



FLORIDA

Executive
Director
Leon Biegalski

March 7, 2017

TAX: Sales and Use Tax

TAA NUMBER: 17A-009

ISSUE: Whether Taxpayer’s point of sale devices are amusement machines?

STATUTE CITE(S): Section(s) 212.02(24) and 212.05, F.S.

RULE CITE(S): Rule 12A-1.071, F.A.C.

QUESTION: Are Taxpayer’s point of sale devices used as an amusement machine?

ANSWER: No. Taxpayer’s charges are rental income. Since Taxpayer also uses the machines, Taxpayer is considered to be a dual user.

March 7, 2017

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Subject: Technical Assistance Advise ment (“TAA”)
TAA 17A-009
Lease of tangible personal property; Amusement machines
Section(s) 212.02(24) and 212.05, Florida Statutes (“F.S.”)
Rule(s) 12A-1.071, Florida Administrative Code (“F.A.C.”)

XXXXXXXXXXXX (“Petitioner”) (“Taxpayer”)
XXXXXX
XXXXXX

Dear XXXXXXX:

This letter is a response to your petition dated October 22, 2016, for the Department’s issuance of a Technical Assistance Advise ment (“TAA”) to Petitioner, regarding whether Taxpayer’s devices are considered amusement machines. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Rule Chapter

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

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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

Taxpayer is a XXXXXXXXX of a mobile point of sale device XXXXXX XXXX enhance the XXXXXX XXXXX customer's satisfaction and increase XXXX sales and XXXXXX efficiencies. The mobile point of sale device is a XXXXXXXXXXXX XXXXXX XXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXXX. The mobile point of sale device facilitates order placement, order add-ons, XXXXXXXX information, check out and payment, customer satisfaction surveys, and customer loyalty programs.

The mobile point of sale device provides detailed descriptions of certain XXXX items, and in some cases pictures and even videos of XXXXX are available for customer viewing. It permits customers to place orders for XXXXXXXXXXX XXXXXXXXXXX XXXX throughout the XXXXXX, XXXXXXXXXXXXXXXXXXX, XXXXXX, and to pay their XXXX directly through the mobile point of sale device. The customer is given the option to pay the check by credit card, debit card, or even a gift card.

The XXXXXXXXXXX receives the benefit of better customer education, increased sales, quicker XXXXXXXX turnover, increased customer satisfaction, and greater guest loyalty. Guests have better control over the pace of the XXXX and are able to keep their payment cards secure. An average XXXXXXXX will have 50 XXXXXXXX XXXXXXXXXXX mobile point of sale device at each XXXXX. It is accessible only to the customer XXXXXXXXXXXX, and approximately 80% of the customers will use it if paying by credit card. When the XXXXXX paid using the mobile point of sale device, information is obtained regarding the customer to promote loyalty programs and help XXXXXXXX management.

A customer may pay a "Premium License Fee" to access additional software programs, including educational applications, puzzles, cartoons, videos, and games. The customers may watch as many videos and cartoons and play as many games as they like during their visit. Approximately 15% of the customers access premium content. Taxpayer charges the XXXXXXXX a service fee for each mobile point of sale device used at the XXXXXX.

Requested Advisement

Taxpayer seeks guidance as to whether the mobile point of sale device is a coin-operated amusement machine.

Taxpayer Position

Taxpayer maintains that the mobile point of sale devices are not coin-operated amusement machines because they are not designed primarily for the purposes of entertainment or amusement but for the restaurant industry.

Applicable Law

Section 212.05(1)(h), F.S., imposes sales tax on income earned from the gross receipts taken from "coin-operated amusement machines." Section 212.05(1)(h)3.b., F.S., requires the operator of a machine to pay a \$30 fee per year for each machine.

Section 212.02(24), Florida Statutes, provides:

(24) "Coin-operated amusement machine" means any machine operated by coin, slug, token, coupon, or similar device for the purposes of entertainment or amusement. The term includes, but is not limited to, coin-operated pinball machines, music machines, juke boxes, mechanical games, video games, arcade games, billiard tables, moving picture viewers, shooting galleries, and all other similar amusement devices.

Section 212.05, F.S., provides that any person who leases or rents tangible personal property in Florida is exercising a taxable privilege. Section 212.02(15)(a), F.S., provides that a "sale" of tangible personal property includes the lease or rental of tangible personal property. Section 212.05(1)(c), F.S., imposes tax on the gross proceeds derived from the lease or rental of tangible personal property. The terms "lease" and "rental" are defined by s. 212.02(10)(g), F.S., to include the lease or rental of tangible personal property and the possession or use thereof by the lessee for a consideration, without transfer of title to the property. Rule 12A-1.071(1)(a), F.A.C., provides that a lease includes a transaction under which a person secures for a consideration the temporary use of tangible personal property which is operated by or under the direction or control of the person or his employees.

The XXXXXX are using the mobile point of sale device as a dual use, because it is being used by both the XXXXXXXXXX and the XXXXXXXXXX's customer. Therefore, the charge to the XXX by Taxpayer and the charge made to the XXXXXXXXXX's customer for the "Premium License Fee" are both subject to sales tax. See Rule 12A-1.071(2)(b), F.A.C, which provides that the resale exemption does not apply to purchases of tangible personal property by a dealer for the "dual purpose of leasing it to others and also for his own use."

Response

The mobile point of sale device is not considered to be a "coin operated amusement machine," as defined in s. 212.02(24), F.S. This is because the predominant use is by the XXXXXXXXXX without the premium content. This assumes that the primary revenue stream to Taxpayer is from the payment by the XXXXXXX to Taxpayer and that the XXXXXXXXXX retains most of the income from the "Premium License Fee." Also, typically, amusement machines do not have a dual use. Accordingly, these devices need not be registered with a fee paid and tax collected on gross receipts.

Although the devices are not taxed as amusement machines, mobile point of sale devices are tangible personal property. The lease of tangible personal property is subject to sales tax. Based

on the facts, Taxpayer's primary income is from leasing the mobile point of sale device to the XXXXXX. The XXXXXXXXXXXX is then using it for the "dual purpose of leasing it to others and for its own use."

Taxpayer is doing business in Florida and is therefore required to register with the Florida Department of Revenue to collect and remit the sales tax on the lease payments received from its customers, such as XXXXXXXXXs.¹ The lease of the mobile point of sale device by Taxpayer to the XXXXXXXX is not exempt for resale purposes. The XXXXXXXXXXXX uses the mobile point of sale device to facilitate order placement, order add-ons, XXXXXXXXXXXXXXX, and customer satisfaction surveys. When the patron of the XXXXXXXX makes the payment of the "Premium License Fee" for "premium content" for the use of the mobile point of sale device, then sales tax must be collected on that charge also. The patron is taking "possession or use" of the mobile point of sale device, as it is "operated by or under the direction or control" of the patron. The "Premium License Fees" are subject to sales tax as a license to use tangible personal property. The XXXXXXXX leases the mobile point of sale device for the "dual purpose of leasing it to others and also for its own use." Both rental revenue streams are subject to sales tax, as provided in Rule 12A-1.071(2)(b), F.A.C.

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,

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

¹ The sample lease provided with Taxpayer's request for advice provides that the lessee is responsible for payment for all taxes due on fees charged under the contract. Taxpayer should note that the lessor and lessee are jointly and severally liable for taxes due on these fees.

Record ID: 212108