

## SUMMARY

**QUESTION:** Do the Carrier's very light jets [VLJ's] qualify as "qualified aircraft," as the term is defined in s. 212.02(33), F.S., once the Carrier is leasing a total of at least 25 VLJ's?

**ANSWER – Based on Facts Below:** The Carrier's VLJ's will qualify as "qualified aircraft," as the term is defined in s. 212.02(33), F.S., once the Carrier is leasing a total of at least 25 VLJ's.

October 16, 2007

Re: Technical Assistance Advisement No. 07A-036  
Sales and Use Tax – Qualified Aircraft - leases  
Section 212.02(33), Florida Statutes (F.S.)  
Section 212.05(1), F.S.  
Section 212.0801, F.S.  
Section 212.08(7)(ee)(rr)(ss), F.S.  
Rule 12A-1.039(1)(b), Florida Administrative Code (F.A.C.)  
Rule 12A-1.071(2)(a), F.A.C.

XXX [the Corporation]

XXX [the Carrier]

XXX [the Lessor]

Dear :

This is a response to your letter of July 17, 2007, requesting a Technical Assistance Advisement (TAA) regarding the above-referenced matter. This response to your request constitutes a TAA under Chapter 12-11, Florida Administrative Code (F.A.C.), and is issued to you under the authority of Section 213.22, Florida Statutes (F.S.).

## FACTS

The Corporation, a Delaware Corporation with its corporate headquarters located in Florida, is the sole member of two single member limited liability companies, the Lessor and the Carrier. The Carrier is currently operating as a registered air taxi operator under the U.S. Department of Transportation's regulations and is the holder of a Federal Aviation Administration [FAA] Air Carrier Certificate authorizing on-demand operations under Part 135 of the FAA's regulations under Title 49, Subtitle VII, of the United States Code. The Carrier operates two traditional business jets through an aircraft management and lease agreement with a related party. The Carrier is also leasing new aircraft (hereinafter referred to as "very light jets" or "VLJ's") purchased by the Lessor from an aircraft manufacturer located in another state. The VLJ's leased by the Carrier from the Lessor have a maximum certified takeoff weight of less than 10,000 pounds and are equipped with twin turbofan engines that meet Stage IV noise requirements.

The Corporation formed the Lessor to procure and maintain ownership of all VLJ's, as well as to lease the VLJ's to the Carrier. The Lessor is expected to inspect and take delivery of all VLJ's at the manufacturer's facilities located outside Florida. The Lessor has registered as a dealer for Florida sales and use tax purposes and provides a copy of its Annual Resale Certificate to any vendor from which it purchases VLJ's. To date, the Lessor has purchased and taken delivery of five VLJ's. It expects to purchase many more VLJ's in the next five years.

The Lessor and the Carrier have entered into an operating lease agreement, by which the Carrier leases aircraft from the Lessor. The Carrier is training pilots to operate the VLJ's and, after the Carrier satisfies the FAA requirements for adding the VLJ's to its Operations Specifications, the Carrier intends to offer and provide its on-demand service using VLJ's in the third quarter of 2007. Initially, the service will be offered only between points in Florida, but it is expected that the service will subsequently be offered across several states in the Southeastern United States.

The Carrier plans to extend written offers to at least two Florida universities, which offer graduate programs in aeronautical or aerospace engineering and offer flight training through a school of aeronautics or college of aviation, to participate in a flight training and research program. The Carrier will forward copies of these written offers to the Department.

The Corporation has several questions concerning the above transactions:

- 1) Are the Lessor's purchases of VLJ's from the out-of-state manufacturer exempt from Florida sale and use tax?
- 2) Are the VLJ's leased by the Carrier from the Lessor "qualified aircraft" as the term is defined in s. 212.02(33), F.S.?
- 3) Will the Carrier's leases of VLJ's be exempt from Florida sales and use tax?
- 4) Will the Carrier's purchases of labor, replacement engines, parts, and equipment for the repair and maintenance of the VLJ's be exempt from Florida sales and use tax?

### **ISSUE**

Whether the Carrier's VLJ's will be "qualified aircraft," as the term is defined in s. 212.02(33), F.S., once the Carrier is leasing a total of at least 25 VLJ's.

### **REQUESTED ADVISEMENT**

The Corporation requests that the Department issue a TAA stating:

- 1) the Lessor's purchases of VLJ's for lease to the Carrier will be exempt from sales and use tax, provided that the Lessor remains registered as a Florida sales and use tax dealer and issues a copy of its Annual Resale Certificate to the seller prior to the purchase of the aircraft;
- 2) the Carrier's VLJ's will be "qualified aircraft," as the term is defined in s. 212.02(33), F.S., once the Carrier is leasing a total of at least 25 VLJ's;

3) the Carrier's payments to the Lessor for the lease of the VLJ's will be exempt from Florida sales and use tax once the Carrier is leasing a total of at least 25 VLJ's and has satisfied the requirements of s. 212.0801, F.S.;

4) the Carrier's purchases from third parties of labor, replacement engines, parts, and equipment for the repair and maintenance of the VLJ's will be exempt from Florida sales and use tax once the Carrier is leasing a total of at least 25 VLJ's and has satisfied the requirements of s. 212.0801, F.S.

### **TAXPAYER'S POSITION**

In regards to question one, the Corporation cites Rule 12A-1.071(2)(a), F.A.C., and states that the Lessor is purchasing VLJ's "exclusively for lease to [the Carrier] .... Provided [the Lessor] is a registered dealer in the State of Florida and presents the aircraft manufacturer with a valid resale certificate at the time of purchase, [the Lessor's] purchases of VLJ's for lease to [the Carrier] should be exempt from sales and use tax."

In regards to question two, the Corporation states that the definition of qualified aircraft in s. 212.02(33), F.S.<sup>1</sup>, has three primary components, all of which must be met in order to qualify for the sales tax exemptions for qualified aircraft provided in s. 212.08(7), F.S. The Corporation states that a qualified aircraft must: 1) have a maximum certified takeoff weight of less than 10,000 pounds; 2) be equipped with twin turbofan engines that meet Stage IV noise requirements; and, 3) be used by a business operating as an on-demand air carrier that owns or leases and operates a fleet of at least 25 of such aircraft. The Corporation states that the Carrier's VLJ's currently meet the weight and equipment requirements, and the Corporation believes that the VLJ's will soon meet the carrier requirement. The Corporation states the Carrier intends to operate as an on-demand air carrier, and it is anticipated that the Carrier will lease and operate 25 qualifying VLJ's in the near future.

In regards to question three, the Corporation believes that any lease payments the Carrier makes to the Lessor will qualify for the sales tax exemption provided in s. 212.08(7)(ss), F.S., once the Carrier satisfies certain requirements. The Corporation states that when the Carrier 1) leases and operates 25 or more qualifying VLJ's according to s. 212.02(33), F.S., and 2) satisfies the requirements of s. 212.0801, F.S., the Carrier's payments to the Lessor for the lease of the VLJ's will be exempt from Florida sales and use tax.

In regards to question four, the Corporation believes that any purchases the Carrier makes from third parties for labor, replacement engines, parts, and equipment for the repair and maintenance of the VLJ's will qualify for the sales and use tax exemptions provided in ss. 212.08(7)(ee) and (rr), F.S., once the Carrier satisfies certain requirements. The Corporation states that when the Carrier 1) leases and operates 25 or more qualifying VLJ's according to s. 212.02(33), F.S., and 2) satisfies the requirements of s. 212.0801, F.S., the Carrier's purchases of labor, replacement engines, parts, and equipment for the repair and maintenance of the VLJ's will be exempt from Florida sales and use tax.

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<sup>1</sup> As amended by s. 19 of Chapter 2007-106, Laws of Florida.

## APPLICABLE LAW

Section 212.02(33), F.S. (2007), provides:

"Qualified aircraft" means any aircraft having a maximum certified takeoff weight of less than 10,000 pounds and equipped with twin turbofan engines that meet Stage IV noise requirements that is used by a business operating as an on-demand air carrier under Federal Aviation Administration Regulation Title 14, chapter I, part 135, Code of Federal Regulations, that owns or leases and operates a fleet of at least 25 of such aircraft in this state.

Section 212.05(1), F.S., provides, in part:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

\* \* \*

(b) At the rate of 6 percent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; ....

\* \* \*

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; ....

\* \* \*

Section 212.0801, F.S., provides:

Qualified aircraft exemption.--To be eligible to receive an exemption under s. 212.08(7) for a qualified aircraft, a purchaser or lessee must offer, in writing, to participate in a flight training and research program with two or more universities based in this state which offer graduate programs in aeronautical or aerospace engineering and offer flight training through a school of aeronautics or college of aviation. The purchaser or lessee shall forward a copy of the written offer to the Department of Revenue. No exemption provided in this chapter for the lease, purchase, repair, or maintenance of a qualified aircraft shall be allowed unless the purchaser or lessee furnishes the dealer with a certificate stating that the lease, purchase, repair, or maintenance to be exempted is for the exclusive use of the

purchaser or lessee of a qualified aircraft and that the purchaser or lessee otherwise qualifies for the exemption as provided in this section. If a purchaser or lessee makes tax-exempt purchases of qualified aircraft or leases a qualified aircraft on a continual basis, the purchaser or lessee may tender the certificate once and allow the dealer to keep a certificate on file. The purchaser or lessee shall inform the dealer that has a certificate on file when the purchaser or lessee no longer qualifies for the exemption. The department shall determine the format of the certificate.

Section 212.08(7), F.S., provides, in part:

(ee) *Aircraft repair and maintenance labor charges.*--There shall be exempt from the tax imposed by this chapter all labor charges for the repair and maintenance of qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight. Except as otherwise provided in this chapter, charges for parts and equipment furnished in connection with such labor charges are taxable.

(rr) *Equipment used in aircraft repair and maintenance.*--There shall be exempt from the tax imposed by this chapter replacement engines, parts, and equipment used in the repair or maintenance of qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight, when such parts or equipment are installed on such aircraft that is being repaired or maintained in this state.

(ss) *Aircraft sales or leases.*--The sale or lease of a qualified aircraft or an aircraft of more than 15,000 pounds maximum certified takeoff weight for use by a common carrier is exempt from the tax imposed by this chapter. As used in this paragraph, "common carrier" means an airline operating under Federal Aviation Administration regulations contained in Title 14, chapter I, part 121 or part 129 of the Code of Federal Regulations.

\* \* \*

Rule 12A-1.039(1)(b), F.A.C., provides, in part:

A sale for resale is exempt from the tax imposed by Chapter 212, F.S., only when the sale for resale is in strict compliance with the provisions of this rule. For purposes of this rule, a "sale for resale" includes the following sales, leases, or rentals when made to a person who is an active registered dealer. This is not intended to be an exhaustive list.

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2. The sale, lease, or rental of tangible personal property to a dealer when such property will be held exclusively for leasing or rental purposes, pursuant to paragraph 12A-1.071(2)(a), F.A.C.

\* \* \*

Rule 12A-1.071(2)(a), F.A.C., provides:

Tangible personal property purchased exclusively for leasing purposes by a dealer registered with the Department at the time of purchase may be purchased tax-exempt. The purchasing dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase in lieu of paying tax, as provided in Rule 12A-1.039, F.A.C.

### **DISCUSSION AND RESPONSE**

1) Are the Lessor's purchases of VLJ's from the out-of-state manufacturer exempt from Florida sale and use tax?

Rule 12A-1.071(2)(a), F.A.C., states that tangible personal property purchased exclusively for leasing purposes by a dealer registered with the Department at the time of purchase may be purchased tax-exempt. The purchasing dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase in lieu of paying tax, as provided in Rule 12A-1.039, F.A.C. The Corporation states that the Lessor has registered as a dealer for Florida sales and use tax purposes and provides a copy of its Annual Resale Certificate to any vendor from which it purchases VLJ's. The Corporation also states that the Lessor purchases VLJ's "exclusively for lease to [the Carrier], who then uses the VLJ's in its operations as an on-demand carrier." Under the facts provided, the Lessor's purchases of VLJ's for lease to the Carrier are exempt from Florida sales and use tax as sales for resale.<sup>2</sup>

Please note that when the Lessor purchases a VLJ from a manufacturer located in another state, and such manufacturer is not registered as a dealer with the Department and has no taxable nexus with Florida, the out-of-state manufacturer has no obligation to collect Florida sales tax on the sale of the VLJ. Likewise, the Lessor is not required to tender a resale certificate when it purchases the VLJ from such a dealer. If the Lessor purchases the VLJ exclusively for leasing purposes and subsequently brings it into Florida, the VLJ will remain exempt from sales and use tax as long as the aircraft is held exclusively for resale.

2) Are the VLJ's leased by the Carrier from the Lessor "qualified aircraft" as the term is defined in s. 212.02(33), F.S.?

A qualified aircraft is defined by s. 212.02(33), F.S., as follows:

[A]ny aircraft having a maximum certified takeoff weight of less than 10,000 pounds and equipped with twin turbofan engines that meet Stage IV noise requirements that is used by a business operating as an on-demand air carrier under Federal Aviation Administration Regulation Title 14, chapter I, part 135, Code of Federal Regulations, that owns or leases and operates a fleet of at least 25 of such aircraft in this state.

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<sup>2</sup> A lease or rental of tangible personal property is a "sale" by definition and thus constitutes a resale. See s. 212.02(15)(a), F.S.

The definition of qualified aircraft provided in s. 212.02(33), F.S., has three primary components, all of which must be met in order to qualify for the sales tax exemptions provided for qualified aircraft in s. 212.08(7), F.S. A qualified aircraft must: 1) have a maximum certified takeoff weight of less than 10,000 pounds; 2) be equipped with twin turbofan engines that meet Stage IV noise requirements; and, 3) be used by a business operating as an on-demand air carrier (under the FAA regulations) that owns or leases and operates a fleet of at least 25 of such aircraft in Florida.

The Carrier's VLJ's satisfy the first requirement because they have a maximum certified takeoff weight of less than 10,000 pounds. The Carrier's VLJ's satisfy the second requirement because they are equipped with twin turbofan engines that meet State IV noise requirements. In regards to the third requirement, the Corporation states that the Carrier holds an FAA "Air Carrier Certificate authorizing on-demand operations under Part 135 of the FAA's regulations under Title 49, Subtitle VII, of the United States Code." The Corporation also states that the Carrier will amass a fleet of 25 or more qualifying VLJ's in Florida over the next five years. Once the Carrier is leasing a total of at least 25 VLJ's, these VLJ's will satisfy the third requirement of the "qualified aircraft" definition found in s. 212.02(33), F.S. At such time, these VLJ's will be "qualified aircraft," as the term is defined in s. 212.02(33), F.S.

3) Will the Carrier's leases of VLJ's be exempt from Florida sales and use tax?

Section 212.05(1)(c), F.S., states that the gross proceeds derived from the lease or rental of tangible personal property are subject to sales and use tax. However, s. 212.08(7)(ss), F.S., provides an exemption for the sale or lease of qualified aircraft. In order for the Carrier to qualify for the exemption provided in s. 212.08(7)(ss), F.S., the Carrier must first satisfy the requirements of s. 212.0801, F.S.

First, a purchaser or lessee must offer, in writing, to participate in a flight training and research program with two or more universities based in Florida which offer graduate programs in aeronautical or aerospace engineering and offer flight training through a school of aeronautics or college of aviation. The purchaser or lessee must forward a copy of the written offer to the Department. The purchaser or lessee must also furnish each selling dealer with a certificate stating that the lease, purchase, repair, or maintenance to be exempted is for the exclusive use of the purchaser or lessee of a qualified aircraft and that the purchaser or lessee otherwise qualifies for the exemption as provided in s. 212.0801, F.S.

Until such time as the Carrier is leasing and operating 25 or more VLJ's in Florida, these VLJ's cannot be considered to be qualified aircraft for purposes of the exemption provided by s. 212.08(7)(ss), F.S. However, at such time as the Carrier leases the 25<sup>th</sup> VLJ, and for so long as it leases and operates 25 or more VLJ's in Florida, the exemption will apply to any lease payment falling due on or after the acquisition date of the 25<sup>th</sup> aircraft, provided:

1) the VLJ's leased and operated by the Carrier have a maximum certified takeoff weight of less than 10,000 pounds, are equipped with twin turbofan engines that meet Stage IV noise requirements, and will be used by the Carrier, operating as an on demand air carrier under FAA Regulations Title 14, chapter I, part 135, Code of Federal Regulations;

2) the Carrier has extended written offers to at least two Florida universities which satisfy the criteria of s. 212.0801, F.S.; and,

3) the Carrier extends to the Lessor a certificate stating that the leases of the VLJ's by the Carrier are for the exclusive use of the Carrier and that the Carrier otherwise qualifies for the exemption as provided in s. 212.0801, F.S. A suggested format of the exemption certificate is provided in TIP # 06A01-07.

4) Will the Carrier's purchases of labor, replacement engines, parts, and equipment for the repair and maintenance of the VLJ's be exempt from Florida sales and use tax?

In addition to the exemption for the purchase or lease of qualified aircraft provided in s. 212.08(7)(ss), F.S., there is an exemption from sales and use tax on all labor charges for the repair and maintenance of qualified aircraft provided in s. 212.08(7)(ee), F.S., and also an exemption for replacement engines, parts, and equipment used in the repair or maintenance of qualified aircraft in Florida provided in s. 212.08(7)(rr), F.S. The conditions for the application of these exemptions are the same as those applicable to s. 212.08(7)(ss), F.S. Therefore, the Carrier will likewise qualify for these exemptions once it has obtained its 25<sup>th</sup> VLJ subject to the conditions set out in ss. 212.02(33) and 212.0801, F.S.

### **CONCLUSION**

The Lessor's purchases of VLJ's from an out-of-state manufacturer will be exempt from Florida sales and use tax, provided that: 1) the VLJ's are purchased and held exclusively for resale; and, 2) the Lessor is registered as a Florida sales and use tax dealer.

The Carrier's VLJ's will be "qualified aircraft," as the term is defined in s. 212.02(33), F.S., once the Carrier is leasing a total of at least 25 VLJ's.

The Carrier's payments to the Lessor for the lease of the VLJ's will be exempt from Florida sales and use tax once the Carrier is leasing a total of at least 25 VLJ's and has satisfied the requirements of s. 212.0801, F.S.

The Carrier's purchases from third parties of labor, replacement engines, parts, and equipment for the repair and maintenance of the VLJ's in Florida will be exempt from Florida sales and use tax once the Carrier is leasing a total of at least 25 VLJ's and has satisfied the requirements of s. 212.0801, F.S.

This response constitutes a Technical Assistance Advisement 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 Technical Assistance Advise ment, 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.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 488-8565.

Sincerely,

Matt Crockett  
Senior Tax Specialist  
Technical Assistance & Dispute Resolution

ID: 33481