

Title: Boats

Apr 10, 1991

RE: TAA #91A-016

Sales Tax Vessel Importation Section 212.06(8), F.S. Rules
12A-1.007 & 12A-1.091, F.A.C.

Dear:

This is in response to your letter of January 22, 1991, in which you request, on your behalf (hereinafter referred to as the "Purchaser"), the issuance of a Technical Assistance Advisement, regarding the application of use tax to a vessel imported into Florida for use.

FACTS

In your letter of January 22, 1991, you state:

"[Purchaser] is writing to request a Technical Assistance Advisement regarding the Florida Use Tax (12A-1.091) Paragraph 2a. The following facts pertain to [purchaser's] specific request.

"On October 4, 1989, purchaser ordered a new XXX boat to be built to [purchaser's] specifications for delivery in April, 1990. The selling dealer was located in XXX and [purchaser] was a resident of XXX. The purchase was made by a XXX corporation (hereinafter "Corporation") of which [the purchaser] is the sole shareholder. [Purchaser's] previous boat was held in that corporation and was traded (title passed on 10/4/89) on the new purchase. [Purchaser's] previous boat, while registered in XXX was used primarily in XXX Use Tax had been paid on it.

"The new boat was delayed in production way beyond the contracted delivery date of April, 1990. The boat was finally finished on July 23, 1990 and delivery was taken

(title passed) in XXX [Purchaser] was still a resident of XXX at that time. Since most of the boating season in XXX had passed, [purchaser] decided to enjoy [purchaser's] vacation in XXX. [Purchaser] planned to have electronics installed and then bring the boat to XXX in the Spring of 1991. [Purchaser] recognized that the XXX Use Tax would be due upon the boat's use in XXX.

"[Purchaser] was advised that since [corporation] had taken title in XXX [corporation] needed to register the boat in XXX and pay the XXX sales tax. The sales tax was paid on July 24, 1990 and the boat was registered in XXX.

"During the boat's maiden voyage, several major defects of serious nature were found. [Purchaser] decided to return the boat to XXX for repairs in XXX.

"Quite unexpectedly, [purchaser] was transferred within the company [purchaser] works for, from their XXX headquarters to XXX. This transfer occurred on November 19, 1990. XXX had told [purchaser] the repairs will be completed on January 25, 1991 and [purchaser] now plans to bring the boat to Florida.

"Since the boat will be more than six months old after [purchaser] brings it to Florida, [purchaser] does not believe the Use Tax is due on it. [Purchaser] was not a resident of Florida when [purchaser] ordered it or took title to it and it was owned by [purchaser] through [purchaser's] corporation for six months under tax jurisdiction of XXX before bringing it to Florida. Most importantly, [purchaser] believes, is the fact that XXX had control of the time table for the repairs and my delay in bringing the boat to Florida was not an attempt to avoid Florida Use Tax.

Your letter of February 7, 1991, states in part:

"Several other facts should help to clarify the issue. At the time of ordering and purchase of the boat, [purchaser] had no connection with Florida (i.e. Owned no property and

did not have a residence in the state).

The following documents were enclosed with your letter of February 7, 1991:

1. Sales tax check paid to the State of XXX.
2. Application for registration in XXX.
3. XXX registration.
4. Bill of Sale.
5. Purchase invoice.
6. Letter from XXX acknowledging date warranty work was completed.
7. Ships' Log pages relating to entry into Florida.
8. Copy of Captain's Log and bill.
9. Purchase of diesel fuel in XXX, Florida on the date of first entry into Florida.
10. State of XXX Exemption certificate.
11. XXX delivery receipt.

On February 22, 1991, you provided an affidavit to this office which states the following:

"This affidavit certifies that since the date of delivery (July 23, 1990) of [vessel] purchased by [purchaser's] corporation, of which [the purchaser] is the sole shareholder, this vessel has never left the territorial waters of the Continental United States of America and the first time it entered the territorial waters to the State of Florida was January 28, 1991."

APPLICABLE STATUTE

Section 212.06(8), F.S. (1989), provides:

"Use tax will apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that it shall be presumed that tangible personal property used in another state, territory of the United States, or the District of Columbia for 6 months or longer before being imported into

this state was not purchased for use in this state. The rental or lease of tangible personal property which is used or stored in this state shall be taxable without regard to its prior use or tax paid on purchase outside this state."
(Emphasis Supplied)

APPLICABLE RULES

Rule 12A-1.007(2)(a), F.A.C., provides in pertinent part:

"There shall be a presumption that any... boat... purchased in another state, territory of the United States, or the District of Columbia but titled, registered, or licensed in this state is taxable... This presumption may be rebutted only by documentary evidence that the person owning the... boat... purchased the... boat... in another state, territory of the United States, or the District of Columbia six (6) months or more prior to the time it is brought into this state. In order for such property to be presumed exempt as purchased for use outside Florida, the person owning the... boat... must provide documentary proof that such property was used in another state, territory of the United States, or the District of Columbia for six months or longer, under conditions which would lawfully give rise to the taxing jurisdiction of such state, territory, or District of Columbia before being imported into this state..." (Emphasis Supplied)

Rule 12A-1.091(2)(a), F.A.C., provides:

"The use tax applies to the use in this state of tangible personal property purchased outside Florida which would have been subject to the sales tax if purchased from a Florida dealer; provided, however, that it shall be presumed that tangible personal property used in another state for six (6) months or longer before being imported into this state was not purchased for use in this state."
(Emphasis Supplied)

DETERMINATION

Section 212.06(8), F.S., and Rule 12A-1.091(2)(a), F.A.C., provide that use tax will apply and be due on tangible personal property purchased outside of Florida and imported into Florida for use. Section 212.06(8), F.S., and Rule 12A-1.091(2)(a), F.A.C., further provide that it shall be presumed that tangible personal property used in another state for six months or longer before being imported into Florida was not purchased for use in Florida, and therefore, Florida use tax would not be applicable.

Pursuant to Rule 12A-1.007(2)(a), F.A.C., there is a presumption that any boat purchased in another state but titled, registered, or licensed in this state is taxable. However, the rule provides that the presumption may be rebutted only by documentary evidence that the person owning the boat purchased the boat in another state six months or more prior to the time it is brought into this state. In order for such property to be presumed exempt as purchased not for use in Florida, the person owning the boat must provide documentary proof (title certificate, license, or registration) that such property was used in another state or territory of the United States, or District of Columbia for six months or longer under conditions which would lawfully give rise to the taxing jurisdiction of such state, territory or District of Columbia before being imported into this state.

Based on the documentation submitted by the purchaser, the Department of Revenue concludes that: (1) at the time of purchase (transfer of title and possession), there is no evidence that the purchaser intended to use the vessel in the State of Florida; and (2) the purchaser's corporation owned and used the vessel in another state, territory of the United States, or District of Columbia for a period of greater than six months prior to importing the vessel into Florida. Therefore, pursuant to section 212.06(8), F.S., and Rules 12A-1.007(2)(a) and 12A-1.091(2)(a), F.A.C, the importing of the vessel into Florida would not subject to Florida use tax.

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 expressed in this response.

You are further advised that this response and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details which might lead to identification of the taxpayer must be deleted by the Department before disclosure. In an effort to protect the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or the response.

Sincerely,

Rick Johnson
Technical Assistant

RJ/rj