

SUMMARY

QUESTION:

Is the Agreement a taxable lease of tangible personal property, or a nontaxable service transaction?

ANSWER:

Under the facts provided, the hourly rate charged under the Agreement is subject to sales tax as a lease of Taxpayer's simulators.

- 1) Taxpayer is not providing operators without the Customers receiving possession, direction, or control, and
- 2) Taxpayer is not providing flight instruction to Customer's personnel.

January 12, 2010

XXX

Re: Technical Assistance Advisement 10A-001
Flight Simulator Lease
Sales and Use Tax
Section 212.05, Florida Statutes (F.S.)
Rule 12A-1.071, Florida Administrative Code (F.A.C.)
XXX ("Taxpayer")
FEIN: XXX

Dear XXX:

This is in response to your letter dated April 3, 2009, requesting this Department's issuance of a Technical Assistance Advisement (TAA) pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the above referenced matter and party. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

FACTS

Your letter provides in part:

[Taxpayer] enters into training device use agreements with [Customer] for the use of the aircraft simulators. These agreements require the [Customer] to pay an hourly rate for the use of the aircraft simulator.

These aircraft simulators are located at [Taxpayer's] XXX XXX in XXX, Florida. . .

Taxpayer provided an “XXX XXX XXX XXX XXX XXX Agreement” (“Agreement”) that provides in part:

AGREEMENT

X. Use of Simulators

(X) [Taxpayer] shall make the Simulators available to [Customer] on a dry lease basis from time to time as requested by [Customer], subject to availability and subject to the terms and conditions contained herein.

* * *

(X) [Taxpayer] will not conduct any training of [Customer] personnel on [Customer]’s behalf.

X. Payment Terms

(X) As consideration for its use of the Simulators, [Customer] shall pay an hourly rate of \$XXX for Flight Training Device usage and \$XXX for Full Flight Simulator usage. This hourly rate is for dry lease training only and does not include instructors, [or] trainers XXX XXX XXX. . . . (e.s.)

(X) XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX.

X. [Customer] Responsibilities

(X) [Customer] agrees to prudently operate all equipment to which it has access hereunder

X. [Taxpayer] Responsibilities

(X) It is the sole responsibility of [Taxpayer] to make the Simulator, under the terms of this Agreement, available to [Customer]

X. Ownership of the Simulator

The parties agree that neither [Customer] nor any of its Trainees shall have any ownership interest in the Simulators at any time. . . .

ISSUE

Is the Agreement a taxable lease of tangible personal property, or a nontaxable service transaction?

ADVISEMENT REQUESTED

Your letter provides in part:

During the training session, [Taxpayer] maintains control of the simulator operation, with the [Customer] supplying an instructor to observe the training session for the

pilots and set the flight parameters in the simulator cockpit (e.g., the weather conditions, the airport, simulated aircraft malfunctions). The [Customer] is not permitted to enter the control room or to modify or control the profiles/systems of the simulator at any time. At any time during the training session, [Taxpayer] is authorized to stop or deny use of the training device. At the end of the training session, the [Customer] is required to complete the following items on the time log: actual time in and out, and discrepancies/malfunctions.

Therefore, at all times prior to, during, and after the training session, control of the training device/simulator is maintained by [Taxpayer]. . . . The charges under contract for the use of the simulator are for nontaxable services and are therefore not subject to Florida sales tax. . . .

Applicable Authority

Section 212.05, F.S., provides:

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 . . . or who rents or furnishes any of the things or services taxable under this chapter

Rule 12A-1.071, F.A.C., provides in part:

(9)(a) A transaction involving the use of equipment with an operator supplied by the owner of the equipment is a lease if control or direction over the use of the equipment passes to the customer.

* * *

(d) When the owner of equipment furnishes the operator and all operating supplies, and contracts for their use to perform certain work under his direction and according to his customer's specifications, and the customer does not take possession or have any direction or control over the physical operation, the contract constitutes a service transaction and not the rental of tangible personal property, and no tax is due on the transaction. (e.s.)

* * *

(22) A charge for flight instruction, which includes supervised solo flights, is exempt. The purchase of an aircraft for this use is taxable.

Response

In Florida, the sale of tangible personal property is subject to tax. See Section 212.05, F.S. The term “sale” includes a lease or license to use tangible personal property. Service only transactions, except those authorized for taxation by Chapter 212, F.S., are generally not subject

to tax.

Rule 12A-1.071(9), F.A.C., provides that when an owner of an item furnishes the operator, and the operator's customer does not take possession or have any direction or control over the physical operation of the item, then the transaction is viewed as a service and not the rental of

tangible personal property. Under the Agreement, Taxpayer agrees to make the simulator available on a dry lease basis; Taxpayer does not include instructors, [or] training XXX XXX XXX. See Agreement, XXX and XXX. Here, the Customer's instructors and members are in the simulators and have possession, direction, and control over the operation of the training and the physical simulator. Taxpayer, as the owner, does not furnish all operations, and the customer does take possession and has direction or control over the simulators operation and training of the customer's personnel. Therefore, the Agreement is not a service transaction.

Rule 12A-1.071(22), F.A.C., further provides that a charge for flight instruction is exempt. Taxpayer expressly contracts that it will not provide training to the Customer, and that Customer will provide all needed training personnel themselves. See Agreement, XXX and XXX. Therefore, the Agreement is not exempt from sales tax under subsection (22).

Under the facts provided, the hourly rate charged under the Agreement is subject to sales tax as a lease of Taxpayer's simulators. Taxpayer is not providing operators without the Customers receiving possession, direction, or control, and Taxpayer is not providing flight instruction to Customer's personnel.

This response constitutes a Technical Assistance Advisement under Section 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 Section 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 Advisement, 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.

Sincerely,

Technical Assistance Advisement
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Deputy Director
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Record ID: 63284