QUESTION: Are sales from a non-Florida dealer to a non-Florida buyer taxable if drop shipped via common carrier to the non-Florida’s buyer’s customer in Florida?

ANSWER: No.

August 14, 2013

Re: Technical Assistance Advisement – TAA 13A-015
Taxability of Drop Shipments
Sales and Use Tax
Section 212.05, Florida Statutes (F.S.)
XXX (“the Taxpayer”)
FEI #: 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 s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), regarding the taxability of drop shipments to Florida. 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 concerns the taxability of certain drop shipments of tangible personal property in Florida.

FACTS

You assert the following facts:

- Taxpayer is a distributor of used equipment and parts headquartered in XXX.
- Taxpayer has no physical locations nor maintains saleable inventory within the state lines of Florida.
• Taxpayer employs traveling sales force that does visit the State of Florida.

• Taxpayer is registered for Florida sales tax collection as a non-resident retailer on all taxable sales shipped to Florida Customers who buy directly from [the Taxpayer].

• Florida registration is current under number XXX.

• All sales shipped into Florida are done so by common carrier.

You further indicate in part:

The taxpayer has a significant number of sales whereby their customer requests/directs the taxpayer to drop-ship the goods to the customer’s customer. [The Taxpayer] is clear on its understanding when it sells directly to a Florida customer that either sales tax is charged and collected or a Florida resale certificate is obtained from the customer.

You seek guidance on taxing implications of sales to non-Florida dealers, with no legal obligation to be registered in the State of Florida, who direct the Taxpayer to ship goods to the non-Florida dealer’s customer in Florida. You indicate the goods are shipped via common carrier from a non-Florida location.

**TAXPAYER POSITION**

It is your position the Taxpayer is not required to collect tax on sales made pursuant to the facts as stated above, however, you are “unclear on the documentation that is required . . . to substantiate the exempt sale and to what extent [the Taxpayer] has a legal obligation to verify/validate that a purchaser is not registered or required to be so in the [State] of Florida.”

**LAW AND DISCUSSION**

Section 212.05, F.S., provides the legislative intent that “every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales . . . .”

On third-party drop shipments, if the dealer and the buyer are both located outside Florida, and the goods, when purchased, are outside the State, the sale between the dealer and the buyer does not come within the jurisdiction of Florida sales and use tax laws. Whether the purchaser is registered (or should be registered due to other business activities) in Florida is not the relevant point.

The taxability of the third-party transaction occurs when the goods are drop-shipped to the buyer’s customer in Florida. If the Florida customer is a reseller of the goods, then the Florida
customer is responsible for collecting tax when the merchandise is resold. If the Florida customer is the consumer of the goods, then the Florida customer is responsible for remitting use tax on the cost of the goods.

RESPONSE

The sales (resulting in drop shipments to Florida as described) do not come within the jurisdiction of Florida sales and use tax laws. The Taxpayer should retain documentation to establish that the subject sales take place outside Florida’s jurisdiction and delivery is made via common carrier. The invoices to the non-Florida dealers should indicate the non-Florida dealer’s physical location. Further, the invoices should indicate the common carrier destination point as that of the non-Florida dealer’s customer. The Taxpayer is under no obligation to determine if a customer should be registered for sales tax in Florida.

This response constitutes a Technical Assistance Advisement under s. 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 s. 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,

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

RCB/
Ctrl# 147969