TAA 09A-048 - Septmeber 29, 2009

SUMMARY

QUESTION: Whether Taxpayer must collect tax on payments by Taxpayer's owners to Taxpayer.

ANSWER: Yes. Arrangement with Taxpayer and occupying related party was an implied rental arrangement. Lender required an Assignment of rent, issues, and profits from occupying related party to pay for loan mortgage. Funds from the operations of the occupying related party were indirectly used to defray Taxpayer's cost of operations.

September 29, 2009

XXX

Subject: Technical Assistance Advisement 09A-048
Sales and Use Tax
Real property license to use real property
XXX ("Taxpayer")("Landowner")
FEIN: XXX
XXX ("Member A")
XXX
XXX ("Member B")
XXX
XXX ("Operator")
FEIN: XXX
XXX ("Lender")
Section 212.031, F.S.; Section 212.02, F.S.
Section 212.12(8), F.S.
Rule 12A-1.070, F.A.C.

Dear XXX:

This letter is a response to your petition dated August 6, 2008, for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced party and matter. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

FACTS

Landowner is organized under the laws of the State of Florida as a limited liability company. Member A and Member B were the initial members of Landowner.

Your request provides that Operator uses 100% of the real property owned by Landowner. No written lease agreement between Landowner and Operator was submitted. Member A owns ninety-nine percent of the shares of Operator and Member B owns one percent of the shares of Operator.

Landowner borrowed $2,750,000.00 from Lender pursuant to a Commercial Promissory Note ("Note"). The Note is secured by a Mortgage and Security Agreement ("Mortgage") encumbering real and personal property described by the Mortgage. The Note provides that the Note is subject to the terms and conditions of the Loan Agreement. Member A, Member B, and Operator signed guaranty agreements.

The Commitment by Lender provides that the loan is conditioned by the terms of the Commitment. The Commitment and Note reference the Loan Agreement, which was not provided. However, the Commitment provides that the property and collateral include the mortgage on the real property and improvements, and the assignment of all rents and leases on real property and improvements. The Commitment provides that Operator is the sole tenant of the building secured by the Mortgage.

The Commitment required Landlord to execute at or after the closing the following:

- Note
- Mortgage
- Properly executed Uniform Commercial Code Financing Statements which perfect Lender's first lien or security interest in all personal property pledged as collateral for the Loan, including but not limited to leases, rents, issues and profits
- A properly executed Assignment of Leases and Rentals in form and content acceptable to Lender
- Copies of Landlord's financial statement including, but not limited to, an income statement, balance sheet, and schedule of rents concerning the operation of the Property.

The Mortgage provided that a security interest was provided in the property of Landowner, including in part the following:

(A) All of the land [of Landowner] ….
(B) (i) all personal property and fixtures now or hereafter affixed to or located on the property described in (A) …; (v) all those items described on Exhibit B ….

(C) All rents, issues, profits, revenue, income, proceeds, and other benefits flowing or derived from the property described in paragraphs (A) and (B) hereof, provided however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, and use such benefits from the property as they become due and payable ….

Exhibit B of the Mortgage is a UCC-1 Attachment. The Exhibit was part of a financing statement filed with the Clerk of the Circuit Court in XXXXX.

The Attachment provides in part the following:

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All of Debtor's [Landowner] interest as lessor or owner in and to all leases or rental arrangements of the Real Property or any part thereof heretofore made and entered into by Debtor during the life of the security agreements or any extension or renewal thereof, together will all rents and payments in lieu of rents together with any and all guarantees of such leases or rental arrangements and including all present and future security deposits and advance rentals.

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The financing statement provides in part the following:

This FINANCING STATEMENT covers the following collateral:

With respect to the Real Property described in Exhibit A attached hereto (the "Land"), all appurtenances, improvements, tangible property, rents, secondary financing, proceeds ….

The Assignment of Leases, Rents and Profits, also recorded in XXXX County, provides in part:

[Landowner] …, hereinafter called "ASSIGNOR," in consideration of, and as further security for a mortgage loan made to ASSIGNOR by Lender …, hereinafter called "ASSIGNEE", hereby assigns to ASSIGNEE all the rents, issues and profits, arising from the premises described in Exhibit "A" annexed hereto, but until default by ASSIGNOR in that certain Promissory Note … in the sum of $2,750,000.00, together with interest, on the real property mortgage encumbering the property described in Exhibit "A" …, ASSIGNOR may continue in possession of the premises describing in Exhibit "A" under its leasehold rights and may

> continue to collect such rents, issues and profits, and any tenants of any portions of the said property may continue to pay rent to ASSIGNOR.
>
> PROVIDED HOWEVER, upon default by ASSIGNOR or ASSIGNOR'S successors or assigns in any payment or act required under the aforesaid promissory note and real property mortgage ASSIGNEE shall be entitled to possession under the leasehold rights of ASSIGNOR in and to the property described in Exhibit "A" and to receive said rents, issues and profits therefrom whether they arise under leases now existing or hereafter …, and ASSIGNOR does hereby name and constitute ASSIGNEE as its Attorney-in-Fact to transfer to ASSIGNEE or ASSIGNEE'S designee the leasehold of ASSIGNOR to the property described in Exhibit "A" and to sue for and to collect all rents, issues, and profits due and which may become due relative to said leasehold interests, and ASSIGNOR agrees that it shall promptly notify all tenants of the premises to pay over such rents, issues and profits to the ASSIGNEE upon demand.

The initial capital contribution by Member A and Member B to Landlord was $1,000. The Operating Agreement provides that the initial manager of Landowner was Member A. Article III, Section 4, of the Operating Agreement provides that real or personal property owned or purchased by Landowner shall be held and owned, and conveyances made, in Landowner's name. The same section provides that instruments and documents providing for the acquisition, mortgage, or disposition of property of Landowner shall be valid and bind Landowner.

Article IV, Section 4, regarding distributions, provides available cash shall be distributable to the members in proportion to their respective then existing non-returned, contributed capital. The section defines "available cash" as:

> (i) that sum of cash resulting from business operations, including sales revenues, royalties, interest income and other income derived from sale or use of products developed by this company plus funds reserved in a previous fiscal year but released without expenditure, less (ii) all cash expenditures, including, but not limited to real and personal property taxes, principal and interest payments on all loans made to the company, insurance, capital requirements, accounting and legal fees and supplies, and less any amount which the manager or managers may reasonably determine to be necessary as a reserve for operating expenses, capital improvements, security deposits, or contingencies, but not

including cost expenditures previously reserved against in a prior fiscal year.

Although the schedules of rent referenced by the Commitment and Landowner financial statements were not provided, copies of unsigned Landowner's federal income tax returns were provided for several years. The returns provide that the principal business activity is real estate and that the business or activity by Landowner is commercial rental. The returns provide that Landowner's expenses, including mortgage payments, property taxes, and insurance, were financed by contributions of Member A and Member B. The federal income tax returns of Member A and Member B provide that the primary and overwhelming source of income was from distributions from Operator.

Operator's financial statements reported distributions to Member A and B in excess of $9,400,000, which also exceeded all Landowner's expenses since inception of Landowner. Assets reported on Landowner's financial reports are the property used by Operator. No direct payments to Landowner by Operator are reflected on financial statements or federal income tax returns. Landowner's receipts and disbursements were in excess of $5,500,000.00 since inception. Disbursements included mortgage payments, property tax payments, and insurance payments.

REQUESTED ADVISEMENT

Landowner seeks a ruling that Florida sales tax is not due on the above described arrangement.

TAXPAYER POSITION

Section 212.031, F.S., imposes the tax on real property rentals and is inapplicable for several reasons. Specifically, no lease agreement exists between Operator and Landowner. There has never been any consideration paid or recorded in any fashion for the use of the real estate. Landowner is not engaged in the business of renting real property. Operator has acquired no interest or rights with respect to the occupancy of Landowner's property. From inception, no tenants have ever been considered to occupy the premises. There is no link between distributions from Operator to Member A and Member B and the capital contributions of Member A and Member B to Landowner that were ultimately used to pay the expenses of Landowner.

In St. Johns Trading Company v. Department of Revenue, DOAH Case Number 84-1652 (1985), and Department of Revenue v. Ryder System, Inc., 406 So.2d 1299 (Fla. 1st DCA 1981), no tax was found due when the occupant or tenant did not pay rental consideration despite accounting entries reflecting rent expense by the tenants or occupants for accounting purposes. The occupant in St. Johns Trading Company reported as rent expense the real estate owner's costs associated with depreciation, interest, and taxes for the purpose of measuring profitability of the stores.

Taxpayer cites Technical Assistance Advisement 04A-056 as support. Taxpayer cites from the advisement the following:

> "The Department recognizes that there may be situations wherein 'income' or 'profit' flowing between related entities, in an arrangement such as the one before us, would not be 'rental consideration.' Key to any determination on behalf of the Department would be a review of the P.A.'s membership agreement or other controlling documents. The Department would be interested in the timing, amount and control of the distributive shares of earnings or cash flow to the two persons identified above. The Department would look to the membership agreement or other controlling documents to ascertain: (1) that distributions do not coincide with the time at which the property's expense obligations are due; (2) the amount of distributions does not coincide with the amount of the property's expense obligations; and (3) the distributions are based on a true reflection of income or profit and not on the amount of the property's expense obligations."

Operator's distributions to the shareholders do not coincide with the time at which Landowner's expense obligations are due, the amount of the distributions does not coincide with the amount of the expense obligations, and the distributions are based on Operator's profit and not on Landowner's expense obligations.

For these reasons, Taxpayer respectfully requests that the Department find this arrangement to be exempt from sales tax consistent with the aforementioned rulings.

APPLICABLE STATUTES AND RULES

Section 212.02(10)(i), and (12), F.S., provide:

> (10)(i) "License," as used in this chapter with reference to the use of real property, means the granting of a privilege to use or occupy a building or a parcel of real property for any purpose.
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> (12) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit and also includes any political subdivision, municipality, state agency, bureau, or department and includes the plural as well as the singular number.

Section 212.031(1)(a) and (c), (2)(a), and (3), F.S., provide:

> (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 ….
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>
> (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….
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> (2)(a) The tenant or person actually occupying, using, or entitled to the use of any property from which the rental or license fee is subject to taxation under this section shall pay the tax to his or her immediate landlord or other person granting the right to such tenant or person to occupy or use such real property.
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> (3) The tax imposed by this section shall be in addition to the total amount of the rental or license fee, shall be charged by the **lessor or person receiving the rent or payment in and by a rental or license fee arrangement with the lessee or person paying the rental or license fee**, and shall be due and payable at the time of the receipt of such rental or license fee payment by the lessor or other person who receives the rental or payment…. (**Emphasis added**)

Section 212.12(7) and (8), F.S., provide:

> (7) In the event the dealer has imported tangible personal property and he or she fails to produce an invoice showing the cost price of the articles, as defined in this chapter, which are subject to tax, or the invoice does not

> reflect the true or actual cost price as defined herein, then the department shall ascertain, in any manner feasible, the true cost price, and assess and collect the tax thereon with interest plus penalties, if such have accrued on the true cost price as assessed by it. The assessment so made shall be considered prima facie correct, and the duty shall be on the dealer to show to the contrary.
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> (8) In the case of the lease or rental of tangible personal property, or other rentals or license fees as herein defined and taxed, if the consideration given or reported by the lessor, person receiving rental or license fee, or dealer does not, in the judgment of the department, represent the true or actual consideration, then the department is authorized to ascertain the same and assess and collect the tax thereon in the same manner as above provided, with respect to imported tangible property, together with interest, plus penalties, if such have accrued.

Section 608.471(3), F.S., provides in part:

> (3) Single-member limited liability companies and other entities that are disregarded for federal income tax purposes must be treated as separate legal entities for all non-income-tax purposes….

Rule 12A-1.070(4) and (19), F.A.C., provide in part:

> (4)(a) The tenant or person actually occupying, using, or entitled to use any real property from which rental or license fee is subject to taxation under Section 212.031, F.S., shall pay the tax to his immediate landlord or other person granting the right to such tenant or person to occupy or use such real property.
>
> (b) The tax shall be paid at the rate of … 6 percent on or after February 1, 1988, <u>on all considerations</u> 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. (<u>Emphasis added</u>)
>
> (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.

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> (19)(a) The lease or rental of real property or a license fee arrangement to use or occupy real property between related "persons," as defined in s. 212.02(12), F.S., in the capacity of lessor/lessee, is subject to tax.
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> (b) The total consideration, whether direct or indirect, payments or credits, or other consideration in kind, furnished by the lessee to the lessor is subject to tax despite any relationship between the lessor and the lessee.
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> (c) The total consideration furnished by the lessee to a related lessor for the occupation of real property or the use or entitlement to the use of real property owned by the related lessor is subject to tax, even though the amount of the consideration is equal to the amount of the consideration legally necessary to amortize a debt owned by the related lessor and secured by the real property occupied, or used, and even though the consideration is ultimately used to pay that debt. (Emphasis added)

RESPONSE

Section 212.031(1)(a), F.S., provides 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. Section 212.02(10)(i), F.S., defines "License," with reference to the use of real property, as the granting of a privilege to use or occupy a building or a parcel of real property for any purpose. A license may be created by a written or oral agreement by implication based on the actions of the parties. See 20 Fla. Jur 2d §47. Section 212.02(10), F.S., defines "Lease," "let," or "rental" to include the leasing or renting of real property. Section 212.02(10)(h), F.S., states that "Real property" means the surface land, improvements thereto, and fixtures, and is synonymous with "realty" and "real estate."

The term "lease" is defined by Black's Law Dictionary @ 907 (Deluxe 8th edition, 2004) as, "A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. rent." It also means, "To grant the possession and use of (land, buildings, rooms …) to another in return for rent or other consideration." Id. @ 909. In regard to parol leases, it also includes, "A lease based on an oral agreement; an unwritten lease." Id. @ 909. It also includes a contract for exclusive possession of lands or tenements for a determinate period and a contract for possession and profits of lands and tenements either for life or for certain period of time, or during the pleasure of the parties. See Black's (Special Deluxe 5th edition, 1979) @ 800. Also, a lease or license may be implied by the conduct of the parties. 17A Am Jur 2d Contracts § 12. First Nat'l Bank v. Green, 132 Ill. App. 2d 322, 270 NE2d 493 (Ill. 1st DCA 1971) (An implied tenancy may arise where a party has used another's premises, accepting the benefits of such use.).

Thus, a lease includes, but is not limited to, any agreement that gives rise to a relationship of landlord and tenant, and it does not require the existence of a written lease agreement. Therefore, the tax provided for by section 212.031, F.S., is imposed on the consideration received pursuant to the exclusive possession of real property. In addition, the tax is imposed on the grant of a privilege to use real property. The use may be for any purpose.

In this instance, the request provides that Operator used 100% of the real property owned by Landowner. As provided by the Commitment, the Lender made the loan with the express understanding that Operator was the sole tenant. Lender also relied upon Operator's revenue and income to repay the loan, as evidenced by the Mortgage, the Commitment, and the Assignment. The word, "tenant" is defined by Blacks (8th edition) @ 1506, as "One who holds or possesses lands or tenements by any kind of right or title. See *TENANCY."* The word, "tenancy" is defined as, "The possession or occupancy of land under a lease; a leasehold interest in real estate." Id. @ 1505. Therefore, based on the characterization of the relationship with the parties required by the Commitment and information submitted by the request, the relationship between Landowner and Operator created a lease for purposes of section 212.031, F.S.

Section 608.471(3), F.S., requires entities disregarded for federal income tax purposes to be construed as separate legal entities for sales tax purposes. The term "person" is defined by section 212.02(12), F.S., broadly to include "any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit." As such, Landowner, Operator, Member A, and Member B are separate persons for purposes of Chapter 212, F.S.

Section 212.02(2), F.S., defines the term "Business" to mean, "any activity engaged in by any person, or caused to be engaged in by him or her, with the object of private or public gain, benefit, or advantage, either direct or indirect…." The opinion from Regal Kitchens v. Department of Revenue, 641 So.2d 158 (Fla. 1st DCA 1994), @ 162-163, provides in part the following:

> This definition is broad enough to encompass many different forms of rental arrangements, including the transaction in this case. See, e.g., Kirk v. Western Contracting Corp., 216 So.2d 503 (Fla. 1st DCA), cert. denied, 225 So.2d 535 (Fla.1969). The stockholders of Regal Kitchens would not have titled the property in the name of a partnership and leased it back unless there was some benefit inherent in that arrangement. Nothing in subsection 212.02(2) Florida Statutes (1989), suggests that the term "business" is limited to those who engage in regular course of dealing with different clients or customers. A person who rents a single duplex unit is engaged in business as is the owner of an apartment who rents thousands of units.

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> Those who seek the protection afforded by incorporation must also accept the burdens. Individuals may incorporate to shield themselves from personal liability, or for many other reasons, but they may not then disavow the existence of the corporation for the purpose of obtaining a tax advantage….

Here, Landowner's sole property is the property used by Operator. The federal tax returns provide Landowner is in the business of commercial rental. The Commitment provides that Operator is the sole tenant of the property. Landowner has no other business activity than providing use of the property for Operator. In addition, the property is shielded from potential liability from Operator's business activity, which could benefit Member A, Member B, and Lender. Therefore, Landowner is a person engaged in the business of leasing for purposes of section 212.031, F.S.

Section 212.031(2)(a), F.S., provides that the tenant or person actually occupying, using, or entitled to the use of any property from which the rental or license fee is subject to taxation under this section shall pay the tax to his or her immediate landlord or other person granting the right to such tenant or person to occupy or use such real property. As such, Operator, as the tenant, is required to pay the tax on consideration paid to Landlord.

Section 212.031(1)(c), F.S., provides that the 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. Section 212.031(3), F.S., provides that the tax is due and payable at the time of the receipt of such rental or license fee payment by the lessor or other person who receives the rental or payment. This includes Landowner as the lessor. It also includes Member A and Member B as the other person who receives the rental payment by virtue of receipt of Operator's distributions. Rule 12A-1.070(4), F.A.C., provides that all consideration paid for the use of real property is rent subject to the tax, including payments for property tax. Rule 12A-1.070(19), F.A.C., provides that this includes any amount paid by a tenant to a related party and consideration paid or received directly or indirectly. Section 212.12(8), F.S., provides that the Department may determine the true consideration paid when the rental amounts are not accurately reflected by a dealer.

Rent is defined as "consideration paid, usually periodically, for use or occupation of property." Cascella v. Canaveral Port Authority, 827 So.2d 308 (Fla. 5th DCA 2002)(Citing Black's Law Dictionary 1299 (7th ed. 1999)). Consideration includes either a benefit to the promisor or a detriment to or obligation upon the promise. Detriment to an acquiring party may constitute consideration for a transfer of assets. Consideration is

not limited to a money consideration and may include an assumption of liability or other thing of value. 68 Am.Jur. 2d Sales and Uses Taxes §66.

In Trailer Conditioners, Inc. v. Huddleston, 897 S.W. 2d 728 (Tenn. Ct. App. 1995), appeal denied (May 1, 1995), the court determined that consideration may be either a benefit to one related party or a detriment to or obligation upon the other related party. The benefit and detriment included the regular transfer of substantial funds from one related party to another related party's bank accounts to pay for expenses of transferee related party. The transfer constituted consideration even though the related party did not earn a profit from such transfer because other benefits were obtained. Accounting, bookkeeping, and other services provided by a related party also constituted consideration. Although the consideration was not explicitly provided for by agreement, the transfer was implied consideration inferred from the party's actions. Therefore, the fact that amounts received are denominated as rent or consideration does not alter whether funds paid are in substance rent.

The fact that the amounts are not paid directly to Taxpayer by the licensee is not controlling. Rule 12A-1.070(19)(b), F.A.C., provides that consideration may be indirect payments or credits. Here, since Member A and Member B may control and direct the funds of Operator and Landowner, the manner of receipt of funds by Landowner is not controlling as to whether receipts are rental consideration. A property owner may direct the manner in which a tenant makes rental payment. See Seaboard Coastline Railroad Company v. Askew, Case #72-15 (Fla. Cir. Ct., 2nd Cir., Leon Co., 1972). The court in Seaboard, addressed the issue of what is included as rental consideration and held as follows:

> The consideration paid by the tenant for the privilege conferred by the lease is "rent." Rent may be payable in cash, or in some commodity, or by rendering specified services. Rent may be payable directly to the lessor **or to some other person either specified in the lease or directed by the lessor**.... Section 212.031 imposes a tax upon "the total rent charged" for the "renting, leasing or letting" of real estate.... While taxes are not specifically mentioned, this language clearly indicates a legislative intent to tax the **full benefits flowing to the landlord for the use of leased premises**.... The payment of these taxes by the lessee is the payment of money for account of the owner and for his benefit.... A tax [sales tax] is imposed upon a transaction and measured by the rent. In every rental transaction the amount of taxes upon the rented property is necessarily considered by the parties in determining the rent to be charged and paid whether the taxes be paid by the landlord from a fixed monthly or annual rental or paid for the landlord by the tenant. (**Emphasis Supplied**)

Therefore, as with the property owner in Seaboard Coastline, the funds or other benefits flowing to a property owner may be rental consideration regardless of the manner or description attached to funds or benefits received. As such, benefits received by the Landowner, either in Landowner's bank account or paid to Lender or other parties as Landowner or Members of Landowner deems, derived originally indirectly or directly from Operator's funds even if labeled as distributions to shareholders, are rent. Here, the federal income tax returns reflected that Member A's and Member B's only source sufficient to pay Landowner's expenses was from Operator's distributions. These funds were used to pay for Landowner's costs, including the mortgage payments, property taxes, insurance, and other costs of Landowner. As in Huddleston and Seaboard Coastline, the funds received by Landowner were consideration. As such, the payments are rent and subject to the tax.

The loan required Landowner to assign its interest in any lease and all rents, issues, and profits from such lease to Lender. The Assignment provides that Lender will accrue rent upon default. Black's Law Dictionary (Deluxe 8th edition, 2004) defines the words, "Rents, issues, and profits" as "The total income or profit arising from the ownership or possession of property." Also, see Bay Realty Corporation v. Becker, 157 So.2d 91 (Fla. 3rd DCA 1963)("Rents, issues, and profits" means and refers to rents collected by the debtor in possession or the net profits accruing to him from said property.). Generally, rents and profits are income generated from the occupation or use of the realty and not income generated from general business operations. Profits are synonomous with rents and not used in the sense of excess of income over expense in business operations. In re Flower City Nursing Home, Inc., 38 Bankr. 642 (Bankr. W.D.N.Y. 1984). The requirement of Lender that Landowner provide the Assignment prior to closing further demonstrates that amounts received by Landowner were rent in that Lender sought to obtain the repayment of the loan from Operator's use of Landowner's property for its business operations.

Also, Operator, Member A, and Member B were guarantors of Landowner's loan. Section 607.06401(3), F.S., limits distributions to shareholders to the extent that the corporation can pay its debts as they become due in the usual course of business or when the corporation's total assets are less than the sum of its total liabilities after the distribution. Since Operator was liable as guarantor, the distributions in part to Member A and Member B were required to be used to pay Landlord's mortgage payments and were liabilities. As such, the entire amount could not be profit distributions.

The request provides that Landowner's arrangement is consistent to prior TAA opinions. As provided by Rule 12-11.007(1), F.A.C., a TAA is only binding to the person to whom it was issued. Furthermore, a TAA is based on very specific facts. Facts in the TAA referenced are not precisely identical to the facts here.

Therefore, for the reasons provided herein, the Landowner is required to remit sales tax on funds received used to pay Landowner's costs related to real property used by Operator.

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.

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.

Sincerely,

Charles Wallace
Senior Attorney
Technical Assistance and Dispute Resolution
(850) 922-4734

CW/
Ctrl#: 49644