



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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Executive Director

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QUESTION: Whether certain vacation packages sold by a related party travel agent qualify for the exemption provided by s. 212.04(1)(d), F.S.?

ANSWER: Yes. The travel agent purchased all components of the vacation package, which included more than two components. It is permissible for the travel agent to purchase all components from a related party. The travel agent paid sales tax on the purchase of each component. The vacation packages will be sold in a lump sum price. The pricing of the components will satisfy the statute requirements. No components will be separately stated.

November 7, 2020

XXX
XXX
XXX

Re: Technical Assistance Advisement No. – 20A-018
Sales and Use Tax
Admissions
Sections 212.04, Florida Statutes (F.S.)
Rule 12A-1.005, Florida Administrative Code ("F.A.C.")

XXX ("Petitioner")("Taxpayer")
Business Partner Number: XXX
FEIN: XXX
Control #: XXX

XXX ("Travel Agent")
Business Partner Number: XXX
FEIN: XXX
Seller of Travel Number: XXX

XXX ("Hotel")

Dear XXX:

This is in response to your request dated August 10, 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 travel agent packages. 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 and Travel Agent are related companies. Petitioner and Travel Agent are in the process of constructing a XXX travel package experience that will combine taxable transient accommodations, admissions, meals, and transportation. XXX

XXX.

XXX, the XXX adventures will be a single price. The travel package price will include the costs of the accommodations, entertainment, meals, gratuities, and admissions. Each component will be priced based on market rates for comparable XXX hotels, entertainment, and dining experiences.

Taxpayer considers room accommodations, including the charge for a single person supplement to be subject to the tax on the rental of transient living accommodations. Taxpayer considers the per person XXX tickets, and the XXX Entertainment per night charge to be taxable admissions. Taxpayer considers the charges for breakfast, lunch, dinners, dinner gratuities, and XXX meal coupons to be taxable sales of tangible personal property.

The price of the components charged to unrelated travel agents and wholesalers will be the same or less, under normal industry practices than the price charged a travel agent that is a member of the same controlled group as the Taxpayer. Taxpayer assumes that the normal industry practice may include discounts for travel package resellers such as for volume pricing.

Sales tax will be paid on the amount of each component's purchase price, which will be set based on market rates for comparable hotels, entertainment, and dining experiences.

TAXPAYER POSITION

Taxpayer believes the provisions of s. 212.04(1)(d), F.S., should apply to the packages. The statute provides that where taxable components of a travel package are bundled, no additional tax is due when sold under certain conditions. The conditions include the following:

- The travel package sold to the customer must include two or more components such as admissions, transient rentals, transportation, or meals;
- The components parts of the travel package sold to the customer must not be separately itemized or stated; and
- All components of the travel package purchased by the travel agent were purchased with sales tax paid to the dealer.

The statute provision does not apply if the actual price charged for a component by the dealer to a travel agent is less than the price charged to unrelated parties under normal industry practices, and the dealer and the travel agent are members of the same controlled group of corporations for federal income tax purposes.

Taxpayer bundles components of a travel package consisting of admission, transient rentals, and meals. Sales tax is paid to the state and local governments on all of the components as proposed above. The travel package sold to guests will not include an itemized list of the component lists.

Third-party travel agents and wholesalers will be allowed to purchase the same travel package, with its itemized and properly taxed components, to resell to their customers. Travel agents may also combine this travel package with other travel components to create a larger travel package for their customers. Any such sales to a third-party will have each component priced at the same or a lower amount than sales of the same component sold to a related travel agent based on normal industry practices.

Section 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., provide the legislative and administrative framework regarding the taxability of travel packages. These provisions provide that the ultimate charge to a guest is not subject to tax assuming the statutory requirements are met. First, the travel package must contain two or more components such as admissions, transient rentals, transportation, or meals. Here, the travel package sold to the agents includes admissions, accommodations, and meals. Second, the sales tax must be paid on components of the travel package. Here, sales tax will be properly paid on the amount of each component's purchase price as, which will be set based on market rates for comparable hotels, entertainment, and dining experiences. Third, the ultimate travel packages sold to guests must not separately itemize the sales price for the components. Here, the ultimate travel package sold to guests will not itemize the sales price for the components. Therefore, the requirements of s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., are met.

Based on the facts provided, any travel package sale to a third-party will have each component priced at the same or a lower amount than sales of the same component sold to a related travel agent based on normal industry practices. Therefore, the treatment under s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., apply.

REQUESTED RULINGS

Whether the sale of travel packages to third-party and related travel agents meet the requirements of s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.S.

LAW AND DISCUSSION

Section 212.04(1)(d), F.S., provides the following:

- (d) No additional tax is due on components incorporated as part of a package sold by a travel agent if the package includes two or more components such as admissions, transient rentals, transportation, or meals; if all of the components were purchased by the travel agent from other parties and any sales tax due on

such purchases was paid; and if there is no separate itemization of the admission, transient rental, transportation, meal, or other components in the sales price of the package. This paragraph does not apply if the actual price charged for a component by the dealer to a travel agent is less than the price charged to unrelated parties under normal industry practices and the dealer and the travel agent are members of the same controlled group of corporations for federal income tax purposes.

Rule 12A-1.005(6), F.A.C., provides the following:

(6) Sales of vacation packages.

(a) For purposes of this subsection, a “vacation package” means a bundle consisting of two or more components, such as admissions, transient rentals, transportation, or meals. Coupon books, maps, or other incidental items, that are provided free of charge as part of a vacation package are not considered “components” for purposes of this subsection.

(b) Tax is due on the purchase of taxable components of a vacation package at the time of purchase. No additional tax is due on the components that are incorporated into a vacation package and sold by a travel agent, when all of the following conditions are met:

1. The vacation package sold by the travel agent includes two or more components;
2. There is no separate itemization of the sales price of the package for the admission, transient rental, transportation, meal, or any other component of the vacation package; and,
3. All components of the vacation package were purchased by the travel agent from other parties and any sales tax due on such purchases was paid at the time of purchase.

(c) A travel agent who itemizes the sales price of the taxable components of a vacation package must register with the Department as a dealer. (See Rule 12A-

1.060, F.A.C., Registration). Travel agents who itemize the sales price of the taxable components of a vacation package are required to collect tax from the purchaser as follows:

1. When the itemized components are sold for the same amount or less than was paid for each of them, the travel agent is not required to collect any additional tax. No credit is allowed for tax paid on the purchase of the taxable components.

2. When the itemized components are sold for more than the purchase price of each component, the travel agent is required to collect tax on the sales price of the taxable components. The travel agent may take a credit of tax previously paid for the taxable components that are separately itemized at a sales price greater than the purchase price of the component.

(d) When the seller of components of a vacation package and the purchasing travel agent are members of the same controlled group of corporations for federal income tax purposes and the amount charged for the component is an amount less than the price charged to unrelated travel agents under normal industry practices, the related travel agent is required to itemize the sales price of the components to the purchaser and collect tax on the itemized taxable components. The travel agent may take a credit of tax previously paid for the taxable components.

Section 212.04(1), F.S., requires sales tax to be collected on sales of all admissions. Section 212.04(1)(d), F.S., provides that travel agents are not required to charge and collect sales tax on certain lump sum priced vacation packages. Rule 12A-1.005(6), F.A.C., also addresses the sale of vacation packages priced as a lump sum by travel agents.

For s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., to apply, the vacation package must be sold by a travel agent. Here, Travel Agent is licensed as a Seller of Travel. Therefore, the sales of XXX vacation packages by Travel Agent may possibly qualify for the exemption.

The statute also requires Travel Agent to sell a vacation package. The package must include at least two components such as an admission, transient rental living accommodations, meals, and travel. This requirement is satisfied because it includes admissions, a hotel room, and meals. The statute requires a lump sum price for the vacation package, and that no components have a separately stated charge. This requirement is satisfied because the request provides that the charge will be for a lump sum.

The statute also requires that all components must be purchased by Travel Agent and that all taxes are paid on the purchase of each component. The statute also requires that the actual price charged for a component to Travel Agent may not be less than the price charged to unrelated parties under normal industry practices. These two requirements are satisfied because the request provides that "Sales tax will be paid on the amount of each component's price as, which will be set based on market rates for comparable hotels, entertainment, and dining experiences."

Therefore, based on the facts stated in the request, the requirements provided by s. 212.04(1)(d), F.S., are satisfied regarding the vacation packages sold by Travel Agent, and other third-party travel agents making similar purchases as Travel Agent.

RESPONSE

The sale of vacation packages identified by the request to Travel Agent meet the requirements of s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.S.

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: 402088