



**Florida Department of Revenue**  
*Technical Assistance and Dispute Resolution*

**Jim Zingale**  
Executive Director

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**Questions:** 1. Is Taxpayer engaged in nontaxable transportation services with regards to its Customer in the Master Agreement and, thus, required to pay sales or use tax on the autonomous vehicles utilized in the Agreement? 2. Is Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement considered a rental of autonomous vehicles and, thus, subject to sales tax? 3. If Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement were deemed to be the rental of tangible personal property, which of Taxpayer's separately-stated revenue streams (i.e., Planning Phase (Onboarding and Commissioning), Operational Phase (Managed Services), and/or Attendant Services) would be subject to sales tax?

**Answers:** 1. Yes. As long as the attendants on the autonomous vehicles ("AVs") are furnished by Taxpayer, as is provided for in the Master Agreement, Taxpayer's Agreement with Customer in the Master Agreement to provide an autonomous vehicle operation transportation system would be viewed as a service transaction and not as the rental of tangible personal property. As a result, Customer would not owe tax on the transaction. See Rule 12A-1.071(9)(d), F.A.C. Taxpayer, however, would be required to pay sales or use tax, whichever were applicable, on the purchase price of the AVs utilized in the Agreement. 2. No. 3. N/A.

March 19, 2020

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Re: Technical Assistance Advisement No. 20A-005  
Sales and Use Tax – Motor Vehicles  
XXXXXXXXXXXX ("Taxpayer")  
FEI No. XXXXXXXXXXXX  
BPN: XXXXXXXXXX  
Section 213.22(1), Florida Statutes ("F.S.")  
Rules 12A-1.007(13)(d)1., and 12A-1.071(9), Florida Administrative Code ("F.A.C.")

Dear XXXX:

This letter is a response to your petition on behalf of XXXX, dated September 30, 2019, for the Florida Department of Revenue's (the "Department's") issuance of a Technical Assistance Advisement ("TAA") with regards to the sales tax implications on your client's provision of an autonomous vehicle operation

transportation system to a customer. 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. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

**Requested Advisement**

1. Is Taxpayer engaged in nontaxable transportation services with regards to its Customer in the Master Agreement and, thus, required to pay sales or use tax on the autonomous vehicles utilized in the Agreement?
2. Is Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement considered a rental of autonomous vehicles and, thus, subject to sales tax?
3. If Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement is deemed to be the rental of tangible personal property, which of Taxpayer's separately-stated revenue streams (i.e., Planning Phase (Onboarding and Commissioning), Operational Phase (Managed Services), and/or Attendant Services) would be subject to sales tax?

**Brief Answer**

1. Is Taxpayer engaged in nontaxable transportation services with regards to its Customer in the Master Agreement and, thus, required to pay sales or use tax on the autonomous vehicles utilized in the Agreement?

Yes. As long as the attendants on the autonomous vehicles ("AVs") are furnished by Taxpayer, as is provided for in the Master Agreement, Taxpayer's Agreement with Customer in the Master Agreement to provide an autonomous vehicle operation transportation system would be viewed as a service transaction and not as the rental of tangible personal property. As a result, Customer would not owe tax on the transaction. See Rule 12A-1.071(9)(d), F.A.C. Taxpayer, however, would be required to pay sales or use tax, whichever were applicable, on the purchase price of the AVs utilized in the Agreement.

2. Is Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement considered a rental of autonomous vehicles and, thus, subject to sales tax?

No.

3. If Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement were deemed to be the rental of tangible personal property, which of Taxpayer's separately-stated revenue streams (i.e., Planning Phase (Onboarding and Commissioning), Operational Phase (Managed Services), and/or Attendant Services) would be subject to sales tax?

N/A.

#### **Facts As Provided**

Taxpayer is a corporation headquartered in Florida that provides autonomous vehicle ("AV") operation transportation systems to its customers. Taxpayer entered into a contract with XXXXX ("Customer") to provide such a system in a certain location in Florida. Customer's purpose for employing Taxpayer is to improve resident and visitor mobility along various routes in the community. Pursuant to the contract, Taxpayer will provide two AV shuttles, along with fully-staffed shifts of attendants. The term of the contract is five years, following the importation and delivery of the AVs. See Master Agreement Cover Page. The AVs move according to a pre-determined path and are controlled by software applications. This software consists of Taxpayer's and its licensors' proprietary software applications. See Master Agreement §§ 1.12 and 6.1. The AVs are motorized, and Taxpayer's representative believes that they are required to be registered in Florida. Taxpayer would be responsible for paying Florida sales tax in the event they are required to be registered.

There will always be an attendant onboard the vehicles. Pursuant to the Master Agreement, Taxpayer will provide the attendants to accommodate an AV shuttle schedule up to 8 hours per day, 7 days per week (up to 240 hours per month). See Master Agreement § 4.5. These attendants will greet the passengers, provide Customer-suggested information during the route, perform basic maintenance, and operate the vehicles in the event the software malfunctions. The attendants will also assist customers with disabilities, provide additional safety and security measures, and provide basic cleaning.

Taxpayer and Customer will work together to design each route for the operation of the AVs. See Master Agreement § 4.4. Once all the plans have been agreed to in the Statement of Work, neither party will be able to make alterations to the routes or to any other aspect of the plans without the prior written consent of the other party. See Master Agreement § 4.4. Customer can access and use the software, as installed, in the AVs; however, it cannot make any changes to the software. See Master Agreement § 5. Customer must use the AVs in accordance with Taxpayer's Licensed Applications and its user manuals. See Master Agreement § 8.1. It must also use the AVs in accordance with the terms of the Master Agreement and not for any other purpose. See Master Agreement § 8.5.

Taxpayer has divided its services for Customer into three categories: Onboarding and Commissioning, Managed Services, and Attendant Services. See Master Agreement Exhibit B-1. Taxpayer will charge Customer a one-time fee for Onboarding and Commissioning, which includes the mapping of the routes, engineering, licensing, procurement, a one-time fixed fee for the two AVs, etc. See Master Agreement Exhibit B-1. Taxpayer will also charge a monthly fee for the AVs (Managed Services), and it will charge a

separate monthly fee for the services of its attendants (Attendant Services). See Master Agreement Exhibit B-1. Taxpayer will retain ownership of the vehicles. See Master Agreement § 7.

### **Taxpayer's Argument**

Taxpayer's representative states that, aside from the initial agreement on the operating environment of the AVs, Customer does not have unfettered rights to use the vehicles. Taxpayer maintains control of the vehicles through both its software platform embedded in the vehicles and by having its own attendant onboard in the event the vehicle malfunctions. Customer cannot operate the AVs outside the pre-determined route without Taxpayer's approval. In addition, the terms of the Agreement cannot be altered without Taxpayer's consent. Taxpayer's representative argues that the fact that Taxpayer does not require Customer to assume any responsibility for maintenance of the vehicles is indicative of the intent being that this is a service agreement between the two parties rather than a license of the equipment because Taxpayer bears the cost of maintaining the equipment. He also states that, although Taxpayer allows Customer sole "use" of the AVs during the term of the Master Agreement, this "use" does not cause this arrangement to rise to the level of a lease of the vehicles because Taxpayer maintains operation of the vehicles at all times. He contends that Taxpayer's Master Agreement with Customer is analogous to providing equipment with an operator to perform a specific service determined by Taxpayer with input from Customer as to what the operational route will be.

Taxpayer's representative maintains that the fees Taxpayer charges Customer<sup>1</sup> under the Master Agreement are not subject to sales or use tax. He states that Taxpayer is not leasing the AVs to Customer but, rather, is utilizing the AVs to perform a job in a manner determined by Taxpayer which, he contends, falls within the provisions of Rule 12A-1.071(9)(c) and (d), F.A.C. Taxpayer's representative contends that Taxpayer should remit Florida sales or use tax, as applicable, on the autonomous vehicles used in the State and should not charge Customer sales tax on any of its contractual transportation fees.

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<sup>1</sup> In Taxpayer's representative's letter in which he requested a TAA on this matter, he appears to want a TAA in which the ruling will be applicable to Taxpayer's rental of AV's to other customers which enter into similar contracts with Taxpayer. Section 213.22(1), F.S., however, provides, in relevant part:

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 . . . .

Therefore, whereas Taxpayer's representative used language pertaining to multiple customers and contracts in expressing his position (e.g., "[t]he fees charged by Taxpayer to its customers under its contracts should not be subject to Florida retail sales and use tax . . ."), in the response, "customers" has been replaced with "Customer" and "contracts" with "Master Agreement" since this Advisement is only applicable to the transaction between Taxpayer and the Customer in the Master Agreement that was provided with this request for a TAA.

**Applicable Law and Discussion**

Rule 12A-1.071(9), F.A.C., which pertains to Rentals, Leases, or License to Use Tangible Personal Property, provides:

(9)(a) A transaction involving the use of equipment with an operator supplied by the owner of the equipment is a lease if control or direction over the use of the equipment passes to the customer.

(b) When the operator of the equipment is on the payroll of the lessee, the contract constitutes a rental of tangible personal property and is subject to the tax.

(c) A transaction is not a lease if it is for the performance of a specific job in a manner to be determined by the owner or his operator.

(d) When the owner of equipment furnishes the operator and all operating supplies, and contracts for their use to perform certain work under his direction and according to his customer's specifications, and the customer does not take possession or have any direction or control over the physical operation, the contract constitutes a service transaction and not the rental of tangible personal property, and no tax is due on the transaction.

The Department would view Taxpayer's attendant on the AV as an "operator" for purposes of Rule 12A-1.071(9), F.A.C. In addition to other duties, attendants provided by Taxpayer are responsible for operating the vehicles in the event the software malfunctions, performing basic maintenance, and performing basic cleaning. The fact pattern described by Taxpayer's representative and found in the Master Agreement support that, as long as the attendant is furnished by Taxpayer, as is the case in the Master Agreement, Taxpayer's Agreement with Customer in the Master Agreement to provide an autonomous vehicle operation transportation system would be viewed as a service transaction and not as the rental of tangible personal property. As a result, Customer would not owe tax on the transaction.<sup>2</sup> See Rule 12A-1.071(9)(d), F.A.C. Taxpayer, however, would be required to pay sales or use tax, whichever were applicable, on the AVs utilized in the Agreement.<sup>3</sup>

With regards to Taxpayer's questions:

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<sup>2</sup> It should be noted that, while, in the Master Agreement and, thus, for purposes of this TAA, the attendants are not employees of Customer and the provision of the AV transportation system is viewed as a service transaction, if the situation were different and the attendants were employees of the customer and not Taxpayer, Taxpayer's provision of this transportation system to its customers might be considered the taxable rental of tangible personal property. See Rule 12A-1.071(9)(a) and (b), F.A.C., and s. 212.02(19), F.S.

<sup>3</sup> A House Bill pertaining to autonomous vehicles was signed into law in Florida on June, 13, 2019. See Ch. 2019-101, § 311, Laws of Fla.

1. Is Taxpayer engaged in nontaxable transportation services with regards to its Customer in the Master Agreement and, thus, required to pay sales or use tax on the autonomous vehicles utilized in the Agreement?

Yes. As long as the attendants on the AVs are furnished by Taxpayer, as is provided for in the Master Agreement, Taxpayer's Agreement with Customer in the Master Agreement to provide an autonomous vehicle operation transportation system would be viewed as a service transaction and not as the rental of tangible personal property. As a result, Customer would not owe tax on the transaction.<sup>4</sup> See Rule 12A-1.071(9)(d), F.A.C. Taxpayer, however, would be required to pay sales or use tax, whichever was applicable, on the purchase price of the AVs utilized in the Agreement.

2. Is Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement considered a rental of autonomous vehicles and, thus, subject to sales tax?

No.

3. If Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement were deemed to be the rental of tangible personal property, which of Taxpayer's separately-stated revenue streams (i.e., Planning Phase (Onboarding and Commissioning), Operational Phase (Managed Services), and/or Attendant Services) would be subject to sales tax?

N/A.

### **Conclusion**

Taxpayer's provision of an autonomous vehicle operation transportation system to its Customer in the Master Agreement is considered a service transaction, as described in Rule 12A-1.071(9)(d), F.A.C. Among other things contributing to this finding is that Taxpayer, rather than Customer, furnishes the attendants/operators for the AVs. Taxpayer is required to pay sales or use tax, as applicable, on the autonomous vehicles utilized in the Agreement. Taxpayer's provision of the AV transportation system to its Customer in the Master Agreement is not considered a rental of autonomous vehicles; thus, Customer does not owe sales tax or any potential motor vehicle rental surcharge under Rule 12A-1.007(13)(d)1., F.A.C., for any rental of the AVs. The answer to Question 3 is moot.

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 that 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

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<sup>4</sup> It is being assumed that the AVs are being used for transportation and not for sightseeing purposes.

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.

Sincerely,

*Katharine Heyward*

Katharine Heyward  
Senior Attorney  
Technical Assistance & Dispute Resolution

Record ID: 272260