



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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Executive Director

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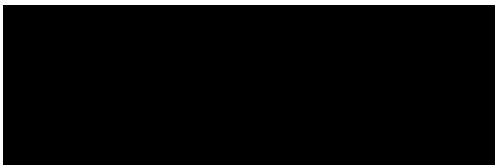
QUESTION Does [Taxpayer's] service qualify as [a] bailment, thereby [excluding] the service from the tax on rental or license fee for use of real property imposed by section 212.031, Florida Statutes?

RESPONSE Yes, Taxpayer's service qualifies as a bailment, thereby excluding the service from the tax on rental or license fee for use of real property imposed by section 212.031, Florida Statutes.

QUESTION To the extent that any charges are levied for, or considered to be associated with, the moving, storing, or packing of a member's wine, are [Taxpayer's] employees considered to be warehousemen under Rule 12A-1.036, Florida Administrative Code?

RESPONSE To the extent that any charges are levied for or considered to be associated with, the moving, storing, or packing of a member's wine, Taxpayer's employees are considered to be warehousemen under Rule 12A-1.036, Florida Administrative Code.

March 26, 2024



Via Email: [Redacted]

Re: Technical Assistance Advisement – TAA #: 24A-003
[Redacted] "Taxpayer")
Sales and Use Tax – Bailment/Real Property
Section(s) 212.031 and 212.08(7)(v)1., Florida Statutes - ("F.S.")
Rule(s) 12A-1.036 and 12A-1.070, Florida Administrative Code - ("F.A.C.")
[Redacted]

Dear [Redacted]:

This is in response to your letter dated, [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 ADVISEMENTS

1. Does [Taxpayer's] service qualify as [a] bailment, thereby [excluding] the service from the tax on rental or license fee for use of real property imposed by s. 212.031, Florida Statutes? See Rule 12A-1.070(22), Florida Administrative Code.
2. To the extent that any charges are levied for, or considered to be associated with, the moving, storing, or packing of a member's wine, are [Taxpayer's] employees considered to be warehousemen under Rule 12A-1.036, Florida Administrative Code?

FACTS

Your request provides in part:

[Taxpayer] is a wine bottle storage facility for wine collectors. [Taxpayer] stores wine in carefully controlled conditions with a constant temperature of 55°, 65-75% humidity, and the complete absence of light and vibration. Security of the facility is maintained through 24-hour monitoring via motion detection devices, as well as seventeen state-of-the-art surveillance cameras with both digital and analog access controls. Customers maintain ownership of the wine, but do not have access to the storage facility or the wine while it is in [Taxpayer's] warehouse. Only employees are allowed access to the refrigerated portion of the warehouse by way of a pre-programmed fob assigned to them specifically. A copy of the customer agreement is included as Attachment A.

Wine bottles destined for temperature-controlled storage are received either directly from the customer or wine supplier per the customer's request. Wine is typically received by [Taxpayer] in either upright cardboard boxes or specialty containers with Styrofoam inserts known as "shippers."

Upon receiving delivery of a customer's wine, [Taxpayer] provides a temporary receipt to the customer for the number of boxes received. The boxes are opened individually, a picture is taken by [Taxpayer] of each bottle for identification, and notes are recorded should the bottle be damaged, leaking, or of unusual character (such as a lower fill amount than would be expected for a bottle of that age). Several fields of data are then recorded in [Taxpayer's] proprietary database (producer, vintage, bottle size, etc.) and the photos and notes are uploaded alongside each respective entry. After assigning a QR code to each bottle, the bottles are placed into custom lay-flat boxes made to fit [Taxpayer's] rack system and sealed. Each box is assigned a QR code and a specific location in the warehouse for ease of retrieval by [Taxpayer's] employees.

After the wine is catalogued, the customer is provided with a unique and custom username and password, and is given digital access to their collection via a portal on [Taxpayer's] website. When ready to remove bottles from [Taxpayer's] custody for consumption or sale, a retrieval request is made through an automated function built into the portal. [Taxpayer] employees then pull the wine ordered for retrieval and ready it for pickup by the customer at the customer's convenience. A customer will never be responsible for retrieving their own wine(s), nor given access to the collection in the temperature-controlled storage area.

[Taxpayer] charges a storage fee based on the size of the collection and the length of time stored under temperature-controlled conditions at [Taxpayer's] location.

TAXPAYER POSITION

Pursuant to the Department's rule, "bailment" is defined as a contractual agreement, oral or written, whereby a person (the bailor) delivers tangible personal property to another (the bailee) and the bailor for the duration of the relationship relinquishes his exclusive possession, control, and dominion over the property, so that the bailee can exclude, within the limits of the agreement, the possession of the property to all others. The relationship between [Taxpayer] and its members regarding the storage of wine at [Taxpayer's] location operates as a bailment. [Taxpayer] contracts with its members for the storage of wine at its facility. The members deliver, either personally or through a delivery service directly from a winery, bottled wine directly to [Taxpayer]. For the duration of the storage relationship, the customer relinquishes exclusive possession, control and dominion of the wine. [Taxpayer], once in possession of the wine, catalogues the wine and stores it within an area of the facility accessible only [by] [Taxpayer's] employees at the exclusion of all others, including the member/bailor. Members are unable to access the wine except through scheduling an appointment with [Taxpayer], wherein [Taxpayer's] employees must retrieve the catalogued and stored wine and return it to the member.

The Department's Rule 12A-1.070(22), Florida Administrative Code, excludes bailments from the sales tax, as a bailment is neither the lease [nor] license to use real property. Here, [Taxpayer's] customers join [Taxpayer] not only for the climate-controlled storage of the wine, but the cataloging and security services provided to customers. [Taxpayer's] exclusive control and possession of the bottled wine under the contractual agreement results in the creation of a non-taxable bailment under the Department's rule.

Furthermore, the Department's Rule 12A-1.036, Florida Administrative Code, provides a similar exempt[ion] for a warehouseman providing similar services. Here, [Taxpayer's] employees merely package/box, move, and store [Taxpayer] member's wine at the facility. Any additional tasks, such as photographing or cataloguing information, are necessarily related to and subsumed within the storage functions taking place. Therefore, [Taxpayer's] employees would be considered warehousemen and their activities would not be taxable pursuant to the Department's rule.

As a result, [Taxpayer] believes that its services as whole are excluded from taxation by the State.

* * *

The attached "Wine Storage Services Agreement," provides in part:

I. Terms:

* * *

- B. Member storage fees will be based on the pricing schedule in effect on the date of this Agreement, a copy of which is attached and indicating which storage option is chosen by Member for the initial term. For By the Case Members, the storage fee will be adjusted at the beginning of each calendar quarter based on case count changes due to deliveries and/or pull requests. [Taxpayer] has been advised by counsel that Florida sales & use taxes do not apply to refrigerated storage. If, for any reason, it is otherwise determined, Member agrees to immediately pay all applicable sales & use taxes.

* * *

- E. Member retrieval requests are made online and are processed on a first-come, first-served basis. Most requests will be fulfilled within 2 business days, but may take up to 5 business days, based upon size of the pull request and seasonality.
- F. Personal pick-ups are allowed during normal published business hours or by appointment.

* * *

II. Lien:

* * *

- B. If an account remains overdue for sixty (60) days after Member has been notified, [Taxpayer] has the right to pursue collection by any legal means, including referring the matter to a third party collection agency, obtaining a judgment through the courts or arranging a sale of Member's Wine. The proceeds of such sale shall be first applied to any indebtedness owing to [Taxpayer] and to any costs and expenses incurred with respect to the goods, the sale, and any efforts to collect such indebtedness. Any excess shall be remitted to the Member.

* * *

III. Liability:

- A. Risk of Loss; Member to Insure. As a material consideration to this Agreement, Member and Taxpayer agree that Member shall insure all of Member's Wine for all risk of loss from any cause whatsoever. Member shall obtain its own insurance policy through its own insurance agent or carrier for all Wine subject to this Agreement. The Wine will not be insured by Taxpayer for the benefit of Member against any risk whatsoever including fire, theft, loss or any other casualty.
- B. [Taxpayer] shall not be liable to the Member for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by or results from causes beyond its reasonable control, including without limitation, strikes, lockouts, or other industrial disturbances, civil disturbances, fires, acts of God, acts of a public enemy, acts or omissions of subcontractors, compliance with any regulations, orders or requirements of any governmental body or agency, or inability to obtain transportation or necessary materials in the open market.
- C. [Taxpayer] shall not be held responsible for loss or damage due to deterioration of the Wine for any cause, and [Taxpayer] reserves the right to reject bottles deemed to be unsafe.

* * *

- E. Member warrants that it is the owner or legal custodian of the Wine and has full authority to store the Wine in accordance with this Agreement.

* * *

LAW AND DISCUSSION

Section 212.031, F.S., provides in part:

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property.

* * *

Rule 12A-1.070(22), F.A.C., provides as follows:

(a) When tangible personal property is left upon another's premises under a contract of bailment, the bailee is not exercising a privilege taxable under the provisions of s. 212.031, F.S., relating to leases, licenses, or rentals of real property.

(b) A bailment is a contractual agreement, oral or written, whereby a person (the bailor) delivers tangible personal property to another (the bailee) and the bailor for the duration of the relationship relinquishes his exclusive possession, control, and dominion over the property, so that the bailee can exclude, within the limits of the agreement, the possession of the property to all others. If there is no such delivery and relinquishment of exclusive possession, and the owner's control and dominion over the property is not dependent upon the cooperation of the person on whose premises the property is left, and his access thereto is in no wise subject to the latter's control, it will generally be held that such person is a tenant, lessee, or licensee of the space upon the premises where the property is left.

1. Example: A safety-deposit box in a bank or vault is a bailment, not a lease or license, because the bank has one key and the customer another and both are necessary to gain access to the box.

2. Example: An airport locker is not a bailment, but a lease or license, because the renter has the key and sole access to the stored property.

3. Example: The charge made for use of a frozen food locker in cold storage or locker plants is exempt under conditions which require the facility owner's presence and assent for the food owner to access his property.

(c) A person who merely grants storage space without assuming, expressly or implied, any duty or responsibility with respect to the care and control of the property stored is a landlord of a person granted a right to occupy or use such real property and is not a bailee. Thus, the person granting the right to use such storage space is exercising a privilege taxable under the provisions of s. 212.031, F.S., as a lease or license.

(d) A lease, license, or bailment is indicative of a contractual relationship, and the terms are not mutually exclusive.

Whatever label is attached to a contract, in determining whether a transaction is a bailment or a lease or a license, consideration will be given to the manifested intention of the parties as to which relationship has been created.

(e) In the absence of an express contract, the creation of a bailment requires that possession and control pass from the bailor to the bailee; there must be full transfer, actual or constructive, so as to exclude the property from the possession of the owner and all other persons and give the bailee sole custody and control for the time being.

Section 212.08(7)(v)1., F.S., provides an exemption for professional, insurance, or personal service transactions that involve sales of inconsequential elements of tangible personal property which are not separately stated.

Rule 12A-1.036(1), F.A.C, provides that "[c]harges by warehousemen solely for moving, storing, packing, or shipping tangible personal property belonging to other persons are not subject to tax."

In this case, Taxpayer provides wine storage services at its warehouse facility in St. Petersburg, Florida. Prior to becoming members and utilizing Taxpayer's wine storage services, customers are required to complete a "Wine Storage Services Agreement" agreeing to Taxpayer's established Terms, Liens, and Liability conditions wherein members must among other things warrant that they are the owners or legal custodians of the wine and have full authority to store the wine. Under the written contractual agreement, members/bailors deliver wine to Taxpayer/bailee and for the duration of the relationship members relinquish their exclusive possession, control, and dominion over the wine, so that Taxpayer can exclude, within the limits of the agreement, the possession of the property to all others.

Although members maintain ownership of the wine, under the agreement, members are not able to access their wine(s) and are not granted access to the collection in the temperature-controlled storage area. However, members may request wine from the collection by making an online retrieval request. In which case, only Taxpayer's employees who are responsible for packaging/boxing, moving, and storing, members' wines are allowed access to retrieve the wine from the temperature-controlled storage area at Taxpayer's facility.

For a contract to be deemed a bailment, the bailee, the person to whom the property is entrusted, has control and dominion of the property, and the owner, the bailor, cannot gain access to the property without the consent and cooperation of the bailee, which is the case here – as Taxpayer has control and dominion of the wine and the member is not able to gain access to the wine without Taxpayer's consent and cooperation. Additionally, Taxpayer's employees responsible for packaging/boxing, moving, and storing the members' wines, are providing a personal or professional service, and would therefore, be considered warehousemen engaged in activities that are not subject to tax.

CONCLUSIONS

QUESTION Does [Taxpayer's] service qualify as [a] bailment, thereby [excluding] the service from the tax on rental or license fee for use of real property imposed by s. 212.031, Florida Statutes?

RESPONSE Yes, Taxpayer's service qualifies as a bailment, thereby excluding the service from the tax on rental or license fee for use of real property imposed by s. 212.031, Florida Statutes.

QUESTION To the extent that any charges are levied for, or considered to be associated with, the moving, storing, or packing of a member's wine, are [Taxpayer's] employees considered to be warehousemen under Rule 12A-1.036, Florida Administrative Code?

RESPONSE Yes, to the extent that any charges are levied for or considered to be associated with, the moving, storing, or packing of a member's wine, Taxpayer's employees are considered to be warehousemen under Rule 12A-1.036, Florida Administrative Code.

This response constitutes a TAA 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 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 TAA, 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 with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6701.

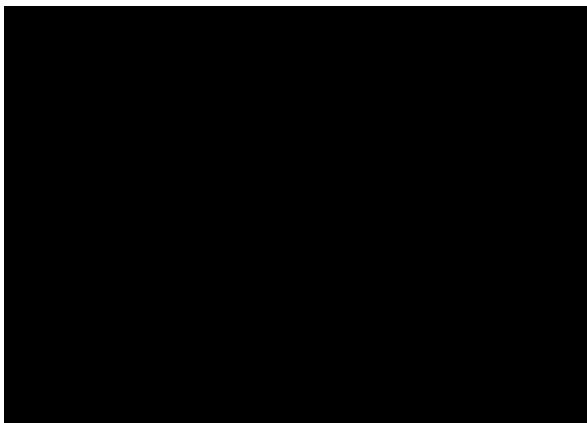
Sincerely,

Shundra McClean

Shundra McClean
Tax Law Specialist
Technical Assistance & Dispute Resolution

Record ID: 7001037539

cc:



TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7001037539

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.