



**Florida Department of Revenue**  
*Technical Assistance and Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** Is Petitioner's method of allocation of taxable rent reasonable?

**ANSWER:** Yes. Except for the areas used for educational purposes allocated as exempt residential use, the proposed method is a reasonable allocation. Appraisal of the specific property may be used in determining the taxable rental portion of the rental.

February 14, 2020

XXXXXXX  
XXXXXXX  
XXXXXXX  
XXXXXXX

Re: Technical Assistance Advisement No. 20A-002  
Sales and Use Tax  
Real Property Rentals  
Sections 212.031, Florida Statutes (F.S.)  
Rule 12A-1.070, Florida Administrative Code ("F.A.C.")

XXXXXXXXXX ("Petitioner")  
Business Partner Number: XXXXXXXXX  
FEIN: XXXXXXXXX

XXXXXXXXXXXXXXXXXX ("Lessor")  
FEIN: XXXXXXXXX

XXXXXXXXXXXXXXXXXX ("Lessee")  
FEIN: XXXXXXXXX

XXXXXXXXXXXXXXXXXX ("Project")  
Parcel # XXXXXXXXXXXXXXXXXXXX ("Parcel A")  
Parcel # XXXXXXXXXXXXXXXXXXXX ("Parcel B")  
Parcel # XXXXXXXXXXXXXXXXXXXX ("Parcel C")

XXXXXXXXXXXXXXXXXX: ("Independent Appraiser")

Dear XXXXXXXX:

This is in response to your request dated August 22, 2019, for a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), concerning the application of Florida's sales tax regarding Petitioner's lease agreements. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

### **FACTS**

Lessor leased property to Lessee pursuant to two lease agreements. The lease agreements require construction of buildings on a portion of the property. Lessee is required to manage Project, which will include the operation of housing and education to students participating in Petitioner's college intern program. Project will include student housing, community centers, education centers, pools, and maintenance buildings. In addition to the buildings Project will include parking, walkways, pools, and outdoor spaces which will be common areas for free use of the residents. Project will include storm water retention under the parking lots. Parcel A and B of Project also includes wetlands.

Petitioner provided copies of the lease agreements, a breakdown of the square footage of the residential buildings, community centers, maintenance buildings, gate houses, pool equipment areas, public restrooms, security pavilion, and other areas. Petitioner also provided appraisal information regarding Parcels A and B.

The total project will include approximately XXXX acres of land, and include student housing, community centers, education centers, pools, and maintenance buildings. The west parcel lease covers XXXXX acres (XXXXXXXXX sq. ft.) of which XXXX acres will be developed. The remaining XXXXX acres of the parcel are undeveloped wetlands. The west XXXXXXXXXXXX parcel ID numbers are XXXXXXXXXXXX (development), XXXXXXXXXXXX (wetlands), and XXXXXXXXXXXX (wetlands). The east parcel lease covers XXXXXXXX acres (XXXXXXXXXXXXX sq. ft.) of which all will be developed. The east XXXXXXXXXXXX parcel ID number is XXXXXXXXXXXX. Illustrative site plans are included as Attachment C.

<b>Total Project Land Acreage Leased to XXXXX (Per Ground Lease)</b>		
<b>Parcel</b>	<b>Acres</b>	<b>Square Feet</b>
XXXXXXXXXX Parcel	XXXX	XXXXXXXX
XXXXXXX Housing XXXXX Parcel TOTAL	XXXX	XXXXXXXX
FC CIP Housing West Parcel Uplands	XXX	
FC CIP Housing West Parcel Wetlands	XXXX	

A detailed breakdown of square footage uses of each building, including the first-floor square footage, and the proposed taxable portions are included as Attachment D. A summary of the data is provided below:

Parcel	Building	Total Square Footage (1st Floor)	Taxable Area SF Total	Taxable Portion of Total Building SF
XXX	Education Center	XXXXX	XXX	XX%
XXX	Community Center	XXXXX	XXX	XX%
XXX	Community Center	XXXXX	XXX	XX%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type H)	XXXX	XX	X%
XXX	Building XX (Type H)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type G)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type D)	XXXX	XX	X%
XXX	Building XX (Type I)	XXXX	XX	X%
XXX	Building XX (Type I)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type G)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type F)	XXXX	XX	X%
XXX	Building XX	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Maintenance Building	XXX	XXX	100%
XXX	Gate House North	XXX	XXX	100%
XXX	Gate House South	XXX	XXX	100%
XXX	Pool Equip & Restrooms	XXX	XX	XX%
XXX	Security Pavilion	XXX	XXX	100%

XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type B)	XXXX	XX	X%
XXX	Building XX (Type A)	XXXX	XX	X%
XXX	Building XX (Type G)	XXXX	XX	X%
XXX	Building XX (Type G)	XXXX	XX	X%
XXX	Building XX (Type A)	XXXX	XX	4%
XXX	Building XX (Type G)	XXXX	XX	4%
XXX	Building XX (Type B)	XXXX	XX	4%
XXX	Building XX (Type A)	XXXX	XX	4%
XXX	Building XX (Type A)	XXXX	XX	4%
XXX	Building XX (Type G)	XXXX	XX	4%
XXX	Building XX (Type B)	XXXX	XX	3%
XXX	Building XX (Type B)	XXXX	XX	4%
XXX	Building XX (Type G)	XXXX	XX	4%
XXX	Building XX (Type A)	XXXX	XX	4%
XXX	Building XX (Type A)	XXXX	XX	4%
XXX	Building XX (Type G)	XXXX	XX	4%
XXX	Building XX (Type G)	XXXX	XX	4%
XXX	Building XX (Type G)	XXXX	XX	4%
XXX	Building XX (Type G)	XXXX	XX	4%
XXX	Building XX (Type A)	XXXX	XX	4%
XXX	Maintenance Building	XXXX	XXXX	100%
XXX	Gate House	XXXX	XXXX	100%
XXX	Pool Equip & Restrooms	XXXX	XXX	XX%
XXX	Security Pavilion	XXX	XXX	XX%
XXXXXXXXX			XXXXX	

In addition to the buildings, the project contains approximately XXX XXXX square feet of parking and common areas including walkways, pools, and outdoor resident spaces. Storm water retention will be constructed under the project's parking lots.

Regarding the wetlands surrounding the west parcel, the XXX acres are classified as a "pond" for property tax purposes (property use code XXX).

### **REQUESTED RULINGS**

Petitioner maintains that the property is multi-use property because a portion of the property leased is used as dwelling units for residential purposes by students. Petitioner proposes to

allocate the rental payment associated with property used as dwelling units using square footage information as proposed in the request. The proposal includes classrooms as exempt property. Petitioner believes that wetlands should be calculated using only a quarter of the value per square foot as compared to areas that will include buildings and common areas.

### **LAW AND DISCUSSION**

Section 212.031, F.S., requires property owners, such as Lessor to collect sales tax from lessees, such as Lessee, on real property rentals. Section 212.031(1)(a)2., F.S., provides for an exemption for real property leased that is used exclusively as a dwelling unit. This includes the residential rooms and the common areas. The common areas include hallways, residential parking areas, and the community centers used exclusively for residents. It may include other areas, depending on the facts. It does not include the educational centers and classrooms as the purpose of those areas are educational and not as a dwelling area. The parking areas next to the educational centers used by persons other than residents is not considered a common area.

Section 212.031(1)(b), F.S., addresses situations in which the leased property is multi-use property that includes areas that are not subject to the tax, such as property used exclusively as a dwelling unit, and other areas that are subject to the tax imposed by s. 212.031, F.S. Section 212.031(1)(b), F.S., provides that the allocation is based on the lease agreement and other available information. Although, an allocation using square footage information is used as an example in Rule 12A-1.070, Florida Administrative Code ("F.A.C."), the Department will use reasonable methods to determine the taxable rental amount. See Department of Revenue v. Vanjaria Enterprises, Inc., 675 So.2d 252 (Fla. 5<sup>th</sup> DCA 1996). Fair market value property appraisals of the leased property may be used to determine a reasonable allocation.

### **RESPONSE**

Except for the educational centers, such as the classrooms, that are used for educational purposes, and not exclusively as a dwelling unit, Petitioner's proposed method of allocation using square footage determined by Petitioner in compiling the request is reasonable. Based on the facts provided, the use of the different appraisal value for wetlands to determine the percentage of the taxable rental amount is reasonable. Petitioner may use relative market value appraisals of different parcels such as from Independent Appraiser so long as that valuation is consistent to other market value appraisals.

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 documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure.

In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

*Chuck Wallace*

Chuck Wallace  
Conferee  
Technical Assistance and Dispute Resolution

Record ID: 297638