this amount on Line 2(b)	27	35,210	

PART II — Subtractions from Federal taxable income (attach schedules):

28	Interest or dividends on obligations or securities of the United States exempt from state income taxes but not from Federal income taxes	28		
29	Foreign dividend gross-up (Section 78 IRC)	29		
30	Refund or credit of income taxes included in Federal taxable income	30		
31	Subpart F income (Section 951 IRC)	31		
32	The amount of salaries and wages not deducted due to the Federal Jobs Credit	32		
33	Foreign source income as defined by Virginia Code Section 58.1-322 C.7. (See instructions for limitations)	33		
34	Dividends received from corporations in which the recipient owns fifty percent or more of the voting stock and to the extent remaining in federal taxable income	34		
35	The amount of employer contributions to a tax credit ESOP for which a credit is allowed under Section 44G of the IRC	35		
36	Other	36		
37	Total - Enter this amount on Line 4(b)	37	None	

PART III — Questions

- 38 The corporation's books are in care of J. Daniel Frix Located at Corporate address
Telephone Number (703) 769-5555
- 39 Check if the corporation is a farmers' marketing or a farmers' purchasing cooperative association _____, a consumer cooperative association _____, or other cooperative association _____
- 40 Has your federal income tax liability been redetermined for any prior year(s) which has not previously been reported to the Department of Taxation? Yes ___ No X. If "yes", state years _____. Report changes under separate cover and mail to: Department of Taxation, P.O. Box 6-L, Richmond, Virginia 23282.

TRANSACTION OR CONDUCTING PART OF BUSINESS WITHIN AND PART
WITHOUT VIRGINIA - ALLOCATION AND APPORTIONMENT OF INCOME

Name of Corporation Short Brothers (USA), Inc.

A. Allocable income	1. Total amount of allocable income	2. Amount allocated to Virginia
1. Dividends (Enter total of Col. 1 in Line 12 and enter total of Col. 2 in Line 15)	None	

B. Apportionable income factors

Motor Carriers

	Total	Virginia	
2. Mileage factor (If apportionment provisions are not applicable check which exception applies- 1 <input type="checkbox"/> or 2 <input type="checkbox"/> .) - (see instructions)			%

Railway Companies

3. Revenue car miles factor (see instructions)			%
--	--	--	---

Financial Corporations

4. Business income factor (see instructions)			%
--	--	--	---

Construction Corporations-Completed Contract Basis

5. Sales factor (see instructions)			%
--	--	--	---

All Others

6. Property factor (see instructions)	12,728,818	12,574,120	98.78 %
---	------------	------------	---------

7. Payroll factor (see instructions)	926,676	853,349	92.09 %
--	---------	---------	---------

8. Sales factor (see instructions)	9,460,190	9,460,190	100.00 %
--	-----------	-----------	----------

9. Sum of percentages in Lines 6, 7, and 8			290.87 %
--	--	--	----------

10. Line 9: divided by the figure 3, or 3 reduced by the number of factors, if any, having no denominator			96.96 %
---	--	--	---------

11. Virginia taxable income (from Line 7, Page 1 of the return)			(554,694)
---	--	--	-----------

12. Less: Total amount of allocable income (from Line 1, Col. 1)			0
--	--	--	---

13. Income subject to apportionment (Line 11 less Line 12)			(554,694)
--	--	--	-----------

14. Income apportioned to Virginia (Line 13 multiplied by % in either Line 2, 3, 4, 5 or 10)			(537,831)
--	--	--	-----------

15. Income allocated to Virginia (from Line 1, Col. 2)			0
--	--	--	---

16. Income subject to Virginia tax (Line 14 plus Line 15) (enter in Line 8(a), Page 1 of the return)			(537,831)
--	--	--	-----------

Form 302

Department of Taxation

Computation of ACRS Depreciation Adjustments

► Attach this form to your return

Name(s) as shown on return

Short Brothers (USA), Inc.

Identifying number

95-3180431

Part I ACRS Addition

1. ACRS adjustment (30% of current year ACRS deduction) \$ 257,108

The ACRS deduction is one of several claimed on federal form 4562, however not all deductions claimed on form 4562 are subject to the 30% addition. All deductions claimed under Part I, Section B, on form 4562 are subject to the 30% addition regardless of whether or not a straight line method is used. Elections under sections 168 (e) and 179 of the IRC are not to be considered.

Part II ACRS Subtractions

1. Amortization of prior ACRS adjustments:

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>	<u>Column D</u>	<u>Column E</u>
Taxable Year Ended	ACRS Addition on Va. Return	Total for Biennium	Recovery Percentage	ACRS Subtraction for Current Year
19 ____	\$			\$
19 ____	\$	\$	X.20	
19 ____	\$			\$
19 ____	\$	\$	X.20	
19 ____	\$			\$
19 ____	\$	\$	X.20	
2. Total of Column E				\$ None

The ACRS additions for preceding bienniums are recoverable in the five taxable periods following the close of the biennium. A twenty percent subtraction for each ended biennium must be taken on the current return regardless of whether or not there is income the subtraction can reduce. A biennium means all taxable periods beginning in 1982 and 1983 or each two succeeding taxable periods.

Application for Automatic Extension of Time
to File Corporation Income Tax Return

(Under section 6081(b) of the Internal Revenue Code)

OMB No. 1545-0047

Name of corporation

Short Brothers (USA), Inc.

Employer identification number

95-3180431

Number and street

2011 Crystal Drive, Suite 713

City or town, State, and ZIP code

Arlington, VA 22202-3702

Check type of return to be filed:

- ☒ Form 1120 ☐ Form 1120S ☐ Form 990-T
☐ Form 1120-A ☐ Form 990-C ☐ Other (specify) _____
☐ Form 1120F (Check here) ☐ if you do not have an office or place of business in the U.S.)

1 (a) I request an automatic 6-month extension of time until December 15, 1985 to file the income tax return of the corporation named above for calendar year 19____ or tax year ending March 31, 1985

(b) If this tax year is for less than 12 months, check reason:

- ☐ Initial return ☐ Final return ☐ Change in accounting period approved ☐ Consolidated return to be filed

2 Does this application also cover subsidiaries to be included in a consolidated return? ☐ Yes

If "Yes," attach a list showing the name, address, and the employer identification number (EIN) of each member of the affiliated group

3 Tentative tax (see instructions)

4 Credits: (a) Overpayment from prior year allowed as a credit

(b) Estimated tax payments (deposits) for the tax year

(c) Less refund of estimated tax for the tax year applied for on Form 4466

(d) Credit from regulated investment companies and credit for overpaid windfall profit tax

(e) Credit for Federal tax on gasoline and special fuels

5 Total—Add lines 4(a) through 4(e)

6 Balance due—Subtract line 5 from line 3. This amount should be deposited with a Federal Tax Deposit (FTD) Coupon

Signature.—Under penalties of perjury, I declare that I have been authorized by the above-named corporation to make this application and that to the best of my knowledge and belief the statements made are true, correct, and complete.

A. B. Cook

(Signature of officer or agent)

Executive VP

(Title)

6/14/85

(Date)

General Instructions

(Section references are to the Internal Revenue Code, unless otherwise noted.)

A. Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

B. Purpose of Form.—Form 7004 should be used by a corporation to request an automatic 6-month extension of time to file its income tax return.

The extension will be allowed if Form 7004 is filed properly by the due date and if the Balance due on line 6 is deposited with a FTD Coupon contained in FTD Coupon Book (Form 8109).

Foreign corporations with an office or place of business in the United States and electing under Regulations section 1.6081-2(a), which provides an automatic 3-month extension of time to file, are not to use Form 7004. If a 6-month extension is anticipated, these corporations should file Form 7004 by the 15th day of the 3rd month following the close of the tax year.

However, this extension does not extend the time for payment of tax.

C. When and Where to File.—File Form 7004 by the due date of the return with the Internal Revenue Service Center where the corporation will file the return.

D. Penalty for Not Paying Tax.—Section 6651 provides a penalty for not paying tax (other than estimated income tax) when due.

The late payment penalty is ½% a month or part of a month unless you have reasonable cause for not paying on time. If you believe you have reasonable cause, attach an explanation to your return.

If you are allowed an extension of time to file, you will not be charged a late payment penalty if: the tax shown on line 3 (or the amount of tax paid by the regular due date of the return) is at least 90% of the tax shown on line 31 of Form 1120, or the comparable line on other returns; and you pay the balance due shown on the return by the extended due date.

E. Termination of Extension.—The IRS may terminate the automatic extension at any time by mailing a notice of termination to the corporation or to the person who requested the extension. The notice will be mailed at least 10 days before the termination date given in the notice.

Specific Instructions

Line 3—Tentative tax.—Enter the tentative amount of income tax for the year, reduced by any non-refundable credits against the tax. This will usually be the tax

shown on Form 1120, line 31 or the comparable line from other returns

Line 6—Balance due.—This is the amount of tax you are required to deposit. Foreign corporations with an office or place of business in the United States and domestic corporations must deposit all income tax payments with an FTD Coupon.

However, if the corporation expects to have a net operating loss carryback, the corporation may reduce the amount to deposited to the extent of the overpayment resulting from the carryback, providing other prior year tax liabilities have been paid and a Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback, accompanies Form 7004. See Rev. Rul. 82-47, 1982-1 C.B. 201 for details.

Interest will be charged on any part of final tax due not shown on line 6. The interest is figured from the original due date of the return to the date of payment.

Signature.—The person authorized by the corporation to sign the return should sign the Form 7004. This person may be:

- (1) An officer of the corporation
- (2) A duly authorized agent holding a power of attorney.
- (3) A person currently enrolled to practice before the Internal Revenue Service
- (4) An attorney or certified public accountant qualified to practice before the IRS

Virginia Corporation Income Tax Return

For calendar year 1985 or taxable year beginning April 1, 1985 and ending March 31, 1986

1985

Check <input type="checkbox"/> — A Consolidated return <input type="checkbox"/> B Combined return <input type="checkbox"/> C Final return (withdrawal or dissolution) <input type="checkbox"/>	Name Short Brothers (USA), Inc.		Official use only
	Number and street 2011 Crystal Drive, Suite 713		
	City or town, state, and ZIP Code Arlington, Virginia 22202		
	Federal Business Code No. 7389		
Date incorporated 10/17/77 State or Country Massachusetts		Federal Employer Identification Number 95-3180431	
Principal business activity Marketing & Product Support Services			

IMPORTANT: ATTACH A COPY OF YOUR FEDERAL RETURN TO THIS RETURN

		Amount
1	Federal taxable income (from attached Federal return)	(735,838)
2	(a) ACRS addition (from Part I, Line 1, Form 302)	183,588
	(b) Additions (from line 27)	-
3	Total (add lines 1, 2(a), and 2(b))	(552,250)
4	(a) ACRS subtraction (from Part II, Line 2, Form 302)	
	(b) Subtractions (from line 37)	
5	Total (line 3 minus line 4(a) and 4(b))	(552,250)
6	Savings and loan assoc.'s bad debt deduction—Federal allowable percent times line 5	
7	Virginia taxable income (line 5 minus line 6)	(552,250)
8	(a) Income of a multistate corporation subject to Virginia tax (Schedule A)	
	(b) Apportionment factor from Schedule A, Line 2, 3, 4, 5, or 10	None
9	Income tax (6% of line 7 or line 8(a))	
10	Tax Credits	
	(a) Neighborhood Assistance Act Credit	
	(b) Renewable Energy Credit	
	(c) Urban Enterprise Zone Credit	
	(d) Conservation Tillage Equipment Credit	
11	Adjusted Tax	None
12	Credits:	
	(a) 1985 estimated Virginia income tax payments	
	(b) Prior year's overpayment	
	(c) Payments with extension request and other payments	
	Total credits (add lines (a), (b) and (c))	
13	Tax due (subtract line 12 from line 11)	None
14	Penalty (see instructions)	
15	Interest (see instructions)	
16	Addition to the tax (attach Form 500-C)	
17	Total due (add lines 13, 14, 15 and 16). Attach Form 500-V with payment due	None
18	Overpayment (if line 12 is larger than line 11 enter overpayment)	
19	Amount to be credited on 1986 estimated tax	
20	Amount to be refunded (subtract line 19 from line 18)	

Mail this return to the Department of Taxation, P.O. Box 1500, Richmond, Virginia 23212-1500 on or before the fifteenth day of the fourth month following the close of the taxable year. Checks should be made payable to the Department of Taxation.

DECLARATION

I, the undersigned president, vice-president, treasurer, assistant treasurer, chief accounting officer, or other officer duly authorized to act, of the corporation for which this return is made, declare under the penalties provided by law that this return (including any accompanying schedules and statements) has been examined by me and is, to the best of my knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the income tax laws of the Commonwealth of Virginia.

If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

11.7.86 (Date)
A. B. Book (Signature of officer)
President (Title)
(Date) (Individual or firm, signature of preparer) (Address)

PART I — Additions to Federal taxable income (attach schedules):

- 21 Net income taxes and other taxes which are based on, measured by or computed with reference to net income 21
- 22 Interest on state obligations other than Virginia 22
- 23 Savings and loan association's Federal bad debt deduction 23
- 24 Unrelated business taxable income as defined by Section 512 of the IRC (to the extent excluded from Line 1, Page 1) 24
- 25 The amount of ESOP Credit carryover deducted under Section 404(i) of the IRC 25
- 26 Other 26
- 27 Total - Enter this amount on Line 2(b) 27

	-
	-

PART II — Subtractions from Federal taxable income (attach schedules):

- 28 Interest or dividends on obligations or securities of the United States exempt from state income taxes but not from Federal income taxes 28
- 29 Foreign dividend gross-up (Section 78 IRC) 29
- 30 Refund or credit of income taxes included in Federal taxable income 30
- 31 Subpart F income (Section 951 IRC) 31
- 32 The amount of salaries and wages not deducted due to the Federal Jobs Credit 32
- 33 Foreign source income as defined by Virginia Code Section 58.1-322 C.7. (See instructions for limitations) 33
- 34 Dividends received from corporations in which the recipient owns fifty percent or more of the voting stock and to the extent remaining in federal taxable income 34
- 35 The amount of employer contributions to a tax credit ESOP for which a credit is allowed under Section 41 of the IRC 35
- 36 Other 36
- 37 Total - Enter this amount on Line 4(b) 37

	None

PART III — Questions

- 38 The corporation's books are in care of Jerry L. Sharp Located at corporate address
Telephone Number (703) 769-8723
- 39 Check if the corporation is a farmers' marketing or a farmers' purchasing cooperative association _____, a consumers' cooperative association _____, or other cooperative association _____.
- 40 Has your federal income tax liability been redetermined for any prior year(s) which has not previously been reported to the Department of Taxation? Yes _____ No X. If "yes", state years _____. Report changes under separate cover and mail to Department of Taxation, P.O. Box 6-L, Richmond, Virginia 23282.

► Attach this form to your return

Name(s) as shown on return
Short Brothers (USA), Inc.

Identifying number
95-3180431

Part I ACRS Addition

ACRS adjustment (30% of current year ACRS deduction) \$ 183,588

The ACRS deduction is one of several claimed on federal Form 4562; however, not all deductions claimed on Form 4562 are subject to the 30% addition. All deductions claimed under Part I, Section B, on Form 4562 are subject to the 30% addition regardless of whether or not a straight line method is used. All ACRS depreciation deductions are subject to the 30% addition regardless of where the deduction was taken for federal tax purposes. Elections under Sections 168(e) and 179 of the IRC are not to be considered.

Part II ACRS Subtractions

1. Amortization of prior ACRS adjustments:

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>	<u>Column D</u>	<u>Column E</u>
Taxable Year Ended	ACRS Addition on Va. Return	Total for Biennium	Recovery Percentage	ACRS Subtraction for Current Year
19 ____	\$			
19 ____	\$	\$	X.20	\$
19 ____	\$			
19 ____	\$	\$	X.20	\$
19 ____	\$			
19 ____	\$	\$	X.20	\$
2. Total of Column E				\$

The ACRS additions for preceding bienniums are recoverable in the five taxable periods following the close of the biennium. A twenty percent subtraction for each ended biennium must be taken on the current return regardless of whether or not there is income the subtraction can reduce. A biennium means all taxable periods beginning in 1982 and 1983; for taxable periods beginning after 1983, two successive taxable periods constitute a biennium.

INSTRUCTIONS FOR PART I

Enter 30% of the total ACRS depreciation deduction taken for federal tax purposes this year. ACRS property is all property placed in service after 1980. If you elected to use an alternate ACRS method (such as straight line) the addition still applies. Property located outside the Commonwealth of Virginia but depreciated using ACRS for federal tax purposes is also subject to the addition.

Taxable periods other than entire calendar or fiscal year count as an entire year. If you have to file two short period returns this would constitute a biennium and amortization would begin in the next taxable period.

INSTRUCTIONS FOR PART II

- 1) Column A—Enter the taxable periods included in each biennium. You may not begin to recover ACRS additions until returns have been filed for both taxable periods in the biennium for which a subtraction is being computed. A biennium means all taxable periods beginning in 1982 and 1983; for taxable periods beginning after 1983, two successive taxable periods constitute a biennium.

Column B—Enter the ACRS addition reported for each taxable period listed in Column A.

Column C—Enter the total amount reported in Column B.

Column D—This is the recovery percentage for each taxable period.

Column E—Multiply the amount entered in Column C by the percentage in Column D and enter here. You may not claim a deduction of more than 20% for any one biennium.

- 2) Enter the total of the amounts listed in Column E. This is your ACRS subtraction for the current taxable period. A taxpayer may claim a subtraction for only those ACRS additions made by the taxpayer. For this purpose a partner, beneficiary or shareholder is NOT deemed to have made ACRS additions reported by partnerships, estates, trusts, and electing small business corporations (Subchapter S corporation). A partner, for example, may claim an ACRS subtraction only to the extent that it is included in the partner's distributive share of the income, loss, additions and subtractions for the taxable year. No adjustments are required due to any changes in the partner's ownership interest between the time the ACRS addition is made by the partnership and the time the ACRS subtraction is claimed by the partnership.

EXAMPLE

1. Amortization of prior ACRS adjustments:

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>	<u>Column D</u>	<u>Column E</u>
Taxable Year Ended	ACRS Addition on Va. Return	Total for Biennium	Recovery Percentage	ACRS Subtraction for Current Year
1982	\$1,000.00			\$400.00
1983	\$1,000.00	\$2,000.00	X.20	
1-1-84—7-31-84	\$500.00			\$200.00
8-1-84—12-31-84	\$500.00	\$1,000.00	X.20	
19 ____	\$			\$
19 ____	\$	\$	X.20	
				\$600.00
2. Total of Column E				

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

SHORT BROTHERS (USA), INC.,)	
)	
Plaintiff,)	
)	
v.)	Law No. 89-1344
)	
ARLINGTON COUNTY,)	
)	
Defendant.)	

**SECOND SUPPLEMENTAL ANSWERS OF SHORT BROTHERS (USA), INC.
TO INTERROGATORIES PROPOUNDED BY ARLINGTON COUNTY**

Short Brothers (USA), Inc. (Short Brothers), by counsel, pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia and the Order of the Court, states the following as its Second Supplemental Answers to Interrogatories Propounded by Arlington County:

Interrogatory No. 1:

Identify each transaction from which or because of which Applicant received monies in calendar years 1984 through 1986 including:

- a. The nature of each transaction;
- b. The products or services involved in each transaction;
- c. The persons who were parties to each transaction;
- d. The persons responsible for financing each transaction;
- e. The individuals who were employees of Applicant who had any role in each transaction; and
- f. The entire amount of monies received by Applicant or any of its affiliates or parent from each transaction specifying the date received.

ANSWER:

The information sought by Interrogatory No. 1 relative to the 1986 tax year may be obtained from Short Brothers' business records. Pursuant to Rule 4:8(f) of the Rules of the Supreme

ANSWER:

With respect to subpart (d), the insurance agent that provided Short Brothers' insurance policy for the 1986 tax year was Ian R. Clubb, Executive Director, Willis Faber & Dumas Limited, Ten Trinity Square, London EC3P 3AX.

Interrogatory No. 4:

Identify all personnel employed by Applicant during calendar years 1984 through 1986 including all independent contractors, subcontractors, consultants and officers of the corporation, including for each person identified, in addition to their full name and addresses as defined above;

a. Each person's job title and a brief job description for each job title; and

b. The state or states for which taxes were withheld for state income tax purposes for each person identified.

ANSWER:

The following is a list of Short Brothers' employees during the 1986 tax year, the departments in which each was employed, and the state for which taxes for each were withheld:

<u>Employee</u>	<u>Department</u>	<u>State of Withholding</u>
Brooks, A.O.	Administration	DC
Hodge, R.R.	Administration	VA
Spillman, G.F.	Administration	VA
Bond, Langhorne	Administration	DC
Austin, F.L.	Administration	CA
Allen, A.Z.	Administration	VA
Frix, J.D.	Administration	VA
Komsa, L.A.	Administration	MD
Sharp, J.	Administration	VA
Lee, M.A.	Administration	MD
Braggs, A.R.	Administration	VA
Crawford, R.G.	Marketing	MD
Kayhan, C.R.	Marketing	VA
McClaugherty, J.L.	Marketing	VA
Pearson, D.E.	Marketing	MD
Parks, C.W.	Marketing	VA
Koerner, F.K.	Marketing	VA

Allen, P.M.	Marketing	DC
Long, J.E.	Marketing	VA
Loynachan, R.E.	Marketing	VA
Cardellicchio, M.	Marketing	MD
Hollenbeck, W.C.	Marketing	CA
Fela, P.A.	Product Support	VA
North, R.N.	Product Support	VA
Trudo, J.M.	Product Support	VA
Panther, M.R.	Product Support	VA
Wright, L.R.	Product Support	VA
Loser, D.R.	Product Support	MI
Thrailkill, J.H.	Product Support	MD
Blouin, R.P.	Product Support	VA
Keusher, T.G.	Product Support	MI
Welch, C.K.		OH
Wolf, J.		OH

Short Brothers does not maintain more detailed job descriptions for these positions and did not file any federal 1099 tax forms for the 1986 tax year.

Interrogatory No. 5:

Describe in detail all alterations, repairs, maintenance or work performed by Applicant on any planes during calendar years 1984 through 1986, identifying all personnel or subcontractors who did such work and the remuneration and contractual basis for all such work, if any.

ANSWER:

Pursuant to the Court's order, all responsive documents in Short Brothers' custody, possession or control will be produced to the County for inspection and copying at its expense. Short Brothers has custody, possession or control of aircraft maintenance logs for only two of the aircraft it owned or leased during the 1986 tax year. Federal regulations require that maintenance logs be maintained with the aircraft. Except for two aircraft presently in Short Brothers' possession, all of the aircraft Short Brothers owned or leased during the 1986 tax year

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

SHORT BROTHERS (USA), INC.,)	
)	
Plaintiff,)	
)	
v.)	Law No. 89-1344
)	
ARLINGTON COUNTY,)	
)	
Defendant.)	

**OBJECTIONS AND ANSWERS BY SHORT BROTHERS (USA), INC.
TO DEFENDANT'S SECOND SET OF INTERROGATORIES**

Short Brothers (USA), Inc. (Short Brothers), by its authorized representative, pursuant to Rules 4:1(e) and 4:8 of the Rules of the Supreme Court of Virginia, states as follows for its Answers to Defendant's Second Set of Interrogatories:

Interrogatory No. 1:

With regards to each of the seven states listed in your response to Interrogatory 9 in which you assert that the applicant has a taxable nexus for the 1986 tax year, state in detail the factual basis relied on in your assertion for each state individually, including what specific activity took place in each state (planes delivered, located, repaired, hangared, etc.), which plane or planes were involved, the names of the customers involved and where such customers are based, for what period of time and what dates each specific activity took place, what documents (i.e., leases) controlled each activity, which of applicants personnel were involved and any other basis relied on in making your assertion. Identify any documents you relied on in making your assertions.

ANSWER:

Short Brothers relied on the following facts in asserting a taxable nexus in Maryland for the 1986 tax year:

D. Dates Activities Took Place: Short Brothers delivered the aircraft to Phoenix, Arizona on January 22, 1985.

E. Documents Controlling Each Activity: Purchase Agreement between Short Brothers and Jesse and Jorita Yohanin dated January 22, 1985.

F. Personnel Involved In Each Activity: A. Oakley Brooks.

In addition to these activities, Short Brothers had aircraft repairs and routine maintenance performed in some or all of the above states.

Interrogatory No. 2:

For the 1986 tax year, were the applicant, its lessees or customers, assessed gross receipts taxes, sales taxes, use taxes, franchise taxes or business taxes by any state or locality other than Arlington County as a result of transactions by or with the applicant? If so, state the type and amount of the assessment, by whom it was made, what transactions were involved, and identify any documents which would reflect such assessments.

ANSWER:

Short Brothers was not assessed gross receipt taxes, sales taxes, use taxes, franchise taxes or business taxes by any state or locality other than Arlington County for the 1986 tax year. Short Brothers' lease agreements with its lessees require the lessees to pay all taxes arising out of the lease transactions. Short Brothers has no knowledge of whether its lessees or customers were assessed similar taxes by any state or locality other than Arlington County as a result of transactions with Short Brothers. However, there was generally no sales or use tax due on Short Brothers' lease and sale transactions because

closing were frequently held in states where sales and leases of aircraft to commercial airlines are exempt from sales and use tax.

Interrogatory No. 3:

For the 1986 tax year, did the applicant, its lessees and customers engage in any oral discussions, correspondence, administrative appeals or litigation with any state or locality other than Arlington County with regard to state or local taxation? If so, please state what discussions, correspondence, appeals or litigation took place, with whom it took place, the person or persons involved, and identify any documents which would reflect such discussions, correspondence, appeals or litigation.

ANSWER:

Short Brothers did not engage in any oral discussions, correspondence, administrative appeals or litigation with any state or locality other than Arlington County with regard to state or local taxation for the 1986 tax year. Short Brothers does not know whether its lessees or customers engaged in any similar activities with any state or locality other than Arlington County with regard to state or local taxation.

Interrogatory No. 4:

For calendar year 1986, identify every state in which applicant obtained a business license, registered as a corporation, or otherwise qualified to do business. Identify any documents which reflect such licenses, registration or qualification.

OBJECTION AND ANSWER:

Short Brothers objects to Interrogatory No. 4 on the grounds that it seeks information that is irrelevant to any issue in this action to the extent that it seeks information from any period

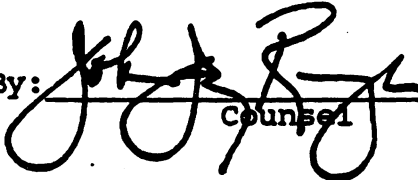
other than the 1985 calendar year. The Court's Order dated December 31, 1990, ruling on the County's Motion to Compel, clearly establishes that the County is not entitled to discovery of information for any year other than the 1985 calendar year.

Subject to its objection, Short Brothers states that it did not obtain a business license, register as a corporation, or qualify to do business in any state other than Massachusetts and Virginia during the 1986 calendar year.

OBJECTIONS

All objections and references to objections were stated by counsel.

SHORT BROTHERS (USA), INC.

By:  _____
Counsel

William L. S. Rowe
David S. Lowman, Jr.
Hunton & Williams
P. O. Box 1535
Richmond, VA 23212
(804) 788-8410

John Jay Range
Michael P. McQuillen
Hunton & Williams
2000 Pennsylvania Avenue N.W.
Washington, D.C. 20006
(202) 955-1500

Of Counsel

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

SHORT BROTHERS (USA), INC.,)	
)	
Plaintiff,)	
)	
v.)	Law No. 89-1344
)	
ARLINGTON COUNTY,)	
)	
Defendant.)	

**OBJECTION AND ANSWER BY SHORT BROTHERS (USA), INC.
TO DEFENDANT'S FOURTH SET OF INTERROGATORIES**

Short Brothers (USA), Inc. (Short Brothers), by its authorized representative, pursuant to Rules 4:1(e) and 4:8 of the Rules of the Supreme Court of Virginia, states as follows for its Objection and Answer to Defendant's Fourth Set of Interrogatories:

GENERAL OBJECTION

Short Brothers objects to the Definitions and Instructions as being overly broad and burdensome and expressly disclaims any obligations to be bound by the instructions except as required by the Rules of the Supreme Court of Virginia.

ANSWER

Interrogatory No. 1:

For calendar year 1985 and tax year 1986, identify every state in which applicant obtained a business license, registered as a corporation, or otherwise qualified to do business. Identify any documents which reflect such licenses, registration or qualification.

ANSWER:

Short Brothers has been unable to locate any documents reflecting the information sought by Interrogatory No. 1 for the 1985 calendar year, which is the same period as the 1986 tax year. Therefore, Short Brothers is unable to determine the state(s) in which it had a business license, was registered as a corporation or was qualified to do business.

OBJECTIONS

All objections and references to objections were stated by counsel.

SHORT BROTHERS (USA), INC.

By: John Jay Range
Counsel

William L. S. Rowe
David S. Lowman, Jr.
Hunton & Williams
P. O. Box 1535
Richmond, VA 23212
(804) 788-8410

John Jay Range
Michael F. McQuillen
Hunton & Williams
2600 Pennsylvania Avenue N.W.
Washington, D.C. 20006
(202) 955-1500

Of Counsel

COPY

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

- - - - -	x	
	:	
SHORT BROTHERS (USA), INC.,	:	
	:	
Applicant,	:	
	:	
vs.	:	At Law No. 89-1344
	:	
ARLINGTON COUNTY,	:	
	:	
Respondent.	:	
	:	
- - - - -	x	

Arlington, Virginia

Monday, March 25, 1991

Deposition of RONALD GARDNER CRAWFORD, called for examination by counsel for the respondent, pursuant to notice, at the offices of the Chief Deputy Commissioner of the Revenue, 2100 Clarendon Boulevard, Suite 200, Arlington, Virginia 22201, before Carol A. Lowe, a notary public in and for the State of Virginia, beginning at 10:05 a.m., when were present on behalf of the respective parties:

1 **FOR THE APPLICANT:**

2 JOHN JAY RANGE, Esq., Hunton & Williams, 2000
3 Pennsylvania Avenue, Northwest, Washington,
 D.C. 20036.

4 **FOR THE RESPONDENT:**

5 ARA L. TRAMBLIAN, Esq., Deputy County Attorney,
6 2100 Clarendon Boulevard, Suite 403, Arlington,
 Virginia 22201.

7 **ALSO PRESENT:**

8 JEAN MARSHALL CRAWFORD, Esq., legal counsel,
9 Chief Deputy Commissioner of the Revenue, 2100
 Clarendon Boulevard, Suite 200, Arlington,
10 Virginia 22201.

I N D E X

EXAMINATION BY COUNSEL FOR:

<u>WITNESS</u>	<u>APPLICANT,</u> <u>MR. RANGE.</u>	<u>RESPONDENT,</u> <u>MR. TRAMBLIAN.</u>
Ronald Gardner Crawford		4

EXHIBITS
(None)

1 P R O C E E D I N G S

2 Whereupon,

3 RONALD GARDNER CRAWFORD,
4 was called for examination by counsel for the respondent,
5 and having been first duly sworn, was examined and
6 testified as follows:

7 EXAMINATION BY COUNSEL FOR THE RESPONDENT

8 BY MR. TRAMBLIAN:

9 Q Would you state your full name, please?

10 A Ronald Gardner Crawford.

11 Q Mr. Crawford, are you currently employed?

12 A Yes.

13 Q With whom?

14 A Short Brothers (USA).

15 Q What is your current job with Short Brothers?

16 A I'm the vice-president of sales and marketing.

17 Q And how long have you been that vice-president?

18 A I believe just about five years. I can't recall
19 the exact time when I was promoted, but it's been -- it's
20 been at least five years.

21 Q What position did you hold with Shorts (USA) in
22 1985?

23 A I was a regional sales manager.

1 Q For any particular -- for what particular region?

2 A At that point we had mostly individual customers
3 as opposed to geographical areas. It kept changing. Part
4 of the time we would be geographical.

5 Then as we would change staff we would then
6 perhaps just retain customers and pick up additional
7 customers depending on the requirement. At that time if I
8 had an area, I can't recall the exact area; but I had
9 specific customers I covered.

10 Q Okay.

11 A When I say area, geographical area.

12 Q What is your educational background after high
13 school? If you could briefly summarize it.

14 A Right. B.A. from the University of Iowa.

15 Q In what subject?

16 A In liberal arts, in general science.

17 Q And in 1985 as regional sales manager could you
18 tell me what your duties were?

19 A Yes. It was to identify potential users of
20 Shorts aircraft and to call on them and sell them the --
21 the use of our aircraft.

22 Q And when you say sell them the use of Shorts
23 aircraft, do you mean rent them planes?

1 MR. RANGE: I object to the form of the question.
2 You can go ahead and answer. It's a technical objection.

3 A Yeah. Rent or purchase.

4 BY MR. TRAMBLIAN:

5 Q Were you involved in the sale of any aircraft in
6 1985 -- of any Shorts aircraft?

7 A I would have to look at the record on that.

8 Q I'm looking at the response of Short Brothers
9 (USA), Incorporated, to defendant's second set of
10 interrogatories. Have you seen any of these documents?

11 A No, I haven't.

12 Q Page 2 of the answer -- I'm sorry. Not page 2.
13 Page 6 of the answer states that you and Daniel Prix were
14 generally involved with Short Brothers aircraft lease and
15 sale transactions with customers involving the
16 above-listed transactions. And the sales customer that's
17 referred to is Chancellor Corporation.

18 Do you have any --

19 A No.

20 Q -- specific recollection --

21 A No. I had no dealings with Chancellor.

22 Q Were you aware of any dealings that Shorts (USA)
23 had with Chancellor Corporation?

1 A I've heard the name of the company, but I'm not
2 aware of a specific transaction at that time.

3 Q Mr. Brooks testified last week that I believe
4 five planes, one demonstrator plane and four other planes,
5 were sold to Chancellor in December of 1985.

6 Does that ring any bells?

7 A Yes. I -- I believe he did that.

8 Q What --

9 A That wasn't mine, see.

10 Q Did you have any involvement in that?

11 A Chancellor is a -- is a leasing company. I was
12 dealing with operators, in other words, airlines like
13 Henson Airlines or -- or other airlines in this area and
14 all over the country. Our responsibility is the entire
15 United States. And I deal with the people who actually
16 use the aircraft. I had no dealings with the financing of
17 aircraft or --

18 Q What was your understanding of what Chancellor
19 Corporation did with the planes that were sold by Shorts?

20 A Well, usually then they would be leased to an
21 operator after -- after Chancellor -- Chancellor is a
22 leasing company. So they would buy aircraft to lease
23 them.

1 Q Is it your understanding that Chancellor never
2 actually used the aircraft?

3 A Yeah. That would be -- that's normal. I --.

4 Q Did you have any knowledge in this -- in 1985 in
5 dealings with Chancellor that Chancellor leased the planes
6 right back to Short Brothers?

7 A I'm not sure. That -- that could be. That is
8 done in this business where the manufacturers and -- well,
9 do sale -- what they call sale lease backs where they --
10 they sell the airplane to a leasing company and then lease
11 it back so that they can pull the cash out of the
12 airplane, you know, pull the value of the airplane out.
13 And then the manufacturers are responsible to do whatever
14 they wish with the airplane which is usually turn around
15 and sublease it to a -- you know, to an operator.

16 Q Do you know in this particular -- in the
17 particular case of Short Brothers and Chancellor whether
18 some of the planes that were sold to Chancellor
19 Corporation continued under leases to Shorts customers
20 during the transaction?

21 A I'd have to see the specific transaction, you
22 know, the -- the details of the specific transaction. As
23 I said, I -- my job was to sell or lease airplanes to

1 operators. And the financing wasn't really my area.

2 And there very well may have been Chancellor
3 leases that were with customers I had, you know, where my
4 customer was operating the aircraft. And then it would
5 have been, say, sold to a leasing company and then
6 continued to be leased to my customer.

7 Q Do you recall a plane, plane number 3002, that
8 was under lease to Henson Airlines in 1985?

9 A Yes. I leased that airplane.

10 Q And do you know if that plane was sold to
11 Chancellor Corporation in 1985?

12 A I couldn't confirm or deny it. It possibly was.
13 You'd have to -- again, you'd have to look at the records
14 to see what the -- you know, who was the owner of it.

15 Q Had Short Brothers done business with Henson
16 Airlines prior to 1985?

17 A Oh, yes.

18 Q Do you know when Shorts began dealing with
19 Henson?

20 A I'd have to look at the records, but I can say
21 they were a very early operator of Shorts equipment which
22 was certainly well before 1985.

23 Q And, Mr. Crawford, where is your office located?

1 A I'm in Crystal City.

2 Q How did the lease of aircraft to Henson Airlines
3 or Henson Aviation come about in 1985?

4 A I don't recall the exact date of when the lease
5 was, you know, implemented; but if that's -- if you have
6 the record that that was the year it -- it was initiated,
7 what happened is I was calling on them.

8 I would go over and see Mr. Henson and sometimes
9 his staff members and discuss the desirability of renting
10 our aircraft or using our aircraft and negotiate a deal
11 for them to -- to take it; to take the aircraft. And
12 that -- that's it.

13 Q Okay. Can you -- let me start from the first
14 element that you referred to which is calling on Henson.
15 How did it come about that you would call on Henson?

16 Let me give you -- for example, did someone else
17 in Shorts tell you we have some planes available to lease?
18 Did you talk -- did Henson call you and say we need some
19 planes and you check? Can you tell me how it was that the
20 transactions began?

21 A Normally, you know, my superiors would tell me
22 what aircraft we had that were available and that needed
23 to be either rented or sold. And we had objectives as --

1 as salesmen. We call sales managers salesmen. You know,
2 you're a salesman.

3 And you've got the job to do. You've got to go
4 out there. And that's how you earn your salary is taking
5 aircraft that aren't working and getting them working and
6 earning revenue for the --.

7 Q How would you typically be told that planes were
8 available by your superiors?

9 A Just as a part of my job I would be advised
10 normally verbally. I can't recall specifically getting a
11 letter or anything saying so. I mean, it's a small
12 office. You would just be told verbally what the status
13 of the fleet was and what needed to be done.

14 Q Is that something that would be -- you would be
15 regularly told in the Arlington office?

16 A Arlington office or wherever I was with my
17 superior. I mean, if I was traveling with him, if I --
18 you know, wherever. I mean, these issues come up as -- as
19 you discuss your job and how you're doing and what's --
20 what needs to be done.

21 That's it. That's your primary job as aircraft
22 salesman is to move aircraft. So you're constantly made
23 aware of -- of what the objectives are.

1 Q The lease of aircraft to Henson Aviation in 1985,
2 do you recall where you were when you were told that
3 planes were available to be rented?

4 A No. I mean, it could have been anywhere.

5 Q Are there occasions when you are told in your
6 Arlington office that there are planes to be leased out?

7 A Probably. Yes. Probably. I can't imagine --
8 yeah. We'd hear there. We'd hear other places.

9 Q You stated that you then called on Mr. Henson.

10 A Correct.

11 Q How did you do that?

12 A I'd call him up, make an appointment. Sometimes
13 you see them at the trade shows. You'll see them out when
14 you're traveling around, you know, whatever; but quite
15 often by phone call you make an appointment, tell him you
16 have something you want to discuss with him. You've got a
17 proposition or a -- or an idea that might be of interest
18 to him.

19 And then you go see him. He's the customer. So
20 his headquarters was in Salisbury, Maryland. So you would
21 fly over there and -- and sit down over lunch with him or
22 in his office and discuss what his situation was and how
23 you thought you could improve it by adding your equipment.

1 Q Do you remember where you called Mr. Henson from
2 for the transactions with Henson in 1985?

3 A No. It -- it could have been anywhere. Our
4 office. It could have been while I was traveling on the
5 road. It could have, you know, been from any place. And
6 there probably would have been more than one phone call,
7 you know, setting up appointments, identifying what
8 your -- you want to talk about or you -- you know.

9 Q Were you involved in negotiating the terms of the
10 leases or was that somebody else's department?

11 A I discuss the duration of the lease and the
12 payment of, you know, what the -- the charges will be, you
13 know, how much he has to pay and basically, you know, how
14 long he -- the aircraft would be for and -- and what the
15 aircraft will do, too. I mean, my -- a large part of my
16 selling is technical. I mean the capabilities of the
17 aircraft as well as the cost of the aircraft. And then
18 you await his response.

19 Q Did you have to get the terms of the deal
20 approved by anybody?

21 A Yes.

22 Q Who had to approve the lease terms?

23 A Well, after I got it written up at -- usually at,

1 you know, Mr. Henson's office and would get him to sign
2 it, then I would bring it back and give it to Mr. Brooks.

3 Q When you say you would bring it back, you bring
4 it back to Arlington?

5 A Yes, because that's where Mr. Brooks was. And
6 then he -- it would have to be approved. I did not have
7 the authority to commit the company to a -- any -- you
8 know, anything like that.

9 Q Okay. Once Mr. Brooks approved the term what
10 would be the next step in the deal?

11 A I'm not certain Mr. Brooks approved it. He's the
12 man I gave it to for approval, because he was my superior.
13 Then he may have taken it somewhere else. I mean, I -- I
14 was always told there was a credit committee. And he was
15 my conduit to the credit committee; okay?

16 Q What's your understanding of what the credit
17 committee was?

18 A Just what the name implies. A credit committee
19 was who approved the financial aspects of the transaction.

20 Q Do you know who made up the credit committee?

21 A No, I don't.

22 Q Do you know if it was Shorts (USA) personnel or
23 Shorts, PLC, personnel?

1 A I -- I don't. I could only make assumptions. I
2 mean, there's got to be a record of who it was; but
3 whoever it was -- my point of contact was Mr. Brooks.

4 Q Once you heard back -- did you hear back from Mr.
5 Brooks whether or not the deals were approved?

6 A Oh, yes.

7 Q What would then be the next step?

8 A Then the next step would be, of course, advising
9 the customer that it -- it had been approved and then
10 going -- what we say -- call going to documentation which
11 was creating the lease documents with the customer. And I
12 did not do that.

13 Q Do you know who did that, creating the lease
14 documents?

15 A At that time I think it was Daniel Frix; but,
16 again, I'd have to refer to the record as to when he was
17 working for us and -- because he's no longer with us. And
18 if the records show he was with us in 1985, he was the guy
19 who did it.

20 Q Once the documents were created were you involved
21 in the deal any further?

22 A Only to ensure that they got signed. I mean, it
23 was usually hand carrying them to the customer to get the

1 suitable signature. Sometimes, you know, you -- you could
2 just hand carry it over or you could send it by overnight
3 mail if -- you know, if you knew the guy was going to sign
4 it when it got in front of him. If you felt he needed
5 additional arm twisting, you'd actually hand carry it.

6 Q When you say that you would hand carry them or
7 overnight courier the documents, where are you referring
8 to sending them from?

9 A Well, sending them from the office. Yeah.

10 Q From the Arlington office?

11 A From the Arlington office.

12 Q Once the documents were signed in this case by
13 Henson what happened to the documents then?

14 A Then they would go to -- if Frix was the person
15 who was there, they would go to him. And from then on
16 they were his responsibility.

17 Q Would it be fair to say that once the documents
18 were signed off your responsibility or your involvement
19 with that particular deal was over?

20 A Yes, because -- yeah. It would become a
21 contractual thing at that point. And my job was selling,
22 not contracting.

23 Q Did you have any involvement in seeing to the

1 delivery of the aircraft that were under lease?

2 A Only as a salesman to ensure that he got the
3 aircraft when I said he'd get it.

4 Q How would you do that?

5 A Just checking that it was being prepared and
6 delivered.

7 Q Okay. In order to make sure it was being
8 prepared and delivered what would you do? Would you call
9 somebody?

10 A Call somebody or ask whoever it was that was --
11 that was doing it. Again, that wasn't my area of
12 responsibility of doing those preparation work.

13 Q Okay. The people you are referring to who have
14 the responsibility for doing the preparation work, are
15 they Shorts (USA) employees or are you referring to
16 somebody else?

17 A The people who do the actual work are usually
18 someone else, you know, what they call FBOs or maintenance
19 facilities or, you know, all the terms for these contract
20 type people who do that sort of work. But what are you
21 asking? I mean specifically. I mean, who did the work or
22 who -- who made sure the work got done?

23 Q I'm following up on what you had stated about you

1 would -- you would check to see that the planes were --
2 the work was being done and the planes were going to be
3 delivered.

4 A Yeah. Well, then there was -- usually there was
5 somebody within Shorts who was responsible for that. Just
6 as Frix was responsible for the contract, there would be
7 somebody responsible to see the work got done.

8 Q Do you remember who that person would be in 1985
9 in Shorts?

10 A I am not certain without looking at the
11 employment record. It's changed. And I'm not sure of the
12 exact date when it changed. If you can tell me who was
13 there at that time, I can say, yeah, he was the guy who
14 was doing it, because I know, you know --

15 Q Would it be -- would the person who was in Shorts
16 who had the responsibility of seeing to the work being
17 done on the planes, their delivery, be based in Arlington?

18 A Oh, yeah.

19 Q And how would you check with that particular
20 person?

21 A Literally walk down the hall. I mean, you know,
22 he's -- he's two or three doors from mine.

23 Q Do you know where Henson Aviation had its main

1 operation?

2 A Yes. It was Salisbury, Maryland. That's his
3 headquarters and his maintenance operation.

4 Q Do you know if Henson Aviation had a particular
5 location where they principally kept their planes?

6 A That would have been the primary place, but any
7 airline has its aircraft all over its route system. And
8 any particular night they could be in a number of places.
9 And the following night they would be in different places.

10 Q Do you know why planes going to Henson Aviation
11 were delivered in Pennsylvania?

12 A If they were delivered in Pennsylvania, it was
13 because that's probably where we were having the work
14 done. And it's quite common to have the new operator pick
15 the aircraft up where you're having the work done. So if
16 he's not happy with the condition, you can correct any
17 deficiencies or discrepancies prior to his acceptance of
18 the aircraft.

19 Q In the deals with Chancellor Corporation do you
20 know if Chancellor ever received the aircraft?

21 A No.

22 Q No, you don't know, or, no, they didn't?

23 A I don't know. No, I don't know.

1 Q Did you keep any records of where particular
2 elements of the negotiations with Henson took place?

3 A No.

4 Q Do you keep a travel log of where you've gone and
5 why?

6 A No, I don't keep a formal travel log.

7 Q Do you keep any kind of records that would show
8 your travel?

9 A Not that far back. We have -- you know, just
10 keep track of what I'm doing so that when I'm asked what
11 I'm doing and what I've done I can -- you know, I know;
12 but, no, not keeping an extended diary of where I've
13 traveled and who I've seen.

14 Q Do you have any involvement with obtaining and
15 selling of parts by Shorts (USA)?

16 A No. If people want parts, I refer them to our
17 parts people.

18 Q That's somebody else's job?

19 A Yes, that's someone else's.

20 Q In 1985 after the planes were leased to Henson
21 and the deal was finalized did they ever contact you
22 regarding those particular leases?

23 A Not that I can recall. Normally once the

1 aircraft is in that -- that ends my involvement.
2 Obviously if they had a problem, I'm their salesman. You
3 know, they would call me and say I've got a problem. Can
4 you help me? And again I would refer the problem to the
5 technical people and request that they take care of my
6 customer.

7 Q When customers contact you during a lease term
8 with a problem, what's a typical kind of problem that they
9 have?

10 A Well, if they were -- normally once the aircraft
11 is in and running, okay, then that's it. They don't
12 have -- if they -- when they first got it it didn't have
13 something they thought it was going to have, they might
14 call me and say I thought it was going to have this. Why
15 doesn't it have this? And then I'd have to, you know,
16 explain or -- or have somebody else explain.

17 Normally during the course of a lease I wouldn't
18 be contacted by the lessor -- pardon me. The lessee
19 unless he wanted to do something like either shorten the
20 term of the lease or extend the term of the lease, in
21 other words, business matters.

22 He -- he really wouldn't be calling me up unless
23 he discovered something terribly wrong with the aircraft

1 and quite different from the way it was represented to
2 him. And I can't recall one of those instances.

3 Q If somebody called up -- if one of your customers
4 called up to Shorts to extend a lease term, for example,
5 what would you have to do in order to do that?

6 A Well, first of all, I would go see him and find
7 out exactly what it was. I mean, you know, especially if
8 he wished to shorten the term of the lease. You find out
9 are you in financial difficulties or are you just changing
10 your mind. And then the salesmanship goes back into work.

11 Okay. And if he wants to extend a lease, then I
12 would probably write up a -- a one-page little letter
13 requesting extension and bring it back and give it to the
14 credit -- you know, Mr. Brooks is the, as I said, contact
15 with the credit committee, because that would be a credit
16 issue then. Do you want to extend it?

17 And then the same thing if the guy said he
18 absolutely had to shorten the lease, he just couldn't
19 survive without shortening the lease. I would bring that
20 back; you know, have him write that up and bring it back
21 and submit it to the credit committee for their
22 assessment.

23 You know, are we better off shortening the lease

1 or are we better off sticking with our guns and trying to
2 make him keep it for the term of the lease? And, as I
3 said, those are -- those are financial decisions. I mean,
4 not mine.

5 Q And once you heard back from Mr. Brooks on the
6 decision what would you do typically?

7 A Well, then I would relay it to him. You know, I
8 would probably go see him on a matter of that
9 significance, you know.

10 Q Were you involved in the lease of aircraft to
11 Sunbird Airlines in 1985?

12 A Yeah, if that's when it took place. It was --
13 Sunbird was my customer.

14 Q How long had Sunbird been a customer of Shorts?

15 A I'd have to go to the record, because I can't
16 recall the exact year that we began talking to them; but I
17 certainly was talking to them in 1985. And -- and I'm not
18 sure. I think -- I believe that was the first year I
19 talked to them.

20 Q Do you recall how the lease of aircraft in 1985
21 came about?

22 A Sunbird was in -- it's in North Carolina; was
23 expanding or wanting to expand. And I was talking to them

1 about using our aircraft. And I talked them into taking
2 some of our aircraft as part of their expansion.

3 Q Do you remember who called whom?

4 A I had enough contact with them and their
5 president that he could have either called me or I could
6 have called him. I can't recall how it was initiated.
7 And, as I said, I had continuous contact with them both,
8 you know, just by going to see them and staying in touch.

9 Q Do you know where in North Carolina they have
10 their place of business?

11 A When they -- when I first called on Sunbird, they
12 were in -- it was Denver, North Carolina, an airfield
13 called Little Mountain north of Charlotte. Then they
14 moved to Charlotte. And I can't recall when -- when they
15 moved, but -- so in '85 I'm not certain which location
16 they were at. Initially they were Denver, North Carolina.
17 And then they later moved to Charlotte, North Carolina, 40
18 miles away.

19 Q Do you know where they have their -- principally
20 keep their planes?

21 A Yes. Initially it was in Little Mountain.
22 Denver, North Carolina, Little Mountain Airport. And then
23 they moved to Charlotte. And then they finally put the

1 maintenance in Hickory, North Carolina, but I think that
2 was after '85. I -- so it's always been in that -- in
3 that immediate area of Charlotte, either Charlotte itself
4 or the nearby airports where they keep their maintenance.

5 Q Do you know why in some of the leases to Sunbird
6 in addition to a flat monthly fee there was an hourly
7 charge as well?

8 A The hourly charge, if there was one there, would
9 be a -- a -- what you would call a maintenance reserve or
10 a component reserve. It's -- it's a reserve against wear
11 and tear on major components.

12 Q Could you explain to me how that creates a
13 reserve, maintenance reserve, by having an hourly charge?

14 A They pay so much per hour. That goes into an
15 account which then is used if the airplane is given back
16 to, in affect, offset the wear and tear they've put on the
17 designated major components; major components usually
18 being engines, propellers and landing gear.

19 And those components have very expensive repair
20 schemes. And if an operator flew the aircraft for a short
21 period of time and gave it back, he's put a certain dollar
22 amount of wear and tear on those components. And if he
23 doesn't repair them, somebody else will have to. And it's

1 got to be paid.

2 Q What happened to the reserve fund at the end of
3 the lease term?

4 A It would depend on the term of the lease -- the
5 conditions of the lease whether it was returned or kept
6 or -- you know.

7 Q The deal with Sunbird, was it -- were the
8 documents done the way the documents were done by Henson,
9 that is, by Mr. Frix?

10 A If it was at that time, yes. The same thing.

11 Q And again in the dealings with Sunbird were the
12 terms brought back to Mr. Brooks for approval?

13 A Correct.

14 Q Do you recall being involved in the lease of
15 Shorts (USA) aircraft to Chautauque Airlines in 1985?

16 A I don't think I was involved in that. It was one
17 airplane?

18 Q As best I can tell, yes.

19 A Yeah. I -- because Chautauque was not my
20 customer at that point. I believe it was -- it was Mr.
21 Fred Austin who talked to that -- the president was a guy
22 named Joel Hall. And he and Fred were old friends that
23 had gone back to the beginning of the business. And at

1 that point I think -- I believe Fred was the president
2 of -- of us at that time.

3 Q When you say he was president, do you mean of
4 Chautauque Airlines?

5 A No. Joel Hall was president of Chautauque
6 Airlines. Fred Austin was president of Shorts. And Joel
7 is the sort of guy that would pick up the phone and call
8 the president and tell him what his needs were.

9 Q Your recollection is then that you were not
10 involved in that deal with Chautauque in '85?

11 A I would have to look at the records. I -- I may
12 have had some incidental side thing of it, but I was not
13 calling on Chautauque. And I was not -- at that point.
14 And I was not writing deals with Chautauque.

15 Q Do you know where Chautauque has their main base
16 of operation?

17 A Yeah. It's Jamestown, New York.

18 Q Do you know if that's where they keep their
19 planes primarily?

20 A Yeah.

21 Q All right. Were you involved in the lease of
22 planes to Fisher Brothers Aviation --

23 A Yes.

1 Q -- in 1985?

2 A Yes. If that's when the lease took place, I did,
3 because they were my customer at that time.

4 Q Do you remember how those transactions came about
5 with Fisher Brothers?

6 A Okay. I cannot remember when I first started
7 calling on them, but it was prior to that. They were my
8 customer as far as I know from the beginning. I don't
9 know of anybody else who called on them.

10 I called on them regularly. And I was
11 continually trying to convince them to move up to Shorts
12 equipment. They were flying smaller aircraft. And
13 somewhere along in there I guess -- rely on the record as
14 to when they took them, but they did take some Shorts
15 aircraft.

16 Q Do you remember if they called you or you called
17 them?

18 A No, I don't remember. I called them and -- the
19 first time and then went out to see them. And then after
20 that it was -- as you establish the relationship they --
21 they have called me or I called them. I went to see them
22 quite regularly. And I would go in and see them and talk
23 to them about their requirements and -- and what we could

1 do for them.

2 Q Again, when you would call them, you would be
3 calling them from Arlington?

4 A Again, from there or from on the road. When I
5 was traveling around you would keep checking on
6 opportunities, making calls from a number of places.

7 Q And as with the other transactions would the --
8 would you bring back from your discussions with Fisher the
9 terms and present them to Mr. Brooks?

10 A Right. Right. I would write up a -- a letter of
11 intent or a letter -- a memorandum of understanding or
12 whatever term suited the mood of the moment and outlining
13 term and payment and -- and get them to sign it and sign
14 it myself so -- and bring it back to Mr. Brooks for -- you
15 know, for credit committee approval and go from there.

16 Q And as with the other transactions, would the
17 documents with Fisher be created by Mr. Frix or whoever
18 was in the Arlington office at the time?

19 A Mr. Frix or whoever had that responsibility.

20 Q Were you involved in the lease of Shorts aircraft
21 in 1985 to Comair, Incorporated?

22 A No. No. Comair was not my customer.

23 Q Do you know whose customer they were?

1 A They probably were Mr. Brooks's, because he did
2 have people he dealt with; but I'm not certain. That's
3 speculation. You would have to look at the record.

4 Q Did you have any involvement in the sale of two
5 aircraft to a couple named Yohanan in California in 1985?

6 A No.

7 Q Do you know where Fisher Brothers had their main
8 place of operation?

9 A Yes. It's Galion, Ohio. G-A-L-I-O-N, Ohio.
10 It's near Mansfield, Ohio. About half way between
11 Columbus and Cleveland.

12 Q Is that where they primarily kept their aircraft?

13 A That was their headquarters, their maintenance.
14 The whole airline was there really. A very small airline.

15 Q Do you have any memory of any of your -- any of
16 these customers that you dealt with in 1985 calling you
17 after the leases had been executed with problems?

18 A No, I can't recall anything specific. They --
19 they -- obviously if they had a problem that they thought
20 I should help them with, they would call me; but I can't
21 recall any specific instance.

22 Q Do you know where the executed leases were kept?

23 A No. I assume they were kept in -- in file

1 cabinets in the office, but I don't know.

2 Q Did you ever take customers' staff somewhere to
3 test Shorts aircraft or to see Shorts aircraft?

4 A Yes. Usually you took the aircraft to their
5 facility. Like I -- I've taken an aircraft to Galion for
6 Fisher Brothers. I've taken an aircraft I believe to
7 Salisbury.

8 And I probably took one to Sunbird, too, you
9 know, down -- that's very typical in our business to take
10 the aircraft to the customer's base, his headquarters, so
11 that he and any of his staff can see the aircraft, ride in
12 it, look at it, ask questions about it.

13 So it very possibly -- in all three of those
14 instances I -- again, I have to look at the records to see
15 if it was done; but it's not unusual for you to do that.
16 It's very common.

17 Q Do you remember instances of taking their
18 personnel somewhere else to look at Shorts aircraft?

19 A No, but that's done all the time, too, where
20 you -- you can't get the aircraft to them. You will take
21 them to another operator who has the aircraft and -- and
22 show them the aircraft.

23 Q In those instances where you've taken them

1 somewhere else, there's not one specific place you would
2 take them to view the aircraft?

3 A Well, you would take them to the operator of the
4 aircraft such as Reading, Pennsylvania, or, what is it,
5 Harrisburg where we had two different operators that
6 operated our equipment and were very cooperative. Those
7 are the two that I've used when I had to -- you know, when
8 I needed to show somebody the airplanes.

9 Q Do you remember any other customers you had in
10 1985 other than Henson, Sunbird and Fisher Brothers?

11 A Well, there are undoubtedly other people I called
12 on; but, again, without looking at the record I couldn't
13 see who else there would have been that I rented aircraft
14 to or sold aircraft to.

15 Q You don't remember any others?

16 A No, I don't remember any others.

17 Q A comment you made earlier. You said it was your
18 job to get non-working aircraft working. Did you mean
19 planes that weren't physically operating repaired or did
20 you mean getting --

21 A No. What I meant was finding a home for them.
22 If the aircraft was parked and didn't have a -- you know,
23 somebody using it, my job was to find an airline or

1 operator to take the aircraft and use it and pay rent on
2 it or purchase it.

3 Q Did you have any other offices outside Arlington
4 in 1985?

5 A We had an office in California at Newport Beach.
6 I don't know -- that office has been closed since then,
7 but I don't know when it was closed.

8 Q Could you estimate how many days you were on the
9 road in 1985?

10 A Probably half of them, I would say. That's a
11 pretty good rule of thumb for aircraft salesmen. You
12 spend about half your time traveling.

13 Q How would you learn of the capabilities of Shorts
14 aircraft which you were selling or leasing?

15 A Well, we have manuals on the aircraft, brochures,
16 you know, technical information. You study that. You
17 talk to the operators who are using it to -- you know, to
18 verify that what's being said about the aircraft is the
19 same as what you're telling the customers.

20 Q These manuals and documents that you referred to,
21 where were they kept?

22 A We would have those in the office, you know, in
23 our office in Arlington. You also usually carry some of

1 them with you. You know, you carry some of the material
2 with you.

3 Q If a customer had a specific question about the
4 capability of one of your planes and you didn't know the
5 answer, how would you find out?

6 A If it was very detailed, I'd go to Belfast,
7 because that's -- you know, you haven't mentioned that
8 yet; but Belfast, Northern Ireland, is where the airplanes
9 are built. And that's where all the engineering staff is.
10 And the design people and the product support is -- is
11 headquartered over there and where it's run from. And the
12 parts are run from there.

13 So if it was more than just, you know, a fairly
14 easy question that -- in the sort of material that you
15 carry, you would probably have to go there to get answers.

16 Q Were you able to get answers to that kind of
17 questions from staff in the Arlington office?

18 A It would depend again on how detailed it was, how
19 difficult a question it was. The easy ones, obviously we
20 had those, you know; but if you're talking about the real
21 stuff of design, high performance -- I mean detailed
22 performance, that sort of thing, that was Belfast. You
23 would go there.

1 Q Just to clarify. When you say the easy questions
2 we had the answers, you mean you had the answers in the
3 Arlington office?

4 A Perhaps in my briefcase, but the briefcase or
5 Arlington. I mean, just -- you know, we carry brochures
6 that show performance data if that's good enough for the
7 guy; but if he really wants to get down and get the pencil
8 sharp and really know a lot of detail about something, you
9 have to go to the people who designed and built the
10 airplane.

11 Q Do you know if the lease documents were signed by
12 Shorts or the customer first?

13 A I think it could have been either, whichever
14 logistically was -- was the easiest. I didn't always
15 do -- handle the signing of the document.

16 When I did handle it, probably I had gotten a
17 signature at the -- at the company end and then took it to
18 him to get the final one. On the other hand, I could have
19 very easily gotten his signature first and brought it back
20 for signing off, you know.

21 Q Those deals that you did in 1985, did Shorts --
22 was the document signed on behalf of Shorts in Arlington?

23 A I don't know. I mean, the document -- the lease

1 document, I don't sign it. So I don't know where it was
2 signed. Now, the customer, I know it was signed usually
3 at his headquarters.

4 Q Okay. You had just mentioned that on some
5 occasions the customer would sign it. And then you would
6 bring it back and get Shorts to sign it. What document
7 were you referring to?

8 A What I was referring to was the memorandum of
9 understanding, the letter of agreement, the commitment
10 letter, so to speak.

11 Q That particular document or documents were
12 usually signed in Arlington?

13 MR. RANGE: Object to the form of the question.

14 A No. No. The customer would sign it. And then I
15 would bring it back to get it approved, you know.

16 BY MR. TRAMBLIAN:

17 Q Did Shorts have to also sign these memoranda when
18 the deal was approved?

19 A I -- I honestly don't know, because what I do is
20 turn that in to Mr. Brooks. And then it went to the
21 credit committee. And if the credit committee signed that
22 or if they just merely initiated documentation, I'm not
23 sure which way it went. They may have just gone right

1 from that to final lease documentation and said that's our
2 approval. Here's our lease document.

3 Q Do you know where the reserve account was kept?

4 A No.

5 Q Do you know in whose name it was kept?

6 A No.

7 Q Did you or to your knowledge anybody in Shorts
8 keep track of where your leased planes were chiefly
9 hangared or the routes they flew?

10 A No.

11 Q Do you know if Shorts (USA) or Shorts, PLC, ever
12 hangared or kept aircraft at National or Dulles airports?

13 A No. Again, the records will show where the
14 aircraft were. I -- I honestly do not recall aircraft
15 being at -- at either National or Dulles. That doesn't
16 mean they weren't there. It's just that I wasn't the guy
17 who kept track of them. You know, that's the technical
18 side of the house is to -- taking care of the aircraft
19 physically.

20 I know when I go to see an aircraft they're
21 usually in -- up in Pennsylvania. Reading is where we go
22 or they're out in Las Vegas, Nevada, where we put them in
23 long-term storage, you know.

1 Q When are aircraft put in long-term storage?

2 A When you think it's going to be awhile before
3 you're going to find a home for it.

4 Q What facility is there in Las Vegas for that?

5 A It's just an airport. You put them there because
6 of the climate.

7 Q Do you know if Shorts (USA) pays hangar fees to
8 Las Vegas for -- this airport in Las Vegas for storage?

9 A No.

10 Q You don't know or --

11 A I don't know. I don't know.

12 MR. TRAMBLIAN: Thank you, Mr. Crawford. I don't
13 have any further questions.

14 (At 10:55 a.m. the taking of the deposition was
15 concluded.)
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1 I have examined and read the foregoing 38 pages
2 and find the answers contained therein with
3 changes made by me, if any, to be true and
4 correct.

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9 Ronald Gardner Crawford
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CERTIFICATE OF NOTARY PUBLIC/REPORTER

I, Carol A. Lowe, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

Given under my hand this 29th day of March, 1991.



Notary Public in and for the
State of Virginia.

My Commission expires
November 1, 1992.

CHAPTER 11. LICENSE CODE

ARTICLE I. IN GENERAL

§ 11-1. Definitions.

As used in this chapter and as applied to the business, trade or occupation subject to the license taxes hereinafter set forth and not specifically otherwise taxed:

- (a) *Amusement* shall include every person engaged in the conduct of a business or trade enumerated in section 11-65 of this Code.
- (b) *Builder or developer* shall mean any person carrying on or conducting any of the businesses, trades or occupations, or doing any of the things enumerated in paragraph (d) of

this section, or in section 11-67 of this Code, in connection with the improvement or development for sale or rent of properties or structures owned or leased by or otherwise in the control of such builders and developers by force account.

All builders or developers are required to submit to the commissioner of the revenue a roster of all subcontractors within thirty (30) days from date of issuance of building permit, listing name, address and type of work to be performed.

- (c) *Business service* shall include every person engaged in the conduct of a business or trade enumerated in section 11-59 of this Code.
 - (d) *Contractor* shall mean any person accepting or offering to accept orders or contracts for doing any work on or in any building or structure requiring the use of paint, stone, brick, cement, mortar, wood, wallpaper, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead or other metal or any other building material; or accepting or offering to accept orders or contracts to do any electrical work on or in any building or structure; or accepting or offering to accept orders or contracts to do any paving or curbing on sidewalks or streets, public or private property, requiring the use of asphalt, brick, stone, cement, wood or any composition; or accepting or offering to accept order or contracts to excavate earth, rock or materials for foundations or any other purpose; or accepting or offering to accept orders or contracts to construct any sewer of stone, brick, concrete, terra cotta or other material; or accepting or offering to accept orders or contracts to care for plots in cemeteries; or accepting or offering to accept orders or contracts for building, remodeling, repairing, wrecking, razing or demolishing any structure, or for moving any building, or for drilling, boring or digging a well, or for the installation, maintenance or repair of neon signs or air conditioning apparatus or equipment, or for the eradication or extermination of rats, mice, termites, vermin or insects or bugs of any kind; whether such work is done or offered to be done by hourly or day labor, general contractor or subcontract.
- The term "contractor" shall also include any person carrying on or conducting any of the businesses, trades or occupations enumerated in sections 11-64 and 11-64.1 of this Code.

The term "contractor" shall not include persons employed directly on a salary or wage basis by a contractor duly licensed as such under the terms of this chapter.

All contractors are required to submit to the commissioner of the Revenue a roster of all subcontractors within thirty (30) days from date of issuance of building permit, listing name, address, amount of contract, and type of work to be performed.

- (e) *Gross expenditures* shall mean all expenditures incurred in connection with the acquisition or lease of real property, including cash, credits, fees, commissions, brokerage charges and rentals, and all expenditures incurred in connection with the improvement or development of such property by force account, including costs of all labor involved in such improvement or development, cost of materials and supplies, equipment rental or an equivalent charge therefor if equipment is owned by the builder or developer, and any other expenditure of whatever description incurred in connection with the improvement or development by force account of such property. The term "gross expenditures" shall not include amounts expended for interest on or payment of principal of debt incurred in connection with such improvement or development work.
- (f) *Gross receipts* shall mean the gross receipts from any business, profession, trade, occupation, vocation, calling or activity, including cash, credits, fees, commissions, brokerage charges and rentals, and property of any kind, nature or description from either sales made or services rendered without any deduction therefrom on account of cost of the property sold, the cost of materials, labor or service or other costs, interest, or discounts paid, or any expense whatsoever, and shall include in case of merchants the amount of the sale of supplies and goods furnished to or used by the licensee or his family or other person for which no charge is made; provided, however, that the term "gross receipts" with respect to manufacturers and wholesale merchants manufacturing or dealing in articles upon which there is levied a direct excise tax by the United States shall exclude such excise tax payments to the United States government; provided further, that wholesale and retail dealers in petroleum products on which the state levies a motor vehicle fuel tax shall exclude such tax payments to the state; provided, that the tax has first been included in the "gross receipts"; provided further, that retail motor vehicle dealers shall deduct trade-in allowances credited on sales of both new and used motor vehicles; provided further, in computing the gross receipts of licenses under section 11-57 of this Code, the licensees shall be permitted to claim as a deduction the amount of salaries paid to any person employed by them who is duly licensed in the same profession, under such section.

The term "gross receipts" which used in connection with, or in respect to financial transactions involving the sale of notes, stocks, bonds or other securities, or the loan, collection or advance of money, or the discounting of notes, bills or other evidence of debt, shall be deemed to mean the gross interest, gross discount, gross commission or other gross receipts earned by means of, or resulting from such financial transactions, but the term "gross receipts" shall not include amounts received as payment of debts.

The term "gross receipts" shall include the gross receipts from all sales made or services rendered or activities conducted from a place of business within the county, both to persons within the county and to persons outside the county.

In this connection the word "person" shall be construed to include governmental agencies.

The calculation of gross receipts for license tax purposes shall be on either a cash, modified accrual or accrual basis; provided, however, that the basis used must coincide with the system of accounts used by the taxpayer for federal and state income tax purposes. The calculation of gross receipts for a partnership shall be on the same basis used by the partnership on its federal and state partnership income tax return report. This amendment shall be effective for all business license tax assessments done on and after January 1, 1985.

Gross receipts shall not include any receipts earned by any organization that has qualified for exemption under 26 U.S.C. Section 501(c)(6) to the extent such receipts are exempt from United States income tax.

Except for the following, gross receipts shall not include receipts earned by any organization that has qualified for exemption from United States income taxes under any subsection of 26 U.S.C. Section 501(c) other than section 501(c)(6), i.e., the following gross receipts and activities are subject to taxation under this chapter:

- (1) Any receipts which are not exempt from United States income tax.
- (2) Those receipts which are not dues paid by members of the organization but which are exempt from United States income tax to the extent that they exceed two million five hundred thousand dollars (\$2,500,000.00).
- (3) Those receipts which are earned from the activities described in section 11-26(d) (wine and beer sales), section 11-61.1 (restaurants, etc.), section 11-46.2 (mixed beverages), and section 11-69.1 (coin machines).

(g) *Manufacturer. (Repealed, see section 11-66.)*

(h) *Person* shall include individuals, firms, copartnerships, corporations, companies, associations or joint stock corporations; and it shall include any trustee, receiver, assignee, or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a trustee, receiver or other representative duly appointed by a court to liquidate assets for immediate distribution, or a sergeant or sheriff, or any deputy, selling under authority of process or writ of a court of justice, nor shall it include any organization that has qualified for exemption under 26 U.S.C. Section 501(c)(6) to the extent that the receipts of such organization, which by reason of the organization's purposes or activities, are exempt from United States income tax.

- (i) *Personal service* shall include every person engaged in the conduct or a business or trade enumerated in section 11-58 of this Code.
- (j) *Professional and specialized occupations* shall include every person engaged in an occupation enumerated in section 11-57 of this Code.

- (k) *Repair service* shall include every person engaged in the business of repairing, renovating or servicing one or more of those items or articles enumerated in section 11-60 of this Code.
- (l) *Retail merchant* shall include every person engaged in the conduct of a business enumerated in section 11-61 of this Code. The term "retail merchant" is further defined to mean any merchant who sells to others for use only and not for resale.
- (m) *Wholesale merchant* shall include every person engaged in the conduct of a business enumerated in section 11-62 of this Code. The term "wholesale merchant" is further defined to mean every merchant who sells to others for resale only, or who sells to institutional, commercial or industrial users.
- (n) *Hotels and motels* mean any building or group of buildings containing guest rooms, and/or dwelling units which are intended, used, or designed to be rented, let, or hired out for compensation by automobile tourists or other transients, whether such compensation be paid directly or indirectly. This shall include motels, motor hotels, tourist courts, motor lodges, and the like. Daily or weekly rental of units or any sign on the premises making reference to other than monthly rates shall be considered prima facie evidence that a building is a hotel and subject to all hotel restrictions and ordinances.

§11-3. Business, etc., subject to tax.

Each and all of the taxes hereinafter imposed are in all cases imposed upon the privilege of doing business or exercising a profession, trade or occupation in the county, including all phases of the business, profession, trade or occupation conducted in the county.

As to businesses, professions, trades or occupations for which a gross receipts license is levied on persons having a definitely established place of business or maintaining an office in the county, it is the policy of the county to require that all gross receipts derived from the business, profession, trade or occupation shall be included in their licensing basis; provided, that in cases where their business, profession, trade or occupation requires the performance of certain activities without the county, and they become subject to and pay a licensing tax to a foreign taxing jurisdiction based on gross receipts derived from activities conducted within a foreign taxing jurisdiction they shall be permitted to deduct such gross receipts taxed by the foreign taxing jurisdiction in arriving at their licensing basis. In all cases such deduction must first be included in their total gross receipts.

As to businesses, professions, trades or occupations for which a gross receipts license is levied, carried on or conducted only in part within the county limits of the county by persons having no definitely established place of business or maintaining an office within the Commonwealth, it is the policy of the county to subject such persons to the same provisions, conditions and rates that persons having a definitely established place of business or maintaining an office within the county are subjected to; and, in such cases where only part of the business, profession, trade or occupation is so conducted or carried on within the county, the tax liability shall be measured by only that portion of the business, profession, trade or occupation conducted or carried on within the county limits.

In this connection the term "foreign taxing jurisdiction" shall be construed as limited to other counties, cities and towns of the Commonwealth of Virginia. (Adopted 1/1/49, Amended 1-1-53.) (Amended 12-21-74, effective 1-1-75.)

§11-4. Levying of license taxes.

For each and every year beginning with January first of each year and ending December thirty-first following, until otherwise changed, there are hereby levied and there shall be collected the annual license taxes hereinafter set forth in this chapter, except as otherwise specifically provided in this chapter, on persons conducting or engaged in any business, trade or occupation in the county hereinafter set forth in this chapter, which license taxes shall be for the support of the county government, the payment of the county debt, and for other county purposes.

§11-5. Procedure for obtaining license; reconciliation of records and monthly report.

Every person liable to the payment of a license tax under the provisions of this chapter shall make application therefor in writing to the Commissioner of the Revenue at his office in the county court house. The Commissioner of the Revenue shall furnish license application forms in quadruplicate, which forms shall be properly and fully executed by the applicant, and shall contain such information as may be required by the Commissioner of the Revenue. In cases where the license tax is based upon the gross receipts or gross expenditures of the business or occupation to be licensed, the Commissioner of the Revenue shall require a sworn statement from the applicant of the amount of such gross receipts, except in the case of a beginner as hereinafter defined. The Commissioner of the Revenue shall assess such applicant or other person of whom a license is required with the license tax by this chapter and shall furnish the applicant with all copies to be surrendered to the County Treasurer. Upon payment of required license tax to the County Treasurer, the Treasurer shall receipt such payment upon each of the copies of the license application form, retain one and furnish the remaining copies to the applicant for surrender to the Commissioner of the Revenue. The Commissioner of the Revenue shall issue the applicant the copy indicating "Licensee's Copy", and shall furnish the licensee with such tag, button or sign as may be appropriate for display as evidence that a license has been issued.

The Commissioner of the Revenue and the County Treasurer shall reconcile monthly their records with respect to license applications made, license payments received by the County Treasurer, and license certificates issued by the Commissioner of the Revenue; and a combined report thereon shall be submitted monthly to the County Manager. (Adopted 1-1-49, Amended 8-5-70, effective 1-1-71.)

§11-9. Persons liable for license tax to keep records, report of gross receipts.

Every person liable for a license tax under this chapter which is based on gross receipts or gross expenditures shall keep all records and accounts necessary to compute and to verify such gross receipts or gross expenditures, and the report of such gross receipts or gross expenditures shall be taken from such records. All such records and general books of account shall be open to inspection and examination by any authorized representative of the county, and shall be maintained for a period of three (3) years.

Each licensee whose license is measured by gross receipts or gross expenditures shall submit to the Commissioner of the Revenue, not later than January thirtieth of each year, a report of his gross receipts or gross expenditures for the preceding year.

In those cases in which the conduct of the business, profession, trade or occupation involves operations subject to more than one rate or computed on more than one base, as hereinafter set forth, the licensee is hereby required to maintain separate accounts for each such operation and shall be separately licensed for such operation; provided, however, that the licensee may elect to maintain a single account for all operations taxed on gross receipts, in which case the entire business taxed on gross receipts shall be computed at the highest rate applicable to any part of the business taxed on gross receipts.

If any licensee shall fail to maintain the records required in this section, regularly supported by customary vouchers, the Commissioner of the Revenue is hereby authorized and directed to estimate the taxpayer's gross receipts or gross expenditures on the basis of the best evidence he can obtain, and the Commissioner of the Revenue shall make an assessment on the basis of such determination. (Adopted 1-1-49)

§11-59. Business service occupations.

Every person conducting or engaging in any of the following business service occupations, businesses or trades shall pay for the privilege an annual license tax of \$0.35 for each \$100.00 of gross receipts, as hereinabove defined, from the occupation during the preceding fiscal or calendar year; the minimum annual license tax shall be \$25.00.

An airport
Auto damage appraisal service
A bid or building reporting service
A computer time sharing
A drafting service
An engraver
Erecting, installing, removing, storing awnings
Freight, traffic bureau or agency
Hauling or transfer, not in connection with taxicab business
An impounding lot
Inventory service
Job printer, printing shop, bookbinding, duplicating process
A laundering, cleaning, pressing or dyeing establishment
Leasing films for compensation
Microfilming
Motion picture film products and laboratories
Packing, crating, shipping, hauling, or moving goods or chattels for others
Photogrametric engineering
A protective agent or agency
Realty multiple listing service
Renting airplanes
Renting bicycles
Sign painting, window lettering, vehicle lettering
Storage, all types
Swimming pool management
A tabulating or computer service bureau
Taxicab operators
Tree surgery, trimming and removal
U-Drive-It firm or business, daily or mileage charge basis
Vehicular advertising, electric advertising, business advertising, commercial advertising
Other business service occupations

(Amended 5-19-60, effective 1-1-61; amended 6-3-67, effective 1-1-68;
amended 8-5-70, effective 1-1-71; amended 12-19-73 and
12-27-73, effective 1-1-74; amended 12-21-74, effective 1-1-75)

§11-62. Wholesale merchants.

Every person conducting or engaging in any of the following wholesale merchants occupations, businesses or trades shall pay for the privilege an annual license tax of \$0.08 for each \$100.00 of gross receipts from the business during the preceding fiscal or calendar year; the minimum annual license tax shall be \$25.00.

- Automotive
- Chemicals
- Clothing, furnishings
- Coal, coke
- Commission merchants (who take title, others classed as brokers)
- Drugs
- Dry goods
- Electrical, plumbing goods
- Farm products or supplies
- Furniture and house furnishings
- Groceries and foods
- Hardware
- Jewelry
- Lumber, paint and construction materials
- Machinery, equipment and supplies
- Metals and metal work
- Other goods, wares, merchandise
- Paper and paper products
- Petroleum and petroleum products
- Seafood
- Soft drinks
- Sporting goods
- Tobacco and tobacco products (except leaf tobacco)
- Waste materials
- Other wholesale merchants

(Amended 5-19-60, effective 1-1-61; amended 6-3-67, effective 1-1-68;
amended 12-27-73, effective 1-1-74)

12th Judicial Circuit

County of Chesterfield
City of Colonial Heights

JUDGES CHAMBERS

CHESTERFIELD, VIRGINIA 23832

June 23, 1983

ERNEST P. GATES-
JUDGE

D. W. MURPHY
JUDGE

JOHN F. DAFRON, JR.
JUDGE

(804)
748-1333

Jeffrey L. Mincks, Esquire
Office of the County Attorney
P. O. Box 40
Chesterfield, Virginia 23832

Stephen T. Gannon, Esquire
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

Re: American Sterilizer Company
v.
County of Chesterfield, Virginia

Law #3121-81

Gentlemen:

I find that the County of Chesterfield has properly assessed the 1980 Retail Merchants License Tax against American Sterilizer Company.

AMSCO is clearly a merchant. It does not sell from its place of manufacture, exempting it under §12-119 of the County Code, but sells by agents who work out of a central sales office. While this office in Chesterfield neither receives nor has on hand any money or isn't a place for walk-in sales, it is the sales office for AMSCO's field representatives for a five state area. The salesmen receive messages and stenographic services at this office. They send their reports, quotations, and purchase orders to this regional office. They are supervised and evaluated by the regional office and the regional office has a sales quota to meet. It is by salesmen working out of this office that all sales occur (in the Richmond regional area). Sales contracts are forwarded from the regional office to AMSCO home office in Pennsylvania where they are accepted. All goods are shipped f.o.b. manufacturing plants (from other states) to the purchaser, and all sales receipts come to the home office in Pennsylvania.

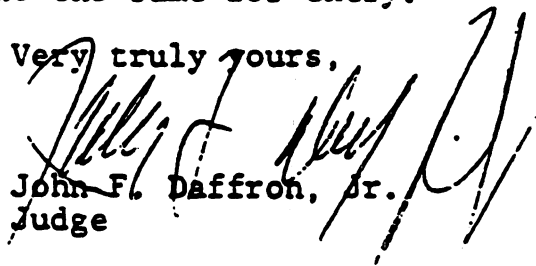
The existence of the regional sales office and its activities create a legally sufficient nexus to impose a tax on AMSCO, a foreign corporation. The Commissioner of

Jeffrey L. Minck, Esquire
Stephen T. Gannon, Esquire
June 23, 1983
page two

Revenue correctly assessed a Merchant's Tax based upon gross receipts for sales within the state of Virginia by salesmen working out of the Chesterfield Office. The Commissioner may not assess a business license tax upon the proceeds of sales out of the state of Virginia because of lack of apportionment and the possibility of multiple tax burdens on interstate commerce.

Mr. Mincks will prepare another Order consistent with this letter and, after presentation to Mr. Gannon for objection and endorsement, present the same for entry.

Very truly yours,


John F. Daffron, Jr.
Judge

wgwc

1984 SESSION

LD1595574

HOUSE BILL NO. 386

Offered January 20, 1984

A BILL to amend the Code of Virginia by adding a section numbered 58-266.5:2, to provide for the apportionment of gross receipts for license taxation.

Patrons—Stambaugh, Almand, and Marshall

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 58-266.5:2, as follows:

§ 58-266.5:2. Apportionment of gross receipts.—The governing body of any county, city or town may provide by ordinance for apportionment of the gross receipts of interstate corporations for purposes of license taxation, in the manner provided for apportionment of income in §§ 58-151.041 through 58-151.050.

Official Use By Clerks

Passed By
The House of Delegates

without amendment ☐

with amendment ☐

substitute ☐

substitute w/amdt ☐

Passed By The Senate

without amendment ☐

with amendment ☐

substitute ☐

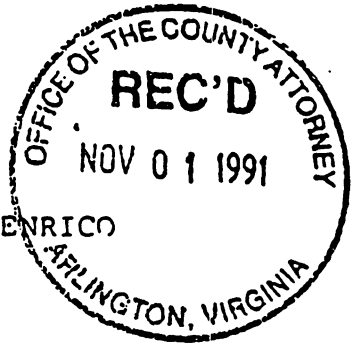
substitute w/amdt ☐

Date: _____

Date: _____

Clerk of the House of Delegates

Clerk of the Senate



V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

RICHARD C. ROBERTS,

Plaintiff,

v.

COUNTY OF HENRICO,

Defendant.

Case No. CL83-311

CL 83-400311

ORDER

On August 2, 1991, came the parties, by counsel, for oral argument upon Plaintiff's Application to Correct Erroneous Assessment and the Application was argued by counsel.

Based on its review of the pleadings, memorandum, Joint Stipulation of Facts, Plaintiff's Admissions, and the authorities cited by the parties, the Court is of the opinion that the plaintiff maintained an office within Henrico County in conjunction with his business as a consulting engineer during tax years 1980 through 1983 and that plaintiff was subject to a Henrico business license tax for those years. See Commonwealth v. Manzer, 207 Va. 996 (1967). The Court further finds that Roberts' clients were not located in Virginia; that he maintained no office outside his home in Henrico County; and that he was properly subject to Henrico business license tax on his total gross receipts all of which were invoiced and received by mail at his Henrico County

home. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 280 (1977). The Court further finds that Roberts was not licensed and did not pay tax in any location outside Virginia and that apportionment of tax is not appropriate. Wisconsin v. J. C. Penney Co., 311 U.S. 435 (1940); and Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 437 (1980). Accordingly, the Court hereby denies the Plaintiff's Application to Correct Erroneous Assessment and for Refund of Taxes and ORDERS judgment for the defendant.

ENTER: 9/19/91.

Seen:

Rhysa Griffith Smith p.d.
Rhysa Griffith Smith
Assistant County Attorney
Joseph P. Rapisarda, Jr.
County Attorney
County of Henrico
P. O. Box 27032
Richmond, Virginia 23273

Samuel E. Kula
A Copy Teste:
Margaret B. Baker, Clerk

Julia McElroy
Deputy Clerk

September 20, 1991
1 copy to South
1 copy to Lewane

Seen and Objected to:

Michelle S. Lewane p.q.
Michelle S. Lewane, Esq.
Hubard, Marchant, Samuels & Gayle, P.C.
1205 East Main Street, Fourth Floor West
Richmond, Virginia 23219

III. ASSIGNMENT OF ERRORS

1. The trial court erred in holding that the County's assessments of an unapportioned business license tax were lawful and in refusing to correct the erroneous assessments made against Short Brothers.

2. The trial court erred in holding that Arlington County could, consistent with the Commerce Clause and Due Process Clause of the United States Constitution, base its business privilege license tax on 100% of Short Brothers' multi-state income from:

(a) Sales of aircraft which were manufactured overseas and delivered directly to customers outside Virginia; and

(b) Leases of aircraft which were delivered to lessees outside Virginia and which never entered Virginia.

3. The trial court erred in permitting the County to introduce testimony through an auditor of an alleged administrative practice adopted by the Commissioner of Revenue for apportioning the County's business license tax, and in sustaining the County's assessment because of the alleged adoption of the administrative practice when:

(a) The administrative practice was not authorized by any statute or ordinance; and

(b) The administrative practice was not written, published, or in any way communicated to Short Brothers.