

Title: Real Property Rentals/Subleases

Jul 18, 1988

RE: TAA 88(A)-273

Sales Tax: Lease and Sublease of Real Property  
Sections 212.03(6), 212.031(1) (a), (2)(a) and (b) F.S.  
Rules 12A-1.070(7) & (8), 12A-1.073(2) F.A.C.

Dear

This is in response to your letter of February 11, 1988, in which you request a technical assistance advisement with respect to the applicability of sales tax upon the leasing of office space in a building and parking spaces to tenants of the building.

Your letter provides in part:

"A Technical Assistance Advisement is requested with respect to the amount of sales tax required to be paid upon the leasing of office space in a building and parking spaces to tenants of the building pursuant to the following transaction. The relevant parties include XXX (the "Center") and the XXX (the "Association"). It is possible that all rights, interests and obligations of the Association may be transferred to the XXX (the "Foundation"). Therefore, the taxpayer requests that all rulings made applicable to the Association be applied to the Foundation in the event it acquires all rights, interests and obligations of the Association. The taxpayer believes that in the lease arrangements discussed below, only one tax should apply on the leasing of office space in the building and parking spaces, even though such properties will be subleased.

#### FACTS

"The Center is in the process of acquiring a building in XXX. The Center will sublease the entire building to the Association. The Association is a nonprofit organization which

is tax exempt pursuant to Section 501(c)(6) of the Internal Revenue Code. The Association will then sublease office space in the building to various members of the Association and may also lease space to non-related entities in the event any additional space is still available. In addition, a portion of the office space leased by the Association from the Center will be retained by the Association for its offices. The total square feet in the building will be approximately 14,880 square feet and the Association shall retain for its offices approximately 850 square feet."

"The Center will also be acquiring the lease rights to a number of parking spaces from the XXX and also from an independent third party. Both the XXX and the independent third party will be required to maintain the parking lots and operate them, or pay another party to operate them. However, neither the Center or the Association will maintain and operate the parking lots. The Master Lease Agreement (the "Master Lease"), whereby the Center leases the entire building to the Association, will also include a paragraph whereby the Center subleases all of its parking rights to the Association. The Association will enter into separate Sublease Agreements (the "Sublease") with its tenants, which will include a provision for sub-subleasing a specific number of the parking spaces acquired from the Center to the tenants."

"Under the Master Lease, the Association will pay rent for the leasing of the entire building, the parking spaces, and the land underlying the building. (The land will be leased at \$1.00 per year.) Under the Sublease, the Association will separately charge the tenants rent for the use of the parking spaces, for the use of the office space leased to the particular tenant, and also for the use of various common areas, including a conference room, combination snackroom/mailroom, library, hallways, lavatories, elevators, stairwells and walkways. A copy of the formula in the Sublease for determination of the rent for the common areas is attached hereto."

"The Association may also sub-sublease the parking spaces leased to its tenants to independent third parties during times when the tenants are not using the parking spaces. Any rents

received from such parking will be credited to the parking rent of the tenants."

In the first paragraph of FACTS portion of your letter, you stated that the center will sublease the entire building to the association, whereas in the second paragraph you stated that the center will lease the entire building to the association. Our response is based on the center leasing the entire building to the association.

Concerning the lease of the building and the land to the XXX and the sublease of a majority of the office space (including common areas) to various members of the association and non-related entities, Section 212.031(1)(a), (2)(a) and (b) F.S., as amended by Section 3, of Chapter 87-548, L.O.F., provides in part:

"(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

"1. Assessed as agricultural property under s. 193.461.

"2. Used exclusively as dwelling units.

"3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).

"(2)(a) The tenant or person actually occupying, using, or entitled to the use of any property from which the rental or license fee is subject to taxation under this section shall pay the tax to his immediate landlord or other person granting the right to such tenant or person to occupy or use such real property.

"(b) It is the further intent of this Legislature that only one tax be collected on the rental or license fee payable for the occupancy or use of any such property, that the tax so collected shall not be pyramided by a progression of transactions, and that the amount of the tax due the state shall not be decreased by any such progression of transactions."

Rule 12A-1.070(8), F.A.C., provides:

"(8) If a tenant sublets or assigns his interest in all of the leased premises, or retains only an incidental portion of the entire premises, then such tenant may elect not to pay tax on the prime lease, provided that such tenant shall register as a dealer and collect and remit tax due on the sub-rentals and pay the tax due on the portion of the rental charges pertaining to any taxable space which he retains. If the tenant elects not to pay the tax to his landlord, he should extend to his landlord a resale certificate."

As indicated in the above section of 212.031, F.S., as amended, the land lease and the lease of the building from the Center to the Association are taxable privileges and the person actually occupying, using, or entitled to use the property is subject to tax. The statute provides that only one tax be collected on the rental of real property and the tax shall not be pyramided by a progression of transactions or decreased by any such progressions of transactions. The rule states that if a tenant sublets a majority of the premises and retains only an incidental portion of the premises, the tenant may elect not to pay tax on the prime lease if he registers as a dealer to collect and remit sales tax due on sublet rentals and pays tax on the portion of the rental charges pertaining to any taxable space he retains. Therefore, the Association should register as a dealer and extend a properly executed resale certificate to the Center in lieu of tax and collect sales tax on the subleases to its tenants and accrue tax on the amount of space it retains as office space which is 5.71% based on the total square footage in the building (14,880) and the amount the Association will retain (850) for its offices. The Association will not be responsible for paying sales tax on the common areas since they are included in the subleases to the tenants.

The lease of parking spaces is covered by Section 212.03(6), F.S., as amended by section 2, of Chapter 87-548, L.O.F., which provides:

"(6) It is the legislative intent that every person is engaging in a taxable privilege who leases or rents parking

or storage spaces for motor vehicles in parking lots or garages, who leases or rents docking or storage spaces for boats in boat docks or marinas, or who leases or rents tie-down or storage space for aircraft at airports. For the exercise of this privilege, a tax is hereby levied at the rate of 6 percent on the total rental charged."

Rule 12A-1.073(2), F.A.C., also provides:

"(2) Tax applies to the rental charge for parking or docking paid to the operator of the facility by the one who parks or docks. The prime lease of the parking or docking facility to the operator is not taxable."

The Center should register as a dealer with the Department for purposes of extending a resale certificate to the XXX and to the independent third party in lieu of tax when subleasing parking spaces to the Association. Since the Association will sub-sublease parking spaces to its tenants and independent third parties they should extend a resale certificate to the Center and collect tax on the sub-subleases from its tenants and independent third parties and also accrue tax on the parking spaces the Association retains for its own use.

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 upon 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 and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details which might lead to identification of the taxpayer must be deleted by the department before disclosure. In an effort to protect confidential

information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

Richard S. Harrod  
Technical Assistant

RSH/oc