



5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** Whether the XXXX Fee for Taxpayer's XXXX subscription service is subject to Florida sales or use tax?

**ANSWER:** Yes, Taxpayer's XXXX subscription service is subject to Florida sales or use tax because the fee is for the sale of both tangible personal property and digital content or services.

October 26, 2022

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Re: Technical Assistance Advise ment – TAA #: 22A-022  
XXXX ("Taxpayer")  
Sales and Use Tax – Newspapers, On-line Subscriptions  
Sections 212.02, 212.05 and 212.08, Florida Statutes - ("F.S.")  
Rules 12A-1.008 and 12A-1.039, Florida Administrative Code - ("F.A.C.")  
BP #: XXXX

XXXX ("Taxpayer")  
FEIN: XXXX

Dear XXXX,

This is in response to your letter dated June 27, 2022, requesting this Department's issuance of a Technical Assistance Advise ment ("TAA") pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C, Florida Administrative Code, regarding the matter discussed below. 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, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

### **REQUESTED ADVISEMENT**

Taxpayer requests that the Department confirm that the XXXX Fee is not subject to Florida sales or use tax for the following reasons:

- The fee is charged solely to obtain access to digital news content;
- At the time of the initial subscription or subsequent renewal, the subscriber is informed of the XXXX Fee which is paid to access the digital news content;

- At the time of the initial subscription or subsequent renewal, the subscriber is informed that the XXXX Fee can be avoided by an election of the subscriber (i.e., by declining the digital content access); and
- The XXXX Fee is separately stated on the subscriber's invoice.

Taxpayer provides copies of the following:

- XXXX Invoice
- XXXX Invoice
- XXXX Invoice

### **FACTS**

The request dated June 27, 2022, provides:

Taxpayer is the leading source for news and information in the XXXX United States. Taxpayer has a broad portfolio that consists of newspapers, magazines, websites, and consumer events. Taxpayer publishes several newspapers throughout Florida, including the XXXX for the XXXX region in Florida.

Taxpayer currently offers a variety of subscription models in order to cater to its subscribers' specific desires and to help ensure subscriber retention. These include digital access only subscriptions, XXXX subscription services which include access to the features described below, and a print only subscription ("Print Subscription") at a non-bundled comparable rate for subscribers who desire to opt-out of the XXXX subscription service offering. The XXXX subscription service includes the following distinct and separate features:

- Printed newspaper publications;
- An enhanced digital replica of each printed newspaper accessed on the XXXX website;
- Mobile news apps with articles from the XXXX website;
- iOS and Android e-Newspaper apps that provide access to digital replicas of the newspaper publications; and
- XXXX news emails containing top headlines of the week.

To access the digital services, subscribers must activate a digital account provided by Taxpayer. For new subscribers of XXXX subscription services, the subscriber is charged an XXXX Fee on the invoice that grants access to the digital content. As noted above, this is an optional fee for digital content and the subscriber may opt-out to receive print-only content. At the time of the initial subscription, the customer is provided an invoice that separately states the carrier delivery charge and the XXXX Fee.

The XXXX Fee is comprised of the following cost components borne by Taxpayer:

- Digital news production costs;
- Video production, editing and software costs;
- Digital editors and user-engagement staff;
- Incremental content fees (wire services, XXXX, Stock listings, puzzles, op-ed columnists) for online distribution and exclusive digital-only comics;
- Reporting and production time devoted to updating digital replica edition pages;
- Exclusive entertainment pages published in the digital replica edition;
- Web hosting costs;
- Website and application development costs;
- Digital replica edition software costs;
- Online subscription processing software; and
- Online audience measurement and tracking software.

Delivery charges and sales tax are included in the subscription fees. Taxpayer currently collects and remits sales tax on its subscription sales and deducts the delivery charge before calculating the total tax due.

We note that none of the three (3) sample invoices submitted with this request separately state the various cost components. In other words, all three (3) sample invoices are “lump sum.” The “XXXX” and “XXXX” sample invoices do notify the consumer of the option of picking up their newspapers in order to avoid transportation costs.

### **TAXPAYER POSITION**

Florida sales and use tax is applied to the “sales price” of the retail sale of tangible personal property and certain enumerated taxable services. The word “sale” is defined to include printing of material, which includes newspapers in printed form. Florida has specifically recognized that certain services are afforded an exemption from sales and use tax, including the provision of professional services. For the reasons discussed below, Taxpayer asserts that the XXXX Fee is exempt from sales and use tax as a digital access service, which is characterized as a tax-exempt professional service for Florida sales and use tax purposes.

- a. The separately stated XXXX Fee is a charge for a digital news content and is not taxable as tangible personal property.

As addressed above, the XXXX Fee is an optional fee that Taxpayer’s subscribers pay exclusively to access digital news content. The Fee does not grant any rights to access or use any tangible personal property. The fee is separately stated on the subscriber’s invoice. Currently, Florida law does not consider the sale of a digital news subscription to be the retail sale of taxable tangible personal property. Instead, the sale of a digital news subscription is categorized as the provision of exempt professional services. This issue was addressed in *Department of Revenue v. Quotron Systems Inc.*, as explained below.

In *Quotron*, the Department determined that a digital news subscription was tangible personal property because the information could be “seen” via a customer’s display screen and a customer could print the information, if desired. The taxpayer in *Quotron* provided “high-speed electronic delivery of various financial news and information to its subscribers via display on video screens.” The court held that although a customer could print the information through the digital news subscription, this was not considered an integral fact to taxability. The court ultimately determined that digital news subscription was not tangible personal property because:

[Taxpayer’s] images on a screen are not capable of being touched or possessed; they are transient and have no enduring existence. The electronic images which appear on the video display screens of a subscriber’s desk unit do not constitute “tangible personal property” as defined by Chapter 212, Florida Statutes, nor does the transmission of such images constitute a “sale.”

Similar to the taxpayer in *Quotron*, Taxpayer provides access to digital news content for subscribers through the payment of a separate XXXX Fee. A subscriber accesses the digital content via the Internet through a computer or electronic device. Taxpayer’s sale of digital news content is not subject to tax per the reasoning in *Quotron*, as the XXXX Fee is separately stated from the Print Subscription and does not involve the sale of tangible personal property.

Taxpayer understands that certain criteria must be met in order for the All Access Fee to be considered exempt from Florida’s sales tax. The Department issued a Declaratory Statement regarding the taxability of delivery charges by a newspaper that provides guidance in this instance. See *In Re: The Petition of the Miami Herald Publishing Company*, 02-2-DS, Florida Declaratory Statement (Issued 12/23/2002). The Declaratory Statement provides that as to the sale of newspapers with optional delivery charges, the newspaper publisher is not required to collect sales tax on the charge for newspaper delivery by independent carriers if the following criteria are satisfied:

- At the time of the initial subscription or subsequent renewal, the subscriber is informed of the carrier delivery charge and mail delivery charge;
- At the time of the initial subscription or subsequent renewal, the subscriber is informed that the delivery charge can be avoided by an election to either pick-up the newspaper at a distribution center or to receive the newspapers by mail; and
- The carrier delivery charge is separately stated on the invoice.

Based on the Declaratory Statement, Taxpayer’s subscriber must be informed prior to making the order or renewal of a separate charge for Taxpayer’s digital news content, apart from a predetermined price for the print copy. The subscriber must also have the option to avoid the purchase of the digital news content. Also, the charge for the XXXX Fee must be separately stated.

In the present case, all of these criteria are met. Consequently, the XXXX Fee satisfies the requirements established by the Department.

The Declaratory Statement is consistent with the opinion in *Department of Revenue v. B&L Concepts, Inc.*, 612 So.2d 720 (Fla. 5th DCA 1993) that addressed service charges by a lessor leasing furniture and home entertainment products. The court determined that the service charge for order processing was a service that was part of the sale and part of the “sales price”. This was because the service processing fee was required, and therefore not optional. The court determined that delivery fees and late fees, unlike processing fees, were optional (and thus incidental) to the rentals and were avoidable by the lessee. Similarly, in *U.S. Gypsum Co. v. Green*, 110 So.2d 409 (Fla. 1959), the court determined that freight charges that were incurred after the moment of purchase were not part of the taxable “sales price”. In the same manner, in *Green v. Surf Club, Inc.*, 136 So.2d 354 (Fla. 3rd DCA 1961), service charges that were automatically added to the restaurant bill as a gratuity were considered by the court to be part of the taxable amount, as the charge could not be avoided by the purchaser.

Due to the foregoing, where Taxpayer’s XXXX Fee is solely to obtain digital news content access and the Fee provides no rights to access or use any tangible personal property, the separately stated fee is not subject to Florida sales and use tax. This is consistent with the Department’s guidance and the applicable Florida statutes and case law outlined in this letter.

- b. The separately stated XXXX Fee is a charge for a digital news content and is exempt from sales and use tax as a professional service.

The court in *Quotron* also addressed whether a digital news subscription was the provision of exempt professional services per Fla. Stat. § 212.08.11 The court concluded that since the digital news subscription was not considered the sale of tangible personal property or the sale of taxable information services, the digital news subscription would be considered the provision of exempt professional services. The Department has consistently held this position with respect to digital subscriptions.

### **LAW AND DISCUSSION**

Generally, Florida law imposes a state sales and use tax, at the rate of six percent (6%),<sup>1</sup> on the privilege of engaging in the retail sale of any tangible personal property in this state. See s. 212.05(1)(a)1.a., F.S. Tangible personal property is defined as “property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses ....” See 212.02(19), F.S. Rule 12A-1.039(1)(a), F.A.C., further provides “[i]t is the specific legislative intent that each and every sale ... is taxable, unless such sale ... is specifically exempt. The exempt nature of the transaction must be established by the selling dealer.”

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<sup>1</sup> Discretionary county sales surtax, if any, is also owed if the six percent (6%) Florida state sales tax applies. See s. 212.054, F.S. The surtax applies only to the first \$5,000 of the sales amount on any item of tangible personal property. See s. 212.054(2)(b), F.S.

The term “sale” is defined in s. 212.02(15)(a), F.S., to mean “[a]ny transfer of title or possession, or both ... of tangible personal property for a consideration.” This includes the sale of printed material and newspaper subscriptions **with delivery by a carrier** or means other than by mail. See ss. 212.02(15)(c), and 212.08(7)(w), F.S., and Rule 12A-1.008(1)(b)1., F.A.C. (Emphasis added).

In most cases, the taxability of a service is dependent on whether the service is considered to be part of the “sales price” of a taxable item. Section 212.02(16), F.S., defines “sales price” as “the total amount paid for tangible personal property, including any services that are a part of the sale . . . .” When tangible personal property and services are sold as part of the same sale, the entire sales price is subject to tax. Section 212.08(7)(v), F.S., provides an exemption for professional, insurance, or personal services transactions that involve **inconsequential elements of tangible personal property** for which no separate charge is made. Conversely, Florida sales tax applies to **services that are part of the sale of tangible personal property**. (Emphasis added).

Based upon the facts provided, Taxpayer offers print only subscriptions, which are delivered by carrier, digital access only subscriptions and the XXXX subscriptions.

The sale of the print only subscriptions is subject to sales tax as the sale of tangible personal property, pursuant to s. 212.02(15)(a), F.S.

Regarding the digital access only subscriptions, Florida courts have held that electronic images of financial information displayed on a screen are not “tangible personal property,” as defined in s. 212.02(19), F.S. See *Department of Revenue v. Quotron Systems, Inc.*, 615 So.2d 774 (Fla. 3rd DCA 1993); *Henley Holdings Inc. v. Department of Revenue*, No. 89-4381 (Fla. 2d Cir.Ct. July 22, 1991), *affd.* 599 So.2d 1282 (Fla. 1st DCA 1992). The Department has cited *Quotron, supra*, and *Henley Holdings, supra*, in regard to transactions involving only digital transmissions via the Internet to a customer’s computer. The Department has determined that such sales, without any other evidence of the transfer of something tangible, are not sales of tangible personal property for purposes of ss. 212.02(19), and 212.05, F.S. Sales of digital transmissions instead constitute services not subject to tax pursuant to Chapter 212, F.S.

The sale of the digital access only subscriptions is not subject to sales tax, as there is no transfer of a tangible item as part of the transaction.

Regarding the XXXX subscriptions, Taxpayer provides that it includes digital news content and printed newspaper publications, which are delivered by carrier. For this subscription, Taxpayer charges an XXXX Fee.

Taxpayer asserts that, similar to the Taxpayer in *Quotron*, Taxpayer provides access to digital news content for subscribers through the payment of a separate XXXX Fee. Taxpayer further asserts the XXXX Fee is solely to obtain digital news content access and the fee provides no rights to access or use any tangible personal property. Taxpayer’s assertions are contrary to its own facts and the law.

The XXXX Fee is the sales price charged to subscribers for the XXXX subscription service, which provides access to digital services and delivery of printed newspaper publications. Thus, the XXXX Fee is not solely to obtain access to digital services. Further, the fee comprises tangible personal property and a digital access service sold as part of the same sale. *Quotron* is inapplicable here and separately stating the XXXX Fee does not alter this result. Therefore, the entire sales price is subject to tax. Tax is due on the total sales price charged to the subscriber at the time of sale. It is irrelevant that subscribers may subsequently opt out of the XXXX subscription service.

As a result, the invoices submitted for review, which state that the XXXX Fee for access to digital services are nontaxable in the state of Florida, are inaccurate.

Further, Rule 12A-1.045(4)(a), F.A.C, provides:

(4)(a) The charge for transportation services is not subject to tax when both of the following conditions have been met:

1. The charge is separately stated on an invoice or bill of sale; and,
2. The charge can be avoided by a decision or action solely on the part of the purchaser.

...

Because none of the three (3) sample invoices submitted with the request satisfy the Rule, the delivery/transportation charge is subject to Florida Sales Tax (as part of the entire XXXX).

Taxpayer also asserts that the digital news subscription service is an exempt professional service. Taxpayer's assertion is contrary to its own facts and the law. The XXXX subscription service is not a pure service transaction because the sale of tangible personal property is involved. Florida sales tax applies to **services that are part of the sale of tangible personal property**, according to s. 212.02(16), F.S. (Emphasis added).

Taxpayer relies upon the Declaratory Statement issued in *In Re: The Petition of the Miami Herald Publishing Company* to support its position that the XXXX Fee is not taxable if certain criteria are met. Taxpayer's reliance is misplaced. The declaratory statement expressly addresses **optional delivery charges and collecting sales tax on the charge for newspaper delivery by independent carriers**, not access to digital content or services.

### CONCLUSION

The XXXX Fee is the sales price charged for the sale of the XXXX subscriptions, which provides printed newspaper publications delivered by carrier and access to digital content or services. The entire sales price is subject to sales tax. Tax is due on the total sales price charged to the subscriber at the time of sale.

This response constitutes a TAA 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 backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 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 TAA, 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 ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-7347.

Sincerely,

*Felicia S.W. Thomas*

Felicia S.W. Thomas, Esq.  
Senior Attorney  
Technical Assistance & Dispute Resolution  
(850)717-7347

CC: XXXX  
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