



QUESTION: THE TAXPAYER HAS REQUESTED THAT THE DEPARTMENT INDICATE WHICH PORTIONS OF A GROUND LEASE ARE SUBJECT TO SALES AND USE TAX. IT IS FURTHER REQUESTED THAT GUIDANCE BE PROVIDED CONCERNING THE REFUND PROCESS.

ANSWER: THE TAXABLE PORTION OF THE LEASE EXCLUDES PROPERTY USED FOR STORAGE OF AIRCRAFT AND PROPERTY USED EXCLUSIVELY FOR THE PURPOSE OF AIRCRAFT LANDING OR AIRCRAFT TAXIING. ANY POTENTIAL REFUND TO THE TAXPAYER MUST BE SECURED FROM THE LESSOR.

November 29, 2018

XXX

Technical Assistance Advisement 18A-017 (Revised)
Sales & Use Tax – License to Use Real Property
Sections 212.031 & 212.03, Florida Statutes (F.S.)
XXX (the Taxpayer)
FEI#: XXX

Dear XXX:

This is in response to the letter dated June 21, 2018, from XXXXX XXX, XXX, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), regarding the taxability of portions of a certain airport lease for sales and use tax. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Rule Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of section 213.22, F.S.

Issue

The Taxpayer is requesting that the Department indicate which portions of a ground lease are subject to sales and use tax, pursuant to s. 212.031, F.S., as a lease or license to use real property. It is further requested that guidance be provided concerning the refund process.

Facts Provided by Taxpayer

The Taxpayer, a fixed-base operator, provides fueling, aircraft storage, catering and other accommodations to private and commercial customers. The Taxpayer entered into a 20-year land lease with three 5-year extensions with XXX (the Lessor).

You have indicated the following concerning the square footage and usage of the subject real property:

Building 1625 D & E; 36,724 sq. ft.; Hangar D & E – Storing of aircraft.

Ground Rent – East Tract S-9; 470,471 sq. ft.; 3 hangars (A,B,C) @ 30,000 sq. ft. each. Plus main terminal @ 11,525 sq. ft.

Ground Rent – West Tract S-1B; 384,963 sq. ft.; 2 hangars (G,H) @30,000 sq. ft. each. You have indicated that 139,417 sq. ft. on a 3rd hangar is subleased.

Ground Rent – Parcel S-5; 327,282 sq. ft. – Hangar India; 70,000 sq. ft. - storing of aircraft.

Ground Rent – GA Parking Apron A & B; 86,244 sq. ft.; Ramp space – parking of aircraft.

Ground Rent – Parcel S1 – D; 17,997 sq. ft.; Ramp space in front of hangar.

Ground Rent – Parcel S1-E; 19,177 sq. ft.; Ramp space in front of hangar.

Ground Rent – Option Area; 73,151 sq. ft.; Ramp space in front of hangar.

You indicated that all of the hangars are used for storing of aircraft for a consideration. In addition, based on the schematic submitted, the ramp spaces adjoin to the taxiing areas.

Applicable Law & Discussion

Section 212.031(1)(a)3. & 7., F.S., provide:

It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

* * *

3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).

* * *

7. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft.

Section 212.03(6), provides in part:

The Legislature finds that every person . . . who leases or rents tie-down or storage space for aircraft at airports is engaging in a taxable privilege.

Property used for storage of aircraft and property used exclusively for the purpose of aircraft landing or aircraft taxiing are not subject to tax under s. 212.031, F.S. These privileges are taxable under s. 212.03(6), F.S.

Based on the information submitted, the lease is not taxable with regard to the square footage related to hangar and ramp space; which amounts to 592,710 sq. ft. As the total square footage of the subject property is 1,416,009 sq. ft., the taxable percentage on the prime lease is approximately 58 percent of the rental payments made.¹

Regarding any refund potentially due the Taxpayer, please be advised that any overpayments of sales and use tax (paid to a lessor) must be refunded by the lessor. Rule 12A-1.014(4), F.A.C., provides:

A taxpayer who has overpaid tax to a dealer, or who has paid tax to a dealer when no tax is due, must secure a refund of the tax from the dealer and not from the Department of Revenue.

Concluding Statement

The taxable portion of the lease is as provided above. Any potential refund to the Taxpayer must be secured from the Lessor.

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.

¹ This is provided that the subleased hangar continues to be used exclusively for the storage of aircraft for a consideration.

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.

Respectfully,

R. Clay Brower

R. Clay Brower
Technical Assistance & Dispute Resolution
(850) 717-6306

Control No: 101068