

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date May 1, 1962

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation  
From John W. Benoit, Asst. Atty. General Dept. " " "  
Subject Maine Aviation Corporation--Reg. #02820

Your memorandum of April 26, 1962, is answered below.

I have reviewed the bill of sale between Bar Harbor Airways, Inc., hereinafter called the seller, and Maine Aviation Corporation, hereinafter called the purchaser, together with the minutes of the special joint meeting of the stockholders and directors of the seller.

The bill of sale recites that the consideration for the transfer of the plane was \$1 and other consideration. The parties in the present matter are the purchaser of the aircraft and the State Tax Assessor. The consideration expressed can not be denied.

The statement of counsel for the purchaser given at the reconsideration hearing, to wit: that there was no sale but only a distribution of assets, disregards the existence of corporate entities separate and distinct from their shareholders.

The bill of sale indicates a transfer of tangible personal property from one corporation to another corporation. The minutes indicate the manner in which the stockholders and directors of the selling corporation shall regard the event after its consummation.

We are not concerned here with a sale between stockholders of corporations nor are we here concerned with a transfer between the directors of corporations.

The contention of the purchaser that the transaction concerned two corporations having the same stockholders loses sight, again, of the corporate entities of the seller and the purchaser.

The transfer between seller and purchaser was such as to render the latter liable for use tax when that corporation made use of the plane for charter flights and other purposes not connected with selling the plane.

I have attached the original bill of sale and minutes to this memorandum together with copies of same for your records.

JWB:epd

FEDERAL AVIATION AGENCY

BILL OF SALE

For and in consideration of \$ 1.00 A.O.C. the undersigned owner of the full legal and beneficial title of the aircraft described as follows:

AIRCRAFT MAKE AND MODEL

**CESSNA 310B**

SERIAL NO.

**33749**

REGISTRATION MARKS

**N- 6649B**

does this 9 day of February 19 59  
hereby sell, grant, transfer, and deliver all of his right, title and interest in and to such aircraft unto:

(Name and address of purchaser, same to be printed in full)

**MAINE AVIATION CORPORATION**

**LEWISTON-AUSTON AIRPORT**

**AUSTON, MAINE**

and to its executors, administrators, and assigns, to have and to hold singularly the said aircraft forever, and certifies that same is not subject to any mortgage or other encumbrance except

TYPE OF ENCUMBRANCE	AMOUNT	DATE
IN FAVOR OF		

In testimony whereof I have set My hand and seal this 9 day of February 19 59

NAME OF SELLER

**BAR HARBOR AIRWAYS INC.**

BY (SIGN IN INK)

(If authorized for co-ownership, all must sign)

TITLE

**PRESIDENT**

(If signed for a corporation, partnership, owner, or agent)

ACKNOWLEDGMENT

State of **MAINE**

County of **HANCOCK**

and acknowledged that he executed the same as his free act and deed, and if said bill of sale be that of a corporation swore that he was duly authorized to execute the same. Given under my hand and official seal the day and year written above.

(SEAL)

On this 9 day of February, 19 59  
before me personally appeared the above named seller, to me known to be the person described in and who executed the foregoing bill of sale, and if said bill of sale be that of a corporation swore that he was duly authorized to execute the same. Given under my hand

MY COMMISSION EXPIRES

8-9-59

NOTARY PUBLIC

RETAIN THIS COPY

**SPECIAL JOINT MEETING  
OF  
STOCKHOLDERS AND DIRECTORS  
OF  
BAR HARBOR AIRWAYS, INC.**

\* \* \*

In accordance with the foregoing Waiver of Notice a Special Joint Meeting of the Stockholders and Directors of BAR HARBOR AIRWAYS, INC. was duly held on February 2, 1959, at the office of BAR HARBOR AIRWAYS, INC., Bar Harbor, Maine, at two o'clock in the afternoon.

The meeting was called to order by the Chairman, Joseph Caruso, and the Clerk, Ralph Masterman, was present and kept the records.

There were present the following named Stockholders each owning the number of shares set opposite their names:

Joseph Caruso	1500 shares
Thomas Caruso	1499 shares
Ralph Masterman	1 share

making a total of 3000 shares or all of the stock issued and outstanding.

All of the Directors of the corporation were present.

The Chairman stated that the Stockholders of this company had become interested in conducting flight operations and aircraft sales at Lewiston, Maine and Portland, Maine. He noted that the Stockholders of this corporation had formed a corporation called Maine Aviation Corporation with its principal office in Portland, Maine and that the Stockholders of that corporation held their stock in that corporation in the same proportion as the Stockholders of this corporation, they being one and the same persons, with the exception

WAIVER OF NOTICE  
OF  
SPECIAL JOINT MEETING  
OF  
STOCKHOLDERS AND DIRECTORS  
OF  
BAR HARBOR AIRWAYS, INC.

We, the undersigned, being all the members of the Board of Directors and all of the Stockholders of the above named corporation, organized under the Laws of the State of Maine, do hereby waive notice of the time and place of a Special Joint Meeting of the said Board of Directors and Stockholders, and of the business to be transacted at said meeting.

We designate the second day of February, A.D., 1959, at two o'clock p.m. as the time and the offices of Bar Harbor Airways, Inc., Bar Harbor, Maine, as the place of the meeting of said Board of Directors and Stockholders, jointly, and we do hereby waive all the requirements of the Laws of the State of Maine and of the By-Laws of the company as to notice of the time, place and object of the meeting.

Dated: February 2, 1959,

Joseph Caruso

Thomas Caruso

R. C. Masterman

A True Copy  
ATTEST:

  
Clerk

Bar Harbor Airways, Inc.

Stockholders of Maine Aviation Corporation, in proportion to their holdings of capital stock of BAR HARBOR AIRWAYS, INC., common capital stock of Maine Aviation Corporation in an amount, determined by the par value thereof, equal to the then book value of said aircraft as shown on the books of BAR HARBOR AIRWAYS, INC. as of the date of said transfer.

4. BAR HARBOR AIRWAYS, INC. shall have the right, but not the obligation, to require its Stockholders to assign and transfer back to it, BAR HARBOR AIRWAYS, INC., for retirement, a sufficient number of shares of the capital stock of BAR HARBOR AIRWAYS, INC., in proportion to said Stockholders' holdings of the same, at the book value thereof per share determined immediately prior to the transfer of said aircraft, as will equal the total book value of said aircraft as shown on the books of said BAR HARBOR AIRWAYS, INC. immediately before said transfer.
5. Nothing herein contained shall prohibit or be construed to prohibit, notwithstanding the foregoing language, Maine Aviation Corporation from issuing common capital stock to not more than one stockholder other than persons who are Stockholders of BAR HARBOR AIRWAYS, INC., provided that after the issuance of such stock to said one other person, the control of Maine Aviation Corporation (meaning more

of a Stockholder in this corporation and a Stockholder in Maine Aviation Corporation who are holding one share each for the purpose of qualifying said corporation, said single shares in fact being owned by the other Stockholders of both corporations respectively.

After considerable discussion it was, upon motion duly made and seconded, unanimously

VOTED: To adopt the following plan of reorganization of this company:

#### PLAN OF CORPORATE SEPARATION AND REORGANIZATION

The following plan of corporate reorganization, hereinafter referred to as the Plan, is hereby approved, adopted and agreed upon:

1. This Plan is designed, but not by way of limitation, to take advantage of Section 368 (a) (1) (D) of the Internal Revenue Code of 1954 as amended, said Section and this reorganization perhaps being known as a "D" reorganization.
2. BAR HARBOR AIRWAYS, INC. shall assign, transfer, convey and deliver to Maine Aviation Corporation, a Maine corporation having its principal office in Portland, Maine, a certain aircraft known as a Cessna 310B, the same being a twin engine airplane now owned by BAR HARBOR AIRWAYS, INC., said transfer to take place as soon as reasonably convenient to BAR HARBOR AIRWAYS, INC. and Maine Aviation Corporation.
3. Maine Aviation Corporation shall at the time of the transfer of said aircraft, distribute to the

than 50% of the voting stock outstanding) shall be in Stockholders of Maine Aviation Corporation who are also the controlling Stockholders of BAR HARBOR AIRWAYS, INC. in the same proportion as their holdings in said BAR HARBOR AIRWAYS, INC.

Upon motion, duly made and seconded, it was unanimously

VOTED: To authorize and empower the President and/or Treasurer of BAR HARBOR AIRWAYS, INC. to execute all instruments and take all other action necessary or proper for the implementation of said Plan of Reorganization.

Upon motion, duly made and seconded, it was unanimously

VOTED: To ratify and affirm any acts or actions taken by the officers of BAR HARBOR AIRWAYS, INC. or Maine Aviation Corporation in any matters heretofore done in contemplation of the enactment of Reorganization of BAR HARBOR AIRWAYS, INC.

No further business coming before the meeting, it was

VOTED: To adjourn.

A true record.

ATTEST:

R. C. Masterman  
Clerk

True copy  
Attest:

*R. C. Masterman*  
Clerk

Bar Harbor Airways, Inc.

# STATE OF MAINE

Inter-Departmental Memorandum Date April 26, 1962

To John W. Bessit, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Maine Aviation Corporation Reg. #82820

Attached hereto is the file in connection with our assessment of February 6, 1961 against the above corporation, which assessment is presently pending reconsideration. Also attached is a letter, together with enclosures, received today from Mr. Preti, attorney for the above corporation, having to do with the transfer of an airplane from Bar Harbor Airways, Inc. to Maine Aviation Corporation. This transfer, which has been the basis of a portion of the use tax assessment against Maine Aviation Corporation, on the ground that while the plane was purchased for resale it was subsequently used by Maine Aviation Corporation so that use tax liability was developed, is the only subject in dispute and is the only point on which reconsideration is being held up.

Will you please review this material and advise whether the transfer between Bar Harbor Airways and Maine Aviation Corporation was such as to render the latter corporation liable for use tax when that corporation made use of the plane for charter flights and other purposes not connected with selling the plane.

EHJ:j  
Enc.

