



Interim
Executive Director
Marshall Stranburg

September 7, 2012

Re: Technical Assistance Advisement – TAA 12A-020
Taxability of a Hotel Real Property Lease
Sales and Use Tax – Real Property Rental
Section 212.031(1)(a)2., Florida Statutes (F.S.)
Rules 12A-1.070(9) & 12A-1.070(14)(a), Florida Administrative Code (F.A.C.)
XXX (Owner)
XXX (Tenant)
XXX (Subtenant)
FEI #s: XXX, XXX & XXX

Dear XXX:

This is in response to your letter dated XXX, 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., regarding the taxability of a lease and sublease of a of a hotel. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

ISSUE

The issue is whether Tenant may issue a resale certificate to Owner and collect sales and use tax from Subtenant on the taxable portion of multiple use property in the manner as described in your request.

FACTS AS PRESENTED

Your letter provides, in part, the following:

* * *

Owner holds fee title to the Hotel. The Hotel is not yet in a condition to be operated as a hotel. Owner will, at Owner's expense, rehabilitate the existing structure so that it will be suitable to operate as a hotel.

Owner has entered into the Master Lease in order to lease the entire premises of the Hotel to Tenant. A copy of the Master Lease is attached as Exhibit "A." Under the Master

Lease, Owner will lease the entire Hotel property to Tenant for a period of XXX years. Under the Master Lease, [Owner] is required to make all improvements required to rehabilitate the existing structure into an operating hotel, pursuant to a qualified rehabilitation that will be eligible for a federal income tax credit for the rehabilitation of a certified historic structure. Tenant will not be obligated to make any improvements to the Hotel under the Master Lease. The initial lease payment due under the Master Lease will not be paid to Owner until Owner has completed the improvements to the Hotel. Tenant will register as a dealer with the Florida Department of Revenue prior to taking possession and making the initial rental payment due under the Master Lease, so that Tenant may issue a valid Florida sales tax resale exemption certificate in connection with the lease payments that are required to be made under the Master Lease.

Tenant has entered into the Sublease in order to sublease the entire premises of the Hotel to Subtenant. A copy of the Sublease is attached as Exhibit "B." Under the Sublease, Tenant will sublease the entire Hotel Property to Subtenant for a period of XXX years. Subtenant will be the operator of the Hotel, and will rent hotel rooms to the public, and engage in other business activities that are customarily conducted by a hotel. Subtenant will register with the Department of Revenue prior to engaging in the hotel business.

The total area of the Hotel, including exterior areas is XXX square feet. The areas of the Hotel that will be available to guests and the public ("Public and Guest Area") is XXX square feet (interior public area of XXX square feet plus exterior public area of XXX square feet). The areas of the Hotel that will not be open to the public ("Back of House" or "BOH") is XXX square feet. The calculation of the Public and Guest Area and the Back Of House square footage is set out in Exhibit "C", and a site plan and floor plan of the Hotel are attached as Exhibits "D" and "E", respectively.

* * *

TAXPAYER POSITION

You further provide, in your letter:

(A) Master Lease:

No sales tax will be due on the payment from Tenant to Owner under the Master Lease, because the Tenant will be leasing the Hotel under the Master Lease for the purpose of subleasing the entire Hotel premises to Subtenant, and the Tenant will issue a valid resale exemption certificate at the time the initial rent payment is made to Owner under the Master Lease.

(B) Sublease:

Only a portion of the Sublease payments, equal to a fraction where the numerator is the Back Of House square footage (XXX square feet) and where the denominator [is] the total square footage of the hotel (XXX square feet) will be subject to sales tax, so that

only XXX% of the amount due from Subtenant to Tenant under the Sublease will be subject to Florida sales tax.

* * *

LAW AND DISCUSSION

Section 212.031(1)(a), F.S., provides, in part: “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 . . . [u]sed exclusively as dwelling units. . . .”

Rule 12A-1.070(9), F.A.C., provides:

If a tenant or other person sublets or assigns his interest in all of the leased or licensed premises, or retains only an incidental portion of the entire premises, then such tenant or other person may elect not to pay tax on the prime lease or license, provided that such tenant or other person shall register as a dealer and collect and remit tax due on the sub-rentals or assignments and pay the tax due on the portion of the rental charges or license fees pertaining to any taxable space which he retains. If the tenant or licensee elects not to pay the tax to his landlord, or other person granting the right to occupy or use such real property, he should extend to his landlord or such other person a resale certificate.

Rule 12A-1.070(14)(a), F.A.C., provides:

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.

Because Tenant has entered into a Sublease to sublease the entire premises of the Hotel to Subtenant, Tenant can issue a resale certificate to Owner in lieu of paying sales and use tax on the Master Lease. Further, as the Hotel property will represent multiple use property, only space not utilized for transient accommodations is subject to tax imposed by Section 212.031, F.S. Transient accommodations are subject to tax under Section 202.03, F.S. Accordingly, Tenant would then collect and remit sales and use tax from Subtenant on the space not utilized by guests of the Hotel.

You have indicated the total square footage under the Sublease that will not be utilized by hotel guests as XXX square feet. This includes: hotel use only corridors; employee support areas; engineering, guest services areas; housekeeping areas; office areas; and storage areas. You have further indicated that the total square footage of the property under the Sublease is XXX¹. Accordingly, the portion of the total rent or license fee due from Subtenant to Tenant under the Sublease that is taxable is XXX% (XXX/XXX)² pursuant to Section 212.031, F.S. Therefore, the Department finds the methodology employed in your request to be reasonable. This response is predicated on the assumption the Hotel is developed as specified in your request.

RESPONSE

The Tenant may issue a resale certificate to Owner and collect sales and use tax from Subtenant on the taxable portion of multiple use property in the manner as described in your request.

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 15 days of the date of this letter.

Sincerely,

R. Clay Brower
Revenue Program Administrator
Technical Assistance and Dispute Resolution
(850) 717-6306

RCB/
Ctrl# 127316

¹ Your request letter indicated XXX square feet, however, backup material indicates XXX.

² XXX/XXX = XXX = XXX%, when rounded to nearest hundredth.