

SUMMARY

QUESTION #1: Can the presumption contained in Rule 12A-1.007(8)(d), Florida Administrative Code, be rebutted by evidence that the purchasing dealer resold an untitled vehicle to a consumer?

ANSWER: The presumption created in Rule 12A-1.007(8)(d), F.A.C., cannot be rebutted solely by providing evidence that the purchasing dealer resold an untitled vehicle. The Department will also look to determine if the purchasing dealer used the vehicle for purposes other than demonstration or display that created a taxable use of the vehicle before the dealer resold the vehicle.

QUESTION #2: Can the presumption contained in Rule 12A-1.007(8)(d), Florida Administrative Code, be rebutted by evidence that the purchasing dealer resold a titled vehicle to a consumer without first having used that vehicle in its business operations so as to render it a used vehicle?

ANSWER: The presumption created in Rule 12A-1.007(8)(d), F.A.C., can be rebutted by providing sufficient evidence that the purchasing dealer resold a titled vehicle without having used that vehicle in its business operations so as to render it a used vehicle. If the purchasing dealer did not use the vehicle for purposes other than demonstration or display before it resold the vehicle, it has rebutted the presumption created in this rule provision.

May 14, 2009

XXX
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Re: Technical Assistance Advisement 09A-024
Sales and Use Tax
Purchase of a Motor Vehicle by a Nonfranchised Motor Vehicle Dealer
Rules 12A-1.007(8)(d), and 12A-1.039(5), Florida Administrative Code (F.A.C.)

Dear XXX:

This response is in reply to your letter dated November 16, 2008, requesting the Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the Department's position on the issue described below. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for issuance of a TAA.

Facts

In a letter dated September 11, 2008, you provided that XXX (the Taxpayer) is proposing to sell new untitled Lexus vehicles to motor vehicle dealers who are either licensed in Florida as independent nonfranchised motor vehicle dealers, or as franchised motor vehicle dealers that are not franchised to sell Lexus vehicles. These sales may occur when: 1) the purchasing dealer has secured a buyer for the vehicle; 2) the purchasing dealer purchases the vehicle to place in its inventory; or, 3) the purchasing dealer intends to use the vehicle for demonstration or display purposes only. The Taxpayer may not always be aware how the purchasing dealer will use the vehicle.

The Taxpayer would complete the transaction either by: 1) transferring the manufacturer's certificate of origin to the purchasing dealer who, in turn, would apply for a title for the vehicle when it sold the vehicle to the consumer; or 2) applying for a title for the vehicle in the purchasing dealer's name. However, unless the purchasing dealer intends to use the vehicle for demonstration or display purposes only, the Taxpayer would obtain a copy of the purchasing dealer's resale certificate as evidence that the vehicles were for resale.

You asked us, based on this proposal, if Rule 12A-1.007(8)(d), F.A.C., provided for a conclusive or rebuttable presumption. We issued you a Letter of Technical Advice, dated October 10, 2008, concluding that the presumption provided for in Rule 12A-1.007(8)(d), F.A.C., is a rebuttable presumption.

Requested Advisement

You now ask that the Department the following questions pertaining to the scenario presented above:

1. Can the presumption contained in Rule 12A-1.007(8)(d), Florida Administrative Code, be rebutted by evidence that the purchasing dealer resold an untitled vehicle to a consumer?
2. Can the presumption contained in Rule 12A-1.007(8)(d), Florida Administrative Code, be rebutted by evidence that the purchasing dealer resold a titled vehicle to a consumer without first having used that vehicle in its business operations so as to render it a used vehicle?

Taxpayer's Position

The Taxpayer's position is that the answer to both questions is no. The Taxpayer provides that "fundamental to Rule 12A-1.007(8)(d)[, F.A.C.,] is the understanding that the sale of a new vehicle by a dealer not franchised to sell that line-make of vehicle is a sale that cannot be considered in the dealer's regular course of business." The Taxpayer offers that this would be the case regardless of the titling of the vehicle prior to its sale. The Taxpayer also offers that to rebut the presumption of the rule provision, the purchasing dealer would have to establish that the vehicle was used in its business operations and that it was later resold to a customer.

Discussion

Your reliance on Rule 12A-1.007(8)(d), F.A.C., to support your position is misplaced, because this rule speaks to the purchasing dealer's responsibility after using its resale certificate to purchase a vehicle tax-exempt that it is not franchised to sell, or does not ordinarily sell. If the purchasing dealer uses the vehicle for any purpose other than demonstration or display, it is presumed that the purchasing dealer is not holding the vehicle in inventory for sale in the regular course of its business, or for operation in connection with its business, and tax is due on the cost price of the vehicle by the purchasing dealer.

This rule provision does not require that the vehicle must be used in the purchasing dealer's business before it is resold to rebut this presumption. To the contrary, if the purchasing dealer uses the vehicle for any other purpose other than demonstration or display, the presumption is not rebutted because it is presumed that the dealer is not holding the vehicle in inventory for sale, and tax is due on the cost price of the vehicle. Further, the purchasing dealer's titling of a vehicle in its name and subsequent sale of the vehicle alone does not rebut the presumption created in this rule provision. The Department will look to the transaction surrounding the purchasing dealer's use of the vehicle it has purchased for resale as a whole (i.e., how the vehicle is used, how the vehicle is recorded in the dealer's books and records, etc.) when determining whether the purchasing dealer has rebutted the presumption of Rule 12A-1.007(8)(d), F.A.C.

In the Taxpayer's proposed transaction, the Taxpayer provides that "unless the purchasing dealer intended to use the vehicle for demonstration or display only, Lexus of XXX would obtain a copy of its current annual resale certificate as evidence that the vehicles were for resale" Even if the purchasing dealer is using the vehicle for demonstration or display only, the selling dealer may accept the purchasing dealer's annual resale certificate as evidence that the vehicles are for resale. When the purchasing dealer uses the vehicle for demonstration or display only, generally the vehicle is still in the purchasing dealer's inventory to be sold.

Conclusion

1. The presumption created in Rule 12A-1.007(8)(d), F.A.C., cannot be rebutted solely by providing evidence that the purchasing dealer resold an untitled vehicle. The Department will also look to determine if the purchasing dealer used the vehicle for purposes other than demonstration or display that created a taxable use of the vehicle before the dealer resold the vehicle.

2. The presumption created in Rule 12A-1.007(8)(d), F.A.C., can be rebutted by providing sufficient evidence that the purchasing dealer resold a titled vehicle without having used that vehicle in its business operations so as to render it a used vehicle. If the purchasing dealer did not use the vehicle for purposes other than demonstration or display before it resold the vehicle, it has rebutted the presumption created in this rule provision.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation

summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related 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.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)414-6107.

Respectfully,

Kimberly McCorvey
Technical Assistance & Dispute Resolution

Record ID: 59019