



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

QUESTION:

You request confirmation that Taxpayer's use of the aircraft and installed equipment in Florida are exempt from Florida sales and use tax under the nonresident exemption for flight training pursuant to s. 212.08(7)(fff)2., F.S.

ANSWER:

Based upon review of the documentation and information provided: (1) the Taxpayer is a nonresident; (2) Taxpayer's aircraft will enter and remain in Florida exclusively for purposes of flight training under contract with the [REDACTED] and for repairs, alterations, refitting, and/or modifications; and (3) Taxpayer's use of the aircraft and installed equipment in Florida qualifies for the exemption provided in s. 212.08(7)(fff), F.S.

June 5, 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Email: [REDACTED]

Re: Technical Assistance Advisement – TAA 23A-011
[REDACTED]. ("Taxpayer")
Sales and Use Tax – Aircraft/Flight Training/Modifications
Sections 212.02, 212.05, 212.054, 212.06, and 212.08, Florida Statutes - ("F.S.")
Rule 12A-1.007, Florida Administrative Code - ("F.A.C.")
BP #: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated October 24, 2022, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C, Florida Administrative Code, regarding the matter discussed below. Your request 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 s. 213.22, F.S.

REQUESTED ADVISEMENT

You request confirmation that the use of the aircraft and installed equipment in Florida are exempt from Florida sales and use tax under the nonresident exemption for flight training pursuant to Section 212.08(7)(fff)2., F.S.

FACTS

Your request provides in part:

The undersigned represents [Taxpayer]. Taxpayer's mailing address is [REDACTED]. Taxpayer's FEIN is [REDACTED]. Taxpayer is not currently under audit nor is the issue involved in a return of the Taxpayer. To the best of Taxpayer's knowledge, there are no contrary authorities known. The purpose of this request is to obtain a [TAA] from the Florida Department of Revenue [Department].

* * *

Taxpayer is a [REDACTED] for-profit corporation but is based in [REDACTED]. Taxpayer is one hundred percent (100%) owned by another entity, [REDACTED]. ("Entity A"), which is a [REDACTED] entity. Entity A is one hundred percent (100%) owned by another entity, [REDACTED]. ("Entity B"), which is a [REDACTED] entity. Finally, Entity B is one hundred percent (100%) owned by another entity, [REDACTED]. ("Entity C"), which is a [REDACTED] entity. None of the corporate owners or officers of Taxpayer are Florida residents. Taxpayer does not maintain its chief or principal office in Florida.

Taxpayer engages in the flight training services business. Taxpayer owns various types of aircraft that have been in [REDACTED] since purchase. The aircraft were acquired more than six (6) months ago and have had various upgrades made to make the aircraft more [REDACTED] – e.g., state-of-the-art radar and other current technologies. No [REDACTED] sales or use tax was paid on the acquisition of the aircraft, but rather [REDACTED] offered an exemption from tax. Thus, Taxpayer subjected itself to the taxing jurisdiction of [REDACTED].

Taxpayer intends on bringing its aircraft to Florida. Taxpayer's use of the aircraft in Florida will be strictly for flight training services and will solely be at [REDACTED] for this purpose when in Florida. Taxpayer's pilots will use their aircraft to teach [REDACTED] [REDACTED] pilots air combat and help the same to refine their skills, much like [REDACTED]. Taxpayer uses its aircraft as an "enemy force." Specifically, Taxpayer flies the aircraft as if it were an enemy combatant. The [REDACTED] pilots then engage the enemy force in order to "neutralize" the aircraft or else be "neutralized" themselves. The [REDACTED] pilots use their own aircraft.

As it pertains to Taxpayer's flight training, the [REDACTED] pilots are provided the training goals, strategies, and maneuvers that need to be planned before the training flight. The student

█████ requires Taxpayer's [North American Industry Classification System (NAICS)] code and services be performed under 611512, which is described as aviation and flight training. The same document on page 17 describes the services to be provided, as delineated above. This page also incorporates by reference Exhibit B, the Performance Work Statement. In Exhibit B and on pages 3, 4, and 5, the Taxpayer's services are further defined and recapped – namely for Taxpayer to provide its aircraft as an enemy combatant force and provide trainings/briefings regarding the same. Lastly, Exhibit A also describes the aforementioned activities, especially on page 8.

Thus, the terms of the very documentation with the █████ spells out the services as that of flight training. Furthermore, the pre-flight, flight, and post-flight aspects of the training cover exactly the undertones of the exemption – to provide flight training. The context Taxpayer provides is that of a █████ context. The exemption does not limit the exemption to private aircraft usage or prohibit the training of █████ pilots. Because of the broad nature of the exemption, Taxpayer's services constitute flight training as contemplated by the statute.

Since Taxpayer is not a resident of Florida and the aircraft are in Florida exclusively for the purpose of flight training, the use of the aircraft and associated upgrades in Florida is exempt from use tax. In further support of the aforementioned, Taxpayer received an LTA from the Department agreeing the use of the aircraft in Florida is exempt from Florida sales and use tax. The LTA response is attached as Exhibit C^[4].

CONCLUSION

Taxpayer's use of the aircraft, and the associated upgrades, in Florida is exempt from use tax, as Taxpayer is a nonresident having aircraft in Florida exclusively for flight training purposes.

LAW AND DISCUSSION

Sections 212.05 and 212.06, F.S., specifically impose sales or use tax on the sale, use, storage, or consumption of tangible personal property in this State. See ss. 212.05(1) and 212.06(1), F.S. For exercising either privilege, tax is imposed at the rate of 6%, plus any county-imposed surtax. See ss. 212.05(1)(a)1.a., 212.06(1)(a), and 212.054, F.S. Tangible personal property is defined as "personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including ... aircraft" See s. 212.02(19), F.S. Therefore, the use of Taxpayer's aircraft in Florida is subject to tax, unless an exemption applies.

The use tax in Florida is levied on the cost price at the moment of purchase or the cost price as of the moment of commingling with the general mass of property in this state. The use tax is due from a "dealer" which includes any person who imports or causes to be imported tangible personal property from outside Florida. See s. 212.06(1)(a) and (2)(b), F.S.

⁴ LTA # █████

CONCLUSION

Based upon review of the documentation and information provided: (1) the Taxpayer is a nonresident; (2) Taxpayer's aircraft will enter and remain in Florida exclusively for purposes of flight training under contract with the [REDACTED] and for repairs, alterations, refitting, and/or modifications; and (3) Taxpayer's use of the aircraft and installed equipment in Florida qualifies for the exemption provided in s. 212.08(7)(fff), F.S.

This response constitutes a TAA 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 TAA, 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 ten (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)717-6701.

Sincerely,

Shundra McClean

Shundra McClean
Tax Law Specialist
Technical Assistance & Dispute Resolution
(850)717-6701
Record ID: 7000854607

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000854607

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.