TAA 11A-020 - JUNE 21, 2011

SUMMARY

QUESTION ONE: What portion of the Taxpayer's rent payments under the Lease and Parking Lot Lease are subject to Florida Sales and Use Tax?

ANSWER: In the case of the Land Lease, based on the figures provided, the proposed taxable percentage of 15.82% is a reasonable determination.

However, the Taxpayer's rent payments under the Parking Lot Lease are fully taxable. The property is not exempt pursuant to section 212.031(1)(a)2., F.S., since the property is not a part of the property under the Land Lease where the Facility has been built. Nor is the property exempt pursuant to section 212.031(1)(a)3., F.S., since the Taxpayer does not impose a charge for parking that is subject to tax under section 212.03(6), F.S.

QUESTION TWO: What portion of the Taxpayer's property tax payments, insurance premiums, and utility payments is subject to Florida Sales and Use Tax?

ANSWER: Section 212.031(1)(c), F.S., provides that "[t]he total rent or license fee charged for such real property shall include payments for the granting of a privilege to use or occupy real property for any purpose . . . ." Therefore, the proposed taxable ratio of 15.82% should be applied to all rents due and payable under the lease.

The Taxpayer's sales tax liability for ad valorem taxes should be calculated each year by multiplying 15.8% against the ad valorem taxes paid by the Tenant for the Land. The portion of the ad valorem taxes imposed on the property appraiser's valuation attributable to the facility is not subject to sales tax.

The Tenant's payment for utility charges would not be subject to tax, since the Tenant is making the payments directly to the utility provider.

Based on the information provided, the Tenant's payment for insurance premiums will not be subject to sales tax. However, as provided in Rule12A-1.070(12), F.A.C., "any portion of the premium which secures the protection of the landlord . . . which is separately stated or itemized is regarded as rental or license fee consideration and is taxable."

QUESTION THREE: What portion, if any, of the rent payments collected by the Taxpayer from students renting units in the Facility [is] subject to Florida Sales and Use Tax?

ANSWER: The Taxpayer's letter provides that "all rents are collected pursuant to written lease agreements for terms in excess of six months" and that all "rentals [will] be made to full time students at the [University]." Based on this information, the rent collected from the tenants of the Facility are not subject to sales tax.

QUESTION FOUR: Is the Taxpayer required to register as a "dealer" under section 212.06, Florida Statutes, or Rule 12A-l.060 of the Florida Administrative Code?

ANSWER: The Taxpayer provides that it only enters into lease agreements for terms greater than 6 months and that it only rents to full time students of the University. Therefore, the Taxpayer would not be required to register as a dealer of transient accommodations.

June 21, 2011

XXX

Re: Subject: Technical Assistance Advisement (TAA) 11A-020
Sales and Use Tax – Taxable Portions of Real Property Leases
Sections 212.03, 212.031, and 212.18, Florida Statutes (F.S.)
Rules 12A-1.061 and 12A-1.070, Florida Administrative Code (F.A.C.)
XXX ("Taxpayer")
FEI # XXX

XXX:

This is in response to your letter dated April 18, 2011, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxable portions of real property leases for a student housing facility. An examination of your letter has established 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

Your letter provides the following in part:

The Taxpayer has possession of 708,808.3 square feet of certain real property in XXX County, Florida (the "Land"), folio numbers . . . and . . . , pursuant to a ground lease dated XXX (the "Lease"), a copy of which is attached as Exhibit "A." Pursuant to the Lease,
the Taxpayer . . . operates a student living facility (the "Facility") on the Land. . . . The improvements associated with the Facility are situated on 599,357.5 square feet of the Land. A drawing showing the Land and ground level of the Facility is attached as Exhibit "B." The remaining 109,450.8 square feet of the Land is comprised of unimproved detention areas.

The Facility is primarily made up of XXX dwelling units, which the Taxpayer rents to students at [the XXX]. The Facility also contains electrical rooms, a/v closets, mechanical units, storage areas, management offices and other maintenance rooms which are not accessible to the student residents (the "Non-Exempt Areas"). The Non-Exempt Areas, as specifically described in the attached Exhibit "C," take up 2,679 square feet of the first floor of the Facility. The Taxpayer does not rent the Non-Exempt Areas, and the Taxpayer is not in the business of renting any portion of the Facility or Land to anyone other than full time students.

Pursuant to the terms of the Lease, the Taxpayer paid annual rent in the amount of $XXX for the first two years of the Lease term, and is paying annual rent in the amount
of $XXX for the 2010-2011 Lease year. The annual rent due under the Lease increases

each year of the Lease term, as set forth in Exhibit C of the Lease. Additionally, pursuant to Section 4.01 of the Lease, the Taxpayer is responsible for paying all property taxes associated with the Land and Facility during the Lease term. For the year 2011, the XXX County Property Appraiser has determined that folio . . . has a taxable value of $XXX, of which $XXX is attributed to the Land value. Folio . . . 2011 taxable value is $XXX, of which $XXX is attributed to the Land value.

Additionally, pursuant to Article 7 of the Lease the Taxpayer is required to maintain certain property and liability insurance policies insuring against casualties to the Facility and protecting the Taxpayer and the lessor from liability relating to certain claims arising out of the Taxpayer's operation of the Facility and possession of the Land. The Taxpayer pays all premiums associated with these insurance policies directly to the respective insurer, and the Taxpayer does not pay for any insurance policy that only protects the lessor's interests in the Land or Facility. Pursuant to Section 4.01 of the Lease, the Taxpayer is also required to pay all utility services associated with the Land or the Facility, and the Taxpayer makes all such payments directly to the service provider.

In connection with its operation of the Facility, the Taxpayer also leases a parking lot (the "Parking Lot") adjacent to the Land pursuant to a separate lease (the "Parking Lot Lease"). A copy of the Parking Lot Lease is attached as Exhibit "D." The Parking Lot is used as a parking area for the student residents of the Facility and their guests. The Taxpayer does not sublease or license the use of the Parking Lot to any third party, and the Taxpayer does not charge the student residents any extra fee or charge for the use of the Parking Lot.

The Agreement of Lease (the Lease), dated May 2008, provides the following in part:

. . . ARTICLE 2

PREMISES AND TERM OF LEASE

Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord (a) the Land, and (b) the Buildings to be hereafter erected by Tenant thereon, subject to the Permitted Encumbrances.

TO HAVE AND TO HOLD unto Tenant, its successors and permitted assigns, for a term of approximately forty-nine (49) years . . . .

. . . ARTICLE 4

IMPOSITIONS

Section 4.01 Tenant shall pay or cause to be paid, as hereinafter provided, all of the following items ("Impositions"): (a) real property taxes and assessments with respect to the Premises; (b) personal property taxes; (c) occupancy and rent taxes; (d) water, water meter and sewer rents, rates and charges; (e) vault charges; (f) levies; (g) license and permit fees; (h) service charges, with respect to police protection, fire protection, street and highway maintenance, construction and lighting, sanitation and water supply, and business improvement districts, if any; (i) gross receipts, excise or

similar taxes (i.e., taxes customarily based upon gross income or receipts which fail to take into account deductions relating to the Premises) imposed or levied upon, assessed against or measured by Base Rent or other Rental payable hereunder, but only to the extent that such taxes would be payable if the Premises were the only property of Landlord; (j) all sales, value added, intangible, use and similar taxes; (k) charges for utilities, communications and other services rendered or used on or about the Premises . . . .

. . . ARTICLE 7

INSURANCE

Section 7.01

(a) Tenant shall maintain the following insurance on the Premises

(i) Insurance with respect to each of the Buildings against all perils included within the classification "All Risk of Physical Loss" or "Special Form", covering such risks as shall be customarily insured against with respect to improvements similar in construction . . . .

(ii) provide and keep in force commercial general liability insurance against liability for bodily injury and death and property damage, such insurance to be in such amount as may from time to time be reasonably required by Landlord . . . .

(iii) provide and keep in force workers' compensation providing required statutory benefits for all persons employed by Tenant at or in connection with the Premises;

* * *

(b) Whenever under the terms of this Lease Tenant is required to maintain insurance for the benefit of Landlord, including, without limitation, the insurance coverage required by this Section 7.01 and Article 11, Landlord shall be an additional named insured in all such insurance policies. . . .

Taxpayer's Position

Rents Under the Lease and Parking Lot Lease:

Under the facts involved in this case, the Taxpayer believes that 15.8% of its total rent payments (the "Taxable Portion") under the Lease [is] subject to sales tax under section 212.031(1)[, F.S]. The Taxable Portion was determined by dividing those areas on the ground floor of the Land that are not used exclusively for dwelling units by the entire leased space.

The numerator in the Taxpayer's calculation is comprised of the total square footage of the Land that is used exclusively by the Taxpayer for its maintenance and operation of the Facility (e.g. maintenance areas, offices, etc.), as well as all portions of the Land which are unimproved and cannot be developed due to certain restrictions and characteristics of the Land. The numerator does not include the common areas, parking lot, pool, living spaces, and other areas which are provided for use to the

residents of the Facility without any additional charge, which are considered part of the dwelling units and therefore exempt pursuant to section 2l2.031(a)[2., F.S]. Because the Taxpayer leases the Land pursuant to a ground lease, only the ground level of the Facility is included in this calculation. The denominator in the Taxpayer's calculation is the total square footage of the Land. Accordingly, the taxable portion of the Taxpayer's rental payments is equal to 112,129.1/708,808.3, or 15.8%.

* * *

The Taxpayer believes that all of its rent payments under the Parking Lot Lease are exempt from taxation. The Parking Lot is an area which is regularly and normally accessed by the student residents of the Facility, and as such should be considered as an exempt area in the same manner as the parking areas located on the Land. The Taxpayer does not charge the student residents any additional fee or charge for their use of the Parking Lot, and the Taxpayer does not sublease any portion of the Parking Lot or otherwise charge any other party for the use of the Parking Lot. Accordingly, all rents paid under the Parking Lot Lease should be exempt from sales tax.

Property Taxes, Insurance Premiums and Utility Charges:

The Taxpayer believes that the Florida Sales and Use Tax is assessed against the portion of the Taxpayer's ad valorem tax liability which is attributable to the portions of the Land which are not used for an exempt purpose. The Taxpayer bases this position on Rule 12A-l.070(4)(c), [F.A.C.,] which states that ad valorem taxes paid by a tenant on behalf of the Landlord are taxable. However, because the Taxpayer is only leasing the Land, not the Facility, only those portions of the property taxes which are attributable to the Land should be subject to taxation. The Lease explicitly provides that the Facility is the property of the Taxpayer and is owned by the Taxpayer. Therefore, all property tax assessments made against the value of the Facility are not subject to the Sales and Use Tax because the Taxpayer is not leasing the Facility.

Accordingly, the Taxpayer's position is that 15.8% of the ad valorem taxes which are assessed against the Land and are paid by the Taxpayer [is] subject to the Sales and Use Tax under section 212.031(1)[, F.S]. The Taxpayer's sales tax liability will therefore be calculated each year by multiplying 15.8% against the ad valorum taxes assessed against the Land pursuant to the XXX County Property Appraiser's valuation of the Land (not including the values attributed to the Facility).

The Student Rents:

The Taxpayer believes that none of the rents collected by the Taxpayer from the residents of the Facility are subject to taxation under either section 212.03[, F.S.] or section 212.031[, F.S]. These rents are all believed to be exempt from taxation under section 212.03 because all rents are collected pursuant to written lease agreements for terms in excess of six months. Although the Taxpayer is not in the business of renting any units within the Facility for terms of less than six months and does not believe that any such rentals have been made, rents collected from any such short term rentals would still be exempt from taxation under section 212.03 because any such rentals would be made to full time students at the [XXX]. Additionally, all rents collected by the Taxpayer arise out of leasing dwelling units, and are therefore exempt from taxation under section 212.031[, F.S.].

Accordingly, all rents collected by the Taxpayer are exempt from taxation under either section 212.031(1)(a)[2., F.S.] or 212.03(7)[, F.S].

Requested Advisement

The Taxpayer requests that the Department issue a Technical Assistance Advisement declaring: (1) that 15.8% of its rent payments under the Lease and none of its rent payments under the Parking Lot Lease are subject to Florida Sales and Use Tax; (2) that only the portion of ad valorem taxes attributable to the areas of the Land not used for exempt purposes is subject to the Florida Sales and Use Tax; (3) that none of the rents collected by the Taxpayer from student residents are subject to Florida Sales and Use Tax; and (4) that the Taxpayer is not required to register as a dealer with the Department.

Square Footage Calculations

TOTAL LAND AREA	Acres		SF	
North Parcel	9,866	x 43,560 =	429,763.0	
South Parcel	6,406	x 43,560 =	279,045.4	
Total			708,808.3	**100.00%**

NON-EXEMPT AREAS

Apartment Building "C" Type (5 buildings)	SF/BLDG		Total SF
Electrical Rooms	72.3	X 5 Buildings	361.7
AV Closet	21.0	X 5 Buildings	105.0
Plumbing / Fire Suppr. Room	72.0	X 5 Buildings	360.0
Apartment Building "A" Type (1 building)			
Electrical Rooms	36.2	X 1 Building	= 36.2
A V Closet	10.5	X 1 Building	= 10.5
Plumbing / Fire Suppr. Room	12.0	X 1 Building	= 12.0
Community Center			
Mechanical Closet 129	56.0	X 1 Building	= 56.0
Office 103	80.0	X 1 Building	= 80.0
Office 104	100.0	X 1 Building	= 100.0
Workroom 105	80.0	X 1 Building	= 80.0
Mechanical Closet 117	18.0	X 1 Building	= 18.0
Storage 120	20.0	X 1 Building	= 20.0
Audio Visual Closet 119	5.0	X 1 Building	= 5.0
Maintenance Building	1110.0	X 1 Building	= 1110.0
Mail Kiosk			
Booster Pump Room	124.0	X 1 Building	= 124.0

Pool Buildings

Non-public mechanical rooms	100.0	X 2 Buildings	=	200.0	
Total excluded square feet within improved area				2,678.3	0.38%

UNIMPROVED AREA

North Parcel detention area	0.88	X 43,560	=	38,332.8	
South Parcel detention area	1.63	X 43,560	=	71,118.0	
Total				109,450.8	15.44%

15.82%

Applicable Authority

Section 212.03, F.S., provides the following in part:

(1)(a) It is hereby 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 to use any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, roominghouse, tourist or trailer camp, mobile home park, recreational vehicle park, condominium, or timeshare resort . . . .

* * *

(4) The tax levied by this section shall not apply to, be imposed upon, or collected from any person who shall have entered into a bona fide written lease for longer than 6 months in duration for continuous residence at any one hotel, apartment house, roominghouse, tourist or trailer camp, or condominium . . . .

(6) It is the legislative intent that every person is engaging in a taxable privilege who leases or rents parking or storage spaces for motor vehicles in parking lots or garages, who leases or rents docking or storage spaces for boats in boat docks or marinas, or who leases or rents tie-down or storage space for aircraft at airports. For the exercise of this privilege, a tax is hereby levied at the rate of 6 percent on the total rental charged.

(7)(a) Full-time students enrolled in an institution offering postsecondary education and military personnel currently on active duty who reside in the facilities described in subsection (1) shall be exempt from the tax imposed by this section. The department shall be empowered to determine what shall be deemed acceptable proof of full-time enrollment. The exemption contained in this subsection shall apply irrespective of any other provisions of this section. The tax levied by this section shall not apply to or be imposed upon or collected on the basis of rentals to any person who resides in any building or group of buildings intended primarily for lease or rent to persons as their permanent or principal place of residence.

* * *

Section 212.031, F.S., provides in part:

> (1)(a) 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:
>
> * * *
>
> 2. Used exclusively as dwelling units.
>
> 3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).
>
> * * *
>
> (b) When a lease involves multiple use of real property wherein a part of the real property is subject to the tax herein, and a part of the property would be excluded from the tax under subparagraph (a)1., subparagraph (a)2., subparagraph (a)3., or subparagraph (a)5., the department shall determine, from the lease or license and such other information as may be available, that portion of the total rental charge which is exempt from the tax imposed by this section. . . .
>
> (c) For the exercise of such privilege, a tax is levied in an amount equal to 6 percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. The total rent or license fee charged for such real property shall include payments for the granting of a privilege to use or occupy real property for any purpose and shall include base rent, percentage rents, or similar charges.
> . . . In the case of a contractual arrangement that provides for both payments taxable as total rent or license fee and payments not subject to tax, the tax shall be based on a reasonable allocation of such payments and shall not apply to that portion which is for the nontaxable payments.
>
> * * *
>
> (2)(b) It is the further intent of this Legislature that only one tax be collected on the rental or license fee payable for the occupancy or use of any such property, that the tax so collected shall not be pyramided by a progression of transactions, and that the amount of the tax due the state shall not be decreased by any such progression of transactions.

Section 212.18(3)(a), F.S., provides in part:

> Every person desiring to engage in or conduct business in this state as a dealer, as defined in this chapter, or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are subject to tax under s. 212.03, . . . must file with the department an application for a certificate of registration for each place of business . . . .

Rule 12A-1.061(10)(a), F.A.C., provides in part:

> Full-time students enrolled in an institution offering postsecondary education who reside in transient accommodations are exempt from the taxes imposed on transient accommodations. For the purpose of this rule, a "full-time student" is one taking that number of hours or courses considered by his or her educational institution to constitute full-time enrollment. . . .

Rule 12A-1.070, F.A.C., provides in part:

> (4)(c) Ad valorem taxes paid by the tenant or other person actually occupying, using, or entitled to use any real property to the lessor or any other person on behalf of the lessor, including transactions between affiliated entities, are taxable.
>
> * * *
>
> (14)(a) When a rental, lease, or license to use or occupy real property involves multiple use of such real property wherein a part of the real property is subject to tax, and a part of the property is excluded from the tax, the Executive Director or the Executive Director's designee in the responsible program shall determine from the lease or license and such other information as may be available, that portion of the total rental charge or license fee which is exempt from the tax. When, in the judgment of the Executive Director or the Executive Director's designee in the responsible program, the amount of rent or license
> fee stated in the lease or license arrangement for the taxable portion of the real property does not represent true value, the Executive Director or the Executive Director's designee in the responsible program shall make a determination of the proper amount of rent or license fee applicable thereto for the purpose of determining the amount of tax due from such other information as is available.

Department Response:

The Department has not verified the square footage of the figures that were provided. This response will communicate to you the proper usage of the methodology you are using to calculate the taxable portion of your lease agreement.

Section 212.031(1)(a), F.S., imposes sales tax on the privilege of engaging in the leasing of, or the granting of a license to use, real property. Section 212.031(1)(c), F.S., imposes the tax on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. However, section 212.031(1)(a)2., F.S., excludes real property from the tax when such property is "used exclusively as dwelling units." Section 212.031(1)(a)3., F.S., excludes real property from the tax when such property is "subject to tax on parking, docking, or storage spaces under s. 212.03(6)." The law further provides that sales tax under Section 212.031, F.S., shall not be pyramided by a progression of transactions.

Section 212.031(1)(b), F.S., authorizes the Department to determine the taxable portion of the total rent payment when, in a lease of real property, there are multiple uses of such property, and a portion of the property is subject to the tax, while another portion is not subject to the tax, because of the applicability of an exemption, such as those in section 212.031(1)(a)2., and 3., F.S. The Department's interpretation of this statute provides in Rule 12A-1.070(14)(a), F.A.C., that the Department shall determine from the lease or license agreement, or other pertinent information available, that portion of the rental charge that is exempt from tax.

In this instance, there is the Land Lease between Taxpayer and Lessor, for the lease of the Land for the Facility, and a separate Parking Lot Lease between the Taxpayer and a separate Sub-Lessor. Because there are two leases, we must calculate the taxable portion for each separately.

Land Lease:

The following equation is a reasonable method useful for calculating the taxable portion of the Land Lease between Taxpayer and Lessor for the lease of the Land used for the Facility.
The equation multiplies the total rent or license fee by a fraction, the numerator of which is the square footage used by the lessee for its own purposes, and the denominator of which is the entire square footage of the land demised by the lease.

Computing the numerator on the Land Lease

The numerator is comprised of the total square footage of the premises that is used exclusively by the Lessee for its Facility related purposes (e.g., offices, maintenance areas). Also, the numerator would include any land demised under the lease, whether developed or undeveloped, and used exclusively by the Lessee. This includes areas of land that cannot be developed due to certain restrictions and cannot be used by the tenants.

Excluded from the numerator are portions of the property that can be considered as being used "exclusively as dwelling units," as such areas are exempt from tax pursuant to section 212.031(1)(a)2., F.S. Such areas include: the XXX living spaces; common areas of the premises (e.g., lobbies, elevators, and hallways); swimming pool; and any other areas principally used by the residents of the Facility without any additional charge.

The Taxpayer's letter indicates that the "Total Land Area" under the Land Lease comprise a total square footage of 708,808.30. The Taxpayer also provides that the total square footage of the Land Lease that residents are not entitled to use is equal to 112,129.1 square feet.

Based on the facts presented, the proposed 112,129.1 taxable square footage of the Land Lease divided by 708,808.3 total square footage of the Land Lease, results in a taxable percentage of 15.82%. Multiplying this percentage by the total rent due under the Lease would be the taxable rental amount.

Parking Lot Lease:

The Taxpayer has entered into a separate agreement with a sublessor for the lease (the Parking Lot Lease) of certain property (the Parking Lot) adjacent to the property under the Land Lease. The Parking Lot is "used as a parking area for the student residents of the Facility and their guests." The Taxpayer provides that it "does not sublease or license the use of the Parking Lot to any third party, and the Taxpayer does not charge the student residents any extra fee or charge for the use of the Parking Lot." None of the XXX student living facility dwelling units that were constructed by the Taxpayer are located on the Parking Lot property.

As provided, section 212.031(1)(a)3., F.S., excludes real property from sales tax when such property is "subject to tax on parking, docking, or storage spaces under s. 212.03(6)." Section 212.03(6), F.S., provides that tax is due on the rental of parking spaces for motor vehicles in parking lots.

Section 212.031(1)(b), F.S., authorizes the Department to determine the taxable portion of the total rent payment when, in a lease of real property, there are multiple uses of such property, and a portion of the

property is subject to the tax, while another portion is not subject to the tax, because of the applicability of an exemption, such as that in section 212.031(1)(a)3., F.S. However, in this case, the Taxpayer's rental payments to the sublessor of the Parking Lot are not excluded from the sales tax imposed by section 212.031, F.S., since there is not a charge for parking that is subject to tax under section 212.03(6), F.S.

Further, the Parking Lot Lease is not exempt pursuant to section 212.031(1)(a)2., F.S., as this property is not part of the property under the Land Lease where the Facility has been built.

Property Tax Payments, Insurance Premiums, and Utility Payments:

Section 212.031(1)(a) and (c), F.S., impose a tax on the "total rent or license fee" charged for the renting, leasing, or letting of any real property. It is further provided in s. 212.031(1)(d), F.S., that when the rental fee is paid by way of property or "other thing of value," this also becomes a taxable element of rent.

Rule 12A-1.070(4)(b), F.A.C., provides that tax is payable on all considerations due and payable by the tenant or other person actually occupying, using, or entitled to use any real property to his landlord or other person for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose. Rule 12A-1.070(4)(c), F.A.C., provides that ad valorem taxes paid by the tenant to the lessor or any other person on behalf of the lessor are taxable. Rule 12A-1.070(12), F.A.C., provides that when a tenant pays insurance for his own protection, the premium is not regarded as rental consideration, even though the landlord is also protected by the coverage. Rule 12A-1.070(12), F.A.C., goes on to say, however, that any portion of the premium which secures the protection of the landlord and which is separately stated or itemized is regarded as rental consideration and is taxable.

Based on the facts presented, and the foregoing discussion, the proposed taxable percentage of 15.82% should be applied to all consideration payable under the Land Lease. In the case of the Taxpayer's payment of the property tax, the Taxpayer's sales tax liability should be calculated each year by multiplying 15.82%, assuming the taxable portion remains the same, against the ad valorum taxes assessed against the Land, pursuant to the property appraiser's valuation of the Land and paid by the Taxpayer. The Lease provides that the Taxpayer owns the Facility during the term of the Lease. Therefore, the portion of the property appraiser's valuation attributed to the Facility is not subject to sales tax.

Ordinarily, utility charges paid by a lessee to its lessor for the privilege or right to use or occupy real property are taxable as a form of rental consideration, when the payment benefits the lessor. Under this Lease, the Taxpayer is directly responsible for all utilities used by it; and the lessor has no obligation to pay for, nor is it paying for, any of the utilities provided to the property. The Lessor receives no benefit from the Taxpayer, which is paying for its own use of utilities. Because the benefit of utilities goes to the Taxpayer rather than the Lessor, payment for utilities is not "rental consideration" subject to sales tax under Section 212.031, F.S.

Rule 12A-1.070(12), F.A.C., provides that when a tenant pays insurance for his own protection, the premium is not regarded as rental consideration, even though the landlord is also protected by the coverage. Rule 12A-1.070(12), F.A.C., goes on to say, however, that any portion of the premium which secures the protection of the landlord and which is separately stated or itemized is regarded as rental consideration and is taxable. The Lease provides that in cases where the Taxpayer is required to maintain insurance, "[the] Landlord shall be an additional named insured in all such insurance policies." The Taxpayer's letter provides that it "does not pay for any insurance policy that only protects the lessor's interests in the Land

or Facility." Based on the information provided, the Tenant's payment for insurance premiums will not be subject to sales tax.

Lease to Students:

Section 212.03(1), F.S., imposes a tax on transient rentals and further provides that the tax is not imposed on any person who has entered into a bona fide written lease for longer than 6 months in duration for continuous residence. Further, section 212.03(7), F.S., provides an exemption from the tax imposed in section 212.03, F.S., when transient accommodations are rented by full-time students who are enrolled in an institution offering postsecondary education. The term "full-time student" is defined under Rule 12A-l.061(10)(a), F.A.C, as a student taking that number of hours or courses considered by his or her educational institution to constitute full-time enrollment. The term "institution offering postsecondary education" is not defined in either statute or rule.

The Taxpayer's letter provides that "all rents are collected pursuant to written lease agreements for terms in excess of six months." The Taxpayer's letter further provides that all "rentals [will] be made to full time students at the [XXX]." Based on this information, the rents collected from the student tenants of the Facility are not subject to sales tax.

Registration:

Section 212.18(3)(a), F.S., provides that every person that desires to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are subject to tax under section 212.03, F.S., must register as a dealer with the Department. However, the Taxpayer provides that it only enters into lease agreements for terms greater than 6 months and that it only rents to full time students of the XXX. Therefore, the Taxpayer would not be required to register as a dealer of transient accommodations.

Conclusion

1. What portion of the Taxpayer's rent payments under the Lease and Parking Lot Lease are subject to Florida Sales and Use Tax?

In the case of the Land Lease, based on the figures provided, the proposed taxable percentage of 15.82% is a reasonable determination.

However, the Taxpayer's rent payments under the Parking Lot Lease are fully taxable. The property is not exempt pursuant to section 212.031(1)(a)2., F.S., since the property is not a part of the property under the Land Lease where the Facility is located. Nor is the property exempt pursuant to section 212.031(1)(a)3., F.S., since the Taxpayer does not impose a charge for parking that is subject to tax under section 212.03(6), F.S.

2. What portion of the Taxpayer's property tax payments, insurance premiums, and utility payments [is] subject to Florida Sales and Use Tax?

Section 212.031(1)(c), F.S., provides that "[t]he total rent or license fee charged for such real property shall

include payments for the granting of a privilege to use or occupy real property for any purpose . . . .” Therefore, the proposed taxable ratio of 15.82% should be applied to all rents due and payable under the lease.

The Taxpayer’s sales tax liability for ad valorem taxes should be calculated each year by multiplying 15.8%, assuming the taxable portion remains the same, against the ad valorem taxes assessed against the Land pursuant to the property appraiser’s valuation of the Land. The portion of the ad valorem taxes imposed on the property appraiser’s valuation attributable to the facility is not subject to sales tax.

The Tenant’s payment for utility charges would not be subject to tax, since the Tenant is making the payments directly to the utility provider.

Based on the information provided, the Tenant’s payment for insurance premiums will not be subject to sales tax. However, as provided in Rule12A-1.070(12), F.A.C., “any portion of the premium which secures the protection of the landlord . . . which is separately stated or itemized is regarded as rental or license fee consideration and is taxable.”

3. What portion, if any, of the rent payments collected by the Taxpayer from students renting units in the Facility [is] subject to Florida Sales and Use Tax?

The Taxpayer’s letter provides that “all rents are collected pursuant to written lease agreements for terms in excess of six months” and that all “rentals [will] be made to full time students at the [XXX].” Based on this information, the rent collected from the tenants of the Facility are not subject to sales tax.

4. Is the Taxpayer required to register as a “dealer” under section 212.06, Florida Statutes, or Rule 12A-l.060 of the Florida Administrative Code?

The Taxpayer provides that it only enters into lease agreements for terms greater than 6 months and that it only rents to full time students of the XXX. Therefore, the Taxpayer would not be required to register as a dealer of transient accommodations.

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 that 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 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 15 days of the date of this letter.

Sincerely,

Brinton Hevey
Tax Law Specialist
Technical Assistance and Dispute Resolution
850/717-6839

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