



5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** Taxpayer would like confirmation that it is not required to collect Florida sales tax on sales of tangible personal property sold in an export transaction when the following requirements are met:

1. To qualify for the exemption from the imposition of sales tax on export transactions, the tangible personal property must be irrevocably committed to the export process, resulting in the stream of commerce remaining continuous and unbroken; and
2. Any shipping documents from the sale should: (1) describe the tangible personal property; (2) provide a date of shipment; (3) provide a final destination, which will generally only list the airport code or country; and (4) provide a name or address of the Freight Forwarder.

Or,

3. The sale is shipped to a 9-digit zip code of a valid address listed on Florida's certified forwarding agent list.

**ANSWER:** Taxpayer would not be required to collect Florida sales tax on sales of tangible personal property sold in an export transaction when the following requirements are met:

1. To qualify for the exemption from the imposition of sales tax on export transactions, the tangible personal property must be irrevocably committed to the export process, resulting in the stream of commerce remaining continuous and unbroken; and
2. Any shipping documents from the sale should: (1) describe the tangible personal property; (2) provide a date of shipment; (3) provide a final destination, which will generally only list the airport code or country; and (4) provide a name or address of the Freight Forwarder.

Or,

3. The sale is shipped to a 9-digit zip code of a valid address listed on Florida's certified forwarding agent list.

September 12, 2023

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

Via Email: [REDACTED]

Subject: Technical Assistance Advisement: 23A-016

STATUTE CITE(S): Sections 212.02, 212.05965, and 212.06, Florida Statutes (F.S.)

RULE CITE: Rule 12A-1.0015, Florida Administrative Code (F.A.C.)

[REDACTED]. ("Taxpayer")

FEIN: [REDACTED]

BP#: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated May 10, 2023, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the matter referenced below. An examination of your letter has established that Taxpayer has complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

#### **Requested Advisement**

Taxpayer is seeking guidance regarding the sales and use tax treatment of export sales in Florida and what documentation a foreign purchaser would need to provide Taxpayer to ensure that the sale meets the requirement to be exempt from sales and use tax in Florida. In particular, Taxpayer would like confirmation that it is not required to collect Florida sales tax on sales of tangible personal property sold in an export transaction when the following requirements are met:

1. To qualify for the exemption from the imposition of sales tax on export transactions, the tangible personal property must be irrevocably committed to the export process, resulting in the stream of commerce remaining continuous and unbroken; and
2. Any shipping documents from the sale should: (1) describe the tangible personal property; (2) provide a date of shipment; (3) provide a final destination, which will generally only list the airport code or country; and (4) provide a name or address of the Freight Forwarder.

Or,

3. Sale is shipped to a 9-digit zip code of a valid address listed on Florida's certified forwarding agent list.

### Facts

On August 9, 2023, the Department reached out to Taxpayer for clarification of the facts because it appeared that there was a discrepancy between the facts provided by Taxpayer and what was actually on Taxpayer's website. In particular, it appeared that Taxpayer's website indicated it had one International Shipping Center in [REDACTED] that was strictly used for shipping items to foreign customers as opposed to Taxpayer's presentation of the facts which indicated the foreign purchaser directs the Marketplace Seller to ship the purchased items directly to a Forwarding Agent located in Florida. On August 18, 2023, Taxpayer indicated that the facts as provided in its request dated May 10, 2023, were correct and were to be used in formulating the TAA response.

Through its website, [REDACTED], Taxpayer hosts an online marketplace where third-party sellers post product listings, and third-party users may respond to the listings by either bidding on items via an online auction sale or purchasing the listed products at a fixed price. Taxpayer provides the platform for the sale of goods, but Taxpayer does not sell the items listed for sale. All product listings and sales are subject to Taxpayer's User Agreement, which you state makes it clear that Taxpayer is not the seller of record for the products listed on [REDACTED].

You state that pursuant to s. 212.05965(1)(b), F.S., Taxpayer is defined as a Marketplace Provider<sup>1</sup> and is therefore required to collect and remit Florida sales and use tax to the Department for sales that occur between Marketplace Sellers<sup>2</sup> and Florida customers via Taxpayer's website. Taxpayer registered with the Department as a Marketplace Provider and began filing Florida sales and use tax returns with the Department for the period beginning July 1, 2021. On Taxpayer's sales and use tax returns, Taxpayer reports all sales made by Marketplace Sellers to Florida customers that were made through Taxpayer's website. Taxpayer collects and remits the Florida sales and use tax due from the Marketplace Sellers to the Department.

Through Taxpayer's website, Marketplace Sellers sell tangible personal property to customers located worldwide. In the case of a foreign purchaser, the purchaser pays the United States-based

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<sup>1</sup> Section 212.05965(1)(b), F.S., defines the term, "Marketplace provider," as a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace and who directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits all or part of the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

<sup>2</sup> Section 212.05965(1)(c), F.S., defines the term, "Marketplace seller," as a person who has an agreement with a marketplace provider that is a dealer under this chapter and who makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by the marketplace provider.

Marketplace Seller directly via Taxpayer's website; then, the foreign purchaser directs the Marketplace Seller to ship the purchased item directly to a Forwarding Agent located in Florida. The Forwarding Agent then helps to facilitate the international logistics and customs clearance of the item, ultimately delivering it to the final destination in the foreign purchaser's country of residence. This process is referred to as "freight forwarding."

### **Law and Discussion**

Unless a specific exemption applies, s. 212.05, F.S., provides it is the legislative intent that every person is exercising a taxable privilege that engages in the business of selling tangible personal property<sup>3</sup> in this state. For exercising such a privilege, a tax is levied on each taxable transaction or incident. The tax is due and payable at the rate of 6 percent, plus any applicable surtaxes imposed under s. 212.055, F.S., on the total consideration received for each item or article of tangible personal property when sold at retail in this state.

Article 1, Section 10, Clause 2 of the United States Constitution ("Import-Export Clause") generally prohibits individual states from taxing imports and exports to and from the state. Where a state law conflicts with this or any other portion of federal law, federal law controls. See U.S. Const. art. VI., cl.2 ("Supremacy Clause").

In order to affect the requirements imposed by the Import-Export Clause and other components of federal law, Florida law provides that it does not intend to levy a tax in violation of the Constitution or laws of the United States. See s. 212.06(5)(a), F.S. Thus, Chapter 212, F.S., will not permit a conflict between itself and federal law; the provisions of Chapter 212, F.S., will automatically defer to federal law. Therefore, if the tangible personal property involved in this case is shielded from taxation by the Import-Export Clause, Chapter 212, F.S., would not impose tax upon it. However, Florida law places the burden to prove export on the exporter by providing that property received by a purchaser within Florida is presumed to be delivered in Florida, and therefore, taxable, unless adequate documentation can prove otherwise. See s. 212.06(5)(a), F.S.; Rule 12A-1.0015(2)(a), F.A.C.

As an important component of federal law, the scope of the Import-Export Clause primarily has been defined through interpretation by the United States Supreme Court. See e.g., Coe v. Errol, 116 U.S. 517 (1886); A.G. Spalding & Bros. v. Edwards, 262 U.S. 66 (1923); Carson Petroleum Co. v. Vial, 279 U.S. 95 (1929); Kosydar v. National Cash Register Co., 417 U.S. 62 (1974); Department of Revenue v. Association of Washington Stevedoring Companies, 435 U.S. 734 (1978).

The Court has interpreted the Import-Export Clause to prevent state taxation of property when that property has been sufficiently committed to the export process. See Kosydar. Consequently, the focus of most Import-Export Clause cases has been to determine the point of commencement and conclusion of that export process, Id. and to determine whether that process was continuous and unbroken, Carson. The Kosydar and Carson cases illustrate the Court's approach.

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<sup>3</sup> 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. See s. 212.02(19), F.S.

Kosydar involved an Ohio manufacturer of cash registers. Pursuant to orders for cash registers to be delivered and used in a foreign country, the Ohio manufacturer had begun manufacturing a bulk of cash registers to meet its supply needs. Once finished, the registers were stored in an Ohio warehouse and sometimes remained there for years before being shipped abroad. Ohio attempted to impose a tax on the cash registers, and the manufacturer claimed protection under the Import-Export Clause. The Court interpreted the Import-Export Clause to require a physical commitment to the export process before its protections applied. Since the registers had not physically begun their journey out of the country, the Import-Export Clause did not apply.

Carson involved an oil company that purchased petroleum in certain interior states, and then transported the petroleum across state lines via railway to New Orleans. In New Orleans, the oil was accumulated in storage tanks owned by the purchaser. The company intended that the oil be exported, but the oil was stored in New Orleans until enough petroleum was accumulated to justify the costs of shipment overseas. Louisiana argued that the oil became subject to local taxation because it had come to rest in Louisiana and the export journey was broken. However, the Court held that the Import-Export Clause shielded the oil from state taxation because a good faith and temporary interruption of the passage in furtherance of the intended transport does not break the continuity of journey that the Import-Export Clause requires. Carson, 279 U.S. at 103 (citing Champlain Realty Co. v. Brattleboro, 260 U.S. 366 (1922)).

Florida courts have also previously faced the issues involved in the instant case. In Fred McGilvray, Inc. v. Askew, 340 So.2d 475 (Fla. 1976), the Florida Supreme Court was presented a case wherein a subcontractor was involved in a construction project in the Bahamas. The subcontractor purchased materials from sources within and without Florida and received those materials at its Florida location. Eventually, the materials were loaded onto contractor-chartered barges, and subsequently delivered to the Bahamas. However, the subcontractor was not able to present any evidence of the property's commitment to the export process. The subcontractor did not have any bills of lading or export declarations, and because the barges were chartered by the contractor, the subcontractor was not able to present the statutorily-preferred method of proof of export, the use of a common carrier. See s. 212.06(5)(a), F.S. Thus, the Florida Supreme Court held that there was too little evidence of commitment to the export process to find the goods protected by the Import-Export Clause.

Three years after the Florida Supreme Court's decision in Fred McGilvray Inc., the Florida First District Court of Appeal was presented with another foreign installation contract case. Great Lakes Dredge & Dock Co. v. Department of Revenue, 381 So.2d 1078 (Fla. 1st DCA 1979), review denied, 381 So.2d 765 (Fla. 1980), involved a situation wherein a joint venture was created for the purpose of modernizing the Port of Dammam, the primary port of Saudi Arabia. Pursuant to the joint venture's contract with the Saudi Arabian government, the joint venture was required to provide certain materials and equipment for use on the construction project in Saudi Arabia. In order to effectively package and ship the materials and equipment, the joint venture had the property delivered to Dade County, Florida, where the joint venture took possession of the property in order to prepare it for shipping and deliver it to a transporter for ocean transport to Saudi Arabia. The property was prepared for shipment, delivered to the transporter, and shipped by the transporter to the foreign

port. The Department attempted to impose sales tax on the property because it claimed that the property came to rest at Dade County, Florida, and that the continuity of journey requirement was not satisfied. The Florida First District Court of Appeal held that even while the property was being marshaled in Dade County, Florida, the property was still under the protection of the Import-Export Clause. Relying on the analysis provided by the federal case law and the Florida Supreme Court, the First District Court of Appeal weighed the factors involved in order to determine whether the continuity of journey requirement had been satisfied. The court found that 1) the purchaser was contractually bound to deliver the goods to Saudi Arabia, 2) the purchaser had bills of lading, 3) export declarations were processed, 4) the purchaser maintained inventories which documented the packaging of the property, 5) many of the purchase invoices were marked "for export," and 6) many of the purchase invoices even required delivery by a certain date for purposes of meeting overseas shipping dates. Thus, the court held that the goods were committed to the export process from the time they were purchased from the original vendor, and the steps involved in the export process were steps in furtherance of transport and did not subject the property to state taxation.

The Department argued that s. 212.06(5)(a), F.S., was not satisfied because that statute requires that a common carrier, a licensed exporter, or the United States mail service be used for the export process. However, the court determined that s. 212.06(5)(a), F.S., only created a presumption against exportation if one of the enumerated methods of shipping were not used, but that such presumption could be rebutted by other evidence that the property was sufficiently committed to the export stream.

Section 212.06(5)(a)1., F.S., and Rule 12A-1.0015(1)(a), F.A.C., provide that tangible personal property imported, produced, or manufactured in this state for export is not subject to Florida sales tax when the importer, producer, or manufacturer delivers the property to a licensed exporter for export outside Florida or to a common carrier for shipment outside of Florida, or mails the property by United States mail to a destination outside Florida.

Rule 12A-1.0015(2)(b), F.A.C., provides that "when a dealer sells tangible personal property, commits the property to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida, the dealer is not required to collect tax." For the exemption to be applicable, the dealer must commit the property to the exportation process at the time of the sale, and the exportation process must remain continuous and unbroken until the property is exported from Florida.

Rule 12A-1.0015(2)(b), F.A.C., lists methods to commit the property to the exportation process at the time of sale:

1. The dealer is required by the terms of the sale contract to deliver the property outside Florida using the dealer's own mode of transportation.
2. The dealer is required by the terms of the sale contract to mail the property by United States mail to a destination located outside Florida; or

3. The dealer is required by the terms of the sale contract to deliver the property to a carrier, licensed customs broker, or forwarding agent for final and certain movement of the property to a destination located outside Florida.

Please be aware that the dealer is required to keep sufficient records such as contracts, invoices, bills of lading, etc. to document that the tangible personal property was exported outside Florida. It is noted that it should be possible to trace and identify the specific item(s) throughout the documentation.

As discussed above, where a purchaser takes possession of tangible personal property within Florida, but such is done in furtherance of exporting the property out of the country, the Import-Export Clause of the United States Constitution may apply to the activities of the purchaser, and if such purchaser can adequately document the transaction, the purchaser can overcome the presumption of taxation in this state. Taxpayer's export transaction would not be subject to Florida sales and use tax provided the conditions specified in Rule 12A-1.0015(2)(b) F.A.C., and s. 212.06(5)(a)1, F.S. are met. There is no condition in Rule 12A-1.0015(2)(b), F.A.C., or s. 212.06(5)(a)1, F.S., which requires that a particular freight forwarder be used only that "the dealer is required by the terms of the sale contract to deliver the property to a carrier, licensed customs broker, or forwarding agent for final and certain movement of the property to a destination located outside Florida." In the instant case, if the tangible personal property is only taken possession of in Florida by a common carrier, licensed customs broker, or forwarding agent for final delivery outside the United States, the sale would not be subject to Florida sales tax.

In addition, effective January 1, 2022, s. 212.06(b), F.S., was amended to create a process by which a forwarding agent may apply for and receive a Certificate of Forwarding Agent Address (the Certificate). The certificate may be used to document that no sales tax is due on items shipped to the address on the Certificate for international export. A copy of the Certificate can be provided to the selling dealer in lieu of collecting the tax imposed by ch. 212, F.S. The new law specifies that a dealer may accept a valid copy of the Certificate and is not liable for any tax due on sales made during the effective dates indicated on the certificate. The Department is required to publish a list of forwarding agents that have received a Certificate and identify their name, address, and expiration date provided on their Certificate. See [www.floridarevenue.com](http://www.floridarevenue.com) for a current list; s. 213.053(5), F.S. A selling dealer may collect a copy of a forwarding agent's Certificate or rely on the list published on the Department's website – in either case the selling dealer will not be held liable for tax due on sales made during the effective dates indicated on the Certificate.

Taxpayer has inquired as to "if" the requirements listed above are not sufficient to meet the requirements of the sales tax exemption for exports, could Taxpayer assign the sales tax refund to the purchaser so the purchaser can apply for a refund directly with the Department. Regarding tax paid into the State Treasury that is determined to be an overpayment, a payment where no tax is due, or a payment made in error, such tax is eligible for refund when an application for refund is filed within three-years from the date that the tax was paid. See s. 215.26, F.S. Section 215.26, F.S., and Rule 12A-1.014(4) F.A.C., *Refunds and Credits for Sales Tax Erroneously Paid*, authorize a refund under certain circumstances, provided the customer paid the tax directly to the Department or the

customer has secured an assignment from the selling dealer to whom the tax was paid. The assignment of rights provides that the vendor assigns any right the vendor has to recover sales tax paid to the Department. The party requesting a refund must timely file an Application for Refund, Form DR-26S, with the Department. For circumstances in which an assignment of rights is required, please use Form DR-26A, Assignment of Rights to Refund of Tax.

### Conclusion

Taxpayer would not be required to collect Florida sales tax on sales of tangible personal property sold in an export transaction when the following requirements are met:

1. To qualify for the exemption from the imposition of sales tax on export transactions, the tangible personal property must be irrevocably committed to the export process, resulting in the stream of commerce remaining continuous and unbroken; and
2. Any shipping documents from the sale should: (1) describe the tangible personal property; (2) provide a date of shipment; (3) provide a final destination, which will generally only list the airport code or country; and (4) provide a name or address of the Freight Forwarder.

Or,

3. The sale is shipped to a 9-digit zip code of a valid address listed on Florida's certified forwarding agent list.

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)717-6363.

Sincerely,

Leigh L. Ceci

Leigh L. Ceci, MAcc  
Tax Law Specialist  
Technical Assistance & Dispute Resolution  
(850)717-6363

CC: [REDACTED]  
[REDACTED]  
[REDACTED]

Record ID: 7000992849

### 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: 7000992849

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](mailto:douglas.charity@floridarevenue.com).

Thank you.