

SUMMARY

QUESTION: Is a tax credit allowed for the trade of a motor vehicle under a one pay lease?

ANSWER: Yes. A trade in allowance should be deducted from the sales price of the leased vehicle before applying sales tax.

August 19, 2009

XXX
XXX
XXX
XXX

Re: Technical Assistance Advisement 09A-041
Sales and Use Tax
Motor Vehicle – Lease - Trade-In

Dear XXX:

This response is in reply to your letter dated July 9, 2009, 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

The one pay lease agreement you provided to us indicates that XXX (purchasers) leased a 2008 Lexus LS460L from XXX (dealer) on December 20, 2007 for 36 months. The lease agreement provides that the amount due at lease signing was \$38,535.57. This amount includes a *Total Lease Payment* of \$35,350.92 (36 months multiplied by 981.97), \$175.00 in *Registration Fees*, \$62.00 in *Florida Fees*, \$599.95 in *Dealer Services*, \$6.50 in *Tire and Battery Fees*, and \$2341.20 in *Taxes*.

The lease agreement does not indicate that the purchasers traded a vehicle. However, the lease order that you provided to us indicates that a 2005 Lexus LS430 was traded in under the lease. The lease order indicates that the dealer allowed \$30,000.00 for the trade. The Department has verified that the vehicle traded was owned by the purchasers at the time of trade.

Requested Advisement

Your letter to us asks if there is a tax credit for a trade-in on a standard lease and/or one pay lease. During our telephone conversation on August 10, 2009, you revised your question to us. You ask if a tax credit is allowed for the trade of the purchasers' vehicle under their one pay lease.

Discussion

Florida law provides that a used article accepted as a trade on the sale of a new article, and that used article is intended to be resold, is considered a credit or partial payment on the sales price of the new article being purchased. Thus, any tax due is levied after the used article is deducted from the sales price of the new article. See Section 212.09(1), F.S. The term "sale" includes leases of tangible personal property. See Section 212.02(15)(a), F.S. Therefore, a used article can be accepted as a trade on the lease of a new article. However, when a person trades-in a motor vehicle on the lease of a new motor vehicle, the person that is leasing the new vehicle must "hold title to" (own) the motor vehicle that is being traded, or the owner of the vehicle being traded must be present to transfer the title directly to the lessor for the benefit of the lessee.

Conclusion

The purchasers' trade in allowance of \$30,000.00 should be deducted from the sales price of the lease vehicle before applying sales tax.

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: 67850