



SUMMARY:

What are the sales and use tax implications for consigned motor vehicles and related fees charged by a third-party Consignee (Taxpayer) when the motor vehicle is sold and/or not sold?

SUCCESSFUL SALES		
TYPE OF CONSIGNOR	FEE	TAX IMPLICATION
Individual Consignor/ Corporate Sourcing Partner – Flat Fee	<ul style="list-style-type: none"> • Listing Fee • Success Fee commission • Repair/reconditioning • Interior detailing/ exterior cleaning • Fuel • Shipping 	<p>Fees and charges are not taxable to Taxpayer when incorporated into vehicle sales price Taxpayer must collect and remit Florida sales tax, plus any applicable discretionary sales surtax from the buyer.</p> <p>As a registered dealer, Taxpayer may purchase reconditioning and repair services, as well as repair parts that become a component part of the vehicle, exempt from sales tax by extending a copy of its Annual Resale Certificate to the selling dealer.</p>
Corporate Sourcing Partner – Profit Sharing	<ul style="list-style-type: none"> • Seller’s share of profit • Seller’s share of processing fee 	Taxpayer’s charges to the Corporate Sourcing Partner for the percentage of profits generated from the sale of the vehicle would be deemed a service, not taxable under Chapter 212, F.S.
Corporate Sourcing Partner - Cost-Plus (Backstop)	<ul style="list-style-type: none"> • Agreed-upon base price for the vehicle • Additional fixed dollar amount in addition to the base price for the vehicle 	Taxpayer’s charges to the Corporate Sourcing Partner for the agreed upon base price and the additional fixed dollar amount of profits generated from the vehicle sale, would not be subject to sales tax, as these amounts do not constitute consideration received for the transfer of title or possession of tangible personal property.
UNSUCCESSFUL SALES		
Individual Consignor/Corporate Sourcing Partner – Flat Fee Corporate Sourcing Partner – Profit Sharing	<ul style="list-style-type: none"> • Repair/reconditioning • Interior detailing/ exterior cleaning • Fuel • Shipping 	<p>Under the Flat Fee agreement, if the vehicle is returned to the Consignor after the performance of taxable repairs or taxable car wash services Taxpayer should charge the Consignor sales tax for these services as well as any separately stated shipping/transportation related charges which the Consignor cannot elect to avoid.</p> <p>If the Corporate Sourcing Partner, is a registered dealer, the Corporate Sourcing Partner may extend a copy of its Annual Resale Certificate to Taxpayer to purchase any taxable repairs, reconditioning services, and related charges tax-exempt if the</p>

		<p>Corporate Sourcing Partner intends to resale the vehicle.</p> <p>Under the Corporate Sourcing Partner – Profit Sharing agreement – when Taxpayer returns a vehicle, no sales tax is due as there is no sale. Taxpayer would be liable for use tax on any taxable repairs and taxable car wash services purchased for resale, but instead, returned to the Corporate Sourcing Partner, thus deemed to have been used by Taxpayer.</p>
Corporate Sourcing Partner - Profit Sharing	<ul style="list-style-type: none"> • Seller’s share of profit • Seller’s share of processing fee 	Taxpayer’s charges to the Corporate Sourcing Partner for the percentage of profits generated from the sale of the vehicle would be deemed a service, not taxable under Chapter 212, F.S.
Corporate Sourcing Partner - Cost-Plus (Backstop)	<ul style="list-style-type: none"> • Agreed-upon base price for the vehicle • Additional fixed dollar amount in addition to the base price for the vehicle 	Taxpayer’s charges to the Corporate Sourcing Partner for the vehicle would not be subject to sales tax as a sale for resale if Taxpayer takes ownership of the vehicle and holds the vehicle in its inventory with the intention to relist and resell the vehicle.

March 30, 2023

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Via Email: [REDACTED]

Re: Technical Assistance Advisement – TAA #: 23A-007
 [REDACTED] (“Taxpayer”)¹
 Sales and Use Tax – Consignment Sales/Motor Vehicles
 Sections 212.02, 212.05, 212.06, 212.07, 212.054, 320.27, 403.718, and 403.7185, Florida Statutes - (“F.S.”)
 Rules 12A-1.006, 12A-1.007, 12A-1.039, 12A-1.045, 12A-1.066, 12A-1.081, 12A-12.001, and 12A-12.0011, Florida Administrative Code - (“F.A.C.”)
 FEI#: [REDACTED]
 BP #: [REDACTED]

Dear [REDACTED]:

¹ According to the Department of State, [REDACTED] website, on [REDACTED], Taxpayer filed a “Name Change Amendment. Taxpayer’s current name is [REDACTED].

This is in response to your letter received on August 22, 2022, requesting this Department's issuance of a Technical Assistance Advisement ("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

You pose several questions regarding the imposition of sales and use tax upon various aspects of Taxpayer's motor vehicle consignment services. The Department's responses to your questions will be addressed in the conclusion of this TAA.

FACTS

Your request provides in part, the following:

* * *

This letter constitutes a request for Technical Assistance Advisement ("TAA") ... on behalf of [Taxpayer]
....

To the best of [Taxpayer's] knowledge, the identical issues addressed in this TAA request are not currently the subject of a Florida Department of Revenue ... audit of Taxpayer. Neither is an issue pending in litigation in a case involving [Taxpayer]. The Department has not provided written guidance on this issue to [Taxpayer] or its predecessor.

OVERVIEW

Taxpayer is a used car dealer that operates physical locations in several jurisdictions throughout the United States. [Taxpayer] is similar to a "traditional" car dealership model in many respects, including the purchase of inventory from sellers, however [Taxpayer] also inventories vehicles on consignment from sellers. Specific to the consignment inventory, [Taxpayer] consigns cars from either individual consumers ("Individuals") or corporate partners, such as fleet management companies, rental car companies, credit unions, banks, dealers, wholesalers and captive finance companies ("Corporate Sourcing Partners"). [Taxpayer] lists those consigned cars for sale by listing vehicles on a web-based platform, as well as physically displaying them at its various hub locations throughout the country, including ... Florida. Each customer type is subject to unique contract terms and agreements with [Taxpayer]. These transactions occur primarily using a consignment model, wherein [Taxpayer] will showcase a vehicle at its physical locations while also listing the vehicle for sale on its web application. [Taxpayer] controls the consignment vehicles while they are listed for sale and showcases them at the physical hub. In the event that a buyer agrees to [Taxpayer's] sales terms, the [Taxpayer] takes ownership of the vehicle through execution of a "flash title" transaction, purchasing the vehicle from the seller and then immediately reselling the vehicle to the end customer.

Prior to listing, [Taxpayer] will arrange for any vehicle repairs (parts and labor), maintenance, and interior/exterior cleaning charges (“reconditioning services”) deemed necessary for the vehicle to be listed by [Taxpayer] for sale. The reconditioning services are done at facilities owned/managed by [Taxpayer] or are contracted out to [third-] party vendors. The party responsible for reconditioning service fees is contingent on the terms of the agreement and will be addressed by ensuing sections herein. Once the reconditioning services have been rendered, the vehicle is listed for sale in [Taxpayer’s] inventory.

Once listed in [Taxpayer’s] inventory, a vehicle has until the conclusion of a specified time-period (typically 45-90 days) which it will be listed on [Taxpayer’s] platforms for sale, after which time the seller would either need to relist the vehicle or reclaim possession of the vehicle. The structure of charges, fees and commissions for successfully and unsuccessfully sold vehicles are dependent on the contract terms between [Taxpayer] and individual or corporate seller. Further discussion of successful and unsuccessful vehicle sale treatment for each contractual agreement is provided within the ensuing FACTS section.

Summary

Below is a summary of the various consignment arrangements [Taxpayer] has with its Individual and Corporate Sourcing Partners. ...

<u>Type of Consignor</u>	<u>Fee Paid</u>	<u>Consignor Pays for Repairs, Detail, Fuel and Transportation (Marked Up) Once Car is Sold</u>	<u>Consignor Pays for Repairs, Detail, Fuel and Transportation (Marked Up) If Car is Not Sold</u>
<u>Individual – Flat Fee</u>	<u>Listing Fee (\$299) and Success Fee Upon Sale (\$899)</u>	<u>Yes</u>	<u>Yes</u>
<u>Corporate Sourcing Partner – Flat Fee</u>	<u>Success Fee Upon Sale (\$1,100)</u>	<u>Yes</u>	<u>Yes</u>
<u>Corporate Sourcing Partner – Profit Sharing</u>	<u>None – certain amount of revenue is split</u>	<u>No</u>	<u>No</u>
<u>Corporate Sourcing Partner - Backstop</u>	<u>None – [Taxpayer] pays for the car for a price above an agreed-upon wholesale value after a certain number of days ([i.e] 45 days)</u>	<u>No</u>	<u>No</u>

Overview of the Sales Process

1. [Taxpayer] sells used cars ... using three different types of consignment terms – a fixed fee consignment model with Individuals and Corporate Sourcing Partners, a profit-sharing model with Corporate Sourcing Partners, and a cost-plus (backstop) consignment model with Corporate

Sourcing Partners.

2. For consignment arrangements, ownership and title of the vehicle remains with the Individual/Corporate Sourcing Partner until a buyer is identified.
3. [Taxpayer] provides “reconditioning services” for the benefit of the individual/corporate seller, where vehicle improvements are made by [Taxpayer] or contracted to [third-] party vendors. Reconditioning services are typically performed prior to the vehicle being listed on [Taxpayer’s] web-based platform for sale. If the reconditioning services are completed by a [third-] party vendor, the vendor provides the services and subsequently invoices [Taxpayer] for the charges. Invoices do not include sales tax, as resale certificates are provided to the vendors.
4. The car is listed as inventory held for sale by [Taxpayer] for a pre-defined period ..., typically ranging between 45-90 days. As this is [a] consignment arrangement, [Taxpayer] does not hold title or take ownership of the vehicle during this time. Vehicles are typically listed at a price set at the seller’s discretion; however, [Taxpayer] and its sellers generally adhere to price floors or ranges that are in line with the current automobile sales market, taking into consideration any repairs or reconditioning services performed.
5. Costs to perform the reconditioning services are tracked and accounted for as they are incurred but are not charged nor collected from the consignor until the vehicle is sold/delisted. When a vehicle is successfully sold to a buyer, [Taxpayer] takes ownership of the vehicle through execution of a “flash title” transaction, purchasing the vehicle from the seller and then immediately reselling the vehicle to the end customer for the agreed-upon sales price. However, [Taxpayer] bears the sole risk of loss should a vehicle be damaged the entire time it is in [Taxpayer’s] possession.
6. A Bill of Sale is then provided to Individuals or Corporate Sourcing Partners which include the selling price of the vehicle less any applicable charges incurred, including, but not limited to the following:²
 - Listing Fee for advertising of vehicle[.]
 - Success Fee commission if vehicle is sold[.]
 - Repair charges relating to reconditioning done by [Taxpayer] or [third-] party vendors including, but not limited to, new parts (i.e. – windshield wipers, tires, headlights, etc.), oil changes, fixing mechanical issues; charges include markups for repair/reconditioning services.
 - Interior detailing and exterior cleaning charges; charges include markups[.]
 - Fuel charges incurred to top off gas tank; charges include markup for fueling services[.]
 - Shipping charges for transportation of vehicle include markups[.]

² Charges are typically presented as a single line item indicating “repairs” or “reconditioning” and are not itemized to include the detail or parts and/or services included.

7. Corporate Sourcing Partner Profit-Sharing Bill of Sales include the selling price of the vehicle less any applicable charges incurred, including, but not limited to the following:
 - Seller's share of profit due to Corporate Sourcing Partner; rates are pursuant to contract for each individual corporate seller[.]
 - Seller's share of processing fee due to corporate seller; rates are pursuant to contract for each individual corporate seller[.]
 - Cost of reconditioning, parts, labor, and/or fuel **are not** detailed in corporate profit-sharing Bill of Sale.
8. If the vehicle is listed by [Taxpayer], but not sold, [Taxpayer] will invoice the Individual or Corporate Sourcing Partner for the applicable charges listed in Paragraph 6.

Sales Agreements and Invoicing

1. Individual Flat Fee Agreement – Once the vehicle is sold, [Taxpayer] collects the selling price of the vehicle and any applicable taxes due from the end consumer, or the lienholder associated with financing the purchase. [Taxpayer] remits the proceeds of the sale to the vehicle seller, less listing fees, reconditioning service charges, delivery charges, refueling costs, commission/success fee, and any other fees incidental to the closing of the vehicle sale. Payments to sellers may occur before or after receiving lienholder funds and payment timing varies situationally.
2. Corporate Sourcing Partner Flat Fee Agreement – Once the vehicle is sold, [Taxpayer] collects the selling price of the vehicle and any applicable taxes due from the end consumer. [Taxpayer] subsequently remits the proceeds of the sale to the Corporate Sourcing Partner, less listing fees, reconditioning service charges, delivery charges, refueling costs, commission/success fee, and any other fees incidental to the closing of the vehicle sale.
3. Corporate Sourcing Partner Profit-Sharing Agreement – Once the vehicle is sold, [Taxpayer] collects the selling price of the vehicle and any applicable taxes due from the end consumer. [Taxpayer] subsequently remits to the Corporate Sourcing Partner an agreed upon base price, plus a percentage of the profits between the base price and selling price of the vehicle. Percentages applied to any profits are fixed, pursuant to the contractual agreement in place with each Corporate Sourcing Partner. Reconditioning and/or other costs incurred are not separately stated on a [B]ill of [S]ale or charged to the Corporate Sourcing Partner.
4. Corporate Sourcing Partner Cost-plus (Backstop) Agreement – Once the vehicle is sold, [Taxpayer] collects the selling price of the vehicle and any applicable taxes due from the end consumer. [Taxpayer] subsequently remits to the Corporate Sourcing Partners at an agreed upon base price, plus a fixed dollar amount. Reconditioning and/or other costs incurred are not separately stated on a bill of sale or charged to the Corporate Sourcing Partner.

Unsuccessful Sales³

³ An unsuccessful sale represents any instance in which [Taxpayer] cannot find a buyer for the vehicle through their marketplace.

1. Individual Flat Fee Agreement – Individual consignment agreements typically run for 90-120 days. Any vehicle that has not successfully sold prior is returned to individual seller. The individual seller is invoiced for all reconditioning service charges, delivery charges, and any other incidental fees incurred (i.e., refueling costs). No commissions are assessed.
2. Corporate Sourcing Partner Flat Fee Agreement – Corporate consignor agreements typically run for 90 days. Any vehicle that has not successfully sold prior is returned to corporate seller. The corporate seller is invoiced for all reconditioning service charges, delivery charges, any other incidental fees incurred (i.e.,] refueling costs). No commissions are assessed.
3. Corporate Sourcing Partner Profit-Sharing Agreement – Corporate Sourcing Partner profit-sharing agreements typically run for 90 days. Any vehicle that has not sold prior to the 90-day deadline is returned to the Corporate Sourcing Partner. The Corporate Sourcing Partner is not invoiced as there is no transaction. Reconditioning service charges and other fees not assigned to the corporate seller are absorbed by [Taxpayer].
4. Corporate Sourcing Partner Cost-Plus (Backstop) Agreement – Cost-plus agreements typically run for 45 days. Any vehicle that has not sold prior to the 45-day deadline is purchased from the consignor for the agreed upon base price plus a fixed dollar amount. Reconditioning and other costs are the sole responsibility of [Taxpayer].

* * *

TAXPAYER'S POSITION

Individual Consignor – Flat Fee

1. Upon the successful sale of vehicle all costs related to the reconditioning, listing, and selling of the vehicle are deemed to be incurred by [Taxpayer] (a registered dealer), to have brought the vehicle to market. Such costs are incorporated into the vehicle sale[s] price set by [Taxpayer]. The vehicle is presumed to be held in inventory by [Taxpayer] until the vehicle is sold. Accordingly, sales tax is collected by [Taxpayer] on the final vehicle sales price when sold to the buyer.

When repair parts (or parts used in the performance of other taxable services) are purchased by [Taxpayer] (a registered dealer), and used to recondition the vehicle, such parts would be subject to [the] resale exemption and sales tax will be collected from the buyer of the vehicle when sold. *[GT-400400: Tax Information for Motor Vehicle Dealers, Fla. Dept. of Rev., 02/2018]*

When the vehicle is successfully sold, the reconditioning charges are deducted from the final vehicle sales price on the [B]ill of [S]ale to the vehicle seller. These deductions are for the seller to reimburse [Taxpayer] for the costs incurred by [Taxpayer] to bring the vehicle to market and successfully sell the vehicle. Since sales tax was already collected [from the buyer] on the vehicle sale[s] price, the deductions for the reconditioning services are not deemed to be a "sale" of such services to the seller and no tax would apply on any of the related deductions to the seller.

2. In the event of an unsuccessful sale of the vehicle, in which the vehicle is returned to the seller, a sale is deemed to occur when [Taxpayer] provides the invoice to the seller containing charges for listing fees and reconditioning, repair, fuel and shipping services.

When the vehicle is returned to the customer after repairs have been completed, separately stated charges for labor and repairs to the vehicle are subject to sales tax to the consignor. *[GT-800010: Sales and Use Tax on Repair of Tangible Personal Property, 12/1/2017]*

Car washing services in which only water and detergent are applied to the vehicle are nontaxable. However, to the extent that any wax, silicones, or any other substance is added that forms a protective film or coating to the vehicle, the charge for these services is taxable to the consignor. *[Fla. Admin. Code Ann. § 12A-1.006(a) and (b)]*

Charges for shipping, when applicable, are not taxable to the extent that the charges are separately stated and are not required as part of the transaction but are available to the customer. *[Fla. Admin. Code Ann. § 12A-1.045(4)(a)]*

Corporate Sourcing Partner – Flat Fee

3. Upon the successful sale of the vehicle, with the exception of ‘listing fees’ which do not apply to the Corporate Sourcing Partner – Flat Fee revenue stream, the taxability of success fee, repair parts and labor, interior detailing services and shipping charges are taxable/nontaxable as outlined in Individual Consignor – Flat Fee Conclusion for successful sales.
4. In the event of an unsuccessful sale of the vehicle, in which the vehicle is returned to the corporate party listing the vehicle, the taxability of repair parts and labor, interior detailing services and shipping charges are taxable/nontaxable as outlined in the Individual Consignor – Flat Fee Conclusion for unsuccessful sales.

If [Taxpayer] is unable to sell the vehicle, generally the Corporate Sourcing Partner will work with other providers to have the car sold. As such, the Corporate Sourcing Partner typically furnishes a properly executed exemption certificate to [Taxpayer]. *[Fla. Admin. Code Ann. §12A-1.039(1)(b)]* In some limited circumstances, the Corporate Sourcing Partner may also send the vehicle to an auction house for auction. An auction would ... constitute a separate resale by the Corporate Sourcing Partner and would also be exempt from sales and use tax if a valid resale certificate is provided.

Corporate Sourcing Partner – Profit Sharing

5. Upon the successful sale of the vehicle, the charges by [Taxpayer] to the Corporate Sourcing Partner for the percentage of profits from the sale of the vehicle, as agreed to within the contract between the two parties, is not subject to sales tax as a non-enumerated service. *[Fla. Stat. § 212.02(14)(a)]*
6. In the event that the vehicle is not sold, there is no sales tax implications to the Corporate Sourcing Partner as there is no consideration paid when the vehicle is returned to the Corporate Sourcing Partner. *[Fla. Stat. § 212.02(15)(a)]*. Based on the services outlined in the Facts, [Taxpayer] would be liable for use tax on the following services performed to the vehicle:

- a. repair parts and labor [*GT-800010: Sales and Use Tax on Repair of Tangible Personal Property, 12/1/2017*]
- b. car washes, to the extent a protectant film is applied to the vehicle. [*Fla. Admin. Code Ann. § 12A-1.006(a) and (b)*]

Corporate Sourcing Partner – Cost Plus (Backstop)

7. Upon successful sale of the vehicle, the charges by [Taxpayer] to the Corporate Sourcing Partner for the percentage of profits from the sale of the vehicle, as agreed to within the contract between the two parties, is not subject to sales tax as a non-enumerated service. [*Fla. Stat. § 212.02(14)(a)*]
8. In the event of an unsuccessful sale, the agreed-upon base price charges and additional fixed dollar amount charges by [Taxpayer] to the Corporate Sourcing Partner for the vehicle would not be subject to sales tax as a sale for resale, at which time, [Taxpayer] would take ownership of the vehicle. [*GT-800030: Sales and Use Tax on Motor Vehicle[s], 12/1/2017*]

After taking ownership of the vehicle, [Taxpayer] will hold the vehicle in inventory with the intention to relist and resell the vehicle to another customer. Accordingly, sales tax is collected by [Taxpayer] on the final vehicle sales price when sold to the buyer.

At Conferee's request, Taxpayer submitted for review, copies of the *Vehicle Consignment Agreement - Exclusive Listing with the Exclusive Right to Sell* (Individual Consignor – Flat Fee); *Multiple Vehicle Master Consignment - Exclusive Listing with the Exclusive Right to Sell* (Corporate Sourcing Partner - Flat Fee); *Consignment Services Agreement* (Corporate Sourcing Partner - Backstop); *Master Services Agreement* (MSA) (Corporate Sourcing Partner – Profit Sharing), and Bills of Sale for transactions between Taxpayer and Corporate Sourcing Partners under the Flat Fee, Backstop; and Profit Sharing consignment terms.

It should be noted that *GT-400400: Tax Information for Motor Vehicle Dealers*, is obsolete. Additionally, *GT-800030: Sales and Use Tax on Motor Vehicles*, and *GT-800010: Sales and Use Tax on Repair of Tangible Personal Property*, have been revised as of 08/22. Lastly, the language in Rule 12A-1.006(4), F.A.C., was amended as of 08/15/21.

LAW AND DISCUSSION

Florida law provides for the imposition of sales tax upon the retail sale⁴ of tangible personal property⁵ in this state. The tax is imposed on the "sales price"⁶ of each item or article of tangible personal property sold at retail, unless

⁴ The term "sale" is defined to include any "transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration." See s. 212.02(15)(a), F.S. The terms "retail sales," "sale at retail," "use," "storage," and "consumption" do not include "the sale of materials to a registered repair facility for use in repairing a motor vehicle, airplane, or boat, when such materials are incorporated into and sold as part of the repair." See s. 212.02(14)(c), F.S.

⁵ "Tangible personal property" means and includes "personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including ... motor vehicles" See s. 212.02(19), F.S.

⁶ "Sales price" is defined as "the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged,

specifically exempt. See s. 212.05(1)(a), F.S. Florida also levies a use tax on the “cost price”⁷ of each item or article of tangible personal property, including motor vehicles, which are not resold, but instead, used, consumed, distributed, or stored for use⁸ or consumption in this state. See s. 212.05(1)(b), F.S. The tax is due and payable at the rate of six percent (6%), plus any applicable discretionary surtax. See s. 212.054, F.S.

Section 212.06(2), F.S., provides in part:

* * *

(b) The term “dealer” is further defined to mean every person, as used in this chapter, who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

(c) The term “dealer” is further defined to mean every person, as used in this chapter, who sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; or for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property as defined herein, including a retailer who transacts a substantial number of remote sales or a marketplace provider that has a physical presence in this state or that makes or facilitates through its marketplace a substantial number of remote sales.

* * *

(g) “Dealer” also means and includes every person who solicits business either by direct representatives, indirect representatives, or manufacturers’ agents; by distribution of catalogs or other advertising matter; or by any other means whatsoever, and by reason thereof receives orders for tangible personal property from consumers for use, consumption, distribution, and storage for use or consumption in the state; such dealer shall collect the tax imposed by this chapter from the purchaser, and no action, either in law or in equity, on a sale or transaction as provided by the terms of this chapter may be had in this state by any such dealer unless it is affirmatively shown that the provisions of this chapter have been fully complied with.

(h) “Dealer” also means and includes every person who, as a representative, agent, or solicitor of an out-of-state principal or principals, solicits, receives, and accepts orders from consumers in the state for future delivery and whose principal refuses to register as a dealer.

* * *

Under the provisions of s. 212.06(3)(a), F.S., “ ... every dealer making sales, whether within or outside the state, of tangible personal property for distribution, storage, or use or other consumption, in this state, shall, at the time

losses, or any other expense whatsoever.” “Sales price” also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property. ...” See s. 212.02(16), F.S.

⁷ “Cost price” is defined as “the actual cost of articles of tangible personal property, without any deductions on account of the cost of materials used, labor or service costs, transportation charges or any expenses whatsoever.” See s. 212.02(4), F.S.

⁸ Section 212.02(20), F.S., defines the term “use” to include “... the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein, except that it does not include the sale at retail of that property in the regular course of business.”

of making sales, collect the tax imposed by this chapter from the purchaser.”

Section 212.07(8), F.S., provides in part, “[a]ny person who has purchased at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property ... taxable under this chapter ... and cannot prove that the tax levied by this chapter has been paid ... is directly liable to the state for any tax, interest, or penalty due on any such taxable transactions.”

With regard to sales of motor vehicles, Rule 12A-1.007(1)(a), F.A.C., provides in part:

The sale, including occasional or isolated sales, the use, consumption, or storage for use in this state of any ... motor vehicle, or other vehicle of a class or type required to be registered, licensed, titled, or documented in this state or by the United States Government is taxable on the full sales price without any deduction for freight, handling, delivery, commission, repossessions, advertising, future free service, or any other expense or cost whatsoever. ...

Separately stated fees required to title, license, register, transfer ownership, record a lien, or operate any motor vehicle in Florida, its subdivisions, or any state or licensed tag agency or office, are not included in the sales price and are not subject to tax. However, if fees which are required for the registration, licensing, or titling of a motor vehicle in Florida are not separately stated the charges are part of the sales price and subject to tax. Separately stated fees that are discretionary charges, not mandated pursuant to Rule 12A-1.007(1), F.A.C., are taxable as part of the sales price.

The term “motor vehicle dealer” is defined in s. 320.27(1)(c), F.S., to include “... any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be engaged in such business.”

Auctioneers, Agents, Brokers, and Factors/Consignment Sales

Rule 12A-1.066(1)(a), F.A.C., provides in part, “[e]very agent, auctioneer, broker, or other person who is engaged in any business activity of making sales of tangible personal property with the object of private or public gain, benefit or advantage, either direct or indirect, who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, is required to register as a dealer under Chapter 212, F.S., and collect and remit any applicable tax on the total retail sales price of any taxable item of tangible personal property without any deduction for any expense, such as storage, commission, or repairs. ...”

Rule 12A-1.066(1)(c), F.A.C., provides in part:

1. “Agent” is a person appointed by a principal or authorized to act for a principal in a transaction involving the sale of an item of tangible personal property.

* * *

4. “Factor” is a person who sells on consignment an item of tangible personal property belonging to a principal.

5. "Principal" is a person who employs an agent, auctioneer, broker, factor, or other person to act in his or her behalf in negotiating with a purchaser for the sale of tangible personal property.

* * *

Rule 12A-1.066(6), F.A.C., further provides that "[s]ales of tangible personal property consigned, delivered, or entrusted to a person registered or required to be registered as a dealer under Chapter 212, F.S., for the purpose of sale are taxable on the total retail sales price without deduction for any expense such as storage, rental, commission, repairs, etc."

With regard to consignment sales, Rule 12A-1.081, F.A.C., provides, "[w]here merchandise is delivered to a dealer on a consignment basis, the tax shall be collected and remitted by the consignee, not the consignor."

Sales for Resale

Section 212.07(1)(b), F.S., and Rule 12A-1.039(1)(b), F.A.C., provide that a sale for resale is exempt from the sales and use tax, only when the sale for resale is in strict compliance with the provisions of the resale rule. For purposes of the rule, a "sale for resale" includes the sale of tangible personal property to a dealer, who is an active registered dealer⁹ when such property will be resold to the dealer's customers, and the purchasing dealer issues the selling dealer a valid Annual Resale Certificate (Form DR-13).

Rule 12A-1.039(1)(b)1. and 9., F.A.C., provide an exemption for the sale of tangible personal property to a dealer when the property will be resold to the dealer's customers, or the alteration, remodeling, maintenance, adjustment, or repair of tangible personal property that is held in inventory for resale purposes by a dealer.

Rule 12A-1.039(7)(g), F.A.C., provides in part "[a] person who complied with the provisions of this rule when making a purchase ... of tangible personal property that is intended for resale, but then uses, consumes, distributes, or stores for use or consumption in this state, the tangible personal property in a manner inconsistent with the purposes described in paragraph (1)(b) of this rule, is required to pay use tax as provided in s. 212.05(1)(b), F.S."

Repair of Tangible Personal Property

The consideration received for a transaction requiring labor and material to alter, remodel, maintain, adjust, or repair property is taxable. The tax applies to the entire charge when a repair person furnishes parts. Labor, parts, and materials incorporated into, and which become part of tangible personal property repaired, or reconditioned for resale are exempt when purchased by the repair person. However, materials and supplies used by the repair person to make repairs, such as tools, sandpaper, and flux, but which do not become part of the item repaired are taxable to the repairer as overhead items. Charges for repairs of tangible personal property involving labor or service only are taxable unless the repair person's records establish that no tangible personal property was attached to the repaired item. See s. 212.02(16), F.S. and Rule 12A-1.006, F.A.C.

⁹ "Active registered dealer" means "a person who is registered with the Department as a dealer for sales tax purposes and who is required to file a sales and use tax return during each applicable reporting period, as provided in Section 212.11(1), F.S." See Rule 12A1.039(1)(c), F.A.C.

Transportation/Delivery Charges

Rule 12A-1.045, F.A.C., provides in part:

(1) "Transportation charges" include carrying, delivery, freight, handling, pickup, shipping, and other similar charges or fees.

(2) Transportation charges which are not separately stated on an invoice or bill of sale but are included in the sales price of taxable tangible personal property, are subject to tax.

(3)(a) Where the seller agrees to deliver tangible personal property to some designated place and the purchaser cannot elect to avoid the charge for transportation services, the charge for the transportation service is subject to tax, even if separately stated on an invoice or bill of sale.

* * *

(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.

* * *

Solid Waste Fees - New Tire Fees

Section 403.718, F.S., provides that a fee is imposed on any person engaging in the business of making retail sales of new motor vehicle tires within Florida. The fee imposed shall be stated separately on the invoice to the purchaser and shall be imposed at the rate of \$1.00 for each new tire sold and is subject to tax. Rule 12A-12.001(4), F.A.C., further provides:

(a) A motor vehicle dealer can purchase tires exempt from the fee as a sale for resale by presenting a sales tax resale certificate to the seller of the tires. If the motor vehicle dealer subsequently withdraws any such tire from inventory to use on the dealer's own vehicle, to give away, or for any purpose except for resale, the motor vehicle dealer will owe the fee at the time the tire is withdrawn from inventory. If the motor vehicle dealer sells the tire at retail, whether separately or installed on a motor vehicle, that sale will be subject to the fee. If the motor vehicle dealer resells the tire to a dealer who presents a sales tax resale certificate, no fee will be due on that transaction.

(b) Motor vehicle dealers that exclusively sell used motor vehicles may elect to pay the fee to the tire wholesaler on the purchase of tires instead of purchasing tires exempt from the tire fee. If the used motor vehicle dealer elects to do so, the dealer must pay the tire fee to the tire wholesaler on all its purchases of tires. For the purpose of the tire fee only, the wholesale tire dealer is to treat the sale as a retail sale and must separately state the tire fee on the sales invoice to the used motor vehicle dealer. On subsequent retail sales by the used motor vehicle dealer, the dealer must state in the contract or on the sales invoice to the purchaser that the applicable tire fee has been previously paid.

* * *

Based on the facts presented, Taxpayer is engaged in the business of making sales of motor vehicles on consignment from its customers who include, individual consumers and corporate sourcing partners. Taxpayer is a registered dealer and should collect and remit tax on its retail sales of consigned motor vehicles without deduction for commissions, regardless of whether it has possession of the vehicles or title to the vehicles cannot be transferred without action by the customer. Taxpayer must collect and remit tax when title or possession is transferred within Florida even if the tangible personal property belongs to an out-of-state Consignor.

After executing the applicable consignment agreement, Taxpayer arranges for the reconditioning and repair of the consigned vehicle prior to listing the vehicle for sale on its web-based platform or displaying the vehicle at one of its hub locations. The reconditioning and repair services are performed by facilities owned/managed by Taxpayer or contracted to a third-party vendor. You state that the reconditioning services are provided as a benefit to the Consignor. The party responsible for charges, fees and commissions is based on the terms of the specific consignment agreement

CONCLUSIONS

Individual Consignor and Corporate Sourcing Partner – Flat Fee

Questions 1 and 3, and questions 2 and 4, as well as the Department's responses to same, have been combined.

Questions 1 and 3:

1. What are the sales and use tax implications for successful sales, including but not limited to the following separately stated charges to the third-party seller:
 - a. Listing Fee for advertising of vehicle.
 - b. Success Fee commission if vehicle is sold.
 - c. Repair Charges relating to reconditioning done by [Taxpayer] or 3rd party vendors including, but not limited to, new parts (i.e. – windshield wipers, tires, headlights, etc.), oil changes, fixing mechanical issues; charges include markups for repair/reconditioning services.
 - d. Interior detailing and exterior cleaning charges; charges include markups.
 - e. Fuel charges incurred to top off gas tank; charges include markups for fueling services.
 - f. Shipping charges for transportation of vehicle include markups.

Responses 1 and 3:

As provided in Rule 12A-1.039(1)(b)1. and 9., F.A.C., as a registered dealer, when intended for resale purposes, Taxpayer may purchase exempt from sales tax, reconditioning and repair services, as well as repair parts that become a component part of the vehicle, by extending a copy of its Annual Resale Certificate to the selling dealer.

Upon the successful sale of the Consignor's vehicle, the listing fees (not applicable under the Corporate Sourcing Partner – Flat Fee agreement), success fee commission, repair charges, detailing and cleaning charges, fuel charges, and shipping charges are incorporated into the vehicle sales price. Taxpayer must collect and remit Florida sales tax plus any applicable discretionary sales surtax from the buyer. In the event Taxpayer makes a retail

sale of new motor vehicle tires, as a used car dealer, Taxpayer may elect to separately state on its customer's invoice, the required \$1.00 fee for each new tire sold, in which case the new tire fee must be included in the sales price of the vehicle. On the other hand, Taxpayer may pay the fee to the wholesaler on its purchase of the tires – in this case, when the new tire is sold at retail, Taxpayer must indicate on its customer's sales invoice that the applicable tire fee has been previously paid.

After the sale is completed, Taxpayer issues the Consignor a "Bill of Sale" reflecting the final selling price of the vehicle as well as deductions for the Consignor to reimburse Taxpayer for the charges incurred to market and sell the vehicle. The transaction between Taxpayer and the Consignor is not a "sale" as defined by s. 212.02(15), F.S.; therefore, any amounts Taxpayer receives from the Consignor for any separately stated charges, are not subject to Florida sales tax.

Questions 2 and 4:

What are the sales and use tax implications for unsuccessful sales, including, but not limited to the following separately stated charges to the third-party seller:

- a. Repair charges relating to reconditioning done by [Taxpayer] or 3rd party vendors including, but not limited to new parts (i.e. – windshield wipers, tires, headlights, etc.), oil changes, fixing mechanical issues; charges include markups for repair/reconditioning services.
- b. Interior detailing and exterior cleaning charges; charges include markups.
- c. Fuel charges incurred to top off gas tank; charges include markups for fueling services.
- d. Shipping charges for transportation of vehicle include markups.

Responses 2 and 4:

In the case of an unsuccessful sale of the Consignor's vehicle, Taxpayer returns the vehicle to the Consignor and invoices the Consignor for listing fees, reconditioning, repair, fuel and shipping services. If the vehicle is returned to the Consignor after taxable repairs that include installation of tangible personal property or taxable car wash services that include the addition of wax, silicones, or any other substance that forms a protective film or coating on the vehicle, Taxpayer should charge the Consignor sales tax for these services as well as any separately stated shipping/transportation related charges which the Individual Consignor cannot elect to avoid.

However, if Taxpayer returns the vehicle and the Corporate Sourcing Partner, is a registered dealer, the Corporate Sourcing Partner may extend a copy of its Annual Resale Certificate to Taxpayer to purchase any taxable repairs, reconditioning services, and related charges tax-exempt if the Corporate Sourcing Partner intends to sell the vehicle.

Corporate Sourcing Partner – Profit Sharing

Question 5:

What are the sales and use tax implications for successful sales, including but not limited to the following separately stated charges to the third-party seller:

- i. Seller's share of profit due to Corporate Sourcing Partner; rates are pursuant to contact for each individual corporate seller.

- ii. Seller's share of processing fee due to corporate seller; rates are pursuant to contract for each individual corporate seller.

Response 5:

Under the Corporate Sourcing Partner - Profit Sharing agreement, in the event of a successful sale of a vehicle, Taxpayer's charges to the Corporate Sourcing Partner for the percentage of profits generated from the sale of the vehicle would be deemed a service, not taxable under Chapter 212, F.S.

Question 6:

What are the sales and use tax implications for unsuccessful sales in which there is no invoice to the Corporate Sourcing Partner and [Taxpayer] absorbs the costs incurred, including but not limited to:

- a. Repair charges relating to reconditioning done by [Taxpayer] or 3rd party vendors including, but not limited to, new parts (i.e. – windshield wipers, tires, headlights, etc.), oil changes, fixing mechanical issues; charges include markups for repair/reconditioning services.
- b. Interior detailing and exterior cleaning charges; charges include markups.
- c. Fuel charges incurred to top off gas tank; charges include markups for fueling services.
- d. Shipping charges for transportation of vehicle include markups.

Response 6:

In the case of an unsuccessful sale under the Corporate Sourcing Partner – Profit Sharing agreement, when Taxpayer returns a vehicle to the Corporate Sourcing Partner, no sales tax is due from the Consignor, since there is no sale. However, Taxpayer would be liable for use tax on any taxable repairs and taxable car wash services purchased for resale, but instead, returned to the Corporate Sourcing Partner, thus deemed to have been used by Taxpayer.

Corporate Sourcing Partner – Cost Plus (Backstop)**Question 7:**

What are the sales and use tax implications for successful sales, including, but not limited to the following separately stated charges to the third-party seller:

- iii. An agreed-upon base price for the vehicle.
- iv. An additional fixed dollar amount in addition to the base price for the vehicle.

Response 7:

Upon the successful sale of the Corporate Sourcing Partner's vehicle, Taxpayer's charges to the Corporate Sourcing Partner for the agreed upon base price and the additional fixed dollar amount of profits generated from the vehicle sale, would not be subject to sales tax, as these amounts do not constitute consideration received for the transfer of title or possession of tangible personal property.

Question 8:

What are the sales and use tax implications for unsuccessful sales, whereby [Taxpayer] is purchasing the vehicle for the following:

- v. An agreed-upon base price for the vehicle.
- vi. An additional fixed dollar amount in addition to the base price for the vehicle.

Response 8:

In the event of an unsuccessful sale the agreed-upon base price and the additional fixed dollar Taxpayer charges the Corporate Sourcing Partner for the vehicle would not be subject to sales tax as a sale for resale if Taxpayer takes ownership of the vehicle and holds the vehicle in its inventory with the intention to relist and resell the vehicle.

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)717-6701.

Sincerely,

Shundra McClean

Shundra McClean

Tax Law Specialist

Technical Assistance & Dispute Resolution

Record ID: 7000784374

cc:

[REDACTED]

TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000784374

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.