



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

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QUESTION: Does the \$5,000 discretionary sales surtax limitation apply to the entire invoice or would it apply to individual line items or categories of line items listed on the invoice?

ANSWER: In the instant case, the single sale test has been met as the documentation provided for the transaction under this advisement reflects that the repairs all relate back to the original repair contract or work order. The bulk sale/working unit test has been met as a boat would be considered a working unit. Lastly, Taxpayer maintains continuous care, custody, and control of the boat throughout the repair job; therefore, the discretionary sales surtax limitation can be applied to the entire invoice.

April 7, 2021

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Subject: Technical Assistance Advisement 21A-006

STATUTE CITE: Section 212.054, Florida Statutes (F.S.)

RULE CITE: Rule 12A-15.004, Florida Administrative Code (F.A.C.)

XXXXXXX ("Taxpayer")

FEIN: XXXXXXXX

BP#: XXXXXXXX

Dear XXXXXXXX:

This is in response to your letter dated March 24, 2020, 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., concerning the taxability of the services offered by your client. An examination of your letter has established 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.

Requested Advisement

Does the \$5,000 discretionary sales surtax limitation apply to the entire invoice or would it apply to individual line items or categories of line items listed on the invoice.

Facts

Your letter provides the following in part:

Taxpayer is in the marine industry. Specifically, Taxpayer is in the business of repairing and maintaining boats. Prior to the customer delivering a boat to Taxpayer, the customer signs a Service and Storage Contract ("Contract"), which details the activities to be performed. This generates the creation of a Work Order ("WO"). The WO identifies each activity by number, with a corresponding description of the service to be provided. Materials and labor are posted to the WO utilizing these numbers and are accumulated in a computerized billing system. Once the repairs are completed, a final bill is generated and given to the customer on a single invoice.

Activities are regularly added to the WO and approved by the customer after Contract is signed and the WO has been initiated. All service invoices are subject to a 3.9% Shipyard Repairers' Liability Charge Service Charge, which is separately itemized on the invoice and shown as "Other" on the invoice.

Upon completion of all activities, Taxpayer totals all labor, materials, and the service charge on the WO and issues the customer a single invoice. A total for labor and materials is given for each line item, as well as a separate cumulative total for each category. The invoice must be paid in full at the completion of the job. The boat does not leave the possession of Taxpayer until full payment is received.

Taxpayer asserts that it maintains complete control and custody of the boat while repairs are being made to its customers' boats.

Taxpayer states that its assertion that it maintains complete control and custody of the boat while repairs are being made to its customer's boats is supported by the language in Contract, Section 8, Titled "Payment Terms and Conditions" which provides in pertinent part as follows:

. . . Payments are due and payable to the Contractor upon completion of the work described in this Contract. All invoices must be paid in full prior to the vessel departing Contractor premises. . . . Title to any equipment purchased shall not pass to the Owner until payment is made in full.

Taxpayer furthermore states that while the boat is under the control and custody of Taxpayer, Taxpayer identifies the boat in its daily Dockage Report. The day the boat arrives for the job, the boat is recorded in the Dockage Report until the day it leaves at the completion of the job.

Taxpayer asserts that the items of tangible personal property incorporated into the repairs made by Taxpayer are all necessary for a single unit, the boat, to continue to function at an

optimal level. Taxpayer further asserts that these are items normally sold in a single sale by the seller to the purchaser for use in normal business practice of the purchaser as an integrated unit, in compliance with Rule 12A-15.004(3)(b)3., F.A.C.

Taxpayer provided the following specific documentation and explanation of procedures for one of Taxpayer's repairs:

August 30, 2018:

1. XXXXXXXX generated the Service and Storage Contract on August 30, 2018 for the vessel: XXXXXXXX. Section 8 of the Service and Storage Contract, entitled "Payment Terms and Conditions," includes the following language: "Payments are due and payable to the Contractor upon completion of the work described in this Contract. All invoices must be paid in full prior to the vessel departing Contractor premises...Title to any equipment purchased shall not pass to the Owner until payment is made in full."
2. Upon signing the Service and Storage Contract, an internal Work Order is generated. In the provided sample, there is a transposition error. The date the Work Order was generated was the same date of the contract, 08-30-18, not 08-03-18.

August 31, 2018

1. XXXXXXXX is brought to the boatyard to begin work. It is recorded on the Dockage Report dated August 31, 2018.

October 4, 2018

1. The first Work Order Add-On Sheet is created to add a new item. It is authorized by signature.

February 12, 2019

1. The last Work Order Add-On Sheet is authorized.

February 14, 2019

1. The job is completed, and it is the last day XXXXXXXX is recorded on the Dockage Reports.

February 15, 2019

1. XXXXXXXX leaves the boatyard.

February 18, 2019

1. The Final Invoice is issued on this date. It is issued after the boat left the boatyard in this case because payment was made in full prior to the completion of the job. Otherwise, the boat would not leave the boatyard until payment of the final invoice was executed.

Law and Discussion

Under section 212.054(2)(a), F.S., the basic principle in applying discretionary sales surtaxes is that they piggyback the state sales and use tax. If a transaction is subject to sales tax and occurs at a location where surtax is imposed, the surtax also applies. The surtax is imposed on all transactions that are subject to sales tax.

Section 212.054(2)(b), F.S., limits application of that principle when there is a sale of an item of tangible personal property for over \$5,000. The surtax in that case applies only to the first \$5,000. Subparagraph (b)l. of the statute then sets out very specific circumstances in which more than one item can be aggregated for purposes of application of the surtax. The statute requires application of the \$5,000 limitation on an item-by-item basis, except for very specific circumstances when multiple items will be viewed as a single item. In order for the exception to apply, two tests must be satisfied. There must be a single sale in which one purchaser buys all the items at the same time, with a purchase order or other documentary evidence that there has been such a single transaction. Second, the multiple items reflected on that documentation will be aggregated for purposes of applying the \$5,000 limitation only if they fall into one of two categories. They must either be items that are normally sold in bulk, or they must be items that will be assembled into a working unit or a part of one.

Items that meet the bulk sale/working unit test cannot be aggregated if they are not purchased in a single sale. The single sale requirement addresses the character of the transaction itself, whether there has been one discrete transaction to which the limitation can be applied or multiple sales that are separately subject to the limitation. Meeting this requirement is a matter of documenting that there was one buyer, one seller, and that the agreement to buy and sell occurred at the same time as to all of the items involved (See 12A-15.004(3)(a), F.A.C.).

Items cannot be aggregated solely because they are purchased in a single sale. The bulk sale/working unit test must also be met. This requirement addresses the character of the items purchased.

Rule 12A-15.004(3)(b), F.A.C., provides that items comprising a working unit are either: items normally sold as a set or a unit and the utility of each for its intended purpose is dependent on the set being complete; items sold to a purchaser for use in the normal business practice of the purchaser as an integrated unit; or items are component parts that have no utility unless assembled with each other to form a working unit or part of a working unit.

In order for the surtax limitation to apply to a sale of multiple items of tangible personal property in a repair job, the items would have to be sold in a "single sale" and, in the case of a boat repair, the items, when assembled, would have to comprise a "working unit." The Department would view a boat as a "working unit," for purposes of Rule 12A-15.004(3), F.A.C., and s. 212.054(2)(b)1., F.S. The question remaining, then, would be what constitutes a "single sale," or a single repair job, in this case.

In order for all of the repairs on a boat to constitute a single repair job, the repairs would need to relate back to the original repair contract or work order, and the repair facility would need to maintain care, custody, and control of the boat throughout the repair job.

From the documentation provided, it appears that all of the line items on the invoice provided would relate to a single repair job on a working unit. Furthermore, the documentation for this transaction appears to reflect that Taxpayer maintained care, custody, and control of the boat throughout the repair job. Consequently, the surtax limitation would be applicable to the entire invoice in question. It should also be noted that the maximum amount of tax imposed on a single repair of a boat in Florida cannot exceed \$60,000 (surtax included). See s. 212.05(5), F.S.

Conclusion

In the instant case, the single sale test has been met as the documentation provided for the transaction under this advisement reflects that the repairs all relate back to the original repair contract or work order. The bulk sale/working unit test has been met as a boat would be considered a working unit. Lastly, Taxpayer maintains continuous care, custody, and control of the boat throughout the repair job; therefore, the discretionary sales surtax limitation can be applied to the entire invoice.

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 that 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 15 days of the date of this letter.

Sincerely,

Leigh L. Ceci

Leigh L. Ceci
Tax Law Specialist
Technical Assistance and Dispute Resolution

Record ID: XXXXXXX

cc: XXXXXXX
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