

Oct 19, 1989

Re: TAA 89A-056

Sales Tax on Purchase of a Vessel for Leasing

Rules 12A-1.007 and 12A-1.071, F.A.C.

Dear :

This is in response to your letter dated August 25, 1989, in which you have requested a Technical Assistance Advisement on behalf of XXX regarding the purchase of a motor yacht called "XXX" for the purpose of leasing to a third party. Your letter provided in part:

"XXX is a corporation organized in the state of Delaware and has been engaged in the yacht leasing business since August, 1984. XXX intends to purchase a 160 (+)(-) foot yacht manufactured by XXX. The contract price is XXX. The sale will take place in XXX; however, delivery will be made somewhere on the east coast of Florida. The yacht will be a XXX flagged vessel registered in the XXX and the home port will be XXX.

"XXX will enter into an annual time charter lease agreement with an unrelated third party, XXX, a XXX company with corporate offices in XXX. The annual lease is \$450,000 payable monthly. XXX charts the yacht at its sole discretion to whom it chooses and for any duration within the lease period. It is anticipated that XXX would renew the lease with XXX annually. XXX would also provide and control the crew, which would consist of a minimum of a captain, two mates, and other mates as required on an as-needed basis.

"XXX customers are mainly U.S. businesses and individuals. The charter parties will originate in the continental U.S. which will be predominantly the east coast of Florida and the balance in the Northeast. The majority of the charters will originate in Florida and, therefore, to insure dockage space, because of the size of the yacht, dockage will be obtained at a marina on the east coast of Florida.

"We respectfully request the Department of Revenue to favorably rule on the following:

- "1. No Florida sales or use tax is due on the sale from XXX to XXX;
- "2. Florida sales tax be paid based on the lease and payable monthly upon the receipt of each lease payment to the Department of Revenue. Since XXX has no control over the XXX charters and would not have any information as to the origination of the charters, XXX is agreeable in attributing 100% of the annual lease payments to the state of Florida. The majority of the charters would be originating in Florida, although not all of them. XXX is not a U.S. company, does no business within the U.S., and has no offices in the U.S.; therefore, as an administrative convenience, XXX will remit the monthly Florida sales and use tax to the Department of Revenue based on the guaranteed lease payments it receives from XXX."

A copy of the proposed lease agreement attached with your letter provided the following:

"AN AGREEMENT, made and entered into this 9th day of May, 1989, by and between XXX, and XXX.

"For and in consideration of the agreements contained herein, XXX agrees to rent and lease from XXX the following to-wit:

"164' ALUMINUM OCEAN FAST MOTOR YACHT, 'XXX' and the furniture and furnishings in said vessel.

"Said rental is for a term of 12 months, beginning on September 1, 1989 and ending August 31, 1990.

"The agreed rental for the leased vessel is \$37,500 per month.

"All rental payments due and owing under this agreement

shall be made at the office of XXX, or at such other place as XXX, from time to time, may direct.

"XXX will provide the vessel with a licensed captain and crew as required at all times at the cost and expense of XXX. XXX will pay for dockage at its ports, XXX and XXX."

Based on the information submitted in your letter and attached copy of the proposed lease agreement, it is understood that XXX, is purchasing the motor yacht for the sole purpose of leasing it to XXX, who in turn will charter it to customers at their discretion within the prime lease period. The proposed lease is for one year and XXX, (purchaser/lessor) anticipates to renew the lease on an annual basis. The purchaser/lessor does not provide the crew or pay for its expenses. The purchaser/lessor is to rent and pay for dockage space in a docking facility at XXX.

Your attention is invited to the following excerpts from the Florida Administrative Code.

Rule 12A-1.007(2)(b), F.A.C., provides:

"Tax shall apply and be due on any aircraft, boat, mobile home, motor vehicle, or other vehicle imported or caused to be imported from a foreign country into this state for use, consumption, distribution, or storage to be used or consumed in this state. It is immaterial whether such aircraft, boat, mobile home, motor vehicle, or other vehicle was used in another country for a period of six months or more prior to the time it is brought into Florida. Furthermore, tax paid in another country will not be recognized by the State of Florida in arriving at the tax due."

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

"Any person who purchases tangible personal property for the dual purpose of leasing it to others and also for his own use, or who purchases tangible personal property with the intention only of leasing it but in fact also uses the

property itself, shall pay the tax on the cost price of such property and shall also collect and remit the tax on all leases of such property."

Rule 12A-1.071(17), F.A.C., provides:

"(17) When a boat or vessel is leased or rented on a bare boat basis, the sales tax applies to the gross proceeds derived from the lease or rental. The lease or rental is considered to be on a 'bare boat' basis when:

"(a) The lessor does not provide a crew:

"(b) The lessor does provide a crew but it is hired by the lessee under a separate employment contract. (Under such circumstances the employment contract cost is not a part of the gross proceeds derived from the lease or rental and is not taxable.)"

Rule 12A-1.071(19), F.A.C., provides:

"Unless a boat or vessel is purchased exclusively for rental on a bare boat basis as described in paragraph (17), the purchase of the boat or vessel and parts thereof is taxable."

The above excerpts from the Florida Administrative Code clearly state that the purchase of a motor yacht from a foreign country for use, consumption, distribution or storage to be used in this state is taxable unless specifically exempt. A specific exemption is contained in Rule 12A-1.071(19), F.A.C., for boats or vessels which are purchased exclusively for rental on a "bare boat" basis as defined in Rule 12A-1.071(17), F.A.C. However, the gross proceeds derived from such rental is subject to tax. Unless a person is registered as a dealer, he is not entitled to engage in the business of leasing or renting tangible personal property in this state and to purchase such items without paying tax. According to Section 212.05, F.S., every person is exercising a taxable privilege who engages in the business of leasing or renting tangible personal property within this state. A tax is levied on each taxable transaction and should be collected by the dealer and remitted to the state. Section 212.06, F.S., defines the term "dealer" to mean and include any

person who leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto, and Section 212.02, F.S., defines the term "person" to include any corporation. Therefore, XXX, must register as a Florida dealer to engage in the business of leasing or renting the vessel within this state, and to purchase the vessel without paying tax. It is imperative that XXX, should be registered as a Florida dealer before importing the vessel into Florida territorial waters in order to be exempt from tax liability on the cost price of the vessel as of the moment of commingling with the general mass of property in this state as set forth in s. 212.06(1)(a), F.S. If XXX, is not registered as a Florida dealer before importing the vessel into Florida waters, it would be deemed a taxable transaction and tax shall apply pursuant to Rule 12A-1.007(2)(b), F.A.C. An application for registration as a dealer is enclosed herewith for your use.

Based on the information submitted and subject to registration requirements as described above, it is presumed that the vessel "XXX" which is imported from XXX, by XXX, at a price of approximately \$XX, is purchased exclusively for the purpose of leasing on a "bare boat" basis as defined in Rule 12A-1.071(17), F.A.C., and is within the purview of Rule 12A-1.071(19), F.A.C., and therefore, is exempt from tax on the purchase of the vessel and parts thereof. Tax is due on the gross proceeds of the lease and should be collected from the lessee and remitted to the state unless otherwise exempt. XXX, (purchaser/lessor) who rents the docking space should pay tax on such rental pursuant to Rule 12A-1.073(1)(b), F.A.C. Any change in the status of the transaction on which the above determination is based, and which is not in conformity with the definitions as set forth in Rules 12A-1.071(17) and 12A-1.071(19), F.A.C., will make the above determination null and void. We would like to point out that the proposed lease agreement between XXX, and XXX, is for a duration of twelve months. In the instance, where the proposed lease agreement is not properly executed or not renewed as anticipated, XXX, should refrain from any personal use of the vessel except for leasing purposes as defined above in order to avoid any potential use tax liability on the full value of the vessel.

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 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. We acknowledge receipt of your request for deletions of names, addresses, taxpayer identification numbers and counties of origin.

Sincerely,

Neel Jacob,
Technical Assistant

NJ/pb

Enclosures