



QUESTION:

What is required of a licensed exporter who will receive product for shipment for export outside of the United States to satisfy the exclusion for export sales.

ANSWER:

The licensed exporter must be in the business of receiving product and preparing it for export outside of the United States. All requirements provided for by s. 212.06(5), F.S., and Rule 12A-1.0015, F.A.C., regarding documentation and other procedures must be satisfied.

May 29, 2020

XXXXXXX
XXXXXXX
XXXXXXX
XXXXXXX

Re: Technical Assistance Advise ment No. – 20A-010
AMS #: 7000338055

Sales and Use Tax
Real Property Rentals
Sections 212.06, Florida Statutes (F.S.)
Rule 12A-1.0115, Florida Administrative Code (“F.A.C.”)

XXXXXXX
FEIN: XXXXXXXXXXXX
Business Partner Number: XXXXXXXX

XXXXXXX
FEIN: XXXXXXXXXXXX
Business Partner Number: XXXXX7

Dear XXXXXXXXX

This is in response to your request dated January 15, 2020, for a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), regarding exports. 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

Whether certain shipments made by third party vendors to XXXX and XXXX qualify as exports for purposes of section 212.06(5)(a), Florida Statutes ("F.S.") and Rule 12A-1.015, Florida Administrative Code ("F.A.C.")

FACTS

XXXX is a wholly owned subsidiary of XXXX. XXXX, Inc is a wholly own company of LBI Investments, LLC, and is an operating affiliate of XXXX. Both companies (XXXXXXXXXXXX) occupy a XXXXX building in Doral, Florida, where the facilities used for exporting products are situated. The companies employ approximately XXXXX persons in their facilities, and an additional XXXX in foreign countries in XXXXXXXXXXXXXXXX. The business models of XXXX and XXXX are designed to facilitate a foreign consumer's purchase of merchandise originating with an American vendor and the delivery of such merchandise to the foreign consumer, with no intervening use in the United States. XXXX is an air freight forwarder and indirect air carrier licensed by the U.S. Transportation Security Administration (XXXXXXXXXXXX).

XXXXXX and XXXX, under various trading brands, facilitate the purchase of goods from US merchants. The foreign consumer pays the US merchant directly for his purchase using his credit card, and directs the seller to ship the item via the United States Postal Service ("USPS"), or express carriers, to his US Export Address to facilitate the international air transport, customs clearance and delivery in the buyer's country of residence. XXXXX has the buyer's relevant information such as his foreign tax ID number, his home address, and his contact information on file. Upon receipt of his purchase at his US Export Address, XXXX identifies the purchaser using his "Suite No." account number. XXXX is responsible for export functions including printing of delivery address label, export declarations to US Customs, manifesting for the destination country customs authorities, international air transportation from Miami to the buyer's destination country, customs clearance and delivery. XXXXX bills the customer in the foreign country for the service of processing the buyer's purchase and final delivery to his home.

Under this model, neither XXXX nor XXXX is a party to any purchase or sale of the product; neither of them acquires title to it, pays the online vendor for it, or receives payment for the product from the foreign consumer. XXXX bills the foreign consumer only for other costs incurred and for the services of XXXX and XXXX with respect to facilitating the foreign consumer's purchase from the online vendor and the export of the product to the foreign consumer's location outside the United States.

The shipping instructions to the online vendor include a unique account number which XXXX assigns to the foreign consumer, and which enables XXXX to identify the foreign consumer that ordered the product, and to ship the product to the correct address outside the United States. Every shipment that arrives at their facilities is manifested on a customs manifest and exported within 24 to 48 hours of receipt. In the event the buyer's credit card payment for XXXXX service is denied, the parcel is returned to the selling merchant.

XXXX and XXXX do not accept delivery of merchandise to their facilities to be picked up there by foreign consumers. Neither XXXX or XXXX deliver, or cause the delivery of, merchandise to a location that is not outside of the United States.

XXXXX and XXXXX retain orderly records identifying each export, including the identity of the online vendor, the foreign consumer, and the ship-to address outside the United States. This record is kept in electronic form and preserved for Department review. Copies of invoices from online vendors to foreign consumers, bills of lading for exports, and other export documentation are also retained.

TAXPAYER'S POSITION

Products shipped by a third-party dealer to XXXX or XXXX, which are committed to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida, are exempt from Florida sales tax, therefore, the third-party dealer is not required to collect such taxes.

The following activities should not be considered intervening events, which would defeat the exempt status of the export transactions: the recordation of information pertaining to the products in the systems of XXXX and XXXX; the inspection and related processing of the products for purposes of assuring their conformity to the orders placed by foreign consumers, and preparing them for shipment to foreign destinations; the transfer of the products from XXXX to XXXX, and from XXXX to carriers for shipment to foreign destinations; the purchase by foreign consumers—from or through XXXX or XXXX—of insurance against loss or damage during shipment; the return of a product to a third-party dealer due to nonpayment by the foreign consumer, or the inability to effect delivery to the foreign consumer; any act reasonably necessary to comply with the laws and regulations governing the exportation of property from the United States to foreign destinations and/or foreign recipients; and the temporary retention of the products at XXXX or XXXX for purposes of accomplishing the foregoing tasks.

APPLICABLE LAW

Section 212.06(5)(a)1., F.S., provides:

(5)(a)1. Except as provided in subparagraph 2., it is not the intention of this chapter to levy a tax upon tangible personal property imported, produced, or manufactured in this state for export, provided that tangible personal property may not be considered as being imported, produced, or manufactured for export unless the

importer, producer, or manufacturer delivers the same to a licensed exporter for exporting or to a common carrier for shipment outside the state or mails the same by United States mail to a destination outside the state; or, in the case of aircraft being exported under their own power to a destination outside the continental limits of the United States, by submission to the department of a duly signed and validated United States customs declaration, showing the departure of the aircraft from the continental United States; and further with respect to aircraft, the canceled United States registry of said aircraft; or in the case of parts and equipment installed on aircraft of foreign registry, by submission to the department of documentation, the extent of which shall be provided by rule, showing the departure of the aircraft from the continental United States; nor is it the intention of this chapter to levy a tax on any sale which the state is prohibited from taxing under the Constitution or laws of the United States. Every retail sale made to a person physically present at the time of sale shall be presumed to have been delivered in this state.

Rule 12A-1.0015, F.A.C., provides, in part, the following:

(1) Scope.

(a) Tangible personal property imported, produced, or manufactured in this state for export, as provided in Section 212.06(5)(a)1., F.S., 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 Florida, or mails the property by United States mail to a destination outside Florida. This rule is intended to provide tax guidelines for the sale of tangible personal property for the purposes of export from Florida.

* * *

(2) Sales of property irrevocably committed to exportation.

(a) A dealer is required to collect tax on sales of tangible personal property when the property is delivered to the purchaser or the purchaser's representative in Florida, whether the disclosed or undisclosed intention of the purchaser is to transport the property to a location outside Florida, or whether the property is actually so transported. Every sale of tangible personal property to a person physically present at the time of sale is presumed to have been delivered in Florida.

(b) 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. The intent of the seller and the purchaser to export the property is not sufficient to establish that the property is not subject to tax in Florida. The delivery of the property to a location in Florida for subsequent export from Florida is insufficient to establish documentary evidence that the property sold was irrevocably committed to the exportation process. The following are examples of 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.
 - a. The term “carrier” means a person regularly engaged in the business of transporting tangible personal property owned by other persons for compensation. The term “carrier” includes common carriers and contract carriers.
 - b. The term “licensed customs broker” means a person licensed by the United States customs service to act as a custom house broker.
 - c. The term “forwarding agent” means a person regularly engaged in the business of preparing property for shipment or arranging for its shipment for compensation.
 - d. Any person not engaged in the business of receiving tangible personal property owned by other persons and shipping or arranging for shipping for compensation does not become a carrier or forwarding agent by being designated by the purchaser to receive and ship goods to a point outside Florida.

* * *

(d) A dealer who imports taxable tangible personal property into Florida for exportation from Florida is required to maintain documentation that the imported property was irrevocably committed to the exportation process at the time of importation and that the exportation process was continuous and unbroken while such property was within Florida.

DISCUSSION

Florida law provides that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in Florida. Retail sales of tangible personal property are subject to tax, unless specifically exempt by Chapter 212, F.S. See s. 212.05(1)(a)1.a., F.S. Florida law provides an exemption from sales and use tax for tangible personal property imported, produced, or manufactured in Florida for export, however, the exempt nature of the sale must be established by the selling dealer.

Shipments for export are presumed not to be for export but such presumption may be rebutted by the exporter. See Great Lakes Dredge & Dock Company v. Department of Revenue, 381 So.2d 1078 (Fla. 1st DCA 1979). The above-mentioned statute and rule provide factors regarding overcoming this presumption and include when, by the terms of the sales contract, the goods are delivered:

- to a licensed exporter for exporting;
- to a common carrier or forwarding agent for shipment outside Florida;
- to the U.S. mail for mailing to a destination outside Florida; or
- using its own mode of transportation to a destination outside Florida.

To enjoy the protection of the export exemption, the exporter is required to keep sufficient records to document that the supplies were exported outside Florida in a continuous and unbroken exportation process. Examples of records to document sales for export to points outside Florida

include common carriers' receipts, bills of lading, export declarations, or similar documentation that evidences the delivery destination, receipts from a licensed customs broker, and proof of export signed by a customs officer.

As an air freight forwarder, and indirect air carrier, XXXX commits all property shipped to the Export Address to the exportation process, and the exportation process remains continuous and unbroken until the property is exported from Florida to XXXX and XXXX foreign customers.

CONCLUSION

Products shipped by a third-party dealer to XXXX and XXXX, which are committed to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida, are exempt from Florida sales tax, and the third-party dealer is not required to collect Florida sales tax. This is because the contracts do not allow for products to be diverted from the exportation process at any time. The various activities described by the Taxpayer as "intervening events" appear to be part of the continuous and unbroken exportation process. The Taxpayer is reminded that all documentation establishing the continuous and unbroken exportation process must be preserved for inspection and verification by the Department.

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 documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure.

In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

Chuck Wallace

Chuck Wallace
Conferee
Technical Assistance and Dispute Resolution

Record ID: 338055