



**QUESTION #1:** Are Fees, paid by Taxpayer to Associations under the [REDACTED] Agreements, subject to sales tax under Rule 12A-1.070(4)(a), Florida Administrative Code (“F.A.C.”)?

**ANSWER:** Yes.

**QUESTION #2:** Assuming the answer to question (1) above is “yes,” does Taxpayer’s method of paying sales tax to Associations (i.e., where the [REDACTED] Agreements separately break out the percentages for Fees and for the sales taxes, and then Taxpayer remits separate checks to Associations, one for Fees and one for the sales taxes), satisfy Taxpayer’s obligations under Rule 12A-1.070(4)(b), F.A.C., with respect to payment of sales taxes due in connection with Fees paid under the [REDACTED] Agreements?

**ANSWER:** Yes, as long as Taxpayer remits the applicable taxes on its licenses to use real property directly to Associations, it is then Associations’ responsibilities to timely remit such taxes to the Florida Department of Revenue (“DOR”).

**QUESTION #3:** Assuming that Taxpayer pays to Associations the proper amount of sales tax due under the [REDACTED] Agreements as described in question (2) above via remittance of separate checks for Fees and for the sales tax, if Associations subsequently fail to pay that sales tax to the DOR, is it correct that under Rule 12A-1.070(16), F.A.C., Taxpayer will not have any liability to DOR for such non-payment?

**ANSWER:** Yes, as long as Taxpayer maintains adequate books and records to reflect that it paid the proper amount of taxes to Associations for Associations’ granting licenses to use real property to Taxpayer, Associations will then be directly liable to DOR for tax, interest, or penalty due on any such transactions.

August 27, 2024

[REDACTED]

Via Email: [REDACTED]

Subject: Technical Assistance Advisement #24A-012

Sales and Use Tax

Sections 212.02, 212.031, 212.07, and 212.15, Florida Statutes (F.S.)

Rule 12A-1.070, Florida Administrative Code (F.A.C.)

[REDACTED] ("Taxpayer")

BP#: [REDACTED]

Dear [REDACTED]

This is in response to your letter received [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**

Question #1: Are Fees paid by Taxpayer to Associations under the [REDACTED] Agreements ("Agreements") subject to Florida sales and use tax ("sales tax") under Rule 12A-1.070(4)(a), F.A.C.?

Question #2: Assuming the answer to question (1) above is "yes," does Taxpayer's method of paying that sales tax to Associations (i.e., where the [REDACTED] Agreements separately break out the percentages for Fees and for the sales taxes, and then Taxpayer remits separate checks to Associations, one for Fees and one for the sales taxes), satisfy Taxpayer's obligations under Rule 12A-1.070(4)(b), F.A.C. with respect to payment of sales taxes due in connection with Fees paid under the [REDACTED] Agreements?

Question #3: Assuming that Taxpayer pays to Associations the proper amount of sales tax due under the [REDACTED] Agreements as described in question (2) above via remittance of separate

checks for Fees and for the sales tax, if Associations subsequently fail to pay that sales tax to DOR, is it correct that under Rule 12A-1.070(16), F.A.C., Taxpayer will not have any liability to DOR for such non-payment?

### **Facts**

Taxpayer's business involves renting [REDACTED] and related items to individuals who are [REDACTED], or [REDACTED]. Those individuals pay Taxpayer for the rentals, and Taxpayer timely remits the appropriate amount of sales tax thereon to the Florida Department of Revenue ("DOR"). Those rental transactions of [REDACTED] and related items are not the subject of this TAA request.

In connection with its business, Taxpayer enters into [REDACTED] Agreements ("Agreements") with various [REDACTED] ("Associations") on [REDACTED] [REDACTED] in exchange for Taxpayer's use of Associations' [REDACTED] properties to conduct its business. Agreements grant to Taxpayer licenses to operate its business on the portions of the [REDACTED] that are owned or managed by Associations, and Taxpayer agrees to pay a concession fee/commission ("Fee") for those licenses. Fee is based on a percentage of the rentals paid to Taxpayer from those persons using the [REDACTED] and related items. The percentage can vary from Association to Association, but the concept is the same for all of them. Under Agreements, Taxpayer pays to Associations Fees as well as associated sales tax. Under a provision in Agreements, Taxpayer remits two checks payable to Associations: one check for Fee and one check for the sales tax based on Fees. Agreements also contain a provision that obligates Associations to remit the sales tax amount to DOR.

### **Applicable Authority and Discussion**

Section 212.031, F.S., imposes sales tax on the privilege of engaging in the ... license<sup>1</sup> to use real property, unless the Florida Statutes provide a specific exemption for such real property. Section 212.031(1)(c), F.S., imposes the sales tax at the rate of 4.5%<sup>2</sup> on the total rent or license fee charged for such real property by the person charging or collecting the license fee. In addition, the local option discretionary sales surtax imposed by the county where the real property is located applies to the total rent charged. Section 212.031(3), F.A.C., provides that the sales tax imposed on the privilege of granting a license to use real property shall be charged by the lessor or person receiving the rent or payment in and by a rental or license fee arrangement with the lessee or person paying the rental or license fee, and shall be due and payable at the time the lessor receives such rental or license fee payment.

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<sup>1</sup> Section 212.02(10)(i), F.S., defines the term, "license," as "the granting of a privilege to use or occupy a building or a parcel of real property for any purpose."

<sup>2</sup> Effective June 1, 2024, the state sales tax rate imposed under s. 212.031, Florida Statutes (F.S.), on the total rent charged for renting, leasing, letting, or granting a license to use real property (also known as "commercial rentals") is reduced from 4.5% to 2.0%.

DOR's interpretation of s. 212.031 is provided in 12A-1.070(4)(a) and (b), F.A.C., which reiterates that sales tax is due on the total consideration received by the lessor for granting a license to use real property to a lessee in Florida and that the lessor is responsible for remitting such tax.

Section 212.07(8), F.S., provides that "any person who has leased, occupied, or used or was entitled to use any real property and cannot prove that the tax levied by this chapter has been paid to his or her lessor or other person is directly liable to the state for any tax, interest, or penalty due on any such transactions."

Section 212.15(1), F.S., provides that "the taxes imposed by this chapter shall become state funds at the moment of collection."

Rule 12A-1.070(16), F.A.C., provides that any person "who has leased, occupied, or used or was entitled to use any real property and cannot prove that the tax has been paid to his lessor or other person shall be directly liable to the State for any tax, interest, or penalty due on any such taxable transaction."

### Conclusions

**QUESTION #1:** Are Fees paid by Taxpayer to Associations under Agreements subject to sales tax under Rule 12A-1.070(4)(a), F.A.C.?

**ANSWER:** Yes.

**QUESTION #2:** Assuming the answer to question (1) above is "yes," does Taxpayer's method of paying that sales tax to Associations (i.e., where Agreements separately break out the percentages for Fees and for the sales tax, and then Taxpayer remits separate checks to Associations, one for Fees and one for the sales tax), satisfy Taxpayer's obligations under Rule 12A-1.070(4)(b), F.A.C. with respect to payment of sales tax due in connection with Fees paid under Agreements?

**ANSWER:** Yes, as long as Taxpayer remits the applicable taxes on its licenses to use real property directly to Associations, it is then Associations' responsibilities to timely remit such taxes to DOR.

**QUESTION #3:** Assuming that Taxpayer pays to Associations the proper amount of sales tax due under Agreements as described in question (2) above via remittance of separate checks for Fees and for the sales tax, if Associations subsequently fail to pay such sales tax to DOR, is it correct that under Rule 12A-1.070(16), F.A.C., Taxpayer will not have any liability to DOR for such non-payment?

**ANSWER:** Yes, as long as Taxpayer maintains adequate books and records to reflect that it properly paid taxes to Associations for Associations' granting licenses to use real property to

Taxpayer, Associations will then be directly liable to DOR for tax, interest, or penalty due on any such transactions.

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)717-6363.

Sincerely,

*Leigh L. Ceci*

Leigh L. Ceci, MAcc  
Tax Law Specialist  
Technical Assistance & Dispute Resolution

CC:



Record ID: 7001189939

### 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 address 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: 7001189939

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](mailto:douglas.charity@floridarevenue.com).

Thank you.