



5050 West Tennessee Street, Tallahassee, FL 32399

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QUESTION: Whether Florida sales and/or use tax is due on aircraft [REDACTED], which is owned by a [REDACTED] S Corporation, if the [REDACTED] S Corporation were to domesticate the corporation to Florida?

ANSWER: Based on the facts provided, Florida sales and/or use tax is not due on aircraft [REDACTED], which is owned by a [REDACTED] S Corporation, if the [REDACTED] S Corporation were to domesticate the corporation to Florida.

November 9, 2023

[REDACTED]
[REDACTED]
[REDACTED]

Re: Technical Assistance Advisement – TAA #: 23A-020
[REDACTED] (“Owner”)
Sales and Use Tax – Aircraft
Section(s) 212.05 and 212.06, Florida Statutes - (“F.S.”)
Rule(s) 12A-1.007, Florida Administrative Code - (“F.A.C.”)
BP #: [REDACTED]
[REDACTED] (“Corporation”)

Dear [REDACTED]:

This is in response to your letter dated [REDACTED], requesting this Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C, Florida Administrative Code, regarding the matter discussed below. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

REQUESTED ADVISEMENT

Whether Florida sales and/or use tax is due on aircraft [REDACTED], which is owned by a [REDACTED] S Corporation, if the [REDACTED] S Corporation were to domesticate the corporation to Florida?

FACTS

Your request provides that you currently have a [REDACTED] S Corporation that you would like to domesticate to Florida. You state that some of the advantages include keeping your current Federal Tax Identification (ID). With regard to the sales and use taxing statutes, it is your understanding that since there would be no transfer of ownership of the airplane and the airplane has been owned by the corporation for eight years there should be no sales tax.

To support your position, you reference Rule 12A-1.007(2)(a), F.A.C., stating that an aircraft purchased and used in another state for a period of more than six months prior to being imported into Florida, subjecting the airplane to the tax jurisdiction of another state, is exempt from sales and use tax.

When Owner originally purchased the aircraft, he was a [REDACTED] resident. At that time the aircraft was subject to tax in [REDACTED]; however, [REDACTED] grants an exemption from sales tax for [REDACTED]; therefore, no sales tax was imposed. Eight years ago, the aircraft was transferred to the Corporation, of which Owner is the sole shareholder.

LAW AND DISCUSSION

Section 212.05(1)(b), F.S., provides that the “use, consumption, distribution, or storage for use and consumption” of tangible personal property in Florida is a taxable privilege, and levies a tax at the rate of six percent (6%) on each taxable transaction. The use tax is specifically applicable to all articles of tangible personal property “imported or caused to be imported” into Florida from outside the state. See s. 212.06(4) and (8)(a), F.S. The Department’s rules make it clear that the tax applies to any tangible personal property used, consumed, distributed, or stored for use or consumption in Florida that was purchased in such a manner that the sales tax was not applicable at the time of purchase. See Rules 12A-1.007(1) – (3) and 12A-1.091(1), F.A.C.

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,” 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.

Section 212.06(4) and (8)(a), F.S., specifically provide that use tax applies to tangible personal property imported or caused to be imported into Florida. Section 212.06(8)(a), F.S., continues by stating that “... it shall be presumed that tangible personal property used in another state, territory of the United States, or the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state....” Thus, upon a showing that tangible personal property was used for six months or longer within a United States jurisdiction, a presumption arises that such property was not purchased for use in Florida and is, accordingly, not subject to tax (i.e., a presumption arises that the property is excluded or exempted from tax).

Rule 12A-1.007(2)(a), F.A.C., provides, in part "... However, the rental or lease of any aircraft ... which is used or stored in this state is taxable without regard to its prior use or tax paid on the purchase outside this state."

Based upon the facts presented and review of the *Certificate of Aircraft Registration*, aircraft [REDACTED] was registered with the Federal Aviation Administration (FAA) on [REDACTED]. The aircraft was registered to [REDACTED], in [REDACTED].

Pursuant to the provisions of s. 212.06(4) and (8), F.S., and Rule 12A-1.007(2)(a), F.A.C., the aircraft will not be subject to sales and/or use tax at the time of importation into Florida, as the aircraft was purchased and used outside Florida for six months or longer.

CONCLUSION

Based on the facts provided, Florida sales and/or use tax is not due on aircraft [REDACTED], which is owned by a [REDACTED] S Corporation, if the [REDACTED] S Corporation were to domesticate the corporation in Florida.

This response constitutes a TAA under s. 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 s. 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 s. 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 TAA, 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 ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6701.

Sincerely,



Shundra McClean
Tax Law Specialist
Technical Assistance & Dispute Resolution

TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000974090

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.