Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399 floridarevenue.com

QUESTION: Are the Revenue Share payments made by Taxpayer to their retailers subject to Florida sales and use tax?

ANSWER: Taxpayer's Revenue Share payments made to retailers are properly characterized as payments for a license to use real property. All consideration due and payable by Taxpayer to the retailers for the privilege of use, occupancy, or the right to use or occupy Florida real property is subject to sales tax.

December 05, 2024

[redacted]

Email: [redacted]

Re: Technical Assistance Advisement – TAA #: 24a-019
[redacted] ("Taxpayer")
Sales and Use Tax – Rental/Lease - Real Property
Sections 212.055, 212.031(1)(a) and (3), Florida Statutes - ("F.S.")
Rule 12A-1.070, Florida Administrative Code - ("F.A.C.")
BP #: [redacted]
FEI#: [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

Are the Revenue Share payments made by Taxpayer to their retailers subject to Florida sales and use tax?

FACTS

Taxpayer produces, installs, and operates [redacted] kiosks in retail stores. There are over [redacted] kiosks located in Florida at various retail locations. [redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

[redacted]

TAXPAYER AGREEMENTS WITH RETAILERS

Agreements are executed between Taxpayer and their retailers for placement of Taxpayer kiosks. Taxpayer is the owner and operator of the kiosks.

The placement of Taxpayer's kiosks is determined based on collaboration between Taxpayer and the retailer. Taxpayer provides a study assessing the performance of its kiosks in various locations in retail stores. Retailers review the study and collaborate with Taxpayer in good faith to determine the best placement for Taxpayer kiosk at their locations.

[redacted]

Taxpayer provided a sample copy of a Master Kiosk Agreement, which contains the following:

MASTER KIOSK AGREEMENT FOR [redacted] KIOSKS IN THE UNITED STATES

[redacted]

RECITALS

A. [redacted] is in the business of producing, installing and operating various types of kiosks for use in retail stores.

B. [redacted]

C. [redacted]

D. [redacted]

AGREEMENT

[redacted] and [redacted] agree as follows:

1. DEFINITIONS.

Capitalized terms used in this Master Agreement and not otherwise defined will have the meanings given to them in this Section 1.

* * *

"Kiosk(s)" means any machine which is furnished by [redacted] under this Master Agreement, and which provides goods or services to a Customer on an automated basis without the need for an in-Store attendant.

* * *

"Kiosk Space(s)" means the area of space within any Store that has been allocated by the processes set forth herein for the installation, maintenance, and operation of a Kiosk and to otherwise provide Services with respect to such Kiosk.

* * *

3. KIOSK AUTHORIZATION AND INSTALLATION.

[redacted]

[redacted]

* * *

[redacted]

* * *

[redacted]

* * *

[redacted]

* * *

4. KIOSK OPERATIONS.

* * *

[redacted]

[redacted]

* * *

[redacted]

* * *

Florida sales tax is calculated monthly by Taxpayer on these Revenue Share payments made to retailers based on the state and county sales tax rate where the kiosks are physically located.

LAW AND DISCUSSION

Taxpayer's request first takes the position that its kiosks do not constitute a "vending machine" under Florida law or Department rule. See Section 212.0515, F.S., and Rule 12A-1.070, F.A.C. The Department agrees.

Taxpayer's request also states that it "does not believe the agreements with their retailers are taxable leases or licenses of commercial retail space; . . . The intent of the Agreements is to provide a [redacted] . . . . The intent of these agreements is not to lease or license the few square feet the [Taxpayer] kiosk rests upon; it is in providing a service to the retailer's customers."

To this argument the Department disagrees – under the Master Kiosk Agreement, retailers clearly grant a license to use or occupy their real property to Taxpayer.

Section 212.031(1)(a), F.S., provides that every person is exercising a taxable privilege who engages in the business of renting, leasing, or granting a license for the use of any real property, unless a specific exemption applies.

Section 212.02(10)(i), F.S, provides that a "[l]icense," as used with reference to the use of real property, means the granting of a privilege to use or occupy a building or a parcel of real property for any purpose.

Section 212.031(3), F.S., provides that "the tax … shall be due and payable at the time of the receipt of such rental or license fee payment by the lessor or other person who receives the rental or payment."

Rule 12A-1.070(4)(a), F.A.C., provides that:

> (4) (a)The tenant or person actually occupying, using, or entitled to use any real property from which rental or license fee is subject to taxation under Section 212.031, F.S., shall pay the tax to his immediate landlord or other person granting the right to such tenant or person to occupy or use such real property.
> (b) The tax shall be paid on all considerations due and payable by the tenant or other person actually occupying, using, or entitled to use any real property to his landlord or other person for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose.

The terms “lease” and “license” are mutually exclusive. "[A] license is not an interest in real property; it merely gives one the authority to do a particular act on another's land." Keane v. President Condo. Ass'n, 133 So. 3d 1154, 1156 (Fla. 3d DCA 2014). No description of a specific parcel or portion of real property is required. A license “conveys no interest in the land and may not be assigned or conveyed by the licensee." Brevard Cty. v. Blasky, 875 So. 2d 6, 12 (Fla. 5th DCA 2004).

Here, retailers are required to provide the Taxpayer with a location within their stores. As indicated in the Master Kiosk Agreement, that location is subject to change under certain conditions. Whether the location of a licensed activity can be changed, and which party can change it, depends upon the intent of the parties to the licensing agreement. Lodestar Tower N. Palm Beach v. Palm Beach Television Broadcasting, 665 So. 2d 368, 370 (Fla. 4th DCA 1996). When "the terms of a contract are unambiguous, the parties' intent must be determined from within the four corners of the document." Burns v. Barfield, 732 So. 2d 1202, 1205 (Fla. 4th DCA 1999) (citing Misala, Inc. v. Eagles, 662 So. 2d 1389 (Fla. 4th DCA 1995)). The Master Kiosk Agreement clearly expresses the parties’ intent that the location of kiosks may be changed.

In addition, the Master Kiosk Agreement places restrictions upon Taxpayer’s activities within the “Kiosk space” as well as within the rest of retailers’ store. Conditions may be imposed on the licensee’s use of the licensor’s land, and violation of those conditions may create a limitation on the duration of licensee’s rights (i.e., the license may be subject to revocation). See, e.g., Jabour v. Toppino, 293 So.2d 123 (Fla. 3d DCA 1974). Where a conditional or restricted consent to enter land is given, the privilege to enter exists only insofar as the conditions or restrictions are complied with. Satin v. Hialeah Race Course, Inc., 65 So.2d 475 (Fla. 1953). Thus, a license neither requires that exclusive control over the premises be granted to a licensee, nor does it require that a licensee’s operations be free of restrictions.

The Master Kiosk Agreement governs the agreement between the parties regarding the placement of Taxpayer’s kiosks on the retailer’s real property. The retailers are required to provide space on their real property for Taxpayer’s kiosks under agreed conditions. Taxpayer’s use and occupancy are governed by the terms of the Master Kiosk Agreement. In return for use or occupancy, Taxpayer pays the retailer a [redacted]

Accordingly, in the Master Kiosk Agreement, the retailer has granted Taxpayer permission to use part of its real property for the placement of kiosks, and in turn receives payment from Taxpayer for the granting of this privilege. The agreement therefore creates a taxable grant of a license to use or occupy real property pursuant to Section 212.031(1)(a) and (3), F.S. It is immaterial what other purpose may be served by the agreement.

CONCLUSION

The Master Kiosk Agreement creates a license for Taxpayer to use or occupy the retailers' real property. All consideration due and payable to the retailers for the privilege of use, occupancy, or the right to use or occupy Florida real property is subject to sales tax.

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)717-7759.

Sincerely,

Alesia Pride

Alesia Pride
Tax Law Specialist
Office of Technical Assistance

Record ID: 7001257445

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: 7001257445

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.