



Executive Director  
Marshall Stranburg

**QUESTION:** WHETHER SHIPPING AND HANDLING FEES CHARGED BY TAXPAYER TO ITS CUSTOMERS FOR FREIGHT SERVICES ARE SUBJECT TO SALES TAX.

**ANSWER:** NO, IF TAXPAYER CONTINUES TO PROCESS AND BILL ITS FREIGHT CHARGES AS OUTLINED IN ITS REQUEST FOR TECHNICAL ASSISTANCE. TAXPAYER DEMONSTRATED THAT IT SEPARATELY STATES ALL SHIPPING AND HANDLING FEES AND THAT ALL SALES ARE SHIPPED F.O.B. ORIGIN, AS REQUIRED IN RULE 12A-1.045, F.A.C. ANY SALES WHICH DO NOT HAVE SEPARATELY STATED CHARGES FOR SHIPPING AND HANDLING FEES, OR WHICH ARE NOT SHIPPED F.O.B. ORIGIN, WOULD BE SUBJECT TO SALES TAX ON THE SHIPPING AND HANDLING FEES.

**April 3, 2014**

RE: Technical Assistance Advisement 14A-009  
XXX ("Taxpayer")  
Sales and Use Tax on Shipping and Handling Fees  
Chapter 212, Florida Statutes ("F.S.")

Dear XXX,

This letter is in response to your request dated XXX, for issuance of a Technical Assistance Advisement ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of shipping and handling fees ("S&H"). An examination of your request has established you complied with the statutory and regulatory requirements for issuance of a TAA.

### **FACTS PRESENTED**

Taxpayer sells tangible personal property to Florida customers via its XXX. According to Taxpayer's request for advisement, "[t]he distribution, fulfillment and related services (e.g. inventory storage, packaging and shipping services) for such sales are handled by fulfillment centers ("FCs") leased and operated by affiliated entities, including FCs that may be built in Florida." These FCs purchase products from various vendors and hold the inventory for resale to both related and unrelated parties. FCs provide labeling, packaging, and shipping to Taxpayer when such items are sold to Taxpayer's customers. The fulfillment process is described by Taxpayer as follows:

... an FC will sell the tangible personal property ordered by the customer to Taxpayer, the FC prepares the tangible personal property for shipping, and then a common carrier picks up the tangible personal property at the FC for delivery to the customer. Title passes from the FC to Taxpayer, and then to the customer at the point of origin (i.e., F.O.B. origin).

Child Support Enforcement – Ann Coffin, Director • General Tax Administration – Maria Johnson, Director  
Property Tax Oversight – James McAdams, Director • Information Services – Damu Kuttikrishnan, Director

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Each order placed on the XXX website is subject to Taxpayer's "Conditions of Use" policy, which specifically provides that: "All items purchased from XXX are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon our delivery to the carrier."

Taxpayer also explained that when a customer purchases tangible personal property, the customer may be charged an S&H fee. The components of the S&H fee include the preparation of the order for shipment and the actual shipment of the order from the FC to the customer via common carrier. The price of the S&H fee varies, depending on the type of item shipped and the shipping speed selected by the customer. Taxpayer asserts that the S&H fee is separately stated on the customer's invoice as a single line item, separate from the total sales price of the tangible personal property and any applicable sales or use tax, or other charges.

### **REQUESTED ADVISEMENT**

Is the S&H fee charged by Taxpayer on sales of tangible personal property shipped to customers in Florida subject to Florida sales tax?

### **APPLICABLE LAW AND DISCUSSION**

Section 212.05, F.S., provides, in part, the following regarding the sale of tangible personal property:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales ....or who stores for use or consumption in this state any item or article of tangible personal property...

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident .... (Emphasis added.)

Section 212.02, F.S., provides, in part, the following definitions for "sale" and "sales price":

(14)(a) "Retail Sale" or "sale at retail" means a sale to a consumer or to a person for any purpose other than for resale in the form of tangible personal property or services... and includes all such transactions that may be made in lieu of retail sales or sales at retail.

(15) "Sale" means and includes:

(a) Any transfer of title or possession, or both ... in any manner or by any means whatsoever, of tangible personal property for a consideration.

(16) "Sales price" means 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 ....

(19) “Tangible personal property” means and includes personal property which may be seen, weighed, measured, or touched ...

Rule 12A-1.045, F.A.C., provides the general rule for the taxability of transportation charges associated with the sale of tangible personal property:

(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.

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(5) If the seller contracts to sell tangible personal property F.O.B. origin, the title to the property passes at the point of origin. Since the title to the property passes at the point of origin, transportation services arranged by the seller and rendered to the buyer are not a part of the taxable selling price, provided the transportation charges are separately stated. Where the transportation charges are billed by the seller to the buyer, but documentation is inadequate to establish the point at which title passes to the buyer, it is presumed that the tangible personal property was sold F.O.B. origin and the title to the property passes at the point of origin. In such instances, the transportation charges are not considered a part of the selling price of the property, if separately stated.

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In general, sales of tangible personal property in Florida are subject to sales tax on both the item sold and any related services since the cost of any labor or service used, such as transportation charges, would be included in the sales price.<sup>1</sup> Transportation charges include carrying, delivery, freight, handling, pickup, shipping, and other similar charges or fees.<sup>2</sup> Transportation charges not separately stated on an invoice with the sale of tangible personal property are subject to sales tax since these

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<sup>1</sup> See s. 212.02(16), F.S.

<sup>2</sup> Rule 12A-1.045(1), F.A.C.

charges would be considered part of the sales price of taxable tangible personal property.<sup>3</sup> Taxpayer's S&H fees fall squarely within the definition of "transportation charges" found in Rule 12A-1.045, F.A.C.; therefore, these charges are taxable unless another provision applies.

Rule 12A-1.045(5), F.A.C., states that if the seller contracts to sell tangible personal property F.O.B. origin, the title to the property passes at the point of origin. Since the title to the property passes at the point of origin, transportation services arranged by the seller and rendered to the buyer are not part of the taxable selling price, provided the transportation charges are separately stated. As Taxpayer's "Conditions of Use" provides that the risk of loss and title for all sales pass to the customer upon delivery to the carrier (i.e., F.O.B. origin), and Taxpayer stipulates that each invoice or other billing statement breaks out S&H fees from taxable items, the S&H fees would qualify for treatment under this subsection. Therefore, the S&H fees for Taxpayer's sales to its customers would not subject to Florida sales tax, provided that each sale is shipped F.O.B. origin and the S&H fees are broken out on all billing documents.

### **CONCLUSION**

Since the transaction described by Taxpayer in its TAA request appears to meet the requirements of the Florida rules for tax free treatment of its S&H fees, Taxpayer's transportation charges (i.e., S&H fees) are not subject to Florida sales tax. Taxpayer has no responsibility to collect or remit tax on such fees, provided that the S&H fees are separately stated and all sales continue to be shipped F.O.B. origin. However, if any transaction fails to meet the separately stated billing requirement or the F.O.B. origin requirement, the S&H fees would be subject to tax.

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 and 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 15 days of the date of this letter.

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<sup>3</sup> *Id at (2).*

Should you have any questions, please feel free to contact me.

Sincerely,

Kimberly Bevis  
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Technical Assistance and Dispute Resolution  
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