

## SUMMARY

**QUESTION:** Whether, upon conversion of a Florida corporation (Corporation) to a Florida limited liability company (LLC), Florida sales tax should be applied to aircraft transferred from Corporation to LLC and aircraft transferred from another entity (Entity X) to the LLC.

**ANSWER - Based on Facts Below:** Under Florida law, a corporation is not an entity that is permitted to convert to a limited liability company. If, however, the Corporation's transition to a Florida limited liability company would be executed as a corporate consolidation or merger in accordance with Chapters 607 or 617, F.S., or a reorganization as defined in Section 368(a)(1), I.R.C., solely in exchange for stock, the transfer of title of the Corporation aircraft to LLC may be exempt from tax pursuant to Rule 12A-1.007(26)(a), F.A.C.

The aircraft transferred from Entity X to LLC would be used exclusively for providing flight instruction and aircraft rental. Upon transfer of the Entity X aircraft to LLC, LLC will provide contract services to Entity X to provide flight instruction for students of Entity X completing courses through XXX. In addition to fulfilling the contract between LLC and Entity X, the Entity X aircraft will also be used to provide flight instruction to non-Entity X students. There is no plan to segregate which aircraft will be used for providing flight instruction to Entity X students and which aircraft will be used to provide flight instruction to non-Entity X students.

Rule 12A-1.007(14)(b)1., F.A.C., provides that the purchase of an aircraft exclusively for rental purposes may be made tax exempt when the purchaser issues a resale certificate to the dealer at the time of purchase in lieu of paying tax. Pursuant to Rule 12A-1.071(23), F.A.C., a charge for flight instruction, which includes supervised flights, is exempt from Florida sales tax. However, under this rule, the purchase of aircraft to be used for flight instruction is subject to Florida sales tax. Since there is no plan to

segregate which aircraft will be used for a particular purpose, it must be shown that all of the aircraft being transferred from Entity X to LLC are to be used exclusively for rental purposes, in order for the transfer to be exempt from Florida sales tax under Rule 12A-1.007(14)(b)1., F.A.C., assuming that LLC presents a resale certificate to Entity X at the time of transfer.

Entity X will be charging students a fee for flight instruction. This charge for flight instruction would be exempt from Florida sales tax pursuant to Rule 12A-1.071(23), F.A.C. The charge from LLC for the contract services to Entity X would not be deemed a charge for flight instruction, but, rather, a charge for the rental of the aircraft that is subject to Florida sales tax.

However, Section 212.08(7)(p), F.S., provides that purchases or leases by a 501(c)(3) organization, such as Entity X, are exempt from Florida sales tax. Thus, the charge for contract services from LLC to Entity X for flight instruction of Entity X students would be considered a charge for a rental of aircraft to a 501(c)(3) organization, which is exempt from Florida sales tax. Any of the Entity X aircraft transferred to LLC that are used for flight instruction for non-Entity X students would be subject to Florida sales tax on the transfer pursuant to Rule 12A-1.071(23), F.A.C.

Because Entity X has not segregated, nor does it plan to segregate, which of the Entity X aircraft will be used for flight instruction for Entity X students and which aircraft will be used for flight instruction to non-Entity X students, the transfer of the Entity X aircraft to LLC would not be considered a transfer exclusively for rental purposes. Therefore, Florida sales tax would be imposed on all Entity X aircraft transferred to LLC.

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Re: Technical Assistance Advise ment 01A-057

Sales and Use Tax

Transfer of Aircraft

Sections 212.06(10), and 212.08(7)(p), F.S.

Section 330.27(1), F.S.

Section 608.439, F.S.

Rules 12A-1.007 and 12A-1.071(23), F.A.C.

XXX ("XXX"), Taxpayer I.D. XX

XXX ("Corporation"), Taxpayer I.D. XX

New Company ("Limited Liability Company")

Dear

This is a response to your letter of July 30, 2001, requesting a Technical Assistance Advise ment (TAA) regarding the above-referenced matter. This response to your request constitutes a TAA under Chapter 12-11, Florida Administrative Code (F.A.C.), and is issued to you under the authority of Section 213.22, Florida Statutes (F.S.).

### **FACTS**

XXX is an organization exempt from taxation under Section 501(c)(3), I.R.C. XXX. In connection with the XXX, students may complete the necessary requirements to receive various Federal Aviation Administration ("FAA") ratings including: FAA private pilot certificate, FAA commercial pilot and instrument rating, FAA commercial certificate, FAA certified flight instructor certificate, FAA instrument rating, and FAA multi-engine airplane rating. In connection with the training of student pilots and the granting by XXX of the various FAA pilot certifications and ratings, XXX currently owns XX aircraft of varying descriptions ("XXX aircraft"). None of the XXX aircraft are, or will be, certified for charter purposes.

In addition, XXX owns XX of the outstanding shares of common stock of Corporation, a Florida for-profit corporation.

Corporation is engaged in the business of XXX. In connection therewith, Corporation currently owns title to XX aircraft ("Corporation aircraft") of varying descriptions (these are in addition to the XX aircraft owned by XXX as described above).

All of the Corporation aircraft are free from debt.

XXX has proposed to convert Corporation, pursuant to Section 608.439, F.S., to a limited liability company (LLC). LLC will be taxed as a sole proprietorship and, therefore, all items of income, loss, and deductions will pass through to XXX, and LLC will be disregarded as a separate entity from XXX for federal tax purposes. In connection with the formation of LLC, XXX will transfer right, title, and interest to all XXX aircraft. LLC will continue to be engaged in the business of XXX, as was its predecessor, Corporation. In addition, LLC will contract with XXX to provide both supervised and unsupervised solo flights for students completing their courses through XXX (the proposed agreement between XXX and LLC has not been prepared). XXX will continue to provide all classroom time and ground schooling. LLC will be registered with the Florida Department of Revenue as a dealer, prior to the transfer of any XXX aircraft. LLC will be a registered dealer and will be able to issue XXX a resale certificate at the time of the transfer of the XXX aircraft.

#### **REQUESTED ADVISEMENT**

XXX requests advisement on the Florida sales and use tax consequences of the conversion of Corporation into a Florida limited liability company and the transfer of title of the XXX aircraft to LLC.

#### **APPLICABLE LAW**

Section 212.06(10), F.S., relating to the titling, licensing, or registration of a vehicle in Florida provides in part:

No title certificate may be issued on any boat, mobile home, motor vehicle, or other vehicle,... unless there is filed with such application for title certificate or license or registration certificate a receipt, issued by an authorized dealer or a designated agent of the Department of Revenue, evidencing the payment of the tax imposed by this chapter where the same is payable. A presumption of sales and use tax applicability is created if the motor vehicle is registered in this state.... All transfers of

title to boats, mobile homes, motor vehicles, and other vehicles are taxable transactions, unless expressly exempt under this chapter.

Section 212.08(7)(p), F.S., provides:

(p) Section 501(c)(3) organizations.--Also exempt from the tax imposed by this chapter are sales or leases to organizations determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, when such leases or purchases are used in carrying on their customary nonprofit activities.

Section 330.27(1), F.S., provides:

(1) "Aircraft" means any motor vehicle... used or designed for navigation of or flight in the air....

Section 608.439, F.S., relating to limited liability companies, provides in part:

(1) As used in this section, the term "other entity" means a business trust or association, a real estate investment trust, a common law trust, or any other unincorporated business, including a partnership, whether general (including a registered limited liability partnership) or limited (including a registered limited liability limited partnership) or a foreign limited liability company.

(2) Any other entity may convert to a domestic limited liability company by complying with subsection (8) and filing in the Department of State in accordance with s. 608.4081:

(a) A certificate of conversion to a limited liability company that has been executed by one or more authorized persons in accordance with s. 608.408; and

(b) Articles of organization that comply with s. 608.407 and have been executed by one or more authorized persons in

accordance with s. 608.408. [e.s.]

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Rule 12A-1.007, F.A.C., provides in part:

(14) Lease or Rental

\* \* \*

(b)1. The purchase of an aircraft, boat, mobile home, or motor vehicle exclusively for rental purposes may be made tax exempt when the purchaser/lessor issues a resale certificate to the dealer at the time of purchase in lieu of paying tax. The lessor shall collect tax from his customers on the total rental charge.

\* \* \*

(26)(a) The following transfers of ownership of any aircraft, boat, mobile home, motor vehicles, or other vehicles of a class or type required to be registered, licensed, titled, or documented in this state or by the United States Government are exempt from tax, provided that a certificate setting forth the facts and signed under penalty of perjury accompanies the application for title transfer, or if no title certificate is required by law, the application for transfer of license or registration:

\* \* \*

4. The transfer of title into the name of the surviving corporation by reason of a corporate consolidation or merger in accordance with Chapters 607 or 617, F.S., or a reorganization as defined in Section 368(a)(1) of the Internal Revenue Code solely in exchange for stock.

\* \* \*

(d) When title to an aircraft, boat, mobile home, motor vehicle, or other vehicle of a class or type required to be registered, licensed, titled, or documented in this state or by the United States Government is transferred... from one corporation to another,... it is presumed that a consideration flows from the transferee to the transferor, and if no consideration is stated, then it shall be presumed to be the fair market value of the vehicle. This

is true even when the two corporations are owned by the same stockholders.

Rule 12A-1.071(23), F.A.C., provides:

(23) A charge for flight instruction, which includes supervised solo flights, is exempt. The purchase of an aircraft for this use is taxable.

### **DETERMINATION**

XXX states its intent to convert Corporation to a Florida limited liability company and thereby transfer ownership of Corporation's XXX airplanes to the new limited liability company (LLC). Pursuant to Rule 12A-1.007(26)(d), F.A.C., when title to an aircraft is transferred from a corporation to another entity, it is presumed that a consideration flows from the transferee to the transferor. Thus, a transfer between a corporation and a limited liability company would be subject to Florida sales tax, unless expressly exempt. Rule 12A-1.007(26)(a), F.A.C., provides that the transfer of title of an aircraft into the name of the surviving corporation by reason of a corporate consolidation or merger in accordance with Chapters 607 or 617, F.S., or a reorganization as defined in Section 368(a)(1) of the Internal Revenue Code solely in exchange for stock, is exempt from Florida sales tax.

XXX representative states that XXX has proposed to convert Corporation, pursuant to Section 608.439, F.S., to a Florida limited liability company. Section 608.439(2), F.S., provides that any "other entity" may convert to a limited liability company provided certain criteria are met. The term "other entity" is defined in Subsection (1) and includes a business trust or association, a real estate investment trust, a common law trust, or any other unincorporated business, including a partnership, whether general (including a registered limited liability partnership) or limited (including a registered limited liability limited partnership) or a foreign limited liability company. It is important to note that a "corporation" has been omitted from this list of entities that are permitted to convert to a limited liability company. In fact, the

definition specifically refers to "any other unincorporated business." Contrast this with Section 608.438, F.S., which deals with mergers of limited liability companies. For purposes of mergers, the term "other business entity" specifically includes corporations. Therefore, it appears, from the facts presented by XXX, that Corporation is not an entity permitted to convert to a Florida limited liability company pursuant to Section 608.439, F.S. If, however, the Corporation's transition to a Florida limited liability company would be executed as a corporate consolidation or merger in accordance with Chapters 607 or 617, F.S., or a reorganization as defined in Section 368(a)(1), I.R.C., solely in exchange for stock, the transfer of title of the Corporation aircraft to LLC may be exempt from tax pursuant to Rule 12A-1.007(26)(a), F.A.C.

In its letter, XXX, a not-for-profit corporation, also states its intent to transfer the title of the XXX aircraft to LLC, subsequent to its formation. As mentioned above, pursuant to Rule 12A-1.007(26)(d), F.A.C., when title to an aircraft is transferred from a corporation to another entity, it is presumed that a consideration flows from the transferee to the transferor. Thus, a transfer between XXX and LLC would be subject to Florida sales tax, unless expressly exempt.

XXX states that LLC will be in the business of XXX. According to XXX, upon transfer to LLC, the XXX aircraft will not be used for charter purposes. Therefore, from XXX statement, it appears that the transferred aircraft would be used exclusively for providing flight instruction and aircraft rental. Further, XXX states that upon transfer of the XXX aircraft to LLC, LLC will provide contract services to XXX to provide flight instruction for students of XXX completing courses through XXX. In addition to fulfilling the contract between LLC and XXX, the XXX aircraft will also be used to provide flight instruction to non-XXX students. Currently, there is no plan to segregate which aircraft will be used for providing flight instruction to XXX students and which aircraft will be used to provide flight instruction to non-XXX students.

Rule 12A-1.007(14)(b)1., F.A.C., provides that the purchase of an aircraft exclusively for rental purposes may be made tax



exempt when the purchaser issues a resale certificate to the dealer at the time of purchase in lieu of paying tax. Since there is no plan to segregate which aircraft will be used for a particular purpose, it must be shown that all of the aircraft being transferred from XXX to LLC are to be used exclusively for rental purposes, in order for the transfer to be exempt from Florida sales tax under Rule 12A-1.007(14)(b)1., F.A.C., assuming that LLC presents a resale certificate to XXX at the time of transfer.

As stated above, LLC will be providing contract services to XXX for flight instruction of XXX students. Rule 12A-1.071(23), F.A.C., provides that a charge for flight instruction, which includes supervised solo flights, is exempt from Florida sales tax. In this case, the XXX will be charging students a fee for flight instruction. This charge for flight instruction would be exempt from Florida sales tax pursuant to Rule 12A-1.071(23), F.A.C. The charge from LLC for the contract services to XXX would not be deemed a charge for flight instruction, but, rather, a charge for the rental of the aircraft that is subject to Florida sales tax. However, Section 212.08(7)(p), F.S., provides that purchases or leases by a 501(c)(3) organization, such as XXX, are exempt from Florida sales tax. Thus, the charge for contract services from LLC to XXX for flight instruction of XXX students would be considered a charge for a rental of aircraft to a 501(c)(3) organization, which is exempt from Florida sales tax.

In its letter, XXX states that LLC will also be providing flight instruction to non-XXX students. Again, pursuant to Rule 12A-1.071(23), F.A.C., a charge for flight instruction, which includes supervised flights, is exempt from Florida sales tax. However, under this rule, the purchase of aircraft to be used for flight instruction is subject to Florida sales tax. Therefore, any of the XXX aircraft transferred to LLC that are used for flight instruction for non-XXX students would be subject to Florida sales tax on the transfer.

Because XXX has not, nor does it plan to, segregate which of the XXX aircraft will be used for flight instruction for XXX students and which aircraft will be used for flight instruction

to non-XXX students, the transfer of the XXX aircraft to LLC would not be considered a transfer exclusively for rental purposes. Therefore, Florida sales tax would be imposed on all XXX aircraft transferred to LLC.

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 requests 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.

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 15 days of the date of this letter.

Sincerely,

M. Chris Lyon, Attorney  
Technical Assistance & Dispute Resolution

Control #: 46176