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floridarevenue.com

**QUESTION:** Is Taxpayer a “marketplace provider,” as defined by s. 212.05965(1)(b), F.S.

**ANSWER:** Taxpayer is not a “marketplace provider,” as defined by s. 212.05965(1)(b), F.S.

Taxpayer facilitates retail sales by advertising participating dealer’s inventory of vehicle parts on Taxpayer’s online platform. However, based on the information provided regarding the transactions between the dealers and purchasers, there are no cases where the Taxpayer “collects payment from the [customer] and transmits all or part of the payment to the [dealer].” The purchaser pays the dealer directly for the purchase. In cases where the purchase is financed by the financial services company, the dealer is paid by the financial services company and the purchaser makes payment directly to the financial services finance company. At no time, does the financial services company collect and transmit all or part of the purchaser’s payment to the dealer.

June 16, 2022

XX

Re: Technical Assistance Advisement No. 22A-012  
Sales and Use Tax - Marketplace Provider  
XX  
BPN: XX  
Sections 212.0596, 212.05965, 212.06, and 212.18 Florida Statutes (“F.S.”)

Dear XX:

This letter is a response to your petition on behalf of [Taxpayer], dated February 28, 2022, for the Florida Department of Revenue’s (the “Department’s”) issuance of a Technical Assistance Advisement (“TAA”) with regard to whether your client would be considered a marketplace provider under Florida law. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite criteria set forth in chapter 12-11, Florida Administrative Code. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

#### **Requested Advisement**

You request a determination whether Taxpayer is a “marketplace provider,” as defined by s. 212.05965(1)(b), F.S.

#### **Facts**

Your letter dated, February 28, 2022, provides the following in part:

[Taxpayer] is an affiliate of certain companies that manufacture and distribute commercial vehicles and related aftermarket parts (known as original equipment manufacturers or “OEMs”). The OEMs sell the vehicles and parts to their network of independent dealers located across the

United States, and the dealers in turn resell these and other products to their customers. The dealers operate substantial “brick and mortar” businesses within their assigned territories (similar to automobile dealerships) and have an established history of collecting and remitting applicable sales and use taxes on their taxable retail sales and maintaining exemption certificates for their exempt sales. The OEMs currently have X authorized dealer groups located in Florida that operate XX sales and service outlets in the state.

[Taxpayer] has created an online platform . . . to enable participating dealers to list their inventory of vehicle parts on the Internet and make business-to-business (“B2B”) sales to select customers. Taxpayer owns and administers the electronic infrastructure of the platform and provides the necessary support to the dealers to enable them to connect to the platform. At this point, the platform is in the process of being rolled out and is being utilized by a limited number of dealers, none of which are based in Florida. The dealers are required to sign a contractual agreement to use the platform. Taxpayer receives a commission equal to an agreed percentage of the dealers’ sales made through the platform, which is billed monthly or quarterly in arrears (i.e., Taxpayer does not collect customer payments and deduct the percentage from individual transactions as they occur).

[The online platform] is not open to the general public. The website can be accessed only by qualified customers with log-on credentials. To receive log-on credentials, a customer must request an invitation from its local dealer(s). Alternatively, dealers may automatically create accounts for their established customers and send the log-on credentials to them. The customers include both taxable end-users of parts, and others that are purchasing parts for resale or other exempt purposes, such as repair shops. . . .

Once logged-on to the site, customers may view and order inventory only from the specific dealer(s) that invited them and with whom they generally have a pre-existing relationship. Dealers send the pricing and availability of their parts inventory to [the online platform] electronically via their Dealer Management System (“DMS”). [A DMS is a commercially available software suite used by automobile, truck and other vehicle and equipment dealerships to manage and administer their sales, service, and financing operations.] All inventory items and all transactions on the platform are clearly identified as inventory and transactions of the dealer, not Taxpayer. Taxpayer does not store or hold any dealer inventory or perform any order fulfillment functions.

When a customer identifies a part on the platform that it wants to purchase, it will add the item to its order. The customer must then select a delivery and payment method to place the order. The customer generally has three delivery options: (1) pick up the purchased item at one of the dealer’s physical locations, (2) request that the dealer deliver the item, or (3) request that the dealer ship the item. The above-mentioned contracts between Taxpayer and the dealers expressly prohibit dealers from making sales over the platform into jurisdictions where they are not registered for sales and use tax purposes.

. . . All customers that use the platform to place orders will thus need to pay via dealer accounts. A “dealer account” is a pre-existing credit line that the customer establishes with the dealer directly. Under this payment method, [the online platform] “pings” the dealer’s DMS and the DMS will send back an initial order approval or rejection. If approved, [the online platform] forwards the order to the dealer’s DMS and provides an order confirmation to the customer. At this point, [the online platform] is no longer involved in the transaction and the remaining activities follow the same process used for the dealer’s other sales that occur outside the platform. That is, the dealer will proceed to fill the order, generate an invoice from its DMS with applicable state and local tax, and send the invoice directly to the customer. The dealer remits any tax charged on the invoice directly to the appropriate tax authorities. The dealer then collects the customer account balance directly from the customer according to their agreed payment terms (e.g., net 30), and the dealer bears the risk of customer default.

In certain situations, a vehicle fleet customer that chooses to pay on account may also have a credit line established with a financial services company that is an affiliate of [Taxpayer]. In these cases, the dealer submits the above-mentioned customer invoice to [the financial services company] for immediate reimbursement. [The financial services company] verifies the invoice and reimburses the dealer directly for the invoice amount (generally within two days of invoice submission), including any sales and use tax charged on the invoice, less a fixed percentage that [the financial services company] retains as a discount fee. As in the dealer account situation above, the dealer remits any tax charged on the invoice directly to the appropriate tax authorities. [The financial services company] collects the customer receivable according to its payment terms with the customer, and [the financial services company] bears the risk of customer default. Importantly, the reimbursement from [the financial services company] to the dealer occurs entirely outside of [the online platform] after the sale is completed (i.e., after the dealer fulfills the order and generates the invoice from its DMS).

[The online platform] maintains the customer’s order history on the website but does [not] maintain the actual dealer invoices, as dealers do not provide their invoices to [Taxpayer] via the platform or otherwise. [Taxpayer] thus has no visibility as to the specific types and amounts of state and local tax charged on the invoices. Customers may cancel an order for a part placed through [the online platform] but may not modify an order. If a customer wants to return or exchange an item purchased through [the online platform], it must contact the dealer directly. The dealer will handle the physical return and refund directly with the customer according to its normal return process (i.e., entirely outside of [the online] platform). The customer must also contact the dealer directly for any other customer service inquiries.

\* \* \*

Along with the request for advisement, you included a copy of [the online platform] Agreement that “dealers are required to sign . . . to use the platform” (the Agreement). The Agreement provides the following in part:

\* \* \*

This Agreement governs Your access to and use of and sales made through Provider's . . . website  
. . . .

#### 7. End Users.

##### (a) Responsibility for End Users.

You are responsible for the activities of all Your End Users, including Orders they may place and how End Users use Your Information.

\* \* \*

##### (d) End User Agreements.

You will enter into binding and enforceable agreements with each End User including terms of use, terms of sale and privacy policies (collectively the "End User Agreements") that govern such End Users' access to and use of the Platform and any content contained therein. . . .

\* \* \*

#### 11. Taxes

##### (a) Your Responsibilities.

You are the seller of record with respect to all of Your sales made through the Platform. You are solely responsible for determining, charging and collecting the correct amount of Taxes with respect to such sales and, except as set forth in Section 11(c)(iii) below, You are solely responsible for reporting and remitting such Taxes to the appropriate taxing authorities, in each case in accordance with all applicable laws. Without limiting the generality of the foregoing, You are solely responsible for complying with all applicable laws related to Tax-exempt transactions, including, without limitation, obtaining and maintaining valid Tax exemption certificates from End Users. You are also solely responsible for processing any refunds of Taxes with respect to Your sales and otherwise repaying any over-collected Taxes to End Users. You acknowledge and agree that Provider takes no responsibility for any of the foregoing activities and has no obligation or liability to You, or to any taxing authority, End User or other person, for any Taxes arising out of or related to Your sales made through the Platform.

##### (b) Registrations.

You represent, warrant and agree, now and throughout the Term, that You are and will be registered to collect and remit Taxes in all jurisdictions in which you are required by applicable law to be so registered in connection with Your sales made through the Platform. Exhibit D contains a list of all such jurisdictions in which You are currently registered. You agree to promptly notify Provider in writing of any changes to such list. You also agree not to (i) ship or deliver any parts sold through the Platform to an End User that is located within any jurisdiction in which You are not registered to collect and remit Taxes or (ii) make any other sales through the Platform that are subject to Tax in such a jurisdiction.

##### (c) Marketplace Facilitator Jurisdictions.

(i) Some jurisdictions have laws that may permit or require Provider to report and remit Taxes as a “marketplace facilitator” or “marketplace provider” with respect to certain of Your sales made through the Platform. Provider shall determine in its sole discretion whether it is considered a marketplace facilitator or marketplace provider in each applicable jurisdiction and whether any related exemption or waiver applies. You agree to cooperate with Provider in claiming or requesting any such exemption or waiver.

(ii) To the extent that the law of any jurisdiction . . . allows a marketplace facilitator or marketplace provider and a marketplace seller to enter into an agreement with each other regarding the collection, reporting and remittance of Taxes in such jurisdiction, the Parties hereby agree that You will be solely responsible for collecting, reporting and remitting all applicable Taxes on Your sales made through the Platform in such jurisdiction in accordance with Section 11(a) above.

(iii) In the event that Provider notifies You in writing that Provider will report and remit Taxes as a marketplace facilitator or marketplace provider in a specified jurisdiction, You agree to cooperate with Provider in connection therewith. You acknowledge and agree that Provider will not collect any Taxes from any End Users with respect to Your sales made through the Platform in such jurisdiction. You will remain solely responsible for determining, charging and collecting all applicable Taxes on such sales in accordance with Section 11(a) above. You agree to promptly transfer such Taxes to Provider, together with all sales and other information necessary for Provider to accurately report and remit such Taxes, in such form and manner as Provider may reasonably request. Provider will report and remit the same to the appropriate taxing authority as a marketplace facilitator or marketplace provider.

(iv) Notwithstanding anything to the contrary contained in this Agreement, Provider reserves the right in its sole discretion to prohibit sales through the Platform in any jurisdiction if such sales might cause Provider to be considered a marketplace facilitator or marketplace provider in such jurisdiction. Provider will notify You in writing of any such jurisdictions where sales are prohibited, and You agree to comply with such prohibition.

(d) Record Retention and Cooperation.

(i) You agree to maintain appropriate books and records (including, without limitation, general ledgers, sales journals, invoices and credit memos, Tax returns, Tax payment records, and Tax exemption certificates) and any other documentation reasonably necessary to prove the validity and payment of all Taxes that were determined, charged, collected, reported, remitted and/or refunded by You, and all Tax exemptions that were applied by You, with respect to Your sales made through the Platform. . . .

\* \* \*

(q) Exhibits

The following Exhibits are attached hereto and incorporated herein by this reference:

Exhibit "A": Order Form

\* \* \*

1. Platform Description: A web-based e-commerce solution designed to facilitate business to end-customer transactions between You and End Users.

\* \* \*

### **Applicable Law and Discussion**

Section 212.18(3)(a), F.S., requires that any person desiring to engage in or conduct business in Florida as a dealer must file for a certificate of registration with the Department of Revenue. Section 212.06(3)(a), F.S., provides that ". . . every dealer making sales, whether within or outside the state, of tangible personal property for distribution, storage, or use or other consumption, in this state, shall, at the time of making sales, collect the tax imposed by this chapter from the purchaser." Section 212.06(2)(c), F.S., defines the term "dealer" to include "a marketplace provider that has a physical presence in this state or that makes or facilitates through its marketplace a substantial number of remote sales." Section 212.0596(1)(a), F.S., defines the term "remote sale" to mean "a retail sale of tangible personal property ordered by mail, telephone, the Internet, or other means of communication from a person who receives the order outside of [Florida] and transports the property or causes the property to be transported to a location in [Florida]." "Substantial number of remote sales" is defined by s. 212.0596(1)(b), F.S., to mean "any number of taxable remote sales in the previous calendar year in which the sum of the sales prices . . . exceeded \$100,000."

Marketplace providers that are dealers are required to collect and remit tax on the taxable retail sales made through the marketplace. Section 212.05965(1)(a), F.S., defines "marketplace" to mean any physical place or electronic medium through which tangible personal property is offered for sale. Based on the information provided, Taxpayer operates a "marketplace," as defined by s. 212.05965(1)(a), F.S., as Taxpayer provides an online platform through which tangible personal property is offered for sale.

Taxpayer's obligation to register as a dealer is dependent on whether it meets the definition of "marketplace provider" as defined in s. 212.05965(1)(b), F.S. Section 212.05965(1)(b), F.S., provides that a "marketplace provider" means "a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace and who directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits all or part of the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services."

Your letter provides that once a customer's order is confirmed, Taxpayer is "no longer involved in the transaction." The participating dealer will fill the order, directly invoice the customer, and collect payment "directly from the customer according to their agreed payment terms." In the case of payments processed by the financial services company, the participating dealer receives payment for the outstanding receivable from the financial services company. The financial services company collects payment for the outstanding receivable from the online customer. Taxpayer receives a commission equal to an agreed percentage of the dealers' sales made through the platform

### **Conclusion**

Taxpayer facilitates retail sales by advertising participating dealer's inventory of vehicle parts on Taxpayer's online platform. However, based on the information provided regarding the transactions between the dealers and purchasers, there are no cases where the Taxpayer "collects payment from the [customer] and transmits all or part of the payment to the [dealer]." The purchaser pays the dealer directly for the purchase. In cases where the purchase is financed by the financial services company, the dealer is paid by the financial services company and the purchaser makes payment directly to the financial services finance company. At no time, does the financial services company collect and transmit all or part of the purchaser's payment to the dealer. Therefore, Taxpayer is not a "marketplace provider," as defined by s. 212.05965(1)(b), F.S.

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 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 s. 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.

If you have further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-7754.

Sincerely,



Brinton Hevey  
Technical Assistance & Dispute Resolution  
Florida Department of Revenue  
Record ID: 680746