



Executive  
Director  
Leon Biegalski

August 15, 2017

**TAX:** Sales and Use Tax

**TAA NUMBER:** 17A-015

**ISSUE:** Whether Tenant's proposed allocation of real property lease payments for multiuse property should be allowed?

**STATUTE CITE(S):** Section(s) 212.031(1)(a)8. F.S.

**RULE CITE(S):** Rule 12A-1.070, F.A.C.

**QUESTION:** Is Taxpayer's proposed method of allocation of rental payment for multiuse property reasonable?

**ANSWER:** Section 212.031(1)(a)8., F.S., allows an exemption for certain property used, a port to load and unload cargo from oceangoing vessels. Rule 12A-1.070(14), F.A.C., identifies an allocation method regarding lease payments for multiuse property, which may include the portion addressed by s. 212.031(1)(a)8., F.S. Taxpayer's use of the method used by the Rule, which allows for a 53.03% portion of the rent payment as being subject to sales tax is allowed

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XXXXXXXXXX

Subject: Technical Assistance Advisement ("TAA")

TAA 17A-015

Sales and Use Tax

Real Property Rentals

Section(s) 212.031, Florida Statutes ("F.S.")

Rule(s) 12A-1.070, Florida Administrative Code ("F.A.C.")

XXXXXXXXXX ("Petitioner") ("Tenant") ("Taxpayer")

FEI#: XXXXXXXX

XXXXXXXXXXXX ("Affiliate")

FEI#: XXXXXXXX

Child Support – Ann Coffin, Director • General Tax Administration – Maria Johnson, Director  
Property Tax Oversight – Dr. Maurice Gogarty, Director • Information Services – Damu Kuttikrishnan, Director

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**Florida Department of Revenue**  
Tallahassee, Florida 32399-0100

BPN: XXXX

XXXXXX (“Landlord”)  
FEIN: XXXXXXXX

Dear XXXXXXX:

This letter is a response to your petition dated May 22, 2017, for the Department’s issuance of a Technical Assistance Advisement (“TAA”) to Petitioner, regarding whether Tenant’s allocation method for multiuse property is appropriate. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Rule Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of section 213.22, F.S.

### **Issue**

Whether Tenant and Landlord may use the proposed allocation methodology to determine the portion of lease payments subject to sales tax?

### **Facts**

Tenant’s primary business is the temporary storage of XXXXXXXX products. Tenant leases XX acres, or XXXX square feet, from the Landlord for a period of XXXX years, with a renewal option available. The current lease agreement began in XXXX and will end in 2020. The monthly lease payment is \$XXXXX. The TAA request provides that the leased premises are part of XXXXX, as defined by section 315.02(2), F.S., and that a large portion of the improved property of the leased premises is directly related to the loading and unloading of XXXXX products from vessels, and for XXXXX at Landlord’s location.

The TAA request provides that Tenant has three types of uses and purposes with the leased premises. One area (“Non-Production Area One”) includes the XXXXXXXX, lab offices, a general open storage area, and outbuildings. It also includes the ditch that runs north and south across the property. It also includes all unimproved property east of the ditch, less the production area for XXXX located east of the ditch. The total area associated with this area is XXXX square feet.

Another area (“Non-Production Area Two”) lies in the southwest corner of the leased property, and includes the main office buildings, shop, warehouse, and employee parking. This area includes paved and gravel parking, along with unimproved grassy areas. The total area associated with this section is XXX square feet.

A third area (“Improved for Load/Unload Area”) of the property includes a XXXX farm, XXXXX, XXXXX area, secondary containment, and the shore-side facility used to move the product from the vessel to the consumer. The facilities shown in the aerial photos include an integrated XXXX system, XXXXXXX, XXXX, and XXXXX equipment. The XXXX

containment runs along the border of the entire area. This area is also used exclusively to unload cargo from oceangoing vessels or tugs XXXX. The TAA request provides that the use of this property qualifies for the exemption provided for by s. 212.031(1)(a)8.a., F.S. The TAA request provides that this area is for the remainder of the leased premises not part of Non-Production Area One and Non-Production Area Two.

### **Taxpayer Position**

Tenant maintains that a portion of the rental payment should be exempted from sales tax. This is because the Improved for Load/Unload Area is used for an exempt purpose, as provided by s. 212.031(1)(a)8.a., F.S. Tenant believes that XXXX% of the lease payment is subject to sales tax. Tenant maintains that the lease payment should be determined by using an allocation based on square feet for each area. You believe that the square feet of the total of Non-Production Area One and Non-Production Area Two (XXXX square feet) should be divided by the square feet for the total leased premises (XXXXXX square feet). Using this formula, the taxable percentage of the lease payment should be XXXX%.

### **Applicable Law**

The Department has not verified the square footage of the figures that were provided. This response is regarding the methodology the Tenant proposes to use to calculate the taxable portion of the lease payment.

Section 212.031, F.S., imposes the tax on the total rent or license fee charged for the lease or rental of real property by the person charging or collecting the rental or license fee. Section 212.031(1)(a)8.a., F.S., excludes real property “used at a port authority . . . exclusively . . . for the purpose of loading, or unloading passengers or cargo onto or from such a vessel . . . .” The facts included with the request provide that Tenant’s lease is for real property located at a port authority, as defined in section 315.02(2), F.S. Therefore, under this lease, the real property exclusively used to load or unload passengers or cargo onto or from vessels is excluded from sales tax on rental payments.

In this case, Tenant leases a total of XXXX square feet from Landlord. According to the facts provided in Tenant’s Request for TAA, the Improved for Load/Unload Areas is used exclusively for temporary storage, loading and unloading oil and fuel cargo. Rule 12A-1.070(14)(a), F.A.C., authorizes the Department to determine the taxable portion of the total rent payment when, in a lease of real property, there are multiple uses of such property, and a portion of the property is subject to the tax, while another portion is not subject to the tax. Applying the information provided in the Tenant’s request and supporting documentation, the Department agrees with the calculation methodology proposed by Tenant.

**Response**

Based on the information provided, the proposed taxable percentage of XXXX% of the lease payment by Tenant to Landlord would be subject to sales tax.

This response constitutes a Technical Assistance Advisement under section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the

taxpayer. Your response should be received by the Department within 10 days of the date of this letter.

Respectfully,

***Chuck Wallace***

Chuck Wallace  
Technical Assistance & Dispute Resolution  
850-717-7541

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