QUESTION: IS THE CONSIDERATION PAID TO COUNTY BY CONCESSIONAIRE PROVIDING FOOD AND DRINK CONCESSIONAIRE SERVICES WITHIN THE PREMISES OF PUBLICLY OWNED LIBRARY EXEMPT FROM FLORIDA SALES TAX BY SECTION 212.031(1)(A)10., F.S.?

ANSWER: THE LIBRARY IS A PUBLICLY OWNED RECREATIONAL FACILITY. THE CONSIDERATION PAID BY THE CONCESSIONAIRE TO COUNTY FOR USE OF THE COUNTY-OWNED LIBRARY IS NOT SUBJECT TO FLORIDA SALES TAX (OTHERWISE IMPOSED BY SECTION 212.031, F.S.) BECAUSE THE “CONCESSION AGREEMENT” FALLS WITHIN THE SCOPE OF THE EXEMPTION FOUND AT SECTION 212.031(1)(A)10., F.S.

December 12, 2016

Subject: Technical Assistance Advisement (“TAA”) 16A-020
Sales and Use Tax–Real Property Rentals
Concessionaires at Publicly Owned Recreational Facilities
Section(s) 212.031(1)(a)10., Florida Statutes (“F.S.”)

XXXX (“Petitioner”)
XXXX (“County”)
XXXX (“City”)
XXXX (“LLC”)

Dear XXXX:

This letter is a response to your petition dated October 12, 2016, for the Department’s issuance of a Technical Assistance Advisement (“TAA”) to Petitioner, regarding whether a library is a publicly owned recreational area exempt from sales tax on real property rental income. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Rule Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of section 213.22, F.S.

Facts

The XXXX is funded through a countywide municipal services taxing unit assessment. County has assumed all administrative and operational functions of the library system. This includes the operation of all library facilities located within the corporate limits of the City. The downtown main library facility (XXXX square feet) is owned by the City and leased to the County pursuant
Technical Assistance Advisement

to a separate lease agreement. As part of the countywide library system, the main library facility is a community institution serving informational, recreational, and educational needs of the citizens of County by providing free access to reading and audio-visual materials, and offering public computing, database, and Internet access technology. County issued a formal solicitation seeking a concessionaire to provide food and beverage concession services for XXXX to be located at the County’s downtown main library. LLC submitted a proposal and was deemed the most qualified concessionaire to provide such services.

County and LLC signed an agreement (“Agreement”). The Agreement with LLC requires LLC to provide food and drink concessionaire services within the library facility. Per the terms of the Agreement, LLC may use a defined portion of the library facility (approximately XXXX square feet) to provide these services. LLC is required to pay County a monthly fee based on a percentage of net sales.

A copy of the proposal and Agreement is included with the request.

**Requested Advisement**

Question #1. Is the library a publicly owned recreational facility?

Question #2. Is the monthly fee paid to County for the exclusive license to provide food and drink concessionaire services within the public library subject to sales tax?

**Taxpayer Position**

Based on the analysis used by the Department in prior advisements, the library is a publicly owned recreational facility. The fee is not subject to tax, as provided by s. 212.031(1)(a)10., Florida Statutes (“F.S.”)

**Applicable Law and Discussion**

Section 212.031, F.S., provides in part:

(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 unless such property is:

* * *

10. Leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, publicly owned recreational facility, or any business operated under a permit issued pursuant to chapter 550. …

* * *
Persons engaging in the business of renting, leasing, letting, or granting licenses for the use of any real property are exercising a taxable privilege. See Section 212.031, F.S. An exemption from the tax otherwise imposed for this privilege involves property that is leased, subleased, licensed, or rented to persons providing food and drink concessionaire services within the premises of a publicly owned recreational facility. See Section 212.031(1)(a)10., F.S.

“Exemptions to taxing statutes are special favors granted by the Legislature and are to be strictly construed against the taxpayer.” State ex rel. Szabo Food Services, Inc. v. Dickinson, 286 So.2d 529, 530 (Fla. 1973).

Because no definition of "recreational facility" is provided by statute, it is necessary to look to principles of statutory construction. Words of common usage, when used in a statute, should be construed in their plain and ordinary sense. Pederson v. Green, 105 So.2d 1 (Fla. 1958).

The word "recreation" is defined in Merriam-Webster’s Collegiate Dictionary (Tenth Edition, 1999) as meaning:

… refreshment of strength and spirits after work; also: a means of refreshment or diversion: HOBBY – recreational … adj

Merriam-Webster’s defines the word “facility” as meaning:

… something (as a hospital) that is built, installed, or established to serve a particular purpose. Id.

We also note that no definition of the word “concessionaire” is provided by statute. Merriam-Webster’s Collegiate Dictionary (Tenth Edition, 1999) defines “concessionaire” as meaning:

[T]he owner or operator of a concession; esp: one that operates a refreshment stand at a recreational center.

County’s library is a place within the plain and ordinary meaning of “recreational facility,” as it is a place built, installed, or established to serve the purposes of refreshing strength and spirit, and for providing diversion. The library is publicly owned (i.e., owned by County). LLC, which is granted the right to provide food and drinks at the library, is a concessionaire.

Questions and Response

Question #1. Is the library a publicly owned recreational facility?

Response: Yes.

Question #2. Is the monthly fee paid to County for the exclusive license to provide food and drink concessionaire services within the public library subject to sales tax?

Response: No. The exemption provided for by s. 212.031(1)(a)10., F.S., applies.
Concluding Statement

The monthly fee paid to County for space used at County’s library is not subject to Florida sales tax, because Agreement is within the scope of the exemption found at Section 212.031(1)(a)10., F.S.

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.

Respectfully,

Charles Wallace
Technical Assistance & Dispute Resolution
850-717-7541

Record ID: 212046