See Revised TAA 99A-056R, dated November 3, 2000

SUMMARY

QUESTION: Are hand-rolled soft baked pretzels exempt from sales tax when sold by a bakery that does not have eating facilities?

ANSWER - Based on Facts Below: Soft baked pretzels are exempt from sales tax when sold by a pretzel shop that does not have eating facilities available for its customers. The pretzel shop is licensed by the Department of Agriculture as a bakery.

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Oct 15, 1999

Re: Technical Assistance Advisement (99A-056)
Pretzels Baked and Sold for Off-Premises Consumption
Sections: 212.06, and 212.08(1), F.S
XXX (Taxpayer)
Sales Tax Number XX
FEI Number XX

Dear :

This is in response to your letter dated August 13, 1999, for the Department's issuance of a Technical Assistance Advisement (TAA) concerning the above referenced party and matter. Your letter 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 Section 213.22, F.S.

REQUESTED ADVISEMENT

Whether hand-rolled soft baked pretzels, sold for consumption off the seller's premises, should be classified as bakery products for purposes of exempting the transaction from sales tax.

FACTS

The Taxpayer operates a pretzel shop which sells hot soft baked pretzels, soft drinks, prepackaged dips and cheeses. All pretzel products produced are "hand baked" and sold for off-premises consumption, as the store does not provide any dine-in accommodations for its customers. The store is located in a mall and consists of XXX square feet of space. The store is licensed and regulated under Chapter 500, F.S., as a bakery by the Department of Agriculture and Consumer Services, as opposed to being licensed and regulated under Chapter 509, F.S., as a restaurant by the Department of Business and Professional Regulation.

LAW

As provided in Section 212.06(1)(a), F.S., sales tax, at the rate of 6 percent, shall be collectible from all dealers on the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of tangible personal property or services taxable under this chapter. Pursuant to Section 212.08(1), F.S., there are exempted from tax imposed by Chapter 212, F.S., food products for human consumption. Effective July 1, 1998, the exemption provided for the sale of food products includes bakery products sold by bakeries, pastry shops, or like establishments that do not have eating facilities. Section 212.08(1)(b)3., F.S.

DEPARTMENT RESPONSE

It is plainly stated in Section 212.08(1)(b)3., F.S., that bakery products sold by bakeries, pastry shops, or like establishments that do not have eating facilities, are exempt from sales tax. In this instance, the Taxpayer's pretzel shop is licensed and regulated as a bakery by the Department of Agriculture and Consumer Services, and it does not have eating facilities. Since the "hand baked" soft pretzels are a bakery product, they are exempt from sales tax when sold from the

Taxpayer's pretzel shop.

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 and administrative rule changes or that 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., which 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 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 15 days of the date of this letter.

Sincerely,

Richard R. Parsons
Tax Law Specialist
Technical Assistance and Dispute Resolution
(850) 922-4838

Control Number 38637