Florida Department of Revenue
Technical Assistance and Dispute Resolution

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QUESTION: Whether the assessment used for Association's costs for Club Common Areas and Club Facilities maintenance, which is payable by property owners, would be subject to sales and use tax after the merger?

RESPONSE: No. Club has asserted that the assessment under advisement is: 1) mandatory; 2) paid to the Homeowners' Association; 3) required to be paid as a condition of ownership of real property; and 4) used for homeowners' association's costs for common area maintenance and isn't for the entitlement to use the common areas.

October 10, 2023

[redacted]

Via e-mail: [redacted]

Re: Technical Assistance Advisement – TAA #: 23A-018
[redacted]
Sales and Use Tax – Admissions
Sections 212.02(1), 720.301(9), Florida Statutes - (F.S.)
Rule 12A-1.005, Florida Administrative Code - (F.A.C.)

Dear [redacted]

This is in response to your letter [redacted] requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C., Florida Administrative Code, regarding the matter discussed below. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

REQUESTED ADVISEMENT

Club request advisement on whether the assessment used for Association's costs for Club Common Areas and Club Facilities maintenance, which is payable by property owners, would be subject to sales and use tax after the merger.

FACTS

Club is a member-owned not-for-profit Florida corporation owned by [redacted] resident equity members and [redacted] resident Associate equity members. All [redacted] of those Club equity members, are also members of the Association. Currently, there are also [redacted] members. The Club is governed by Chapter 617, F.S., and by Club's Articles of Incorporation, By-Laws, and the Rules and Regulations. Club currently owns, operates, and maintains certain "Club Facilities" which consist substantially of [redacted]

Association is a homeowners' association which incorporated as a not-for-profit corporation located in [redacted], Florida and consist of [redacted]. Association is governed by Chapters 617 and 720, F.S., and by recorded restrictive covenants including, but not limited to, its Declaration of Covenants, ("Declaration"), as same was originally recorded and as same has been amended and restored from time to time. Association provides private safety functions and services in the area described within Exhibits A-1 and A-2 in the Declaration and the Common Areas and Club Facilities. Association is responsible for the control of [redacted]. Finally, Association operates without profit for the sole and exclusive benefits of its Members.

Association and Club each conduct their operations within the Community, and both are comprised of substantially the same members except for: (a) [redacted] individuals who have full rights and privileges to use Club Facilities but are not members of Association ("[redacted]"); (b) [redacted] individuals who have limited contractual rights to use the Club Facilities but are not members of the Association [redacted]"); and (c) [redacted] members of the Club who are not members of the Association ("[redacted]"). Following the effective date of the Merger, [redacted], [redacted] and [redacted] of the former Club will not be Members of the Association. These [redacted] issued by the former Club shall be exchanged for forms of use or license agreements to use the Club Facilities, but same shall not confer a membership in the Association.

It is important to emphasize that per the existing Declaration and the proposed Second Amended and Restated Declaration, every individual or entity, in accepting a deed or contract of ownership for any Lot within the Community agrees to and shall be a member of Association and Club, including without limitation the provisions and obligations imposed by the Governing Documents. Membership shall continue until such time as the member transfers or conveys record title of a Lot, or such Lot is transferred and conveyed by operation of law, at which time membership shall automatically be conferred upon the transferee, subject to the Declaration, including without limitation the provisions of and the obligations imposed by the Governing Documents.

Membership in the Association has been and shall continue to be separate and distinct from Club Membership. The process of obtaining a Club Membership is set forth in the By-Laws and other Governing Documents. Members of the Association who purchase any Lot within the Association subsequent to the effective date of this Amendment shall be required to obtain a Club Membership in connection with each Lot and shall be required to maintain such Club Membership in good standing throughout the duration of their ownership of any Lot within the Community.

It is contemplated that the Merger will be consummated substantially in accordance with a Plan of Merger pursuant to which: (i) Club will be merged with and into Association as authorized by s.617.0302(16), F,S.; (ii) the proposed effective date of the Merger is [redacted], and the Association, as the surviving corporation, will continue to be a Florida not-for-profit corporation and a homeowners association pursuant to s.720.301(9),F,S.; (iii) all other matters pertaining to the terms and conditions of the Merger, including the manner and basis of converting the memberships of each merging corporation into memberships of the surviving corporation; recitation of the approval of the Plan of Merger by the Board of Directors of the Association and by the Board of [redacted] of Club respectively, and recitation of the voting approvals required by both Association members and Club members will be incorporated into the finalized Merger Documents.

Pursuant to the proposed Plan of Merger, effective [redacted], the Association, as the surviving corporation will own Club Facilities by operation of law and shall also operate, manage, and maintain Club Facilities for the use and benefit of Association Members and their guests. Further it is our understanding that, Association will retain an equity membership structure after completion of the proposed Merger and, there shall be one (1) class of Association membership.

Each Lot Owner shall become an Association Member upon title to the Lot being conveyed by deed and upon recording of said deed in the Public Records of [redacted], Florida. The record owners of Lots shall be Association Members and no other persons or entities shall be Association Members. An Association member shall have one vote for each Lot owned. All memberships and corresponding Membership Certificates issued by Club to individuals or entities who were not Lot Owners at the effective date of the Merger shall be exchanged for a form of use or license agreement to authorize use of Club Facilities but shall not confer a membership in the Association.

Upon the effective date of the Merger, there exists one (1) Member of the pre-Merger Association who was the record owner of a Lot in the Community but was not required to obtain a Club Membership in the pre-Merger Club pursuant to Article VII, Section R. of the pre-Merger Declaration (Grandfathered Association Member). All Lot Owners, except for the Grandfathered Association Member, as defined in the Declaration, will be issued a Club Membership by the Association, and will have full access to all Common Areas as well as rights and privileges to use the Club Facilities, subject to the restrictions set forth in the Second Amended and Restated By-Laws.

Lot Owners designated as Associate Members in the Club's prior By-Laws shall not be permitted to use the [redacted], except in [redacted] events approved by the Board that allow guests. Further, Associate Members may not serve on committees that relate to [redacted] facilities or [redacted]; nor shall Associate Members be required to pay Special Assessments pertaining to the [redacted], pursuant to the By-Laws and the Rules and Regulations. Prior to the

Merger, new Associate Memberships were no longer being offered nor will they be offered after the Effective Date of the Merger.

[redacted] Members of the former Club, as Lot Owners, are Members of Association. However, said Members shall not be permitted use of, nor use privileges with respect to Club Facilities.

[redacted], [redacted], and [redacted] of the former Club as of the effective date of the Merger will not be Members of Association. These [redacted] memberships issued by the former Club shall be exchanged for forms of use or license agreements to use Club Facilities, but same shall not confer a membership in Association.

After the Merger, a member shall represent themself, or may authorize by written proxy, an individual to represent the Member in all meetings which a Member of the Association is entitled to attend. In any meeting of Members, the Lot Owners shall be entitled to one (1) vote for each Lot so owned. The first Board following the effective date of the Merger ('initial Post-Merger Board') shall be comprised of [redacted] members consisting of the [redacted] members from the pre-Merger Club's Board of [redacted] appointed pursuant to a duly adopted resolution of the Club's Board of [redacted] and the [redacted] Officers from the pre-Merger Association's Board of Directors holding such office immediately prior to the effective date of the Merger. The terms of all the Directors and Officers comprising the Initial Post-Merger Board shall expire upon the adjournment of Association's first Annual Meeting to take place following the effective date of the Merger, provided that there is a quorum of Members at such Annual Meeting.

Following the Merger, pursuant to the Merger Documents, it is contemplated that the cost of owning and operating: (i) the Common Areas other than Club Facilities will be determined based on the Annual Budget and will be shared equally by all Association Members; and (ii) Club Facilities will be shared among the various categories of members substantially similar to the manner in which such expenses are shared by the Resident Equity Members under the existing Club Governing Documents.

A Lot Owner will be deemed to covenant and agree to pay to the Association any annual assessments or charges and any special assessments for maintenance, or major repairs, capital expenditures or capital improvements, or for any other operating or common expenses of Association, or for any dues, fees, charges and/or special assessments attributable to the Club or as part of Club Membership, which for all purposes, shall be deemed assessments under the Declaration; such assessments to be fixed, established and collected from time to time by the Association.

There shall be established on the effective date of the Merger, one or more restricted accounts, to hold all Association funds collected from initial capital contributions required pursuant to Article IV, Section H, of the Declaration, including such funds held by the pre-Merger Club. The funds held in such restricted account(s) shall be used solely to fund Capital Projects deemed appropriate by the Board but subject to the limitations imposed by the Governing Documents, service the Association's debt obligations associated with Capital Projects, and to redeem any Membership Bonds. All initial capital contributions, net of the repayment of outstanding membership bonds, collected by Association shall be allocated to the "[redacted]" account and shall be used solely to fund [redacted] and [redacted] related to the Common Areas and Club Facilities and any debt service incurred thereon. Initial Capital Contributions shall not be used to fund any Operating Expenses or for any other operational purposes.

After the Merger, Association may establish, levy, assess and collect the assessments necessary to operate Association and carry on its activities, and to create such contingency and working capital funds for expenditures as may be deemed appropriate by the Board, except as such funds may be restricted or limited by the express provisions of the Declaration and By-Laws.

Finally, pursuant to the Merger, the obligation to pay all assessments, including dues, annual assessments, special assessments, initial capital contributions, exterior maintenance assessments, capital assessments, etc., may be secured by a lien on the owner's property in the Community. The lien of the assessments and other fees and costs for which provision is herein made, as well as in any other Article of the Declaration, shall be subordinate to the lien of any first mortgage to a bank, life insurance company, federal or state savings and loan association, or real estate investment trust.

In an email reply, dated [redacted], you confirmed that the assessment under advisement could be described as follows:

1. Assessments are mandatory.
2. Assessments are paid to the association, which is a homeowner's association.
3. Assessments are required to be paid as a condition of ownership of real property where the common areas are located.
4. Assessments are used for the homeowner's association's costs for common area maintenance and aren't for the entitlement to use the common areas.

CLUB'S POSITION

Club believes, based on the relevant Florida Statutes and Administrative Code, that the required membership assessments to be paid to Association, as the surviving entity of the Merger, in connection with the lowest available level of required membership, (i.e. Association Membership) will represent nontaxable admissions pursuant to Rule 12A-1.005(4)(d)3., F.A.C. because, such amounts are: (i) mandatory fees payable by property owners in the community; (ii) paid to a homeowners association; (iii) required to be paid as a condition of ownership; and (iv) the Club Common Areas and Club Facilities will be part of the common elements or common areas of the real property constituting the Community.

The Governing Documents require that all new Lot Owners become Association Members and pay the same amount of assessments to use the Association Common Areas. Resident Equity Members and Associate Equity Members of the Club currently pay and will continue to pay the same amount of dues to use the Club Facilities. The [redacted] Members pay discounted Club dues for a period up to [redacted] months for a home renovation project and up to [redacted] months for a new home construction project. At the end of the discounted dues period, if the Lot has not been sold to a new Resident Equity Member, the [redacted] Member is required to pay full Club dues, The [redacted] Members are not permitted to use the Club Facilities at any time both pre-Merger and post-Merger.

The existing one (1) Grandfathered Member is not permitted to use the Club Facilities and will be replaced when the Lot is sold to a new Association Member with full rights and privileges to use the Club Facilities and who will pay full assessments and dues. Although the Association intends to maintain the [redacted] membership category post- merger, these members are deemed to be temporary as they

will always be replaced with Association Members with full rights and privileges to use the Club Facilities who will pay full assessments and dues when their Lots are sold to new owners. Therefore, it is appropriate to disregard the Grandfathered Member and the [redacted] Members in determining the lowest level of mandatory membership in the Association as neither category is permitted to use the Club Facilities.

The one (1) Association Membership category, consisting of Resident Equity Members and Associate Equity Members of the Club, that pay the same amount of dues to use the Club Facilities, would be the lowest level of mandatory membership in Association in determining the exemption from sales tax.

APPLICABLE LAW AND DISCUSSION

Section 212.02(1), F.S., provides in part, "The term 'admissions' means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation… and all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities, …"

Section 212.04(1)(a), F.S., indicates, "... [it is] the legislative intent that every person is exercising a taxable privilege who sells or receives anything of value by way of admissions."

Section 720.301(9), F.S., provides, "Homeowners' associations" or "association" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute."

Rule 12A-1.005(4)(d), F.A.C. provides in part as follows:

> Fees paid to private clubs or membership clubs that do not entitle the payor to the use of the club's recreational or physical fitness facilities are not subject to tax. Examples of such fees are:
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> ***
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> 3. Mandatory dues and fees paid to a condominium association, homeowners' association, or cooperative association when they are required to be paid as a condition of ownership or occupancy of real property and the club facilities are part of the common elements or common areas of the real property.

CONCLUSION

The assessment under advisement would not be subject to Florida sales tax as such assessment is: 1) mandatory; 2) paid to the Homeowners' Association; 3) required to be paid as a condition of ownership

of real property; and 4) used for homeowners' association's costs for common area maintenance and isn't for the entitlement to use the common areas.

For more information concerning all the taxes administered by the Department of Revenue, please refer to the Department's Internet site at: www.floridarevenue.com.

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, 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 ten (10) days of the date of this letter.

If you have any further questions regarding this matter and wish to discuss them, you may contact us at the telephones listed below.

Kind Regards,

Alesia L. Pride

Alesia L. Pride
Tax Law Specialist
Technical Assistance & Dispute Resolution

Record ID: 7000989979