



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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Question: Whether Taxpayer qualifies for the exemptions provided in ss. 212.08(5)(i) and (j)1.b., 212.08(7)(ee), (rr), and (fff), F.S., as provided in the Department of Revenue's previously issued Letter of Technical Advice (LTA) dated February 7, 2019¹ and as discussed during the February 22, 2022, Revenue Estimating Conference?

Answer: Based upon the information provided and the applicable statutory provisions, Taxpayer qualifies for the exemptions provided under s. 212.08(7)(ee) and (rr), F.S.

Taxpayer does not currently qualify for the exemptions provided under s. 212.08(5)(i) and (j)1.b., F.S., but may qualify upon completion of the requirements set forth in the statute.

Taxpayer is a registered dealer engaged in business in Florida, and therefore, does not qualify for the exemption to nonresidents as provided in s. 212.08(7)(fff), F.S.

October 21, 2022

XXXXX
XXXXX
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XXXXX

Re: Technical Assistance Advisement – TAA #: 22A-016R
Sales and Use Tax – Aircraft Modifications
XXXXX (Taxpayer)
Sections 212.02, 212.05, 212.06, 212.07, 212.08, 212.0801, and 212.21, Florida Statutes
(F.S.)
Rules 12A-1.007 and 12A-1.014, Florida Administrative Code (F.A.C.)
BP #: XXXXX

Dear XXXXX:

This is in response to your letter dated, June 21, 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., 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.

¹ Reference Ctrl No. XXXXX.

REQUESTED ADVISEMENTS

You request an advisement that addresses whether Taxpayer qualifies for the exemptions provided in ss. 212.08(5)(i) and (j)1.b., and 212.08(7)(ee), (rr), and (fff), F.S., as provided in the Department of Revenue's previously issued Letter of Technical Advice (LTA) dated February 7, 2019² and as discussed during the February 22, 2022, Revenue Estimating Conference.

FACTS

Your request states that Taxpayer specializes in advanced concepts and expert-solutions consulting and commercial services to provide XXXXX training to XXXXX. Taxpayer provides specialized flight training XXXXX. In addition to training, Taxpayer purchases aircraft and aircraft components from allied foreign governments to refurbish, repair and upgrade aircraft in Florida for the refurbishment of XXXXX assets as part of the U.S. Department of Defense contract.

You submitted copies of the following documentation and information with your request:

- 1) A copy of the February 7, 2019, LTA issued to Taxpayer. Based on the information presented at that time, the Department determined that Taxpayer would be eligible for the exemptions from Florida sales and use tax for repairs to aircraft used in its training activities as provided under s. 212.08(7)(ee) and (rr), F.S.
- 2) A copy of the XXXXX - Justification and Approval (J&A) of XXXXX Program.
- 3) A XXXXX , article published on United States Department of Defense (DOD) website related to Taxpayer's XXXXX contract award.
- 4) A XXXXX, article entitled XXXXX published by XXXXX.
- 5) A copy of the February 22, 2022, Revenue Estimating Conference - Analysis on Proposed Language Sought during the 2022 Legislative Session.
- 6) Certain documents related to XXXXX use tax paid in error.

According to the documentation provided, XXXXX, is responsible for managing the F-5 upgrades used in the XXXXX program for ground and flight tests.

To improve and enhance F-5 aircraft safety and mission effectiveness and to meet existing and emerging requirements, in XXXXX, XXXXX released a request for white papers XXXXX under 10 United States Code (U.S.C.) §2371b, Other Transaction (OT) Prototypes via OT Agreement XXXXX, with the XXXXX.³ Following a technical evaluation of the white papers received, Project Agreement XXXXX was competitively awarded to Taxpayer.⁴

² Reference Ctrl No. XXXXX.

³ XXXXX

⁴ <https://XXXXX>

The J & A authorizes and approves XXXXX award of an Indefinite Delivery of Indefinite Quantity (IDIQ) contract on a sole-source basis to Taxpayer. The contract supports the F-5N+/F+ XXXXX program as well as the integration of the F-5N/F Capability Upgrade (Block Upgrade System) into the legacy F-5N/F Fleet aircraft.

According to the J & A, supplies and services provided under the XXXXX Program include the Non-Recurring Engineering (NRE), inspection, and modification efforts necessary to upgrade twenty-two aircraft which include sixteen (16) F-5Es and six (6) F-5F Tiger IIs. Additionally, forty-four (44) associated J85-GE-21B engines from Swiss Air Force (SAF) will be reconfigured to XXXXX configuration. As part of the repatriation, the twenty-two (22) aircraft will undergo comprehensive inspections, repairs, and modifications including:

- 1) performing full airframe and engine material condition inspections and resulting repairs;
- 2) procuring and replacing all airframe and engine high-time components;
- 3) procuring sixteen (16) Block Upgrade System kits, twenty-two (22) airframe conversion kits, and forty-four (44) engine conversion/overhaul kits;
- 4) integrating twenty-two (22) Block Upgrade System kits of which (6) six kits will be provided as Government-furnished equipment (GFE); and
- 5) integrating twenty-two (22) airframe conversion kits and forty-four (44) engine conversion/overhaul kits.

In addition to the XXXXX efforts, the resulting contract scope will include the ability to procure and install Block Upgrade System kits for, and into, up to forty (40) legacy F-5N/F Fleet aircraft to ensure greater standardization, maintainability, sustainability, and pilot safety through a uniform configuration across the XXXXX inventory.

According to the XXXXX, DOD contracts article, Taxpayer was awarded a XXXXX contract, which provides for the procurement of XXXXX Block Upgrade System kits, XXXXX. The work is expected to be completed in XXXXX. Thirty percent (30%) is to be performed in Florida, with 28% to be completed in XXXXX and 2% to be completed in XXXXX. The remaining work was to be performed as follows: 19% in XXXXX, 15% in XXXXX, 10 % in XXXXX, 7% in XXXXX, 6% in XXXXX, 4% in XXXXX, 3% in XXXXX, 2% in XXXXX, and 1% each in XXXXX, XXXXX, XXXXX, and XXXXX.

The February 2022 Revenue Estimating Conference addressed proposed changes related to exemptions for aircraft and aircraft equipment with regard to Florida's sales and use laws. According to your request, during the Revenue Estimating Conference, several members expressed that the proposed legislative statute changes were redundant because Taxpayer is already exempt under current law.

With regard to XXXXX tax remitted on equipment used in the repair and maintenance of aircraft, pursuant to s. 212.08(7)(rr), F.S., XXXXX.

Based on publicly available information, a typical F-5 aircraft has a maximum takeoff weight of 24,675 pounds.

LAW AND DISCUSSION

Florida law provides for the imposition of a sales tax upon retail sales of tangible personal property in this state; the tax is imposed on the sales price of the item sold, unless specifically exempt. See ss. 212.05(1)(a)1.a. and 212.21(2), F.S. The term “sales price” means the total amount paid for tangible personal property, including any services that are a part of the sale. See s. 212.02(16), F.S. The term “sales price” also includes “the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property.” See s. 212.02(16), F.S. Florida law requires the selling dealer⁵ to collect the Florida sales tax from the purchaser and to remit the collected tax to the Department. See ss. 212.06(3)(a) and 212.07(2), F.S.

Section 212.06(8)(a), F.S., imposes a use tax on tangible personal property imported or caused to be imported into Florida for use, consumption, distribution, or storage to be used or consumed in Florida. It is presumed that tangible personal property used in another state, territory, or the District of Columbia for six (6) months or longer before being imported into Florida was not purchased for use in Florida.

Section 212.08, F.S., provides specifically enumerated exemptions to the general rule of taxability, including several exemptions relating to aircraft.

Section 212.08(5)(d), F.S., provides an exemption from sales and use tax for industrial machinery and equipment purchased by an expanding business which manufactures tangible personal property pursuant to federal procurement regulations at fixed locations in Florida. The exemption is conditioned upon an affirmative showing by the taxpayer to the Department’s satisfaction that the items are used to increase the implicit productive output of the expanded business by not less than 10 percent (10%).

Under s. 212.08(5)(i), F.S., and Rule 12A-1.007(10)(f), F.A.C., all charges for aircraft modification services, including charges for parts, equipment, labor and installation performed under authority of a Supplemental Type Certificate issued by the Federal Aviation Administration (FAA) under 14 C.F.R. ss. 21.111-21.119 are exempt. The aircraft modifications subject to this exemption are those in which a product is altered by introducing a major change in design type not great enough to require a new application for a new type of certificate, as required under 14 C.F.R. s. 21.19. These major changes require the issuance of Form 337, Major Repair & Alteration (Airframe, Power Plant, Propeller, or Appliance) and inspection of the changes to the aircraft by the Administrator of the FAA.

Section 212.08(5)(j)1.b., F.S., provides that industrial machinery and equipment used in defense technology facilities certified by the Department of Economic Opportunity (DEO) to design, manufacture, assemble, process, compound, or produce defense technology products⁶ for sale or

⁵ Section 212.06, F.S., defines “dealer” to include “every person who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.” That section further defines the term “dealer” as “every person who solicits business through representatives or agents and as a result receives orders for tangible personal property from consumers for use in this state.” The term “dealer” is further defined to mean “any person, as used in this chapter, who maintains or has within this state, directly or by a subsidiary, an office, distributing house, salesroom, or house, warehouse, or other place of business.” See s. 212.06(2)(a), (f), and (g), F.S.

⁶ “Defense technology products” means “products that have a military application, including, but not limited to, weapons, weapons systems, guidance systems, surveillance systems, communications or information systems, munitions, aircraft, vessels, or boats, or components thereof, which are intended for military use and manufactured in performance of a contract with the United States Department of Defense or the military branch of a recognized foreign government or a subcontract thereunder which relates to matters of national defense.” See s. 212.08(5)(j)7.c., F.S.

for use by these facilities are exempt from Florida sales and use tax. To be eligible to receive the exemption provided, a qualifying business must apply to Enterprise Florida, Inc. and be certified by the Florida DEO.

Under s. 212.08(7)(ee), F.S., all labor charges for the repair and maintenance of qualified aircraft and aircraft of more than 2,000 pounds maximum certified takeoff weight, including rotary wing aircraft, are exempt from the tax imposed under this chapter. Except as otherwise provided in this chapter, charges for parts and equipment furnished in connection with such labor charges are taxable.

Additionally, replacement engines, parts, and equipment used in the repair or maintenance of qualified aircraft and aircraft of more than 2,000 pounds maximum certified takeoff weight, including rotary wing aircraft, are exempt from the tax imposed under this chapter if such parts or equipment are installed on such aircraft that is being repaired or maintained in this state. See s. 212.08(7)(rr), F.S.

The exemption provided in s. 212.08(7)(fff)2., F.S., pertaining to aircraft owned by a nonresident and is applicable when the nonresident's aircraft enters or remains in this state exclusively for purposes of flight training, repairs, alterations, refitting, or modification. Such purposes shall be supported by written documentation issued by in-state vendors or suppliers which clearly and specifically identifies the aircraft.

Taxpayer may request a refund for any tax paid on machinery and equipment qualifying for exemption under the provisions of s. 212.08(5)(j), F.S. To make a claim for refund, Taxpayer may file an Application for Refund, Form DR-26S, with the Department. Alternatively, Taxpayer may file a claim for refund online at <https://floridarevenue.com/taxes/compliance/Pages/refunds.aspx>. Taxpayer must file the application for refund within 3 years after the date of payment of the tax.

In this case, Taxpayer provides XXXXX training XXXXX in Florida as part of a U.S. Department of Defense contract. Based on the documentation and information provided, Taxpayer's purchases of labor, replacement engines, parts, and equipment would qualify for the exemption from Florida sales and use tax provided under s. 212.08(7)(ee) and (rr), F.S., when used in the repair and maintenance of qualified aircraft and aircraft of more than 2,000 pounds maximum certified takeoff weight, including rotary wing aircraft (helicopters), if the parts or equipment are installed on the aircraft in Florida.

To qualify for the exemption of aircraft modification as provided in s. 212.08(5)(i), F.S., Taxpayer must establish that the purchases of 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. Taxpayer has not provided documentation indicating that it holds an FAA supplemental type certificate. Additionally, based on search of the of the FAA's Supplemental Type Certificates database⁷, Taxpayer is not a holder of an STC.

To qualify for the exemption from tax on its qualifying purchases or lease of industrial machinery and equipment used to design, manufacture, assemble, process, compound, or produce defense

⁷ [Airworthiness Directives \(faa.gov\)](https://www.faa.gov)

technology products for sales or use by such facilities, Taxpayer must complete the certification application with Enterprise Florida, which in turn reports its recommendation to the DEO for a final decision on the certification. There is no record that Taxpayer is certified with the DEO and holds a tax exemption permit. If approved, the certification will be transmitted to the Department of Revenue for issuance of the tax exemption permit. For additional assistance, Taxpayer may wish to contact Enterprise Florida at:

Enterprise Florida (<https://www.enterpriseflorida.com>)
800 North Magnolia Avenue, Suite 1100
Orlando, FL 32803
Telephone Number: 407-956-5600
Fax Number: 407-956-5599

The exemption provided in s. 212.08(7)(fff)2., F.S., pertains to aircraft owned by a nonresident is applicable when the nonresident's aircraft enters or remains in Florida exclusively for flight training, repairs alterations, refitting, or modifications. As previously discussed, Taxpayer is a registered Florida dealer, and therefore, would not qualify for an exemption available to "nonresidents."

CONCLUSION

Based upon the information provided and the applicable statutory provisions, Taxpayer qualifies for the exemptions provided under s. 212.08(7)(ee) and (rr), F.S.

Taxpayer does not currently qualify for the exemptions provided under s. 212.08(5)(i) and (j)1.b., F.S., but may qualify upon completion of the requirements set forth in the statute. Although not referenced in your request, Taxpayer may also qualify for the exemption provided in s. 212.08(5)(d), F.S.

Taxpayer is a registered dealer engaged in business in Florida, and therefore, does not qualify for the exemption to nonresidents as provided in s. 212.08(7)(fff), F.S.

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 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.

Best Regards,

Shundra McClean

Shundra McClean

Tax Law Specialist

Technical Assistance & Dispute Resolution

Record ID #7000745325