



Executive Director
Marshall Stranburg

QUESTION: WHETHER ITEMS SOLD IN THE GIFT SHOP AND DONATED ITEMS SOLD IN A THRIFT SHOP ARE EXEMPT FROM SALES TAX UNDER SS. 212.08(7)(L) AND (M), F.S., WHEN THE ORGANIZATION IS CATEGORIZED AS A SECTION 501(C)(3), INTERNAL REVENUE CODE (“I.R.C.”), NONPROFIT ORGANIZATION UNDER S. 212.08(7)(P), F.S.

ANSWER: NO. THE HOME CURRENTLY HOLDS A CONSUMER’S CERTIFICATE OF EXEMPTION CATEGORIZED AS A S. 501(C)(3), I.R.C., NONPROFIT ORGANIZATION UNDER S. 212.08(7)(P), F.S., AND IS NOT CATEGORIZED AS A RELIGIOUS INSTITUTION UNDER S. 212.08(7)(M), F.S., OR AN ORGANIZATION BENEFITTING MINORS UNDER S. 212.08(7)(L), F.S. AS SUCH, THE SALES OF TANGIBLE PERSONAL PROPERTY IN THE GIFT SHOP AND IN THE PROPOSED THRIFT SHOP ARE SUBJECT TO SALES TAX.

September 29, 2014

Re: Technical Assistance Advisement 14A-022
Sales and Use Tax - Sales by Nonprofit Organizations
Section: 212.08(7)(l), (m), and (p), Florida Statutes (“F.S.”)

Dear XXXX:

This letter is a response to your petition dated XXXX, for the Florida Department of Revenue’s (the “Department”) 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, Florida Administrative Code. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

Requested Advisement

Advice is requested on whether items sold in the Gift Shop and donated items sold in a Thrift Shop are exempt from sales tax under ss. 212.08(7)(l) and (m), F.S., when the organization is categorized as a section 501(c)(3), Internal Revenue Code (“I.R.C.”), nonprofit organization under s. 212.08(7)(p), F.S.

Facts

According to your letter, the XXXX (the "Home") is a 501(c)(3) organization incorporated in the State of Florida. The Home holds a valid Consumer's Certificate of Exemption issued by the Department, and is categorized under the exemption category of 501(c)(3) organization. The Home has officers and directors, and it provides social benefits and services to at-risk youth through residential group home care and foster care services throughout the state of Florida. The Home is an extended ministry of the XXXX (the "Church"); however, the Home is a separate legal entity. The Home is currently operating an on-site gift shop (the "Gift Shop") on its main campus. The Gift Shop operates as a part of the same legal entity as the Home, and currently collects and remits sales tax for various items purchased by the Home and sold to consumers. The items sold in the Gift Shop are purchased by the Home at fair market value ("FMV").

The Home is also planning to open an off-site thrift shop (the "Thrift Shop"), in XXXX. The Thrift Shop will operate under the same legal entity as the Home. The Thrift Shop will sell a variety of donated items including clothing, furniture, household items, appliances, and vehicles. The Thrift Shop may also occasionally purchase "heavily discounted" items to sell. You are requesting advice on whether the items sold in the Gift Shop and donated items sold through the proposed Thrift Shop, by your organization, are tax exempt under ss. 212.08(7)(l) and (m), F.S.

Applicable Law and Response

The general rule is that Florida imposes sales/use tax at the rate of six percent (6%) on the retail sale of tangible personal property, unless specifically exempt.¹ See s. 212.05(1)(a)1.a., F.S.

Exemptions under s. 212.08(7)(p), F.S.

Florida law provides an exemption from sales tax for the 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), I.R.C., when such leases or purchases are used in carrying on their customary nonprofit activities. See s. 212.08(7)(p), F.S.

The Home currently holds a consumer's certificate of exemption and is categorized as a s. 501(c)(3) nonprofit organization under s. 212.08(7)(p), F.S. Under this exemption category, only the sales or leases to the Home are exempt from sales tax when used in carrying on its customary nonprofit activities. The sales of tangible personal property by the Gift Shop, and by the proposed Thrift Shop, remain subject to sales tax.

¹ Discretionary county sales surtax, if any, is also owed if the six percent (6%) Florida state sales tax applies. See s. 212.054, F.S. The surtax applies only to the first \$5,000 of the sales amount on any item of tangible personal property. See s. 212.054(2)(b), F.S.

Exemptions under s. 212.08(7)(m), F.S.

Florida law provides an exemption from sales tax on the sales or leases directly to religious institutions when used in carrying on their customary nonprofit religious activities, or sales or leases of tangible personal property by religious institutions having an established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on. *See* s. 212.08(7)(m), F.S. The term “religious institutions” include churches, synagogues, and established physical places of worship at which nonprofit religious services and activities are regularly conducted and carried on. *See* s. 212.08(7)(m), F.S. Sales of tangible personal property, including donated and purchased items, are exempt from tax when sold by religious institutions.

Based on the documentation presented, the Home does not qualify as a religious institution, as specified in section 212.08(7)(m), F.S., and is not categorized as a religious institution on the consumer’s certificate of exemption. The Home is a separate legal entity from the Church. As such, the sales of tangible personal property by the Gift Shop and by the proposed Thrift Shop remain subject to sales tax. Please note, however, that if the Gift Shop and the proposed Thrift Shop were operated by the Church as the same legal entity (under the same FEI Number of the Church), then the sales of tangible personal property, both purchased and donated, would be exempt from sales tax.

Exemptions under s. 212.08(7)(l), F.S.

Florida law also provides an exemption from sales tax for the sales or leases to and sales of “donated property” by “nonprofit organizations which are incorporated pursuant to chapter 617 the primary purpose of which is providing activities that contribute to the development of good character or sportsmanship, or to the educational or cultural development, of minors.” *See* s. 212.08(7)(l), F.S. “Donated property” is defined as any property transferred to the nonprofit organization for less than 50 percent of its fair market value. *See* s. 212.08(7)(l), F.S.

Based on the documentation that you presented, it appears that the Home provides special educational, cultural, recreational, and social benefits to minors, and it may qualify for tax exempt status under s. 212.08(7)(l), F.S. However, as mentioned above, the Home currently holds a consumer’s certificate of exemption categorized as a s. 501(c)(3), I.R.C., nonprofit organization under s. 212.08(7)(p), F.S., and not as an organization benefitting minors under s. 212.08(7)(l), F.S. Under the current exemption category, only the sales or leases to the Home are exempt from sales tax, and the sales of tangible personal property by the Gift Shop and by the proposed Thrift Shop are subject to sales tax.

If the Home applies for and is issued a valid consumer’s certificate of exemption from the Department as an organization benefitting minors under s. 212.08(7)(l), F.S., then the sales of “donated property,” as defined above, would be exempt from sales tax, as long as the Gift Shop and Thrift Shop operate as the same legal entity as the Home.

Conclusion

The Home currently holds a consumer's certificate of exemption categorized as a s. 501(c)(3), I.R.C., nonprofit organization under s. 212.08(7)(p), F.S., and is not categorized as a religious institution under s. 212.08(7)(m), F.S., or an organization benefitting minors under s. 212.08(7)(l), F.S. As such, the sales of tangible personal property by the Gift Shop and by the proposed Thrift Shop are subject to sales tax.

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,

Pamela Hernandez
Tax Law Specialist
Technical Assistance & Dispute Resolution

Record ID: 174966