



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

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QUESTION:

Whether certain mandatory fees are taxable as a license to use real property, and if so, is a portion of the fee allocable as not subject to sales tax when bus transportation is also provided,

ANSWER:

The fee is a taxable license to use real property with a portion of the fee subject to reasonable allocation.

March 6, 2020

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Technical Assistance Advisement No. 20A-004
Sales and Use Tax
Real Property Rentals
Sections 212.02, 212.03, and 212.031, Florida Statutes (F.S.)
Rule 12A-1.070, Florida Administrative Code ("F.A.C.")

XXXXXXXXXX ("Petitioner") (XXXXXXXXXX)
Business Partner Number: XXXXX
FEIN: XX-XXXXXX
XXXXXXXXXXXXXXXXXX ("Fee")

Dear XXXXX:

This is in response to your request dated January 15, 2020, for a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), concerning Fee charged to students. An examination of your letter 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 a TAA.

FACTS

Petitioner requires all students to pay Fee each semester when tuition is paid. Payment of the Fee is mandatory regardless if the student has a vehicle or not. Payment of Fee entitles students to a parking permit. The Fee funds are used by Petitioner to support the transportation infrastructure. In addition to parking, students receive free shuttle bus service on campus. The parking permit is linked to the student's license plate.

The Fee amount for students is \$XXXXXX for each student during the Fall and Spring semester. The Fee amount is \$XXXXXX for the Summer semester. Petitioner has XXX parking spaces for XXXX students.

REQUESTED RULINGS

Petitioner does not believe sales tax applies to Fee when paid by students. Petitioner believes that if the Department determines Fee to be subject to sales tax, then an apportionment should be made. Petitioner proposes that the taxable amount of Fee should be allocated using the number of parking spots available and the number of students. Petitioner claims that XX% of Fee is subject to sales tax when using that formula. Petitioner cites to the method used in TAA 01A-040 and TAA 11A-017 involving similar fees for parking and bus transportation.

LAW AND DISCUSSION

Section 212.03(6), F.S., requires every person who leases or rents parking spaces for motor vehicles in parking lots or to collect sales tax on the total rental charge. Section 212.031(1)(a), F.S., provides that "every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property" Section 212.02(10)(i), F.S., defines the word "License." With reference to the use of real property, it means "the granting of a privilege to use or occupy a building or a parcel of real property for any purpose."

A license to use real property is a personal privilege to do one or more acts on the land of another without possessing any interest in the land, such as the license for students to park in designated areas on campus in this case. Since s. 212.03(6), F.S., does not include the license to use parking spaces, the tax provided for by s. 212.031, F.S., applies.

Section 212.031(1)(c), F.S., provides the following in pertinent part:

For the exercise of such privilege, a tax is levied in an amount equal to 6 percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. The total rent or license fee charged for such real property shall include payments for the granting of a

privilege to use or occupy real property for any purposes and shall include base rent, percentage rents, or similar charges.... Payments for intrinsically valuable personal property such as franchises, trademarks, service marks, logos, or patents are not subject to tax under this section. In the case of a contractual arrangement that provides for both payments taxable as total rent or license fee and payments not subject to tax, the tax shall be based on a reasonable allocation of such payments and shall not apply to that portion which is for the nontaxable payments.

Since Fee is a taxable license to use real property, the tax imposed by s. 212.031, F.S., applies. Petitioner is required to demonstrate that the allocation method is reasonable. Petitioner maintains that XX% of the students paying the fee do not apply for a permit to park, and would only be using the other transportation services, such as the shuttle bus service. Therefore, the allocation formula proposed by Petitioner, which will allocate XX% of the Fee funds received as subject to tax, is reasonable based on the information received.

RESPONSE

The Fee is subject to sales tax as consideration paid for the license to use real property. Petitioner may allocate a portion of the Fee (XX%) as not subject to sales tax based on the number of students paying the Fee and the number of available spaces.

Section 212.031, F.S., requires property owners, such as Petitioner to collect sales tax from amounts received from the license to use real property. The sales tax rate provided for by s. 212.031, F.S., applies.

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 documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure.

In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

Chuck Wallace

Chuck Wallace
Conferee
Technical Assistance and Dispute Resolution

Record ID: 318804