



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

Question: Are Taxpayer's services described in this request considered to be nontaxable garbage/waste disposal services in Florida?

Response: Taxpayer is not renting or leasing tangible personal property but is providing a service which is not subject to Sales and Use Tax.

June 9, 2023

[REDACTED]

[REDACTED]

Re: Technical Assistance Advisement – TAA #: 23A-012
Sales and Use Tax – Taxability of Services vs. Rental of Tangible Personal Property
Sections 212.02, 212.05, 212.06, 212.07, 212.18, and 212.21, Florida Statutes ("F.S.")
Rules 12A-1.039 and 12A-1.071, Florida Administrative Code ("F.A.C.")
[REDACTED] ("Taxpayer")
BP#: [REDACTED]
FEIN: [REDACTED]

Dear [REDACTED],

This is in response to your letter dated [REDACTED], requesting this Department's issuance of a TAA pursuant to Section 213.22, F.S., and Chapter 12-11, Florida Administrative Code, regarding the taxability of services. 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.

Stated Facts

The request dated [REDACTED], provides in pertinent part:

Taxpayer is not registered in the state of Florida for sales/use tax and has applied to the voluntary disclosure program.

Taxpayer is a broker of waste removal services in Florida and does not own or lease dumpsters. Taxpayer does not have any physical locations, employees or property in Florida. Taxpayer contracts with local businesses (hereinafter “third-party contractors”) who operate in Florida and either own dumpsters or have access to them.

Taxpayer has a division in the company—called “Vendor Relations”—that deals with all Third-Party

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Requested Advisement

Taxpayer asks the following questions:

1. Are the services outlined above considered to be nontaxable garbage/waste disposal services in Florida?
2. If the answer to question 1 is no, will Taxpayer be penalized for the current description on its sales invoices?

Taxpayer provides copies of the following:

- Invoices, including terms of service, issued to four customers
- Four redacted voice recordings of customer calls
- [REDACTED] Emails and Attachments
- [REDACTED] Emails and Attachments
- Hauler term agreements with [REDACTED], [REDACTED], [REDACTED] and [REDACTED]
- Daily Operations Guide
- Payment Terms

Taxpayer Position

Taxpayer states it does not perform the services or own or lease any of the dumpsters used in Florida. Rather, it is the third-party contractors that provide the services and own the dumpsters used to provide the services to Florida customers. The third-party contractors are not charging sales/use tax to Taxpayer for the nontaxable services they are providing. Taxpayer is billed by the third-party contractors, marks up the cost of the service and bills the customer. Taxpayer states further it does not believe the services provided constitute taxable services in the state of Florida or the taxable rental of tangible personal property. These services should be held to be nontaxable garbage/waste disposal services. Based upon its research and discussions with other companies in Florida providing the same type of services, sales/use is not being charged on this service by any of the providers it has spoken with. The companies are consuming their trucks, dumpsters, etc., in the performance of their service and paying sales/use tax on the equipment when acquired.

Law and Discussion

Florida law provides that all sales of tangible personal property are subject to sales tax unless an exemption or exclusion from the tax applies. See ss. 212.05, 212.06 and 212.18, F.S. Tax is imposed on the sales price of each item or article of tangible personal property when sold at retail, unless specifically exempt. See ss. 212.05(1)(a)1.a. and 212.21(2), F.S. The term “sales price” means the total amount paid for tangible personal property, “including any services that are a part of the sale.” Any transfer of title or possession, or both, lease, or rental, conditional or otherwise, of tangible personal property for a consideration, is a sale. See ss. 212.02(15)(a) and (16), F.S.

All leases of tangible personal property other than conditional-sale type leases are operating leases. It is not essential for a transfer of possession of tangible personal property to include the right to move the tangible personal property. See Rule 12A-1.071(1)(a), F.A.C. Transfer of possession with respect to an operating lease means that one of the following attributes of tangible personal property ownership has been transferred: (1) Custody or possession of the property, actual or constructive; (2) The right to custody or possession of the property; or, (3) The right to use and control or direct the use of the property.... See Rule 12A-1.071(1)(b), F.A.C.

In *Warning Safety Lights Inc. v. Department of Revenue*, 678 So.2d 1377, (Fla. 4th DCA 1996), the court held that the furnishing of traffic barricades and warning lights was incidental to the overall service of setting up and maintaining temporary traffic control patterns to facilitate completion of a road construction project. As a result, these factors constitute a service transaction, not the lease or rental of tangible personal property, and no tax is due on the transaction.

In *American Video Corporation v. Lewis*, 389 So.2d 1059 (Fla. 1st DCA 1980), the Court held that the hooks, wires and “gadgets” used by American Video to install cable television systems are of no value in and of themselves. Id. at 1061. The Court held that the customer is paying a consideration in the form of the monthly service charge for the provision of cable television, not the provision of hooks, wires and “gadgets.”

Applying the law to the facts presented here leads to the conclusion that the provision of the dumpsters (under these specific facts) is of no value in and of itself. The customer is paying consideration for the nontaxable garbage/waste disposal service, not for the rental or possession of a dumpster.

Conclusion

Based on the facts provided, the questions presented are answered as follows:

1. Are the services outlined above considered to be nontaxable garbage/waste disposal services in Florida?

Response: Taxpayer is not renting or leasing tangible personal property but is providing a service which is not subject to Sales and Use Tax.

2. If the answer to question 1 is no, will Taxpayer be penalized for the current description on its sales invoices?

Response: n/a

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 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 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 850-717-6735.

Best Regards,

Alan R. Fulton

Alan R. Fulton

Revenue Program Administrator I

Technical Assistance & Dispute Resolution

CC:



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: 7000721613

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.