



January 24, 2011

Mr. Jed R. Wolcott, CPA
Wolcott & Associates, P.A.
Suite 203
5525 NW 15th Avenue
Ft. Lauderdale, FL 33309

Re: Letter of Technical Advice 11A-098
Sales and Use Tax - Aircraft
Section 212.05, Florida Statutes
Rule 12A-1.071, Florida Administrative Code

Dear Mr. Wolcott:

Pursuant to Rule 12-11.003, Florida Administrative Code (F.A.C.), taxpayers may seek informal written technical advice from the Florida Department of Revenue (Department). This advice is issued in the form of a Letter of Technical Advice (LTA). This LTA is being issued in response to your written request for informal guidance dated November 5, 2010, concerning the matter described below. Please note that this LTA constitutes the opinion of the writer only and does not represent the official position of the Department.

Facts and Requested Advisement

Taxpayer is a Delaware limited liability company that is registered to do business in Florida and has a Florida Resale Certificate. It is the owner of an aircraft that was purchased exclusively for leasing and always has been under the control and operation of a lessee. The aircraft was not in Florida at the time of purchase. It is based continuously at

Massachusetts, but makes frequent trips to Florida. A flight log is maintained for the aircraft documenting its trips.

Taxpayer has calculated the use of the aircraft in Florida based on the ratio of miles flown within the state to total air miles. Miles flown in the state are determined according to Florida airspace boundaries described at Section 220.151(2)(c), Florida Statutes. The calculation is made by dividing the Florida air miles (the numerator) by the total miles flown during the reporting period (the denominator). The quotient is expressed as the percentage of Florida use. The monthly lease payment is multiplied by the percentage of Florida use, then by the 6% state sales tax and the 0.5% Palm Beach County discretionary surtax to determine the total sales tax liability for the reporting period. Willowbend calculates the apportioned sales tax on a monthly basis and remits the sales tax payments on a quarterly basis, consistent with the reporting requirements of its registration.

You have requested an advisement that the above-described method of calculating sales tax is applicable and correct in your circumstances.

Law and Discussion

A person who engages in the business of leasing tangible personal property in the state is exercising a taxable privilege subject to Florida sales and use tax. Section 212.05, Florida Statutes. An out-of-state owner or lessor of equipment is deemed to be doing business in Florida when his tangible personal property is located in Florida in the possession of a lessee. Rule 12A-1.071(3), F.A.C. Although its decision is not an exposition of federal constitutional law, the court in Kirk v. Western Contracting Corporation, 216 So.2d 503 (Fla. 1st DCA 1969), interpreting s. 212.05, F.S., found that sales or use tax was validly imposed on the privilege of “. . . engaging in the business of renting tangible personal property which is located in the State of Florida . . .” At 508.

When a lessee of tangible personal property removes the leased property from the State, the consideration to be paid subsequent to such removal is not taxable, subject to the lessee furnishing the lessor certain required information. Rule 12A-1.071(4), F.A.C. In this case, a flight log is maintained for the leased aircraft that documents its use and locations. This flight log provides the necessary information required by the above-cited rule to identify the aircraft and the periods of time that the aircraft is in Florida and is removed from the state.

In this case, the leased aircraft has significant contact with the State of Florida based on the frequent trips made into Florida and the extended stays within the state on many of those trips, as documented by the flight log. This significant contact meets the constitutional requirements of minimum contacts with the State of Florida under the federal Due Process Clause and of substantial nexus with the State of Florida under the federal Commerce Clause, thus permitting the valid imposition of sales tax on this lease transaction under Section 212.05, F.S. See Quill Corp. v. North Dakota, 504 U.S. 298 (1992); Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

Notwithstanding that an activity otherwise may have a taxable nexus with the state, under the constitutional principles of state taxation of interstate commerce under the federal Commerce Clause, as articulated in Complete Auto Transit, the particular tax nevertheless must be fairly apportioned, must not discriminate against interstate commerce, and must be fairly related to the presence and activities of the taxpayer within the taxing state. A tax that is based on a method such that there would be no multiple impositions of tax if every state were to adopt the taxing state's method, that would be imposed in the same manner on intrastate and interstate activities, and that bears a reasonable relationship to the presence and activities within the taxing state meets these constitutional requirements. In this case, the method of calculating Florida sales tax on the lease transaction at issue herein based on the air miles flown by the particular aircraft in Florida, as described above, meets these requirements since it taxes only that part of the lease payment that is proportionate to the aircraft's actual presence and use in Florida. It is concluded, therefore, that the apportionment method proposed by Taxpayer in the instant case is applicable and correct for the described circumstances.

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As noted in the first paragraph of this letter, this LTA is being issued in response to the disclosed facts and circumstances of your specific situation, and it does not constitute the official position of the Department. Rather, this letter represents the opinion of the writer only. If you wish an official binding statement, you may file a written request for a Technical Assistance Advisement. Rule Chapter 12-11, F.A.C., outlines the procedure to follow in making this request. This rule chapter of the Florida Administrative Code can be found at <http://www.myflorida.com/dor/law/>. Any request for a Technical Assistance Advisement should be sent to Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-7170.

Sincerely,

Carolyn Olive
(pb)

Carolyn Olive

Senior Attorney

Technical Assistance & Dispute Resolution

Record ID: 92457