



FLORIDA

Executive
Director
Leon Biegalski

April 25, 2017

TAX: Sales and Use Tax

TAA NUMBER: 17A-010

ISSUE: Whether Taxpayer’s subscription membership fees are subject to sales tax?

STATUTE CITE(S): Section(s) 212.02(15)(a), 212.05, F.S.

RULE CITE(S):

QUESTION: Are Taxpayer’s on-line legal document drafting services sales of tangible personal property?

ANSWER: No. Taxpayer does not transfer possession of, lease, or license tangible personal property.

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Subject: Technical Assistance Advise ment (“TAA”)
TAA 17A-010
Membership Subscription
Section(s) 212.05, Florida Statutes (“F.S.”)
Rule(s) 12A-1.032, Florida Administrative Code (“F.A.C.”)

XXXXXXX (“Petitioner”) (“Taxpayer”)
Business Partner#: XXXXXXXX
FEI#: XX-XXXXXXXX

Dear XXXXXXX:

This letter is a response to your petition dated March 1, 2017, for the Department’s issuance of a Technical Assistance Advise ment (“TAA”) to Petitioner, regarding whether Taxpayer’s on-line subscription membership service charges. 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-

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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Tallahassee, Florida 32399-0100

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.

Issue

Whether Taxpayer's membership subscription fees are subject to Florida sales or use tax?

Facts

Taxpayer sells membership subscriptions to its online support services for authorized users. Taxpayer uses cloud computing and on-demand software. Taxpayer and its members execute a Membership Agreement and XXXXXXXX Agreement. Members are licensed attorneys and their staff. Members gain access to the membership portal on Taxpayer's website with unique member identification and password credentials. Members do not need to download any software to their local computers or servers to gain access to membership services. The services include access to legal document drafting (XXXXXXXX) software located on Taxpayer's servers or the cloud. The members may download a ribbon to properly assemble the document they assembled. Members are entitled to attend certain XXXX courses, or use Taxpayer's online XXXXX services. Members also have access to an interactive community with other members. The completed documents are downloaded electronically.

Taxpayer Position

Taxpayer maintains that no sales tax is due, because there is no transfer of tangible personal property and Taxpayer only provides professional services.

Applicable Law

Section 212.05, Florida Statutes ("F.S."), provides that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail. Section 212.05(1)(a)1.a., F.S., provides that for the exercise of such privilege, a tax is levied on each taxable transactions at the rate of six percent of the sales price of each item of tangible personal property sold. Section 212.02(15)(a), F.S., defines the word "Sale" to include "[a]ny transfer of title or possession, ... license, lease, or rental, ... of tangible personal property for a consideration."

Based on the facts provided, Taxpayer is not selling tangible personal property, because Taxpayer does not transfer or license tangible personal property. See Department of Revenue v. Quotron Systems, Inc., 615 So.2nd 774 (Fla. 3rd DCA 1993) (Transfer of electronic images is not a sale of tangible personal property). See s. 212.02(19), F.S.

Response

Taxpayer's membership subscription fees are not subject to Florida sales tax imposed by section 212.05, 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,

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

Record ID: 212925