



Executive Director
Marshall Stranburg

QUESTION: WHETHER TAXPAYERS' METHOD FOR BILLING AND DOCUMENTING CLAIMED EXEMPT SALES OF SLEEPING ACCOMMODATIONS TO NON-GOVERNMENTAL EXEMPT ENTITIES SATISFIES TAXPAYERS' FLORIDA SALES AND USE TAX OBLIGATIONS AND RELIEVES TAXPAYERS OF THE OBLIGATION TO COLLECT TAX ON TRANSACTIONS WITH THOSE ENTITIES.

ANSWER: YES, ASSUMING TAXPAYERS ARE ACCEPTING THE DOCUMENTATION IN GOOD FAITH. TAXPAYERS DOCUMENT CLAIMED EXEMPT SALES TO NON-GOVERNMENTAL EXEMPT ENTITIES BY, AMONG OTHER THINGS, INCLUDING THE NAME OF THE EXEMPT ENTITY ON THE GUEST FOLIO AND COLLECTING THE FOLLOWING DOCUMENTATION: (I) A COPY OF THE ENTITY'S EFFECTIVE FLORIDA CONSUMER'S CERTIFICATE OF EXEMPTION (FORM DR-14) ISSUED BY THE DEPARTMENT; AND (II) A DECLARATION/CERTIFICATE, SIGNED BY THE GUEST, WHICH IS SIMILAR TO THE SUGGESTED ATTESTATION FORM SET FORTH IN RULE 12A-1.038(4)(B)2., F.A.C., FOR DOCUMENTING SALES TO EXEMPT NON-FEDERAL GOVERNMENTAL UNITS.

August 26, 2014

RE: Technical Assistance Advisement – TAA 14A-017
Sales and Use Tax – Sale of Sleeping Accommodations to Exempt Entity
Sections 212.03 and 212.08(7), Florida Statutes (“F.S.”)
Rules 12A-1.038 and 12A-1.061, Florida Administrative Code (“F.A.C.”)
XXXXXXXXXXXXX (Multiple Entities)
FEI #: XX-XXXXXXX (Multiple Entities)

Dear XXXXXX:

This is in response to your letter, dated May 15, 2014, 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., regarding the sale of sleeping accommodations to a non-governmental exempt entity. 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 a TAA.

ISSUE

The issue involves whether Taxpayers' method for billing and documenting claimed exempt sales of sleeping accommodations to non-governmental exempt entities satisfies Taxpayers' Florida sales and use tax obligations and relieves Taxpayers of the obligation to collect tax on transactions with those entities.

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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FACTS AS PRESENTED

Taxpayers are a collection of hotels in Florida. You represent that Taxpayers document claimed exempt sales to non-governmental exempt entities by, among other things, including the name of the exempt entity on the guest folio and collecting the following documentation: (i) a copy of the entity's effective Florida Consumer's Certificate of Exemption (Form DR-14) issued by the Department; and (ii) a declaration/certificate signed by the guest. To illustrate, you included the following documentation with your letter:

- a copy of a Florida Consumer's Certificate of Exemption (Form DR-14) issued by the Department to a non-governmental exempt entity;
- a sample guest folio, showing, among other things, the name of the exempt entity, and payment being made by credit card¹; and
- a copy of the declaration/certificate to be signed by the guest.

The declaration/certificate you provide to the guest is similar to the suggested attestation form set forth in Rule 12A-1.038(4)(b)2., F.A.C., for documenting sales to exempt non-federal governmental units.² You revised the suggested attestation form by replacing the term "exempt governmental organization" with "exempt nongovernmental organization" or "exempt entity," and by adding lines for certain additional contact information for the exempt entity (i.e., phone number and e-mail contact). You also added additional language to the suggested attestation form so as to emphasize that payment must be made directly from the funds of the exempt entity.³

You request confirmation that Taxpayers are billing and documenting sales to non-governmental exempt entities sufficiently for purposes of relieving Taxpayers of the obligation to collect tax on transactions with those entities.

LAW AND DISCUSSION

Section 212.03, F.S., imposes Florida state sales tax at the rate of six percent (6%)⁴ on the privilege of engaging in the rental or leasing of living quarters or sleeping accommodations, including hotel rooms. *See* s. 212.03(1)(a), F.S. The tax is imposed on the total rental charged.

¹ The card member's name is shown to be that of the exempt organization.

² For sales to exempt non-federal governmental units, the suggested attestation form is one of two methods for documenting tax-exempt purchases or rentals. The other method involves copying the authorized representative's Purchasing or Procurement Card ("P-Card"), or retaining certain information shown on the P-Card. *See* Rule 12A-1.038(4)(b), F.A.C.

³ For example, you include the following language: "If the charges ... are paid by credit card, I attest that the credit card is issued directly to the exempt organization identified below, in the name of the exempt organization identified below, with the bill directly paid by the funds of the organization. If such charges are paid by check, I attest that the check will be drawn by the exempt organization."

⁴ Discretionary county sales surtax, if any, as well as local transient rental tax(es), if any, are also owed on the transient rental charge if the six percent (6%) Florida state sales tax applies. *See* ss. 125.0104, 125.0108, 212.0305, and 212.054, F.S.

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See s. 212.03(2), F.S. Rental charges include the total consideration received for the use of the sleeping accommodation, and include any charge to a guest for the use of items or services that is required to be paid by the guest as a condition of the use or possession of the accommodation. *See* Rule 12A-1.061(3)(e), (4)(b)1., F.A.C.

Several exemptions to the general rule of taxability of sleeping accommodations are found in the various subsections of s. 212.03, F.S., and elsewhere.⁵ Of relevance to your request are exemptions for sales or leases to certain non-governmental organizations.⁶ As to purchases of sleeping accommodations by such exempt entities, the exemption is not available unless, among other things, the exempt entity extends to the dealer (i.e., the hotel) a copy of the exempt entity's effective Consumer's Certificate of Exemption at the time of the purchase, the sleeping accommodations are not used for personal purposes,⁷ the rental charges or room rates are "billed directly to and paid directly by the ... exempt organization,"⁸ and the employee or representative of the exempt entity provides the dealer with the proper documentation. *See* Rule 12A-1.061(15)(b)1., F.A.C.; *see also* s. 212.08(7), F.S. Additional guidance regarding sales made to exempt entities other than governmental units is found in Rule 12A-1.038(3), F.A.C.

CONCLUSION

Assuming Taxpayers are accepting the documentation in good faith, Taxpayers' method for billing and documenting claimed exempt sales of sleeping accommodations to non-governmental exempt entities satisfies Taxpayers' Florida sales and use tax obligations and relieves Taxpayers of the obligation to collect tax on transactions with those entities.

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

⁵ The legislature has expressed its specific intent to "tax each and every sale, admission, use, storage, consumption, or rental levied and set forth in [Chapter 212, F.S.], except as to such sale, admission, use, storage, consumption, or rental as shall be specifically exempted therefrom by [Chapter 212, F.S.] subject to the conditions appertaining to such exemption." *See* s. 212.21(2), F.S. It is well settled that a taxpayer seeking the benefit of a tax exemption must clearly show that he or she is entitled under the law to the exemption; and the law is to be strictly construed as against the taxpayer claiming the exemption and in favor of the taxing power. *Green v. Pederson*, 99 So. 2d 292, 296 (Fla. 1957).

⁶ As an example, s. 212.08(7)(p), F.S., provides an exemption for sales or leases to organizations determined by the Internal Revenue Service to be exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

⁷ In general, provided that the dealer is acting in good faith, it is the responsibility of the employee or authorized representative of the exempt entity – not the responsibility of the dealer – to determine whether the purchase is for personal purposes or for use by the exempt entity. *See* Rule 12A-1.038(3)(c), F.A.C.

⁸ In general, payment cannot be made with the personal funds of an employee or authorized representative of the exempt entity, even if that person is subsequently reimbursed by the exempt entity. *See* Rule 12A-1.061(15)(b)2., F.A.C.; *see also* s. 212.08(7), F.S., and Rule 12A-1.038(3)(a), F.A.C. Sales to the federal government do not fall under these general rules, as the federal government is not required to have a Consumer's Certificate of Exemption, and exempt purchases can be made by authorized federal employees who are subsequently reimbursed by the federal government. *See* Rule 12A-1.038(4)(c), F.A.C. (setting forth a suggested certificate format to be issued by federal employees to selling dealers to make tax-exempt purchases).

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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 10 days of the date of this letter.

Sincerely,

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Record ID: 173497, 173506-08, 173511-19, 173521-27