

FLIGHT-WATCH

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WHAT ARE THE LEGAL CONSEQUENCES FOR A FOREIGN NATIONAL OF IMPROPERLY REGISTERING AN AIRCRAFT IN THE USA?

I. Improper Registration

In the March 2011 Issue of Flightwatch, we discussed a situation in which clients of the author who are foreign nationals improperly registered their aircraft in the USA employing an American limited liability company to hold title to the aircraft. The problem with that registration was that since a limited liability company was employed, the registration form declared that the principals of the company were Americans when they were not. The aircraft were seized on the theory that the registration was fraudulent. This issue of Flightwatch will discuss the statutes and regulations employed to remit the forfeiture and regain custody of the aircraft, a process which is currently underway as this article is written.

II. Claims to Contest Forfeiture and Petitions for Remission of Forfeiture

One of the aircraft was seized by the Drug Enforcement Administration (the "DEA"). The notice of seizure letter from the DEA referred to 19 U.S.C. § 1618 and 18 U.S.C. § 983.

19 U.S.C. § 1618 deals with petitions for remission of forfeiture. Essentially, the code section says that if the forfeiture of the property occurred without willful

negligence and with no intention on the part of the petitioner to defraud or violate the law, then the forfeiture can be remitted upon terms that are just and reasonable or the forfeiture can be discontinued.

There are regulations to be followed with regard to administrative forfeitures, and these are found in 28 C.F.R. § 91.1(a). Under that regulation, remission or mitigation of forfeitures within the Federal Bureau of Investigation is delegated to the Forfeiture Counsel who is the Unit Chief Legal Forfeiture Unit, Office of the General Counsel, within the Drug Enforcement Administration.

In the matter that I am handling, the decision was made to simultaneously and concurrently file both a petition for remission of forfeiture and also a notice of claim to contest the forfeiture. The claim provisions are found in 18 U.S.C. § 983 and require that the claim be filed within 30 days after the final publication of a notice of seizure. 18 U.S.C. § 983(a)(2)(A), (B). The claim to contest forfeiture must identify the property, state the claimant's interest, and be made under oath and subject to penalty of perjury. *See* 18 U.S.C. § 983(2)(A)(C)(i),(ii),(iii). The claim of forfeiture does not require the posting of a bond. 18 U.S.C. § 983(2)(A)(E).

My clients had about five days within which to file the claim to contest forfeiture due to a delay in the transmittal of the notice of seizure. It was not possible to file a sworn notice of claim timely. The undersigned spoke with counsel at the DEA, and he advised to go ahead and file a claim to

contest forfeiture even if it was not verified. He had indicated that the claim to contest forfeiture would be defective and would be rejected, but that would give my client thirty additional days within which to amend the claim and file it properly. In fact, that is the procedure we followed, and it worked.

In due course, the Drug Enforcement Agency in Washington referred the case to the United States Attorney's Office in Tampa, Florida for a resolution. At or about the same time, the two aircraft seized by United States Customs were the subject of a notice from customs officials indicating that the forfeiture of the aircraft would be remitted on four conditions:

1. The claimants would execute hold harmless agreements in favor of U.S. Customs;
2. The claimants would pay U.S. Customs, as a penalty thirty percent of the appraised value of the aircraft;
3. The claimants would pay U.S. Customs all the storage fees incurred while storing the seized aircraft; and
4. The claimants would properly register their aircraft with the FAA.

III. Conclusion

The matter being handled by the undersigned involved two aircraft seized by U.S. Customs and one aircraft seized by the DEA. Essentially, the procedures followed were very similar with regard to both government agencies. It does appear that the aircraft owners will succeed in avoiding forfeiture of their aircraft. However, they are going to be required to pay very stiff penalties as outlined above. It is extremely important to properly structure the ownership

of aircraft to be operated by foreign nationals under the authority of the United States registration. This article of *Flightwatch* along with the March issue should underscore the importance of properly registering aircraft to avoid the potential loss of the aircraft and the imposition of large fines and penalties as a condition to having possession of the aircraft restored to the owner.



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