



FLORIDA

Executive
Director

Leon M. Biegalski

August 30, 2017

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Re: Technical Assistance Advise ment 17A-017
Sales and Use Tax
XXXXXXXXXXXX (“Company”)
FEI #: XXXXXXXXXX
Section 212.05, 212.02 and 212.04, Florida Statutes (F.S.)
Rule 12A-1.045, Florida Administrative Code (F.A.C.)

Dear XXXXXXXXX:

This response is in reply to your letter to the Department, dated May 23, 2017, in which you are requesting the Department's issuance of a Technical Assistance Advise ment (“TAA”) pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., concerning the taxability of XXXXXXXXX Memberships. An examination of your petition has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for issuance of a TAA.

REQUESTED RULING

Whether charges for XXXXXXXXX Memberships, and free, one-month trial memberships, are subject to Florida sales tax.

FACTS

As stated in your request for advise ment:

Company offers a membership program known as XXXXXXXXX XXXX-XX (“XXXXXXXX” or “XXXXXX XXXXXX XXXXXX”). The membership program is available to existing XXXXXXXX XXXXXXXX members for an additional membership fee.

Technical Assistance Advisement

XXXXXXXXXX allows members to shop for groceries, everyday essentials, favorites from local shops and restaurants on XXXXXXXX (the “Website”) in select cities. Customers may sign up for a free month trial membership and thereafter a paid monthly membership. Participants in the XXXXXXXXXX membership program are referred to as “XXXXXXXX XXXXXXX Members” or “XXXXXXXX Members.” In order to be an XXXXXXXXXX member, a customer is also required to have an XXXXXXX XXXXX (separate membership available for \$10.99 a month or \$99 annually and agree to the XXXXX XXXXX Terms & Conditions to activate their XXXXXXXXXX membership.) [As noted in footnote 1 of your request, the XXXXX membership program does not offer access to communications services.] While an XXXXX XXXXXXX Membership is a prerequisite to purchasing XXXXXXX, a participant in XXXXX XXXXX may decide to purchase XXXXXXX at anytime during their XXXXX XXXXX Membership. Further, the fees for the XXXXX XXXXX and XXXXXXXXXX memberships are separately stated on each participant’s bill. The current benefits of XXXXXXXXXX include:

Delivery – XXXXXXX Members are entitled to receive same day or next day scheduled delivery. Free delivery is available on XXXXXXX orders over \$40, as well as other discounted shipping benefits on eligible XXXXXXX purchases made on the Website. Products eligible for these shipping benefits are designated as XXXXXXX on the Website’s products pages.

XXXXX XXXXX Items – XXXXXXXXXX Members receive access to the XXXXXXXXXX groceries, everyday essentials, and selections from neighborhood shops and restaurants. Examples include fresh produce, meats, dairy, frozen items, and household essentials such as soap and detergents. Customers that are not XXXXXXXXXX Members may purchase other items (other than perishable items) on the Website for a regular Prime shipping charge. While the XXXXXXX catalog is “exclusive” to XXXXXXXXXX Members, many of the items available in the catalog are not exclusive.

XXXXX XXXXX Deals – XXXXXXXXXX Members receive discounts on certain items of tangible personal property. For example, XXXXXXX Members can purchase certain fruits and vegetables at a discount. The suite of products offered to XXXXXXXXXX Members at a discount continues to change based on availability.

You have attached as Exhibit A, three Technical Assistance Advisements regarding the applicability of sales tax on Taxpayer’s various membership programs, including XXXXXXXXXX. In the XXXXXXX ruling, the Department concluded that none of the XXXXXXX Membership services qualified as services subject to sales and use tax. You state that based on the rationale for concluding that the XXXXXXXXXX XXXXX Membership is not subject to Florida sales and use tax, the XXXXXXXXXX Membership should not be taxable. Similar to the XXXXXXXXXX Membership, the primary XXXXXXX benefit is to obtain prepaid

Technical Assistance Advisement

shipping. Like the XXXXXXXX membership, the shipping benefits included in the XXXXXXXX Membership are F.O.B. origin and are separately stated, even if the shipping charge is \$0.00.

LAW AND DISCUSSION

Chapter 212, F.S., imposes a sales tax on the sale and use of tangible personal property and some services in the state of Florida. Sections 212.04 and 212.05, F.S., specifically impose a tax collection obligation on persons engaged in the business of making sales of tangible personal property and specified services, including the sale of admissions. As defined in s. 212.02(1), F.S.:

The term “admissions” means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including, but not limited to, theaters, outdoor theaters, shows, exhibitions, games, races, or any place where charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees, or other fees or receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation, and all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities, except physical fitness facilities owned or operated by any hospital licensed under chapter 395.

The tax on admissions is specifically applicable to membership benefits to “a place of amusement, sport, or recreation” or “recreational or physical fitness facilities,” which the XXXXXXXX Membership does not provide. As previously noted, the only services provided with the XXXXXXXX Membership are: (1) same day or next day delivery; (2) free delivery on orders of \$40 or more; (3) access to XXXXXXXX products (perishable groceries) not available to XXXXXXXX XXXXXX members; and, (4) discounts on certain products.

Transportation charges incurred without the sale of tangible personal property in Florida are not subject to sales tax. Transportation charges that are included with the sale of tangible personal property may be subject to tax. See Rule 12A-1.045, F.A.C.

CONCLUSION

As none of the individual services included in an XXXXXXXX Membership are subject to Florida sales and use tax, neither the sale of the XXXXXXXX Membership nor the one-month free trial membership are subject to Florida sales and use tax.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S. which is binding on the department only under 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.

Technical Assistance Advisement

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 15 days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-7202.

Sincerely,

Richard R. Parsons
Tax Law Specialist
Technical Assistance & Dispute Resolution
(850) 717-7202

Record ID: 213480