



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 29th day of June, 2007

Application of

ABX AIR, INC.

for a disclaimer of jurisdiction

Docket OST-2007-28087

ORDER DISCLAIMING JURISDICTION

Summary

By this order, we confirm our oral action of May 25, 2007, disclaiming jurisdiction over the proposed reorganization of ABX Air, Inc. ("ABX").

Request for Disclaimer

ABX, a Delaware corporation, is an operating air carrier holding interstate and foreign scheduled all-cargo certificate authority.¹

On April 27, 2007, ABX filed an application in accordance with 49 U.S.C. § 41105 requesting that the Department disclaim jurisdiction over the proposed reorganization of ABX. Under the proposed reorganization, ABX intends to form a wholly-owned subsidiary corporation, ABX Holdings, Inc. ("ABX Holdings"), which would, in turn, form its own wholly-owned subsidiary, "Merger Sub." Merger Sub would then merge with and into ABX and ABX would survive as a direct, wholly-owned subsidiary of ABX Holdings.²

In support of its request, ABX states that since the transfer of operating authority is purely incidental to a corporate reorganization undertaken for independent business purposes, the approval of its request for a disclaimer of jurisdiction is appropriate in this case. Furthermore, the applicant states that the reorganization will involve no change in the management, ownership, control, operations, financial condition, or citizenship of the air carrier.

¹ See Order 89-3-30, issued March 14, 1989; and Order 95-6-26, issued June 13, 1995.

² Pursuant to the merger agreement, shares of ABX would convert, on a share-for-share basis, for shares of ABX Holdings, shares of Merger Sub would convert, on a share-for-share basis, for shares of ABX, and shares of ABX and Merger Sub existing prior to the merger would be cancelled.

Decision

We have examined the information provided by ABX in support of its request for a disclaimer of jurisdiction and conclude that the corporate reorganization proposed by ABX is not a transfer within the meaning of section 41105 of the Transportation Code.³ In reaching this conclusion, we find that the proposed corporate reorganization will have no effect on the ownership, control, management, citizenship, financial condition, or operations of the air carrier. Therefore, in light of the foregoing, we have decided to grant ABX's request for a disclaimer of jurisdiction over the proposed reorganization of ABX. We orally advised ABX of this decision on May 25, 2007.

ACCORDINGLY, Pursuant to authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We confirm our oral action of May 25, 2007, and disclaim jurisdiction over the reorganization of ABX Air, Inc.
2. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within 10 days of the service date of this order.

The action confirmed by this order was effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

TODD M. HOMAN
Director
Office of Aviation Analysis

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov>*

³ See, for example, Order 2003-3-2, Order 2003-2-23, Order 2002-3-21, Order 2000-3-19, and Order 96-4-18.

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