



FLORIDA

Executive
Director

Leon M. Biegalski

QUESTION 1: WHAT IS THE TAXABILITY OF A MOTOR VEHICLE TITLE TRANSFER WHEN A BUSINESS NAME HAS CHANGED FROM “INC.” TO “LLC”?

ANSWER 1: GIVEN THE NATURE OF THE CONVERSIONS SET FORTH IN THE FACTS OF THIS TAA, THE TRANSFERS OF THE MOTOR VEHICLE TITLES WOULD BE EXEMPT FROM TAX PROVIDED THAT A SALES TAX EXEMPTION AFFIDAVIT (DR-40) WITH THE LANGUAGE “CONVERSION OF A CORPORATION TO AN LLC THAT QUALIFIES AS A REORGANIZATION SOLELY IN EXCHANGE FOR STOCK UNDER I.R.C. S. 368(A)(1)(F),” SIGNED UNDER PENALTY OF PERJURY, ACCOMPANIED THE APPLICATIONS FOR TITLE TRANSFER.

QUESTION 2: WHAT DOCUMENT(S) WOULD BE REQUIRED TO OVERCOME THE PRESUMPTION OF TAXABILITY WHEN TRANSFERRING MOTOR VEHICLE TITLES IN THIS TYPE OF SITUATION?

ANSWER 2: XXX MUST FIRST DETERMINE IN EVERY CASE WHETHER THE REORGANIZATION QUALIFIES AS A REORGANIZATION UNDER I.R.C. S. 368(A)(1)(F). IF XXX IS SATISFIED THAT THE REORGANIZATION QUALIFIES, A SALES TAX EXEMPTION AFFIDAVIT (DR-40) WITH THE LANGUAGE “CONVERSION OF A CORPORATION TO AN LLC THAT QUALIFIES AS A REORGANIZATION SOLELY IN EXCHANGE FOR STOCK UNDER I.R.C. S. 368(A)(1)(F)” IS REQUIRED.

December 2, 2016

Re: Technical Assistance Advisement 16A-018
Sales and Use Tax – Transfer of Motor Vehicle Titles
Chapters 607 and 617 and sections 212.05, 212.06(10), 220.03(1)(e), and
605.1046, Florida Statutes (“F.S.”)
Rule 12A-1.007(25)(a), Florida Administrative Code (“F.A.C.”)
Sections 368(a)(1), and 381(c), Internal Revenue Code (“I.R.C.”)
I.R.C. Regs. ss. 1.368-2 and 301.7701-3

Dear XXXXX:

This letter is a response to your petition dated September 9, 2016, for the Florida Department of Revenue’s (the “Department”) issuance of a Technical Assistance Advisement (“TAA”) concerning the taxability of motor vehicle title transfers when a business name has changed from “Inc.” to “LLC” and the documents required to overcome the presumption of taxability when transferring motor vehicle titles in this situation.

Child Support – Ann Coffin, Director • General Tax Administration – Maria Johnson, Director
Property Tax Oversight – Dr. Maurice Gogarty, Director • Information Services – Damu Kuttikrishnan, Director

<http://dor.myflorida.com/dor/>
Florida Department of Revenue
Tallahassee, Florida 32399-0100

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 regarding: 1) what the taxability of a motor vehicle title transfer would be when a business name has changed from “Inc.” to “LLC;” and 2) what document(s) would be required to overcome the presumption of taxability when transferring motor vehicle titles in this type of situation.

Brief Answer

Given the nature of the conversions set forth in the facts of this TAA, the transfers of the motor vehicle titles would be exempt from sales tax provided that a Sales Tax Exemption Affidavit (DR-40) with the language “Conversion of a corporation to an LLC that qualifies as a reorganization solely in exchange for stock under I.R.C. s. 368(a)(1)(F)” signed under penalty of perjury accompanied the applications for title transfer.

Facts As Provided

A representative of XXXX is seeking the above advice as a result of an inquiry from an attorney, XXXX (Attorney”). Attorney regularly converts existing corporations to limited liability companies (“LLC’s”) with the Florida Department of State Division of Corporations (“Division of Corporations”). The LLC’s continue to use the same EIN’s that the corporations did and continue to file corporate income tax returns. On the Division of Corporations’ website, a listing for a converted LLC will have the same deemed effective date as the date the original corporation was formed. The Division of Corporations issues a new document number for the LLC, however. When Attorney converts a corporation to an LLC, the owners of the LLC will own membership interests rather than stock. The shareholders surrender shares of stock in the existing corporation for membership interests in the LLC. The owners and ownership percentages of the “transferring” and “resulting” entities are identical. The process involved in the conversion is that the Articles of Conversion are filed simultaneously with the Articles of Organization of the resulting LLC. The moment the Division of Corporations processes the conversion, all of the assets, debts, etc., of the transferring corporation are deemed to immediately be the assets, debts, etc., of the resulting LLC. The corporation no longer owns assets after the conversion, and the resulting LLC does not hold any assets or tax attributes immediately prior to the conversion.

All that is needed to show a conversion, as far as the Internal Revenue Service (IRS) is concerned, is for the LLC to file a copy of the conversion documents with its return. With regards to federal tax treatment, an LLC can choose its tax classification. If Attorney forms a new LLC and elects for it to be taxed as an S Corporation, the resulting LLC will be an S Corporation for income tax purposes even though it is a Florida LLC whose ownership interests are issued as membership interests. Attorney has converted numerous Florida corporations into Florida LLC’s, and every conversion has been accepted by the IRS as a tax-free “F” reorganization pursuant to I.R.C. s. 368(a)(1)(F).

When Attorney converts a corporation to an LLC and the corporation owns real property, the property of the corporation continues to be vested in the LLC without transfer. He is not required to prepare new deeds to reflect the name change. Rather, he records certified copies of the Articles of Conversion in each county where the corporation owns real property. The LLC's can convey legal title to the real property based on the recorded Articles of Conversion.

Many of his corporate clients have fleets of company vehicles. When one corporation tried to renew its vehicle registrations in the name of the converted LLC, XXXX said that the LLC would need to get new plates and registration for each vehicle, as the LLC was a separate new entity from the corporation. This prompted Attorney to ask XXXX if there was a less expensive option available to corporate clients when they renew their vehicle registrations after a state law conversion. XXXX then reached out to the Department of Revenue for advice as to the taxability of a motor vehicle transfer when a business had changed its form and identity from "Inc." to "LLC." XXXX also asks if such transfer is not taxable, then what documents would be needed to substantiate this change in identity.

Applicable Law and Response

Section 212.05, F.S., states that it is "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" Included in the definition of a sale would be "[a]ny transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration." *See* s. 212.02(15)(a), F.S. Section 212.06(10), F.S., further provides that all transfers of title to motor vehicles are taxable transactions, unless expressly exempt under Chapter 212, F.S.

In certain instances, the transfer of ownership of motor vehicles in a conversion from a corporation to an LLC, is exempt from sales tax. Rule 12A-1.007(25)(a), F.A.C., provides, in relevant part, that transfers of ownership of motor vehicles are exempt from sales tax when the following conditions are met:¹

- 1) the transfer of title into the name of the surviving corporation is by reason of a corporate consolidation or merger in accordance with Chapter 607 or 617, F.S., or is a reorganization as defined in s. 368(a)(1) of the Internal Revenue Code solely in exchange for stock.
- 2) a certificate setting forth the facts and signed under penalty of perjury accompanies the application for title transfer, or if no title certificate is required by law, the application for transfer of license or registration.

See Rule 12A-1.007(25)(a), F.A.C., and subparagraph 4., quoted in footnote 4, below.

With regards to the first condition above, since the conversions of corporations to LLC's in this case would not be considered consolidations or mergers, we shall look to see whether the conversion of a corporation to an LLC, as limited to the facts in the instant case, would meet the second alternative of condition 1 above.

¹ Rule 12A-1.007(25)(a), F.A.C., provides other situations in which the transfer of motor vehicles would be exempt from sales tax as well.

In other words, we need to determine whether the conversions specific to this case would qualify as “reorganization[s] as defined in s. 368(a)(1) of the Internal Revenue Code solely in exchange for stock.” *See* Rule 12A-1.007(25)(a)4., F.A.C.

I.R.C. s. 368(a)(1)(F) provides that “a mere change in identity, form, or place of organization of one corporation, however effected,” would be considered a reorganization for purposes of I.R.C. s. 368(a)(1). So, now, it must be determined whether what is occurring in the conversions of the corporations to LLC’s in the instant case would be considered mere changes in identity or form under I.R.C. s. 368(a)(1)(F).

I.R.C. Reg. s. 1.368-2(m) provides, in relevant part, that in order:

[t]o qualify as a reorganization under s. 368(a)(1)(F), a transaction must result in a mere change in identity, form, or place of organization of one corporation, however effected. A mere change can consist of a transaction that involves an actual or deemed transfer of property from one corporation to one other corporation. Such a transaction is a mere change and qualifies as a reorganization under s. 368(a)(1)(F) only if all the requirements set forth in paragraphs (m)(1)(i) through (vi) are satisfied.

I.R.C. Reg. s. 1.368-2(m)(1) provides requirements (i) through (vi):

(i) Resulting corporation stock distributed in exchange for transferor corporation stock. Immediately after the potential F reorganization, all the stock of the resulting corporation, including any stock of the resulting corporation issued before the potential F reorganization, must have been distributed (or deemed distributed) in exchange for stock of the transferor corporation in the potential F reorganization. . . .

(ii) Identity of stock ownership. The same person or persons must own all of the stock of the transferor corporation, determined immediately before the potential F reorganization, and of the resulting corporation, determined immediately after the potential F reorganization, in identical proportions. . . .

(iii) Prior assets or attributes of resulting corporation. The resulting corporation may not hold any property or have any tax attributes (including those specified in section 381(c)) immediately before the potential F reorganization. . . .

(iv) Liquidation of transferor corporation. The transferor corporation must completely liquidate, for federal income tax purposes, in the potential F reorganization. . . .

(v) Resulting corporation is the only acquiring corporation. Immediately after the potential F reorganization, no corporation other than the resulting corporation may hold property that was held by the transferor corporation immediately before the potential F reorganization, if such other corporation would, as a result, succeed to and take into account the items of the transferor corporation described in section 381(c).

(vi) Transferor corporation is the only acquired corporation. Immediately after the potential F reorganization, the resulting corporation may not hold property acquired from a corporation other than the transferor corporation if the resulting corporation would, as a result, succeed to and take into account the items of such other corporation described in section 381(c).

Let us look at the conversions described in the facts of this TAA to see if they would meet these requirements.

(i) Resulting corporation stock distributed in exchange for transferor corporation stock. Immediately after the potential F reorganization, all the stock of the resulting corporation, including any stock of the resulting corporation issued before the potential F reorganization, must have been distributed (or deemed distributed) in exchange for stock of the transferor corporation in the potential F reorganization. . . .

In the conversions described in the facts of this TAA, the moment the Division of Corporations processes a conversion from a corporation to an LLC, all of the stock from the corporation is deemed to have been distributed in terms of membership interests in the LLC. The ownership percentages of the stock and the membership interests are identical. The corporation no longer owns stock after the conversion.

What is occurring is, in fact, the nature of a conversion. Section 605.1046, F.S., provides:

(1) When a conversion in which the converted entity is a domestic limited liability company becomes effective:

(a) The converted entity is:

...

2. The same entity, without interruption, as the converting entity;

(b) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment

The term “stock” in requirement (i) above does not have to be taken literally in the requirement that all of the “stock” of the resulting corporation must be distributed in exchange for the “stock” of the transferor corporation, as LLC’s have membership interests rather than stock. This will be discussed further below.

(ii) Identity of stock ownership. The same person or persons must own all of the stock of the transferor corporation, determined immediately before the potential F reorganization, and of the resulting corporation, determined immediately after the potential F reorganization, in identical proportions. . . .

In the conversions described in the facts of this TAA, the same owners of the stock in the corporations own the membership interests in the LLC’s, and the percentages of ownership of the stock in the corporation are identical to the percentages of ownership of the membership interests in the LLC.

(iii) Prior assets or attributes of resulting corporation. The resulting corporation may not hold any property or have any tax attributes (including those specified in section 381(c)) immediately before the potential F reorganization. . . .

In state law conversions, the Articles of Conversion have to be filed simultaneously with the Articles of Organization of the resulting LLC. In the conversion filing forms, the two sets of articles are in one document. The moment the Division of Corporations processes the conversion, the corporation no longer exists, and all of the assets, debts, etc. of the transferring corporation are deemed to immediately be the assets, debts, etc. of the resulting LLC. Since the LLC is formed simultaneously in the conversion process, the LLC could not have owned any assets or tax attributes prior to the corporation.

(iv) Liquidation of transferor corporation. The transferor corporation must completely liquidate, for federal income tax purposes, in the potential F reorganization. . . .

The transferor corporation liquidates at the time of the conversion in that it ceases to own assets.

(v) Resulting corporation is the only acquiring corporation. Immediately after the potential F reorganization, no corporation other than the resulting corporation may hold property that was held by the transferor corporation immediately before the potential F reorganization, if such other corporation would, as a result, succeed to and take into account the items of the transferor corporation described in section 381(c).

According to the facts of this TAA, immediately after the conversion of the corporation to the LLC, the LLC is the only entity holding property that was held by the transferor corporation.

(vi) Transferor corporation is the only acquired corporation. Immediately after the potential F reorganization, the resulting corporation may not hold property acquired from a corporation other than the transferor corporation if the resulting corporation would, as a result, succeed to and take into account the items of such other corporation described in section 381(c).

According to the facts of this TAA, the conversion is of one corporation into one LLC. The only property acquired by the LLC at the time of the conversion is the property of the transferor corporation.

Also within subsection (m), I.R.C. Reg. s. 1.368-2(m)(4) provides a scenario in which a conversion would qualify as “a mere change in identity, form, or place of organization of one corporation, however effected” under I.R.C. s. 368(a)(1)(F):

EXAMPLE 8. SERIES OF RELATED TRANSACTIONS - MERE CHANGE.

P owns all of the stock of S, a State A corporation. The management of P determines that it would be in the best interest of S to change its form from a State A corporation to a State A limited partnership but to continue to be treated as a corporation for federal tax purposes. Accordingly, P contributes 1% of the S stock to newly formed LLC, a limited liability company, in exchange for all of the membership interests in LLC. P is the sole member of LLC. Under § 301.7701-3 of this chapter, LLC is disregarded as an entity separate from its owner, P. Then, under a State A statute, S converts to a State A limited partnership. In the conversion, P's interest as a 99% shareholder of S is converted into a 99% limited partner interest, and LLC's interest as a 1% shareholder of S is converted into a 1% general partner interest. S also elects, under § 301.7701-3(c) of this chapter, to be classified as a corporation for federal income tax purposes, effective on the same day as the conversion. Under paragraph (m)(3)(i) of this section, the conversion of S from a State A corporation to a State A limited partnership, together with the election to treat S as a corporation for federal tax purposes, results in a mere change of S and qualifies as a reorganization under section 368(a)(1)(F).

While the facts in Example 8 above are slightly different than those in this TAA, this example is illustrative of the point that a conversion from a corporation to an LLC and an election of a limited partnership to be treated as a corporation for federal tax purposes qualify as a “mere change” under I.R.C. s. 368(a)(1)(F). It also shows that, though Rule 12A-1.007(25)(a), F.A.C., above, states that the transfer of ownership of motor vehicles is only exempt from sales tax when the conversion classifies as a reorganization as defined in I.R.C. s. 368(a)(1) “solely in exchange for stock,” there is no problem if the corporation’s stock is, in fact, exchanged for membership interests.

Given that the conversions in the instant case satisfy the six requirements in I.R.C. Reg. s. 1.368-2(m)(1) that are necessary to qualify as a reorganization under I.R.C. s. 368(a)(1)(F) and that the conversions are acceptable under the above example, which is also found in I.R.C. Reg. s. 1.368-2(m), the conversions described in the facts of this TAA would qualify as a reorganization under I.R.C. s. 368(a)(1)(F). In that the conversion in the instant case would qualify as reorganizations under I.R.C. s. 368(a)(1)(F), they would then satisfy the conditions of Rule 12A-1.007(25)(a)4., F.A.C.,² and all that would be needed for the transfer of the motor vehicles to be exempt from sales tax would be that a certificate setting forth the facts and signed under penalty of perjury accompany the application for title transfer. However, this is not to say that the mere provision of such a form would be sufficient for XXXX to grant a tax exemption for any motor vehicle transfer in which it was alleged that a reorganization of a corporation pursuant to I.R.C. s. 368(a)(1) had occurred. XXXX will need to determine in every case whether the reorganization mentioned on the form qualifies as a reorganization under I.R.C. s. 368(a)(1)(F).

With regards to the form that would be required, it would be the Florida Department of Revenue’s Sales Tax Exemption Affidavit (DR-40). For purposes of this TAA only, the language that would be needed on the line for “Other” would be: “Conversion of a corporation to an LLC that qualifies as a reorganization solely in exchange for stock under I.R.C. s. 368(a)(1)(F).”

Conclusion

Given the nature of the conversion set forth in the facts of this TAA, the transfer of the motor vehicle titles would be exempt from sales tax provided that a Sales Tax Exemption Affidavit (DR-40) with the language “Conversion of a corporation to an LLC that qualifies as a reorganization solely in exchange for stock under I.R.C. s. 368(a)(1)(F)” signed under penalty of perjury accompanied the applications for title transfer.

² Rule 12A-1.007(25)(a) 4., F.A.C. provides, in relevant part:

(25)(a) The following transfers of ownership of any aircraft, boat, mobile home, motor vehicles, or other vehicles of a class or type required to be registered, licensed, titled, or documented in this state or by the United States Government are exempt from tax, provided that a certificate setting forth the facts and signed under penalty of perjury accompanies the application for title transfer, or if no title certificate is required by law, the application for transfer of license or registration:

...

4. The transfer of title into the name of the surviving corporation by reason of a corporate consolidation or merger in accordance with Chapter 607 or 617, F.S., or a reorganization as defined in s. 368(a)(1) of the Internal Revenue Code solely in exchange for stock

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,

Katharine Heyward
Tax Law Specialist
Technical Assistance & Dispute Resolution

cc: XXXX

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