



Questions: Taxpayer is seeking a determination as to the following question(s) relating to whether an aircraft owned by a nonresident is exempt from sales and use tax under Sections 212.06(8)(a) and 212.08(7)(fff)2., F.S.:

1. Whether the aircraft purchased by XXXXXXX is exempt from Florida sale and use tax pursuant to Section 212.08(7)(fff)2., F.S., if the aircraft enters Florida or remains in this state exclusively for purpose of FAA conformity inspection and ditching drill?

Answer – Based on Submitted Facts: Taxpayer does not qualify for tax exemption under Section 212.08(7)(fff)2., F.S. The Department does not find that Taxpayer has demonstrated that the aircraft will be imported exclusively for the purposes designated under Section 212.08(7)(fff)2., F.S. However, the Department does find, based on the documentation submitted, that the Aircraft was not purchased for use in Florida and, therefore, will not be subject to use tax. The Department also finds that any charges for parking, tie-downs, storage, or the rental of a hanger for the Aircraft in the state of Florida are taxable along with equipment rentals; unless the latter constitute a service transaction.

XXXXX

June 26, 2020

XXXXXXXX

RE: Technical Assistance Advise ment – 20A-012
Sales and Use Tax – Temporary Storage and Maintenance of an Aircraft in Florida
Sections 212.02, 212.05, 212.054, 212.055, 212.06, 212.08, 212.13, 212.21, and 213.35,
Florida Statutes (F.S.)
Rule 12A-1.071, Florida Administrative Code (F.A.C.)

Dear Mr. XXX:

This letter is a response to your petition received on January 23, 2019, for the Department of Revenue's ("Department") issuance of a Technical Assistance Advise ment ("TAA") concerning the above-referenced petitioner and matter. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, Florida Administrative Code ("F.A.C"). This response to your request constitutes a TAA and is issued to you under the authority of Section ("s.") 213.22, Florida Statutes (F.S.).

FACTS

XXX ("Taxpayer") is a company organized under the laws of XXX. In XXX, Taxpayer entered into a purchase contract directly with XXX ("Manufacturer") to purchase an aircraft. On XXX, Taxpayer and XXX ("Trustee"), as owner trustee, entered into a Trust Agreement (XXX), pursuant to which Trustee would take legal title to a XXX Model XXX aircraft, bearing manufacturer serial number XXX (the "Aircraft") Upon delivery, on XXX, Taxpayer purchased Aircraft for One U.S. Dollar (\$1.00) and other valuable consideration. Trustee also became the legal title holder to the Aircraft and Taxpayer became the beneficial owner and trustor of the Aircraft. On XXX, Trustee became the registered owner of the Aircraft on the Federal Aviation Administration ("FAA") Registry. No sales or use tax was paid on the purchase of Aircraft. Attached as Exhibit "A" is a copy of the Bill of Sale dated XXX. Attached as Exhibit "B" is a copy of Trust Agreement dated XXX. Attached as Exhibit "C" is a copy of the FAA Certificate of Aircraft Registration. Attached as Exhibit "D" is a copy of the Buyer's Retail Sales Tax Registration Exemption Certificate. Attached as Exhibit "E" is a copy of the XXX Aircraft Registration Exemption Form. The Aircraft is not and will not be titled, registered, or licensed in Florida.

XXX

The interior of the Aircraft was unfinished "green" at the time of purchase. Therefore, on XXX, prior to delivery, Taxpayer entered into an Aircraft Modification Agreement with a FAA licensed facility, located in XXX, to design and complete the interior of the aircraft. On XXX, the modification agreement was assigned to Trustee and, on XXX, Taxpayer and Trustee delivered possession of the Aircraft to the completion facility in Washington state where the interior work on the aircraft was completed. XXX.

Taxpayer is now considering ferrying the Aircraft to Orlando International Airport (MCO) in Orlando, Florida, for a FAA conformity inspection, partial ditching demonstration, and associated training ("Inspection"). Taxpayer advises the Inspection is necessary for the Aircraft to be stored and managed by XXX ("Management Company"), a third-party management company. Taxpayer has provided for review a copy of the proforma invoice from the Management Company, which contains the estimated charges associated with the Inspection. The charges include, but are not limited to, landing fees, aircraft parking, equipment rental, maintenance, inspections, and crew training.

While in Florida, Taxpayer asserts the Aircraft will not engage in any flight activity to generate revenue during this time period and the only flights conducted will be for the purpose of the Inspection.

REQUESTED ADVISEMENT

Taxpayer requests advisement on whether importation of its Aircraft into Florida for the Inspection would be exempt from use tax under the provisions of s. 212.08(7)(fff)2., F.S., for nonresident aircraft temporarily in Florida for flight training, repairs, alterations, refitting, or modification.

LAW AND DISCUSSION

The legislature has declared its intention in s. 212.21(2), F.S., that each and every sale, use, storage, or consumption of tangible personal property in Florida is taxable, subject only to the exemptions and exclusions contained within Chapter 212, F.S.

Section 212.05 and 212.06, F.S., specifically impose sales or use tax on the sale, use, storage, or consumption of tangible personal property in this State. See ss. 212.05(1) and 212.06(1), F.S. For exercising either privilege, tax is imposed at the rate of 6%, plus any county imposed surtax.¹ See ss. 212.05(1)(a)1.a., 212.06(1)(a), and 212.054, F.S. Tangible personal property is defined as “personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including ... aircraft” See s. 212.02(19), F.S. Therefore, the use of Taxpayer’s aircraft in Florida is subject to tax, unless an exemption applies.²

There are specifically enumerated exemptions from various taxes. See *generally* s. 212.08, F.S. It is well-settled law exemptions are strictly construed against the taxpayer, causing the burden of proof for the exemption to be on the taxpayer. See State ex rel. Szabo Food Servs., Inc. of N.C. v. Dickinson, 286 So. 2d 529, 530-32 (Fla. 1973); Green v. City of Pensacola, 126 So. 2d 566, 569 (Fla. 1961); State v. Thompson, 101 So. 2d 381, 386 (Fla. 1958). Any doubt as to an exemption is resolved favorably towards the State. See Szabo Food Servs., 286 So. 2d at 531; United States Gypsum Co. v. Green, 110 So. 2d 409, 413 (Fla. 1959).

The use tax in Florida is levied upon the “cost price as of the moment of purchase, or ... the cost price as of the moment of commingling with the general mass of property in this state, as the case may be” See s. 212.06(1)(a), F.S. This tax is collected from a “dealer,” which is defined to include any person who imports or causes to be imported tangible personal property from outside Florida, as well as any person who cannot prove that the tax levied by Chapter 212, F.S., has been paid. See s. 212.06(2)(b) and (d), F.S. Each dealer is required to secure, maintain, and

¹ Counties may charge a discretionary sales surtax, up to 1.5%, in addition to the State sales tax rate. See ss. 212.054 and 212.055, F.S.

² Purchase and delivery of the Aircraft took place outside Florida, so Florida sales tax is not applicable in this instance.

keep for as long as required by s. 213.35, F.S., a complete record of tangible personal property received or used. See s. 212.13(2), F.S.

Taxpayer specifically requests advisement on whether importation of the Aircraft in Florida would be exempt from tax under the provisions of s. 212.08(7)(fff)2., F.S. The provision provides in pertinent part the following:

2. An aircraft owned by a nonresident is exempt from the use tax imposed under this chapter if the aircraft enters or remains in this state ***exclusively*** for purposes of flight training, repairs, alterations, refitting, or modification. Such purposes shall be supported by written documentation issued by in-state vendors or suppliers which clearly and specifically identifies the aircraft....

Taxpayer's written request for advisement indicates, to the contrary, the Aircraft would not be entering Florida *exclusively* for the purposes indicated under s. 212.08(7)(fff)2., F.S. Further, it is indicated that the primary purpose for the Aircraft's importation into Florida is for management by a third-party, Management, and the Inspection is a condition of the management agreement. Last, a review of all information before the Department indicates placement of control of Taxpayer's Aircraft with Management is for purposes of attempting to sell the Aircraft. Accordingly, without documentation to the contrary, the Department does not find that Taxpayer has demonstrated that the aircraft will be imported exclusively for the purposes designated under s. 212.08(7)(fff)2., F.S., for tax exemption. However, it should be noted that importation of an aircraft that is otherwise taxable, would be exempt if the importer is a registered aircraft dealer with the Department, and the aircraft is imported *exclusively* for purpose of resale.

Additionally, while s. 212.06(4) F.S., specifically provides that use tax applies to tangible personal property imported or caused to be imported into Florida, it is presumed that tangible personal property, including aircraft, used in another state, territory of the United States, or the District of Columbia for 6 months or longer that gave rise to one of the referenced taxing jurisdiction, was not purchased for use in Florida and thus would not be subject to use tax. See s. 212.06(8)(a), F.S.

Based on (1) the Bill of Sale dated XXX for sale and transfer of the Aircraft in the State of XXX, (2) documents establishing Taxpayer subjected itself to the State of XXX taxing authority in XXX through its filing for exemption from registration with the XXX State Department of Transportation (as required by the applicable XXX XXX)³, and (3) no indication the Aircraft has

³ Department research indicates no certificate is issued by the State of XXX to establish the claimed tax exemption by Taxpayer for the Aircraft. However, Taxpayer has documented the required filings with that state. Research of the applicable laws in XXX indicates, with storage, the Aircraft could potentially remain in the State of XXX for up to one year.

had a presence in Florida to date, or was otherwise obtained with intent for use in Florida, the Department has determined the Aircraft was not purchased for use in Florida.⁴

While the Aircraft itself is not subject to “use” tax, and various labor and repair exemptions for aircraft will potentially apply, charges to Taxpayer for parking, tie-downs, storage or the rental of a hanger for the Aircraft in the state of Florida are taxable. See s. 212.03(6), F.S. Taxpayer is also fully subject to tax on any equipment rental charges for items that are not incorporated into the aircraft for repair purposes; unless the rental of the equipment qualifies as a service transaction with an operator. See Rule 12A-1.071(9)(a), F.S.

CONCLUSION

Taxpayer does not qualify for tax exemption under s. 212.08(7)(fff)2., F.S. The Department does not find that Taxpayer has demonstrated that the aircraft will be imported exclusively for the purposes designated under s. 212.08(7)(fff)2., F.S. However, the Department does find, based on the documentation submitted, that the Aircraft was not purchased for use in Florida and therefore will not be subject to use tax. The Department also finds that any charges for parking, tie-downs, storage or the rental of a hanger for the Aircraft in the state of Florida are taxable along with equipment rentals; unless the latter constitute a service transaction.

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 15 days of the date of this letter.

⁴ If it is subsequently determined that Taxpayer did not retain its tax exemption status with the State of XXX and tax was determined due to that state as the first instance of taxation, use tax would potentially be due to the State of Florida but a credit provided for any applicable taxes paid to XXX.

Sincerely,

Teresa S. Lee

Teresa S. Lee
Tax Law Specialist
Technical Assistance & Dispute Resolution

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