



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

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floridarevenue.com

QUESTION: Whether sales of pre-assembled meals (not sold for immediate consumption) as part of a weekly meal plan are subject to sales tax.

ANSWER: Since the pre-assembled meals are not sold for immediate consumption, and Taxpayer is not operating as a restaurant, the meals are exempt from sales tax as a food product.

February 12, 2020

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Technical Assistance Advisement (TAA)

TAA #: 20A-001

Taxpayer Name: XXXXXXXXXX

FEIN Number: XXXXXXXXXX

Sales & Use Tax – Restaurants, Bakeries, Caterers

Section 212.08, Florida Statutes (F.S.)

Rule 12A-1.011, and 12A-1.0115, Florida Administrative Code (F.A.C.)

Dear Mr. XXXXXXXXXX:

This is in response to your letter dated October 9, 2019, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to s. 213.22, F.S., and Chapter 12-11, Florida Administrative Code (Fla. Admin. Code) regarding the taxability of pre-assembled meals. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, Fla. Admin. Code. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

As provided in s. 213.22(1), F.S., a technical assistance advisement may be issued to a taxpayer who requests an advisement relating to the exemptions in s. 212.08(1) or (2), F.S., at any time. "Technical assistance advisements shall have no precedential value

except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement.”

REQUESTED RULING

Whether sales of pre-assembled meals, packaged in a sealed container and delivered to customers in a refrigerated bag or picked up by the customer, are subject to sales tax.

FACTS

As provided in your letter, Taxpayer operates two facilities at separate locations. One facility is a kitchen processing center (Facility One) where meals and snacks are prepared and packaged, and the other is a facility licensed as a permanent food service with seating (Facility Two). Facility One is licensed as a non-seating permanent food service and does not provide seating or other accommodations that would allow customers to consume food on the premises.

Taxpayer sells various individually packaged meals as part of a weekly meal plan. The pre-assembled meals are prepared and packaged at Facility One. Each meal or snack is prepared and individually packaged with a label displaying the customer's name. Once the items are packaged, they either remain at Facility One for pickup by the customer or are delivered to the customer's home, or delivered to Facility Two for customer pickup. The meals and snacks are provided to the customer in an insulated bag with ice packs and reheating instructions. Each insulated bag contains the meals and snacks for two to three days of that week's meal plan. The meals require refrigeration, do not include eating utensils, are intended for the customer to heat prior to eating, and are not sold for immediate consumption. The snacks, which may be added to any meal plan, are merely smaller portions of the meals offered, and most of the snacks are intended for the customer to heat prior to heating.

Regarding the meal pickup from Facility Two, Taxpayer states:

While customer[']s may pick up their meals from the second facility, no transactions occur within the facility, the sales records are maintained and recorded on a separate payment system, and the meals are prepared off-site and provided to customer's in the original container. Further, Taxpayer's sales records are maintained and recorded separately for each facility by utilizing two separate payment systems. A customer may sign up for a meal plan at a kiosk located in the second facility. The kiosk is connected to Taxpayer's website with the meal plan offerings and sales records from the kiosk are maintained and recorded in the payment system used for the meal plan sales.

In addition to the charge for the meal plan, Taxpayer also charges a delivery fee that can be waived if the customer chooses to pick up its meals at either of Taxpayer's facilities.

LAW

Pursuant to Section 212.05(1)(a), F.S., sales tax is imposed at the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state. As provided in Section 212.08(1), F.S., there are exempted from sales tax, food products for human consumption. The term "food products" means edible commodities, whether processed, cooked, raw, canned, or in any other form, which are generally regarded as food and include coffee and coffee products and natural fruit and vegetable juices.

The exemption does not apply to food cooked or prepared on or off the seller's premises and sold for immediate consumption,¹ to meals for consumption on or off the seller's premises, or to food products cooked, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business. In determining whether an item is sold for immediate consumption, there shall be considered the customary consumption practices prevailing at the selling facility. Section 212.08(1)(d)2., F.S.

As provided in Rule 12A-1.0115(2)(d), F.A.C., restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business that also maintain a separate department that includes groceries are not required to collect tax on tax-exempt sales of food products, as provided in Rule 12A-1.011, F.A.C., when separate records are maintained for the separate department; however, food products that are sold as prepared food through a separate department are subject to tax.

CONCLUSION

Since the pre-assembled meals are prepared at Facility One separate from Facility Two, are not sold for immediate consumption, and Taxpayer maintains a separate accounting from the sales made at Facility Two, the pre-assemble meals are exempt from sales tax as a food product.

This response constitutes a Technical Assistance Advisement under Section 213.22, Fla. Stat., 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, Fla. Stat. 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

¹ The exemption for food products does apply to food products prepared off the premises and sold in the original sealed container. See s. 212.08(1)(c)9., F.S.

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, Fla. Stat., and are subject to disclosure to the public under the conditions of Section 213.22, Fla. Stat. 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,

Richard R. Parsons

Richard R. Parsons
Tax Law Specialist
Technical Assistance & Dispute Resolution

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

Persons needing an accommodation to participate in any proceeding before the Technical Assistance and Dispute Resolution Office should contact that office at 850-617-8346, or you may also call via the Florida Relay System at 800-955-8770, at least five working days before such proceeding.