



FLORIDA

Executive
Director

Leon M. Biegalski

QUESTION: WHETHER A NONRESIDENT TRUST MAY BE SUBJECT TO TAX ON AIRCRAFT IT OWNS WHEN THE INDIVIDUAL WITH AUTHORITY TO DIRECT OR MANAGE THE TRUST IS A FLORIDA RESIDENT?

ANSWER: YES. BECAUSE THE TRUST HAS A FLORIDA RESIDENT OWNER THAT CAN DIRECT OR MANAGE THE ENTITY (I.E., TRUST), TAX IS DUE ON AIRCRAFT FOUND TO BE IN FLORIDA THAT THE TRUST OWNS.

January 9, 2017

Re: Technical Assistance Advisement 17A-001
Florida Sales and Use Tax – Aircraft Trust Owned By Florida Resident
Sections: 212.05; 212.06; and 212.21, Florida Statutes (F.S.)
Rule: 12A-1.007, Florida Administrative Code (F.A.C.)
Petitioners: XXXX (“Trustee”) and XXXX (“Taxpayer”)

Dear XXXX:

This letter is a response to your petition received on XXXX, for the Department of Revenue’s (“Department”) issuance of a Technical Assistance Advisement (“TAA”) concerning the above-referenced petitioners 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, Florida Administrative Code (“F.A.C.”). This response to your request constitutes a TAA and is issued to you under the authority of Section (“s.”) 213.22, Florida Statutes (F.S.).

FACTS PRESENTED

Taxpayer, a Florida resident, intends to own and be the sole shareholder of a Florida Corporation. The Florida Corporation will wholly own a Delaware Corporation. The Delaware Corporation is a trustee. Trustee is engaged in the business of owning aircraft for persons and entities that are not citizens of the United States of America.

Trustee does not have operational control over the aircraft in its care; rather, the trustor is vested with operational control. After issuance of the TAA, Taxpayer wishes to become an officer and director of Trustee. Taxpayer further states that as Trustee’s business grows, it may hire Florida residents as employees.

Child Support – *Ann Coffin, Director* • General Tax Administration – *Maria Johnson, Director*
Property Tax Oversight – *Dr. Maurice Gogarty, Director* • Information Services – *Damu Kuttikrishnan, Director*

www.floridarevenue.com
Florida Department of Revenue
Tallahassee, Florida 32399-0100

REQUESTED ADVISEMENT

Taxpayer requests that she be allowed to act as an officer, director, and owner of the Florida Corporation without incurring any presumption that the aircraft owned by Trustee are subject to sales or use tax.

TAXPAYER ARGUMENT

Taxpayer argues that though she is a resident of Florida, neither Taxpayer nor Trustee exercise operational control over the aircraft. Based on s. 212.05(1)(a)2., F.S., and Rule 12A-1.007(10)(b)1.e., F.A.C., defining a “nonresident,” neither Taxpayer nor Trustee qualify as a resident, and thus Taxpayer and Trustee do not have “authority to participate in the management, direction, or control of the entity’s affairs who is a resident of ... Florida.”

LAW AND DISCUSSION

The legislature has declared its intention in s. 212.21(2), F.S., that each and every sale, use, storage, or consumption of tangible personal property in Florida is taxable, subject only to the exemptions and exclusions contained within Chapter 212, F.S. Therefore, the purchase or use of an aircraft in Florida is subject to tax, unless an exemption applies.

Section 212.05, F.S., provides every person is engaged in a taxable privilege when engaging in the business of selling, at retail, tangible personal property¹. Tax on a sale of tangible personal property is levied at a rate of six percent (6%)². See s. 212.05(1)(a)1.a., F.S.

Generally, a nonresident purchaser may come to Florida to purchase an aircraft exempt from tax, so long as certain criteria are met. One of the criteria is that a corporate purchaser, or other artificial entity, cannot have an officer, director, or other individual, which is vested with authority to manage, direct, or control the entity, that is a Florida resident. See s. 212.05(1)(a)2., F.S., and Rule 12A-1.007(10)(b)1.d.-e., F.A.C.

For purchases of aircraft occurring outside of Florida, there is a presumption that use tax applies if the aircraft is subsequently brought into this State. See s. 212.06, F.S. Because sales and use taxes are a complementary system, one cannot evade tax with property in Florida, as either a sales or use tax will be due. Accordingly, if an aircraft is purchased within Florida or outside of Florida and brought into Florida, by an entity that has a Florida resident as an officer, director, or other individual, who is vested with authority to manage, direct, or control the entity, then the aircraft will be subject to tax.

¹ Tangible personal property is defined as including “personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses” See s. 212.02(19), F.S.

² Discretionary county sales surtax, if any, is also owed when tangible personal property is delivered to a county imposing surtax. See s. 212.054, F.S.

In the present case, Trustee will have a Florida resident owner (i.e., the Florida Corporation). The Florida Corporation has a Florida resident as an officer, director, or other individual, who is vested with authority to manage, direct, or control the entity (i.e., Taxpayer). Taxpayer is ultimately an officer, director, or other individual, who is vested with authority to manage, direct, or control Trustee. Because Trustee has a Florida resident with authority to manage, direct or control Trustee, Taxpayer is subject to sales or use tax on aircraft she owns, which aircraft are found to be within Florida.

CONCLUSION

Because Taxpayer is a Florida resident, any aircraft owned by Trustee in the State will be subject to a sales or use tax.

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 10 days of the date of this letter.

Sincerely,

Taylor Hikes, Esq.
Senior Attorney
Technical Assistance & Dispute Resolution
Florida Department of Revenue

Record ID: 211498