

SUMMARY

QUESTION: Whether Taxpayer's aircraft will be subject to Florida use tax, when the aircraft is purchased and repaired in California more than six months prior to the time the aircraft is imported into Florida.

ANSWER: Taxpayer's aircraft will be subject to Florida use tax when the aircraft is imported into Florida, because Taxpayer purchased the aircraft with the intent to base and use the aircraft in Florida.

February 10, 2010

XXX
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Re: Technical Assistance Advisement 10A-006
Sales and Use Tax – Aircraft
Section 212.05, Florida Statutes [F.S.]
Section 212.06, F.S.
Section 212.13, F.S.
Rule 12A-1.007, Florida Administrative Code [F.A.C.]
Rule 12A-1.091, F.A.C.

XXX [Taxpayer]
XXX
XXX

Dear XXX:

This is a response to your letter of December 8, 2009, requesting a Technical Assistance Advisement [TAA] regarding the above-referenced matter. This response to your request constitutes a TAA under Chapter 12-11, F.A.C., and is issued to you under the authority of Section 213.22, F.S.

FACTS

On September 29, 2009, Taxpayer, a Florida corporation located in XXX, Florida, purchased a XXX aircraft [the Aircraft] in XXX, California. Taxpayer states that the Aircraft "has not been flown in several years and is in need of significant maintenance, repair, rebuilding, and restoration work." Taxpayer states that, at the time of sale, the Aircraft received basic maintenance work in XXX, California, to make the Aircraft capable of safely flying.

Taxpayer states that the Aircraft was then flown to XXX, California, where the majority of the significant repair work is to be performed. Taxpayer estimates that the aircraft will be located at the repair facility in XXX, California, for at least six months or more.

Taxpayer states that “[a]fter all this work is completed, it is anticipated that the [Aircraft] will be flown to, and be based in, Florida.” Taxpayer anticipates that the Aircraft will first enter Florida at least six months after it was purchased in California.

ISSUE

Whether, under the facts provided, Taxpayer’s Aircraft will be subject to Florida use tax when the Aircraft is imported into Florida.

REQUESTED ADVISEMENT

Taxpayer requests that the Department issue a TAA stating that the Aircraft will be exempt from Florida use tax when the Aircraft is imported into Florida, because the Aircraft was used outside the State of Florida for at least six months prior to such importation into this state.

TAXPAYER’S POSITION

Taxpayer states that the Aircraft should be exempt from tax at the time of importation into this state, because Florida law provides that an aircraft purchased outside the State of Florida, and used in another state, territory of the United States, the District of Columbia six months or more prior to the time it is brought into this state, is presumed to be exempt as purchased for use outside Florida. See s. 212.06(8), F.S., and Rule 12A-1.007(2)(a), F.A.C.

Taxpayer states that the Aircraft will be subject to the taxing jurisdiction of California¹, but that California provides a specific exemption from the sales and use tax for aircraft “sold to any person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.” See California Revenue and Tax Code s. 6366.

Taxpayer also notes that the repair work performed on the Aircraft in California “which is performed ... [in the case of a] nonresident prior to the aircraft’s removal from the State of California, will not disqualify the sale and use of the aircraft or its component parts from the exemption” See Sales and Use Tax Regulation 1593(d)(3).

DISCUSSION AND RESPONSE

Section 212.05(1)(b), F.S., provides that the “use, consumption, distribution, or storage for use and consumption” of tangible personal property in Florida is a taxable privilege, and levies a tax at the rate of six percent on each taxable transaction. The use tax is specifically made applicable to all articles of tangible personal property “imported or caused to be imported” into Florida from outside the state. See s. 212.06(4) and (8)(a), F.S. The Department’s rules make clear that the tax applies to any tangible personal property used, consumed, distributed, or stored for use or consumption in Florida that was purchased in such a manner that the sales tax was not applicable at the time of purchase. See Rules 12A-1.007(1) – (3) and 12A-1.091(1), F.A.C.

¹ Rule 12A-1.007(2)(a), F.A.C., requires a tax-exempt aircraft to be used in other states, territories of the United States, or the District of Columbia for six months or longer under conditions which would lawfully give rise to the taxing jurisdiction of another state, territory, or District of Columbia. This rule provision further requires the owner of the aircraft to pay any lawfully imposed tax to such state, territory, or District of Columbia before importing the aircraft into this state.

The use tax in Florida is levied upon the “cost price as of the moment of purchase, or ... the cost price as of the moment of commingling with the general mass of property in this state, as the case may be” See s. 212.06(1)(a), F.S.² This tax is collected from a “dealer,” which is defined to include any person who imports or causes to be imported tangible personal property from outside Florida, as well as any person who can not prove that the tax levied by Chapter 212, F.S., has been paid. See s. 212.06(2)(b) and (d), F.S. Each dealer is required to secure, maintain, and keep for as long as required by s. 213.35, F.S., a complete record of tangible personal property received or used. See s. 212.13(2), F.S.

Section 212.06(4) and (8)(a), F.S., specifically provide that use tax applies to tangible personal property imported or caused to be imported into Florida. Section 212.06(8)(a), F.S., continues by stating that “. . . it shall be presumed that tangible personal property used in another state, territory of the United States, or the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state. . . .” (emphasis supplied) Thus, upon a showing that tangible personal property was used for six months or longer within a United States jurisdiction, a presumption arises that such property was not purchased for use in Florida and is, accordingly, not subject to tax (i.e., a presumption arises that the property is excluded or exempted from tax).

In the present case, Taxpayer argues that the Aircraft will not be subject to tax at the time of importation into this state, because the Aircraft will be present in California for more than six months prior to the date of importation into Florida. Hence, Taxpayer believes that the Aircraft will be presumed to be purchased for use outside the State of Florida and exempt from tax, in accordance with s. 212.06(8), F.S., and Rule 12A-1.007(2)(a), F.A.C.

After carefully reviewing the facts and circumstances surrounding Taxpayer’s purchase and use of the Aircraft in California, the Department has determined that Taxpayer is unable to claim the presumption that the Aircraft was purchased for use outside the State of Florida for the following reasons:

1) Taxpayer has indicated that the Aircraft was intended to be used in the State of Florida at the time of purchase.

Taxpayer states in its letter dated December 8, 2009, that the Aircraft requires “significant maintenance, repair, rebuilding, and restoration work” to render the Aircraft in serviceable condition. Taxpayer states that the Aircraft “will be flown to, and be based in, Florida” following these repairs. (emphasis supplied) Taxpayer’s stated intent to base the Aircraft in Florida following the completion of the repairs directly rebuts any presumption that the Aircraft was purchased for use outside this state.

2) Taxpayer has failed to provide any evidence that the Aircraft was purchased for use in the State of California.

² When the use tax applies to an item of tangible personal property, credit must be given for any “like tax” lawfully imposed and paid to another state, territory of the United States, or the District of Columbia that is equal to or greater than the tax imposed by Chapter 212, F.S. See s. 212.06(7), F.S. If the out-of-state tax was less than the amount imposed by Chapter 212, F.S., the dealer is only responsible for paying the difference to Florida. See s. 212.06(7), F.S.

California provides a specific tax exemption for nonresident aircraft that will not be used in the State of California for any purpose other than “the removal of the aircraft from this state.” See California Sales and Use Tax Regulation 1593(b)(1)(C).³ (emphasis supplied) To receive this exemption, California law requires the California seller to collect an “Aircraft or Aircraft Parts Exemption Certificate” at the time of sale, in which the purchaser must affirm that the aircraft will be used “[o]utside California by a nonresident of California which aircraft was not used in this state other than the removal from California.” See California Sales and Use Tax Regulation 1593(e). (emphasis supplied)

This exemption is applicable only when a nonresident purchaser in California purchases an aircraft for use outside the State of California. By claiming this exemption, Taxpayer is affirming that the Aircraft is intended for use outside California. Under such circumstances, where Taxpayer affirms that the Aircraft will not be used in the State of California, and where Taxpayer states that the Aircraft will be based in Florida following the repairs which occur in California, Taxpayer’s Aircraft will be subject to Florida use tax when the Aircraft is imported into this state.

CONCLUSION

Under the facts provided, Taxpayer’s Aircraft will be subject to Florida use tax when the Aircraft is imported into Florida.

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 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.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 922-9408.

Sincerely,

Matt Crockett

³ See also California Sales and Use Tax Regulation 1593(c)(1)(G), which provides that a “nonresident will be considered as not using the aircraft other than to remove the aircraft from California if the aircraft is promptly removed from the state and is not returned to California within 12 months after its removal from this state.” (emphasis supplied)

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