

SUMMARY

The Department agreed that a parent corporation could trade-in an aircraft or vessel owned by a subsidiary, if the sale and trade-in are one transaction and reduce the sales price by the credit given for sales tax purposes. Consideration must be given to the taxability of the act of donating or contributing of the used aircraft or vessel to the parent corporation by the subsidiary for the purpose of using the aircraft as a trade-in. If title to the used aircraft is transferred to the dealer on behalf of the parent corporation, absent proof of actual consideration for the transfer, the consideration would be presumed to equal the fair market value of the aircraft or vessel. It is likely that the transfer of the aircraft would be recorded as a contribution of capital on the books and records of the parent corporation.

May 27, 1998

Re: Technical Assistance Advisement 98(A)-040
Sales and Use Tax - Trade-Ins of Aircraft and Vessels
Section: 212.09, F.S.
Rule: 12A-1.007, F.A.C.

Dear :

This is a response styled a Technical Assistance Advisement, to your letter dated February 10, 1998, concerning the above referenced matter as applied to XXX ("Company"). Your correspondence has been carefully examined and the Department finds it to be in compliance with the 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.

STATED FACTS

You provide the following facts:

Company is the parent corporation of XXX ("Subsidiary"). Subsidiary carries on its books and is the owner of certain aircraft and vessels on which sales tax was previously paid. Company has determined that it is in its best interest to have all aircraft and vessels owned and maintained by it on its books and not on the books of Subsidiary. It is proposed that Company will acquire new aircraft and vessels, and the aircraft and vessels owned by Subsidiary would be traded in at the time of the acquisition by Company, in order to reduce the amount paid by Company for the new aircraft and vessels. No consideration is paid between the two related corporations.

REQUESTED ADVISEMENT

You ask, where an aircraft or vessel is traded in by one related entity on the acquisition of a new aircraft or vessel by its affiliated entity, will this be treated as a trade-in, reducing the sales price by the credit given for sales tax purposes?

Is it the Department's position that a person may provide a motor vehicle as a trade in against another person's acquisition of a motor vehicle and qualify for the trade-in credit provided by Rule 12A-1.007, F.A.C.?

LAW AND ANALYSIS

Section 212.09(1), F.S., provides the following regarding used articles taken in trade:

(1) Where used articles are taken in trade, or a series of trades, as a credit or part payment on the sale of new articles, the tax levied by this chapter shall be paid on the sales price of the new article, less the credit for the used article taken in trade.

Rule 12A-1.007(1)(b)1., F.A.C., states:

(1)(b)1. Any trade-in allowance for tangible personal

property, if the sale and trade-in are one transaction, accepted by any person registered with the Department of Revenue as a dealer to engage in the business of selling aircraft, boats, mobile homes, motor vehicles, or other vehicles of a class or type required to be registered, licensed, titled, or documented in this state or by the United States Government and intended for resale by such dealer shall be excluded (deducted) from the gross sales price, and only the net sales price shall be subject to tax.

RESPONSE

The Department answers both questions raised in the affirmative. Company can trade a used aircraft or vessel by its affiliated entity, if the sale and trade-in are one transaction, and reduce the sales price by the credit given for sales tax purposes. The question you have not asked, which must be considered is whether the act of donating or contributing the used aircraft to the Company by Subsidiary for the purpose of using the aircraft as a trade-in is taxable? Title to the used aircraft is transferred in the above described scenerio to the dealer on behalf of Company. Absent proof of the actual consideration for the transfer, the consideration would be presumed to equal the fair market value of the aircraft. It is likely that the transfer of the aircraft would be recorded as a contribution to capital on the books and records of Company.

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. 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,

Janet Cumbie
Tax Law Specialist
Technical Assistance & Dispute Resolution
(850)922-4847

JCC\
Control No: 32874