SUMMARY

QUESTION: Whether Subsidiary is eligible to prorate sales and use tax, as provided in s. 212.0598, F.S., and whether Subsidiary is entitled to certain exemptions from sales and use tax for parts and equipment used by it in aircraft repair and maintenance. Also, Taxpayer is requesting confirmation of Subsidiary's right to use revenue miles for apportionment of Florida corporate income tax under Chapter 220 F.S., as provided in s. 220.151, F.S.

ANSWER: It is determined that Subsidiary's revenue is derived from the transportation of people or goods. Subsidiary operates a "business whose income is derived primarily from transporting people or goods from one location to another," within the definition of Rule 12C-1.0151(2)(a)1., F.A.C. It is further determined that Subsidiary is entitled to use revenue miles to apportion all of its income to Florida for purposes of corporate income tax, pursuant to s. 220.151, F.S.

It is concluded that Subsidiary is entitled to elect to prorate sales and use taxes for its purchases of tangible personal properly, including the lease of aircraft, purchases of parts, and use of parts or aircraft in Florida, pursuant to s. 212.0598, F.S. Also, it is determined that parts purchased by Subsidiary that are installed on aircraft of any size being modified for foreign customers are not taxable, so long as the aircraft are registered with a foreign government and will depart from the U.S. after the modifications are completed, pursuant to s. 212.06(5)(a)1., F.S. Also, it is concluded that Subsidiary's use of parts for the repair or maintenance of aircraft that meet the weight criteria under s. 212.08(7)(rr), F.S., is exempt from any Florida use tax when those parts are installed in Florida. In addition, it is determined that s. 212.08(7)(rr), F.S., exempts Subsidiary from any use tax liability where parts purchased for modification, repair, or maintenance service are sent out of state for maintenance and then returned for installation on aircraft that meet the weight criteria when such installation occurs in Florida. Furthermore, it is determined that no sales tax will be due when Subsidiary repairs aircraft in Florida and thereby sells parts and equipment used in the repair that meet the weight thresholds provided in s. 212.08(7)(rr), F.S., and it is concluded that in order for the exemption under s. 212.08(5)(i), F.S., to apply, Subsidiary must be performing its work under an STC issued by the FAA for a specific modification.

October 19, 2011

XXX
XXX
XXX

Re: Technical Assistance Advisement 11A-029
Florida Sales and Use Tax/Corporate Income Tax

Aircraft
Sections 212.0598, 212.06, 212.08, 220.151, 220.152, Florida Statute (F.S.)
Rules 12A-1.007, 12C-1.003, 12C-1.0151, 12C-1.0152, Florida Administrative Code (F.A.C.)
Petitioners: XXX. ("Taxpayer")
XXX ("Subsidiary")

Dear

This letter is a response to your petition dated February 11, 2011, for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced petitioner and matter. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite 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 Section (s.) 213.22, F.S.

FACTS

A subsidiary of Taxpayer, Subsidiary, holds a Federal Aviation Administration ("FAA") Part 135 air carrier certificate, an FAA Part 133 air operator certificate, and an FAA Part 145 repair station certificate.

Previously Subsidiary's U.S. base of operations was almost entirely in XXX. However, it has recently relocated to XXX, Florida. It is now filing Florida sales and use tax returns and anticipates filing its Florida corporate income tax return, when due.[1]

Subsidiary operates two lines of business. First, it operates both fixed and rotary-wing aircraft under contract, including transportation of personnel and cargo in support of U.S. government contracts outside the U.S., under the FAA Part 135 air carrier certificate and the FAA Part 133 air operator certificate. Second, Subsidiary operates under the FAA Part 145 repair station certificate and performs maintenance, repair, overhaul and engineering, and design modifications on aircraft.

Presently, Subsidiary operates a fleet of 63 leased aircraft, of which 18 fixed-wing and 23 rotary-wing aircraft operate under contracts with the U.S. government (principally in Afghanistan and other jurisdictions outside the U.S.) from Subsidiary's current base of operations. The remaining 22 aircraft are currently located at Subsidiary's base of operations, 20 of which are for use in future service contracts or for sale; the other two are hulls. All but five of Subsidiary's leased fleet are leased from another subsidiary of Taxpayer, a Delaware limited liability company. The remaining aircraft are leased from unrelated entities. When Subsidiary completes its relocation to Florida, aircraft not in service under a government contract will likely be stored in Florida until sold or redeployed under a new contract.

[1] Updated information, relating to Subsidiary's status, was submitted by Taxpayer on September 21, 2011.

Subsidiary's customers are currently all U.S. government agencies and are generally located in overseas locations. The majority of Subsidiary's revenue-producing aircraft are located at sites other than its base of operations. Subsidiary has, in the past, however, operated domestic contracts from its XXX base of operations, and it will continue to pursue in the future other domestic services that could be provided to federal and non-federal customers within the U.S., including from Florida upon completion of its relocation.

Prior to deployment, aircraft are customarily brought to Subsidiary's base of operations, typically for a 30- to 60-day period, for testing, training of personnel, and potential modifications. Subsidiary does not generate revenue during this time but rather incurs costs to prepare the aircraft for a mission and to train its pilots. When a service contract expires, the aircraft used in the performance of the contract are likely to be returned to Subsidiary's base of operations until redeployed under a new contract or sold. From time to time, Subsidiary may lease aircraft specifically for use in ongoing training at Subsidiary's base of operations. Following its relocation to Florida, Subsidiary will utilize the aircraft in Florida to train and prepare pilots to fly missions, principally outside the U.S., but it will receive payment for such training only as an increment of overhead. Subsidiary is not transporting either cargo or passengers during any of its training exercises.

To support its fleet, Subsidiary is responsible for repairing and maintaining its aircraft. Line maintenance and other light repair are conducted in theater. Most heavy maintenance would likely be conducted at a third-party provider outside the U.S. or by Subsidiary in situations where the aircraft would be returned to the U.S. To support operating aircraft, Subsidiary purchases new or used (overhauled) parts that are: (i) stored at the base of operations; (ii) shipped directly abroad; (iii) or shipped to Subsidiary's base of operations to then be exported. Subsidiary estimates that it has approximately $10 to $15 million in parts that will be relocated from XXX to Florida.

Subsidiary, also repairs, rebuilds, and modifies aircraft under its FAA Part 145 repair station certificate. In general, Subsidiary works on fixed-wing aircraft of maximum certified takeoff weight exceeding 15,000 pounds or rotary-wing aircraft of more than 10,300 certified maximum takeoff weight. For this line of business, Subsidiary's customers are foreign or domestic owners or operators of aircraft. In addition, from time to time, Subsidiary, operating under a d/b/a, may perform repair work for its own aircraft operating under a different d/b/a. The process of repair and modification can take from one to six months, depending on the scope of work. Once a job is completed, the aircraft are returned to the owners/customers for operation under that owner's/customer's certification.

REQUESTED ADVISEMENTS

Whether Subsidiary is eligible to prorate sales and use tax, as provided in s. 212.0598, F.S., and whether Subsidiary is entitled to certain exemptions from sales and use tax for parts and equipment used by it in aircraft repair and maintenance. Also, Taxpayer is

requesting confirmation of Subsidiary's right to use revenue miles for apportionment of Florida corporate income tax under Chapter 220 F.S., as provided in s. 220.151, F.S.

TAXPAYER'S POSITION

Taxpayer's position is that Subsidiary is entitled to elect to prorate sales and use tax for its purchases of tangible personal property, including the lease of aircraft, purchases of parts, and use of parts or aircraft, pursuant to s. 212.0598, F.S.

Taxpayer also contends that parts purchased by Subsidiary that are installed on aircraft of any size being modified for foreign customers are not taxable, so long as the aircraft are registered by a foreign government and will depart from the U.S. after the modifications are completed, pursuant to s. 212.06(5)(a)1., F.S. Also, it contends that Subsidiary's use of parts for the repair or maintenance of aircraft that meet the weight criteria under s. 212.08(7)(rr), F.S., is exempt from any Florida use tax when those parts are installed in Florida. Further, Taxpayer asserts that s. 212.08(7)(rr), F.S., exempts Subsidiary from any use tax liability where parts purchased for modification, repair, or maintenance service are sent out of state for maintenance and then returned for installation on aircraft that meet the weight criteria when such installation occurs in Florida. In addition, Taxpayer maintains that no sales tax will be due when Subsidiary repairs aircraft in Florida and thereby sells parts and equipment used in the repair that meet the weight thresholds provided in s. 212.08(7)(rr), F.S. Furthermore, Taxpayer states, in order for the exemption under s. 212.08(5), F.S., to apply, Subsidiary must be performing its work under an STC (supplemental type certificate) issued by the FAA for a specific modification.

Also, Taxpayer's position is that Subsidiary is entitled to use revenue miles to apportion all of its income to this state for purposes of corporate income tax, pursuant to s. 220.151, F.S.

ANALYSIS and DISCUSSION

Corporate Income Tax

Section 220.151(2), F.S., permits a taxpayer "furnishing transportation services" to apportion its income by revenue miles traveled within and without Florida. Pursuant to Rule 12C-1.0151(2)(a)1., F.A.C., the definition of a taxpayer providing transportation services is a business whose income is derived primarily from transporting people or goods from one location to another.

From the information submitted by Taxpayer and reviewed, Subsidiary is a taxpayer in the business of transporting goods and people from one location to another. Its "principal" or "most significant" source of revenue is derived primarily from those

services. As a result, Subsidiary should use the single factor apportionment provided in section 220.151, F.S.

Regarding the proration of Subsidiary's business income, Rule 12C-1.003(4), F.A.C., defines "business income," in part, basically as all income which arises from the conduct of trade or business operations of a taxpayer. Rule 12C-1.0151(2)(c), F.A.C., provides that the revenue miles apportionment factor is applied to the business income of a transportation company providing transportation services, partially or wholly in interstate or foreign commerce. Section 220.151, F.S., and Rule 12C-1.0151(1), F.A.C., state that a taxpayer providing transportation services (transportation company) shall apportion income to Florida using a single-factor formula, in lieu of the three-factor formula used in the general apportionment method. These provisions state that all of the income of a taxpayer providing transportation services would be apportioned under the single-factor formula. Therefore, all of the "business income" of Subsidiary, a transportation company substantially providing transportation services, should be apportioned to Florida using a single apportionment factor based on revenue miles. This would include all of Subsidiary's business income from other activities, including aircraft repair and modification activities for as long as Subsidiary remains a "transportation company."

Please note that the single transportation apportionment factor must accurately and fairly reflect the Subsidiary's business activity in Florida, or alternative apportionment under section 220.152, F.S., and Rule 12C-1.0152, may be requested by the taxpayer or invoked by the Department.

Sales and Use Tax

Section 212.06(8)(a), F.S., provides that generally, when tangible personal property is imported to Florida within six months of the date of purchase, the property is subject to the Florida use tax. In addition, leased tangible personal property located or used in Florida is also subject to Florida sales tax on the lease while the property is present in Florida. The consequences of this for Subsidiary are that absent a specific tax exemption, its recently purchased inventory and leased aircraft would be subject to Florida use tax and sales tax. However, since Subsidiary operates under an FAA Part 135 certificate, transporting people and/or cargo for hire, the partial exemption provided for in s. 212.0598, F.S., will apply.

Section 212.0598, F.S., does require a taxpayer to be a licensed air carrier and to utilize mileage apportionment for corporate income tax purposes. Since Subsidiary operates under FAA Part 135 as a licensed air carrier, it can utilize the corporate income tax mileage apportionment, and thus Subsidiary would be entitled to elect apportionment based on the ratio of Florida miles to total mileage as determined in chapter 220, F.S. The applicable ratio is then applied monthly to all systemwide purchases of tangible personal property, including the lease of aircraft, purchase of parts, and use of parts or aircraft in Florida.

Section 212.06(5)(a)1., F.S., provides that it is not the intention to levy Florida sales tax upon purchases of parts and equipment installed on aircraft that have foreign registry and that will not operated in the United States. Parts purchased by Subsidiary that are installed on aircraft being modified for foreign customers are exempt from tax provided the aircraft is registered outside of the United States and will depart from the United States after the modifications are completed. To be eligible for this exemption, Subsidiary must submit a notarized affidavit from the aircraft's owner, agent, or operator indicating that upon completion of the modifications the aircraft will depart from the U.S. under its own power. See Rule 12A-1.007(10)(d)2., F.A.C.

Section 212.08(7)(ee), F.S., provides that there shall be exempt from sales tax all labor charges for the repair and maintenance of aircraft of more than 15,000 pounds maximum certified takeoff weight, and of rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.

Section 212.08(7)(rr), F.S., provides that there shall be exempt from sales tax replacement engines, parts, and equipment used in the repair or maintenance of aircraft of more than 15,000 pounds maximum certified takeoff weight, and of rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight, when such parts or equipment are installed on these aircraft that are being repaired or maintained in Florida.

As provided above, the purchases of parts and equipment used for the repair or maintenance of aircraft of more than 15,000 pounds maximum certified takeoff weight or rotary-wing aircraft with a maximum certified takeoff weight of more than 10,300 pounds are exempt when the repair or maintenance occurs in Florida. Also, labor charges for the repair and maintenance of aircraft of more than 15,000 pounds maximum certified takeoff weight and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight are exempt when the repair or maintenance occurs in Florida.

Subsidiary's purchases of parts and equipment purchased for repairing and maintaining aircraft meeting the statutory weight criteria in the State of Florida are exempt from sales and use tax. Also, Subsidiary's maintenance of spare parts for use on its aircraft meeting these weight criteria would be exempt from any Florida use tax when these parts are installed or held for installation in Florida during the course of aircraft repair or maintenance, and future purchases of parts would be exempt from sales tax. Further, this exemption will apply to exempt any use tax liability where the parts were sent out of state for maintenance and then returned for installation on the aircraft, because the statute requires only that the parts be "installed" on the aircraft that is being repaired in Florida. In addition, Subsidiary's labor charges for repair or maintenance of its aircraft meeting these weight criteria would be exempt from any Florida sales and use tax.

Section 212.08(5)(i), F.S., provides that there shall be exempt from sales tax all charges for aircraft modification services, including parts and equipment furnished or installed in connection therewith, performed under authority of a supplemental type certificate issued by the Federal Aviation Administration.

As provided in s. 212.08(5)(i), F.S., charges for parts and equipment furnished or installed in connection with the modification of an aircraft under an FAA supplemental type certificate ("STC") are exempt from Florida sales and use tax. Modifications provided by Subsidiary under an STC issued by the FAA for specifically installed equipment would be exempt from Florida sales and use tax.

CONCLUDING STATEMENTS

It is determined that Subsidiary's revenue is derived from the transportation of people or goods. Subsidiary operates a "business whose income is derived primarily from transporting people or goods from one location to another," within the definition of Rule 12C-1.0151(2)(a)1., F.A.C. It is further determined that Subsidiary is entitled to use revenue miles to apportion all of its income to Florida for purposes of corporate income tax, pursuant to s. 220.151, F.S.

It is concluded that Subsidiary is entitled to elect to prorate sales and use taxes for its purchases of tangible personal properly, including the lease of aircraft, purchases of parts, and use of parts or aircraft in Florida, pursuant to s. 212.0598, F.S. Also, it is determined that parts purchased by Subsidiary that are installed on aircraft of any size being modified for foreign customers are not taxable, so long as the aircraft are registered with a foreign government and will depart from the U.S. after the modifications are completed, pursuant to s. 212.06(5)(a)1., F.S. Also, it is concluded that Subsidiary's use of parts for the repair or maintenance of aircraft that meet the weight criteria under s. 212.08(7)(rr), F.S., is exempt from any Florida use tax when those parts are installed in Florida. In addition, it is determined that s. 212.08(7)(rr), F.S., exempts Subsidiary from any use tax liability where parts purchased for modification, repair, or maintenance service are sent out of state for maintenance and then returned for installation on aircraft that meet the weight criteria when such installation occurs in Florida. Furthermore, it is determined that no sales tax will be due when Subsidiary repairs aircraft in Florida and thereby sells parts and equipment used in the repair that meet the weight thresholds provided in s. 212.08(7)(rr), F.S., and it is concluded that in order for the exemption under s. 212.08(5)(i), F.S., to apply, Subsidiary must be performing its work under an STC issued by the FAA for a specific modification.

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 Section 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 10 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 850-717-6735.

Kind Regards,

Alan R. Fulton
Tax Law Specialist
Technical Assistance & Dispute Resolution

ARF\pb
Record ID: 97871