

Florida Department of Revenue Technical Assistance and Dispute Resolution

Jim Zingale Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

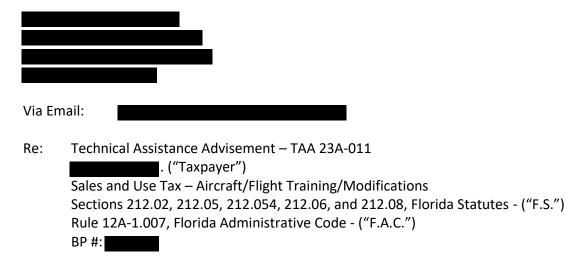
QUESTION:

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 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



Dear :

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 . Taxpayer's FEIN is . 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 for-profit corporation but is based in
Taxpayer engages in the flight training services business. Taxpayer owns various types of aircraft that have been in since purchase. The aircraft were acquired more than six (6) months ago and have had various upgrades made to make the aircraft more e.g., state of-the-art radar and other current technologies. No sales or use tax was paid on the acquisition of the aircraft, but rather offered an exemption from tax. Thus, Taxpayer subjected itself to the taxing jurisdiction of sales.
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
As it pertains to Taxpayer's flight training, the pilots are provided the training goals, strategies, and maneuvers that need to be planned before the training flight. The student

pilots are briefed on mission objectives, air strategy, and best practices prior to taking
to the air. This level of detail discussed with the student pilots enumerates the altitude
needed, bearing to be taken, and other aspects of the flight. In essence, the student
pilots are told everything about the flight they need to know in advance to maximize success
for the flight training. After the flight, student pilots are brought down into a group
setting on the ground to debrief and discuss the outcome of the mission – success or failure.
A discussion is held with the student pilots to review their mistakes and teach them
what to do in the future so as to learn, practice and train better, and survive an enemy
encounter.

TAXPAYER POSITION

Generally, use tax is imposed on the cost price at the moment of commingling with the general mass property in Florida, use, consumption, distribution, or storage for use or consumption of tangible personal property in Florida. Section 212.06(1)(a), F.S. "Tangible personal property" includes aircraft. Section 212.02(19), F.S. Therefore, aircraft that are commingled with the mass property of Florida, used, consumed, distributed, or stored for use or consumption in Florida are subject to use tax. However, there are certain exemptions from use tax. One exemption from use tax is for aircraft owned by a nonresident that enters and remains in Florida exclusively for flight training. Section 212.08(7)(fff)2., F.S.

Here, Taxpayer is not a Florida resident, as Taxpayer is a entity. Attached to this request is Exhibit E, which is Tax Information Publication 10A01-11R ("TIP"). In this TIP, the Department clearly states a "nonresident corporation means a corporation incorporated under the laws of another state..., which does not maintain its chief or principal office in this state." Here, Taxpayer is a corporation incorporated under the laws of chief or principal office is outside of Florida in thus, and based upon the Department's own TIP, Taxpayer is a "nonresident" for purposes of the exemption. Even if the Department were to "look through" to Entity A, Entity B, and Entity C, none of these entities are Florida entities. Furthermore, none of the officers of any of these entities are Florida residents. For these reasons, Taxpayer is not a Florida resident.

The aircraft at issue are coming solely to Florida for flight training purposes. Flight training is broad and unequivocally captures more than just learning to be a pilot. Flight training can and does capture Taxpayer's business model of providing flight training to pilots to survive an encounter with an enemy force.

Attached to this request are Exhibits $A^{[1]}$, $B^{[2]}$, and $D^{[3]}$ which are the various documents constituting the contracts with the \blacksquare . On page 56 of Exhibit D in paragraph L-1.3, the

^{1 &}quot;Order for Supplies or Services"

2 "Performance Work Statement (PWS)"
PERFORMANCE WORK STATEMENT (PWS). A document that accurately describes essential and technical requirements for items, materials, or services, including the standards used to determine whether requirements have been met.

3 "Solicitation, Offer and Award"

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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.



Section 212.06(4) F.S., specifically provides that use tax applies to tangible personal property imported or caused to be imported into Florida. It is presumed that tangible personal property, including aircraft, used in another state, territory of the United States, or the District of Columbia for 6 months or longer that gave rise to that taxing authority, was not purchased for use in Florida and would therefore, not be subject to use tax. See s. 212.06(8)(a), F.S.

An exemption is provided under s. 212.08(7)(fff)2., F.S., which states in part:

An aircraft owned by a nonresident is exempt from the use tax imposed under this chapter if the 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....

In this case, Taxpayer is a contractor, currently registered with the Department for Reemployment Tax purposes. You state that Taxpayer and its related entities are out-of-state entities, with no owners and officers who are Florida residents based on the definition of "nonresident corporation" as provided in TIP #10A01-11R. You further state that Taxpayer owns various aircraft that have been in for more than six (6) months. While in growing, you state that Taxpayer had various upgrades performed to the aircraft. Upon acquiring the aircraft, Taxpayer subjected itself to the taxing laws of ; however, no sales or use tax was paid on the aircraft, as seemed offered a tax-exemption. It is your opinion that as a nonresident of Florida, Taxpayer's use of the aircraft and associated upgrades for flight training purposes in Florida qualifies for the exemption provided in s. 212.08(7)(fff), F.S. Exhibit Services Order for Supplies or Section C provides the "Description/Specifications/Statement of Work." The relevant part states that "[Taxpayer] will provide Adversary Air Support Services to . Additional support may be provided to)^[5] TDY⁶ Support as defined in the PWS and Master PWS." [See page 8 of 20] Exhibit B does not address the significance of the modifications performed on the aircraft. However, as suggested by the language in Exhibit D, paragraph L-7.6, Offerors are required to include a signed/certified " ," as provided in Section L, Attachment 3, for each proposed enhancement on each aircraft. Furthermore, paragraph L-7.9.4 Subfactor D, addresses aircraft enhancements and requires Offerors to provide details of proposed aircraft avionics enhancements timelines such as, but not limited to: logistics (supplies) deliveries, prime or third party (e.g. - subcontractor) installations; required testing; and aircraft avionics enhancement delivery to reach full operational capability that best meets targeted milestones indicated in Appendix I.

⁶ Temporary Duty

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 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



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.