



June 28, 2017

SUMMARY

TAX: Sales and Use Tax

TAA NUMBER: 17A-012

ISSUE: Taxpayer provides yacht charter services with crew furnished by the owner.

STATUTE CITE(S): 212.02; 212.05; 212.21, Florida Statutes (“F.S.”)

RULE CITE(S): 12A-1.071, Florida Administrative Code (“F.A.C.”)

QUESTION:

Taxpayer requests confirmation that the crewed yacht charter services it offers are exempt from Florida sales tax.

ANSWER:

Because Taxpayer provides yacht charter carriage or transportation services with crew furnished by the Taxpayer, and the charterer does not have any direction or control over the vessel’s operation, the charter agreement constitutes a service transaction and is exempt.

Re: Technical Assistance Advisement 17A-012
Florida Sales and Use Tax – Boats
Sections: 212.02; 212.05; 212.21, Florida Statutes (F.S.)
Rule: 12A-1.071, Florida Administrative Code (F.A.C.)
Petitioner: XXXX (“Taxpayer”)
FEI: XXX

Dear XXXX:

This letter is a response to your petition received on XXXX, for the Department of Revenue’s (“Department”) issuance of a Technical Assistance Advisement (“TAA”) concerning the above-referenced petitioners 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 (“F.A.C.”). This response to your request constitutes a TAA and is issued to you under the authority of Section (“s.”) 213.22, Florida Statutes (F.S.).

FACTS PRESENTED

Your petition provides in part:

... [Taxpayer] is the owner of a XXX yacht that is offered for charter with the crew provided by the owners. The yacht is a US-flagged USCG documented vessel with a coastwise endorsement and is manned by US citizen crewmembers, including a USCG licensed captain authorized to conduct passenger carrying operations. When the yacht is chartered a contract with the charterer is executed whereby the charterer has no control over the operation of the yacht; operational control remains solely with the captain provided by the owner. However, the charterer, in consultation with the captain, may request the charter itinerary and times, subject to legal restrictions and the terms of the charter contract XXX. At all times compliance with applicable laws rests solely with the captain provided by the owner; this is both a contractual and USCG requirement. Typical charter fees are XXX per charter day, plus expenses, regardless of the number of passengers onboard. Under USCG regulations, our XXX yacht is limited to carrying XX passengers....

A sample charter agreement was submitted with the petition. Of interest are XX and XX.

...XX

A. The OWNER shall provide a professional captain and crew for the Vessel....

XX

- A. The captain, together with the CHARTERER, will direct the course of the voyage and mutually agree regarding the management, operation, and movement of the Vessel, wind, weather, and other circumstances permitting.
- B. However, the captain will not be bound to comply with any order or request by the CHARTERER which, in the reasonable opinion of the captain, might result in (i) the Vessel’s moving to any port or place that is not safe and proper for it to be in; (ii) the CHARTERER’s failing to Re-Deliver the Vessel upon the expiration of the Charter period; or (iii) the breach of XXX....

REQUESTED ADVISEMENT

Taxpayer requests confirmation that the crewed yacht charter services it offers are exempt from Florida sales tax.

TAXPAYER ARGUMENT

Your petition provides in part:

... We believe Rule 12A-1.071(15), F.A.C. is applicable to these owner-furnished crewed yacht charters, which states “*When a boat or vessel is chartered with crew furnished, for the carriage or transportation of persons or property from one point to another and the charterer does not have any direction or control over its operation, the contract constitutes a service transaction and not the rental of tangible personal property and is exempt.*” (Taxpayer’s emphasis).

By analyzing this rule clause by clause, first, the vessel is being chartered with the crew furnished by the owner; the charterer has no right to select the crew or to operate the yacht himself. Second, the vessel is carrying or transporting persons from one point (the port of embarkation) to other places, and may or may not return to the original port of embarkation. Finally, the charterer does not have any direction or control over the operation of the yacht - this right remains solely with the owner-furnished captain, who can neither be selected nor replaced by the charterer.

We believe the charterer’s limited ability to suggest to the captain the charter times and itinerary, subject to the captain’s concurrence (in his sole discretion), does not constitute direction or control over the operation of the yacht. Under applicable USCG regulations, passengers on these crewed yacht charters of US registered vessels are prohibited from exercising operational control.

... Based on the above, we believe these crewed yacht charters are exempt from Florida sales taxes....

LAW AND DISCUSSION

The legislature has declared its intention in s. 212.21(2), F.S., that each and every sale, use, storage, consumption, or rental of tangible personal property¹ in Florida is taxable, subject only to the exemptions and exclusions contained within Chapter 212, F.S.

Rule 12A-1.071(1)(a), F.A.C., provides in part, “the term ‘lease’ includes ... a transaction under which a person secures for a consideration the temporary use of tangible personal property which, although not on his premises, is operated by or under the direction or control of the person or his employees.”

Taxpayer provides yacht charter services with captain and crew furnished by the Taxpayer. “When a boat or vessel is chartered with crew furnished, for the carriage or transportation of persons or property from one point to another and the charterer does not have any direction or control over its operation, the contract constitutes a service transaction and not the rental of tangible personal property and is exempt.” See Rule 12A-1.071(15), F.A.C.

In the present case, the charter agreement states that the Taxpayer shall provide a captain and crew for the vessel. Although the charterer could direct the course of the voyage, the charterer

¹ Tangible personal property is defined as including “personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses” See s. 212.02(19), F.S.

does not have independent direction or control over the vessel. Taxpayer will provide a captain whose discretion determines whether the charterer may have any direction or control of the vessel.

CONCLUSION

Because Taxpayer provides yacht charter carriage or transportation services with crew furnished by the Taxpayer, and the charterer does not have any direction or control over the vessel's operation, the charter agreement constitutes a service transaction and is exempt.

This response constitutes a Technical Assistance Advisement under s. 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 s. 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 s. 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.

Sincerely,

Taylor Feldscher, Esq.
Senior Attorney
Technical Assistance & Dispute Resolution
Florida Department of Revenue

Record ID: 213127