



QUESTION: Is the service of providing digitized invoices on a CD, furnished by a dealer and separately stated on an invoice that is shipped to a customer outside the State of Florida, a taxable service or an exempt qualifying sale for export? If the transactions are exempt, is the customer entitled to a refund of sales tax from the State of Florida?

ANSWER: All sales of tangible personal property in Florida are subject to tax, unless specifically exempt by Chapter 212, F.S. An exemption may be applicable for a variety of reasons: the nature of the item sold; classification of the purchaser as a tax-exempt purchaser; or the nature of the sale. Our previous TAA addressed the application of tax based on the nature of the item sold.

Where a dealer sells tangible personal property, commits the property to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida, the dealer is not required to collect tax. Where documentation does not exist to show that tangible personal property "was exported" outside Florida and was committed to the exportation process at the time of sale, and that the exportation process was continuous and unbroken until the property was exported from Florida, the dealer is liable for any tax due that was not collected.

If a refund was due, the dealer is required to refund the customer first before seeking a refund from the State of Florida or the customer would have to obtain a validly executed Assignment of Rights from the dealer.

August 21, 2020

XXX

Attn: XXX

XXX

XXX

RE: Technical Assistance Advise ment – 20A-016
Florida Sales and Use Tax - Information Services
Sections 212.02, 212.05, 212.06, and 212.08, Florida Statutes ("F.S.")
Rule 12A-1.0015, Florida Administrative Code ("F.A.C.")

XXX ("Taxpayer")

BPN: XXX

FEIN: XXX

XXX ("Client")

FEIN: XXX

XXX ("POA")

FEIN: XXX

Dear XXX:

This letter is a response to your petition dated July 9, 2019, for the Florida Department of Revenue's ("Department") issuance of a Technical Assistance Advisement concerning the above referenced party 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. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

STATED FACTS PRESENTED

Taxpayer provides a service to [the Client], which involves the scanning of hard copy invoices onto a CD ROM, furnished by Taxpayer, to provide [the Client] digitized invoices. After processing, a CD(s) is created with all the collected data and shipped back to [the Client] at an address in XXX.

Taxpayer provided copies of invoices and shipping documents. Taxpayer previously requested and was given a TAA (19A-011, dated April 26, 2019) addressing the taxability of the provided services. The impact that shipment of the CDs outside of Florida may have on taxability was not addressed.

REQUESTED ADVISEMENT

Taxpayer seeks an opinion from the Department regarding the taxability of the services provided to [the Client] where the tangible personal property is mailed out of state.

LAW AND RESPONSE

All sales of tangible personal property in Florida are subject to tax, unless specifically exempt by Chapter 212, F.S. An exemption may be applicable for a variety of reasons: the nature of the item sold; classification of the purchaser as a tax-exempt purchaser; or the nature of the sale. Our previous TAA addressed the application of tax based on the nature of the item sold. We affirm that finding and will not address it further here. At issue currently is whether the transaction qualifies for exemption based on the nature of the sale, due to the goods being shipped outside Florida.

Section 212.06(5)(a)1., F.S., provides an exemption from sales tax for the sale of tangible personal property exported from Florida. Rule 12A-1.0015, F.A.C., provides guidance for this exemption. Every retail sale made to a person physically present at the time of sale shall be presumed to have been delivered in this state. The seller is not required to collect and remit tax to the Department when the seller is required by the terms of the sales contract to deliver the item:

- To a licensed exporter for exporting;
- To a common carrier or forwarding agent for shipment outside Florida;
- To the U.S. mail for mailing to a destination outside Florida; or
- Using its own mode of transportation to a destination outside Florida.

To enjoy the protection of this exemption, a dealer is required to keep sufficient records to document that the item was exported outside Florida, such as the list of examples provided in Rule 12A-1.0015(2)(c), F.A.C. Examples of records to document sales for export to points outside Florida include common carriers' receipts, bills of lading, or similar documentation that evidences the delivery destination, receipts from a licensed customs broker, and proof of export signed by a customs officer. See Rule 12A-1.0015(2)(c), F.A.C.

The selling dealer's documentation must indicate that the item(s) have been placed in the hands of one of the accepted transporters listed above (such as a freight forwarder or licensed exporter). This documentation must identify: 1) the item(s) sold; 2) the purchaser; and 3) the ultimate destination of the item(s). In order for the documentation to satisfy the requirements of the export exemption, the Department should be able to trace and identify the specific item(s) sold and exported throughout the documentation. Additionally, Rule 12A-1.0015(2)(b), F.A.C., specifically provides that "[t]he intent of the seller and the purchaser to export the property is not sufficient to establish that the property is not subject to tax in Florida." This rule further provides that "[t]he delivery of the property to a location in Florida for subsequent export from Florida is insufficient to establish documentary evidence that the property sold was irrevocably committed to the exportation process." [Emphasis added].

Therefore, where a dealer sells tangible personal property, commits the property to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida, the dealer is not required to collect tax. Where documentation does not exist to show that tangible personal property “was exported” outside Florida and was committed to the exportation process at the time of sale, and that the exportation process was continuous and unbroken until the property was exported from Florida, the dealer is liable for any tax due that was not collected.

Qualifying sales for export are exempt from tax and, if tax was paid, a refund may be available. Based on the information provided, we are unable to state definitively whether your transactions qualify for exemption. If you believe they qualify under the provisions explained above and a refund is requested by Taxpayer or Client, documentation must be presented that clearly demonstrates qualifying export sales for which refund is sought.

With regard to refunds, Section 215.26, F.S. only authorizes a refund under certain circumstances, provided the customer paid the tax directly to the Department or the customer has secured an assignment from the selling dealer to whom the tax was paid. Section 215.26(1), F.S., specifically provides that the “Chief Financial Officer may only refund to the person who paid same, or his or her heirs, personal representatives, or assigns, any moneys paid into the State Treasury which constitute an overpayment or payment made in error.” An assignment of rights provides the dealer’s assigns any right the dealer has to recover sales tax paid to the Department.

The three statutory circumstances for issuing a refund are (i) an overpayment of tax, (ii) payment when no tax is due, and (iii) a payment of tax made in error. See s. 215.26(1)(a)-(c), F.S.

Section 215.26(2), F.S., further provides in pertinent part:

Application for refunds as provided by this section must be filed with the Chief Financial Officer, except as otherwise provided in this subsection, within 3 years after the right to the refund has accrued or else the right is barred. Except as provided in chapter 198 and ss. 220.23 and 624.50921, an application for a refund of a tax enumerated in s. 72.011, which tax was paid after September 30, 1994, and before July 1, 1999, must be filed with the Chief Financial Officer within 5 years after the date the tax is paid, and within 3 years after the date the tax was paid for taxes paid on or after July 1, 1999. (Emphasis added).

Accordingly, if a refund was due to Client for payment of tax when no tax is due, Taxpayer, as the selling dealer who remitted the tax to the State of Florida, would first have to refund Client, then seek a refund from the State of Florida. In the alternative, Client must obtain a validly executed

Assignment of Rights¹ from Taxpayer. Where Client obtains a validly executed Assignment of Rights, Client is only entitled to the same rights as the selling dealer who granted the assignment. Client must clearly demonstrate qualifying sales for export. Even with proper documentation, a refund of sales tax is only available for transactions that occurred within three (3) years after the right to the refund has accrued.

CONCLUSION

The sale of tangible personal property for export is exempt from tax if the transaction meets the requirements set out above. If Taxpayer or Client seeks a refund from the Department, they must be able to clearly demonstrate, with documentation, those qualifying sales for export. Where no tax was due, Taxpayer must either refund sales tax to Client prior to seeking a refund from the State of Florida or provide Client a properly executed Assignment of Rights. A refund of sales tax is only available for transactions that occurred within three (3) years after the right to the refund has accrued, regardless of documentation.

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 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,

/s/ Felicia S.W. Thomas

Felicia S.W. Thomas, Esq.

Senior Attorney

Technical Assistance & Dispute Resolution

ID No. 234945

¹ The Department has prescribed Form DR-26A, Assignment of Rights to Refund of Tax, for this purpose. A copy of this form is available on the Department's website at <https://floridarevenue.com/forms> under the 'Refunds' category.