

Status: Obsolete - Law Amended 7/1/86, Lease or License to use
TPP is a "sale"; see Rule 12A-1.071(42), F.A.C.

Nov 14, 1983

IN RE: DOR 83-3
Petition for Declaratory Statement by Steve Semler, d/b/a
American Pipe and Tank

The Petitioner, Steve Semler, d/b/a American Pipe and Tank, by and through its attorney, filed a Petition for Declaratory Statement with the Department of Revenue setting forth the following:

The Petitioner is engaged in the business of renting and servicing portable toilets. For a set fee, the Petitioner delivers and sets up portable toilets on the premises of the specific lessee. There is no transfer of title or ownership involved.

Briefly stated, the question posed by the Petitioner is:

Are charges for renting and servicing portable toilets subject to the tax imposed by s. 212.05(1) (d), Florida Statutes, or exempt from Florida sales tax pursuant to s. 212.08(7)(e)1., Florida Statutes?

Section 212.05(1)(b) and (d), Florida Statutes, provides:

"It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

"(b) At the rate of 5 percent of the cost price of each

item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state.

"(d) At the rate of 5 percent of the lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee, to the owner of the tangible personal property."

Section 212.08(7)(e)1., Florida Statutes, provides:

"The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following tangible personal property are hereby specifically exempt from the tax imposed by this chapter.

* * * *

"(e)1. Also exempted are professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made."

Rule 12A-1.71(1),(8)(a) and (35), Florida Administrative Code, provides:

"(1) Sales tax applies to the gross proceeds derived from the lease or rental of tangible personal property where the lease or rental of such property is an established business, part of an established business or is incidental or germane to such business; provided, however, that the lease or rental of motion picture film where an admission is charged for viewing such film is not taxable. Likewise exempt from the tax are all charges to radio and television stations for license fees and charges for raw and processed films, video tapes and transcriptions for use in producing radio or television broadcasts.

"(8)(a) When the owner of equipment furnishes the operator and all operating supplies, and contracts for their use to perform certain work under his direction and according to his customer's specifications, and the customer does not take possession or have any direction or control over the physical operation, the contract constitutes a service

transaction and not the rental of tangible personal property, and the charge therefor is exempt.

"(35) The charges for water conditioning (soft water service) is exempt. The dealer shall pay tax on the acquisition of tanks, minerals and other equipment used in furnishing such service."

It is the position of the Department of Revenue that an agreement providing both services (labor) and property for a lump sum amount, when the element of service is the essence of the transaction, is exempt from Florida sales tax under the portion of Section 212.08(7)(e)1., Florida Statutes, and Rule 12A-1.71(1)(8) and (35), Florida Administrative Code, quoted above. To qualify as a service contract, the services provided must be clearly evident in the terms of the contract; and the providing of property maintenance and repair services to a lessee does not, in and itself, convert a lease contract into a service contract.

The tangible personal property, which is utilized in the performance of service, is taxable under the portion of Section 212.05(1)(b), Florida Statutes, quoted above.

The rental of portable toilets, where possession and control is in the customer, is subject to Florida sales tax under the provisions of Section 212.05(1)(d), Florida Statutes, and Rule 12A-1.71(1), Florida Administrative Code, quoted above.

Exemptions from taxation are matters of legislative grace and are strictly construed against the person seeking the exemption. See, Wanda Marine v. Department of Revenue, 305 So.2d 65 (Fla. 1 DCA); and Robert N. Anderson v. State Department of Revenue, 403 So.2d 397 (Fla. Supt. Ct.).

Based upon the facts presented in the Petition, it appears that the business practices of the Petitioner are in the nature of service contracts, not the rental of tangible personal property.

Accordingly, it is the position of the Department of Revenue that the charge for full service portable toilets, where

possession and control vests in the lessor is within the meaning of Section 212.08(7)(e), Florida Statutes, and therefore is not subject to Florida sales tax.

DONE AND ENTERED this 14th day of November, 1983, in Tallahassee, Leon County, Florida.

RANDY MILLER
EXECUTIVE DIRECTOR
DEPARTMENT OF REVENUE
STATE OF FLORIDA

Filed with the Clerk this 14th day of November, 1983.

Agency Clerk