

## **SUMMARY**

**QUESTION 1:** Is a drop shipper, located outside of Florida but registered as a Florida dealer, obligated to collect sales tax on a sale to a customer, that is an unregistered dealer located outside of Florida with no tax nexus with this state, in the instance when the drop shipper ships the goods by common carrier, or by its own vehicles, to the customer's buyer in Florida?

**ANSWER 1 - Based on Facts Below:** Since the goods were outside Florida at the time of sale to the unregistered customer, no tax is collected by the drop shipper when the goods are shipped into Florida by common carriers. However, the drop shipper is obligated to collect sales tax from the buyer when the goods are delivered into Florida by the drop shipper's own vehicles.

**QUESTION 2:** Is the taxability of the sale conditioned on the tax nexus with Florida of the drop shipper or the customer?

**ANSWERS 2 - Based on Facts Below:** The physical presence of the drop shipper in Florida requires its registration as a Florida dealer. Such status, in turn, obligates the drop shipper to collect the tax whenever appropriate. The physical presence of the customer in Florida, sufficient to require its registration as a Florida dealer, would permit the customer to tender a resale certificate to the drop shipper, thus removing from the drop shipper the duty to collect the tax.

**QUESTION 3:** Would the taxability of the sale be affected if the buyer claimed no presence in Florida, but employed personnel in Florida in the performance of a construction contract?

**ANSWER 3 - Based on Facts Below:** If the goods were delivered by common carrier into Florida by drop shipper, the buyer would have an obligation to pay use tax on the cost of the materials.

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Aug 03, 2000

Re: Technical Assistance Advise ment Number 00A-44

Drop Shipments

Section 212.05, F.S.

Section 212.06, F.S.

Dear :

This is a response, styled a Technical Assistance Advise ment, to your letter dated April 25, 2000, in which you ask whether certain shipments, commonly known as "drop shipments," are subject to Florida sales or use tax. Note is especially made that during a telephone conversation on May 17, 2000, the Department learned that Drop Shipper has begun completing the Registration Application for Sales and Use Tax, further identified as form DR-1. The discussion within this communication assumes that the registration process will be completed and a sales tax registration number will be obtained by Drop Shipper.

During the conversation the Department also learned that Drop Shipper is the entity created by a merger with the Predecessor Firms. The Federal Employer Identification Number noted above is assigned to one of the Predecessor Firms. A new Federal number will be assigned to Drop Shipper. Further, Drop Shipper has been collecting and remitting Florida sales tax on sales made in this state at retail and has attempted to collect tax on certain drop shipments, which are the focus of this communication.

The facts you provided the Department describe Drop Shipper as "... a national manufacturer of polyethylene pipe with physical locations in [several states]." You state that Drop Shipper is "... both a wholesaler and retailer of the products it manufactures." Drop Shipper has no manufacturing facility in Florida, nor does it store or warehouse its goods in Florida.

The contacts Drop Shipper has with Florida are represented by the frequent trips into the state by its salespeople who accept orders from customers in this state. These sales are made during Drop Shipper's retail sales activities in this state.

The facts of the drop shipment transaction about which you ask 5 questions involve Drop Shipper's wholesale activities. In the factual pattern presented by you, the Drop Shipper sells its goods to a customer (herein Customer) located outside of Florida who has no tax nexus with this state. Customer directs Drop Shipper to ship the goods to Customer's Florida buyer (herein Florida Buyer) at a location in this state. You state that Drop Shipper charged Florida sales tax to Customer, but that the Customer refused the payment of the tax. Customer contends that it has no tax nexus with Florida and that it is not required to be a registered Florida dealer. The goods of the Drop Shipper entered Florida by common carrier.

The questions you ask will be replicated, after each of which the Department's response appears.

**Question 1.** "Is [Drop Shipper] required to collect and remit sales tax on the transaction wherein [Drop Shipper] sells to Customer, an out-of-state business with no nexus in Florida, and delivers merchandise to Florida from its [out-of-state] facility by common carrier to [Florida Buyer], a Florida customer of Customer?"

#### Department Response

Section 212.05, F.S., levies Florida sales tax on the sale at retail of tangible personal property in this state. Given the facts you have provided the Department, the sale by Drop Shipper to Customer is not subject to Florida sales tax because it is not a Florida sale. The goods are not in Florida at the time of the sale, nor is the Customer located in Florida.

The Drop Shipper is provided with the following guidance as to the preservation of records that reveal the sale to Customer is not subject to tax:

In accordance with Rule 12A-1.038(4) and (5)(a), F.A.C., Drop Shipper, a registered Florida dealer, may not accept a resale certificate issued by another state. However, solely for purposes of documentation that the transaction was not a Florida sale, the Drop Shipper may retain in its records a foreign resale certificate, if tendered to it by Customer. It would also be helpful, again for purpose of documentation, that a notation be made on the invoice that the drop shipment was not taxable because the transaction was not a Florida sale.

You are alerted that Drop Shipper would neither be liable to collect the sales tax from the Florida Buyer unless Drop Shipper ships the goods into Florida in its own or leased trucks; ships the goods and collects the sales price as a COD delivery in Florida; or, ships the goods from its Florida facility to the Florida Buyer. In any of these instances Drop Shipper would be obligated to collect the applicable sales tax, not from the Customer, but from the Florida Buyer computed on either the sales price of the goods paid by the Florida Buyer to Customer; or, if such price is unknown, Drop Shipper then is obligated to collect the tax from the Florida Buyer computed on the sales price of the goods sold by Drop Shipper to Customer.

However, since Drop Shipper did not ship the goods to the Florida Buyer under any of the three conditions described above, Drop Shipper is not obligated to collect sales tax from the Customer.

Thus, under these facts, the only tax applicable to the transaction may be that owed by the Florida Buyer. Florida Buyer, if not a registered Florida dealer who bought the goods for resale, would be obligated to remit the Florida use tax on the goods it had purchased from the Customer.

**Question 2.** "Does the answer to question 1 change if the merchandise is delivered by the [Drop Shipper's] own vehicles?"

#### Department Response

As indicated above in the response to Question 1., the entry into Florida of Drop Shipper's own vehicles or vehicles leased

by Drop Shipper would create the obligation of Drop Shipper to collect the Florida sales tax from the Florida Buyer computed on the sales price Customer charged Florida Buyer. If that price is unknown, the Florida sales tax should be collected by Drop Shipper from the Florida Buyer on the price for the goods charged to Customer by Drop Shipper.

**Question 3.** "Does the fact that [Drop Shipper] has nexus through its salespeople have any bearing on the determination of the taxability of this issue?"

Department Response

The physical presence in Florida of the Drop Shipper's personnel, which you have described as "frequent" and during which time the personnel can accept orders, presumably from retail sales to its own customers in Florida, is sufficient to require the registration of Drop Shipper as a Florida dealer, as that term is defined in s. 212.06, F.S., and to collect and remit any applicable Florida sales tax.

**Question 4.** "Does the answer to question 1 change if Customer has nexus in Florida?"

Department Response

The fact that the Customer may have contacts with Florida sufficient enough to require it, as provided in s. 212.06, F.S., to register with this state as a Florida dealer is a factual finding that can not be imposed on the Drop Shipper. However, if the Customer has sufficient physical presence in this state that it must register as a Florida dealer, Drop Shipper would accept a Florida resale certificate from the Customer. The acceptance, in good faith, of a resale certificate from Customer would remove all liability of Drop Shipper for the collection of sales tax from Customer.

**Question 5.** "Does the answer to question 1 change if [Florida Buyer] claims to have no nexus in Florida but is in fact performing a construction contract with its own employees in the State of Florida?"

## Department Response

The Department response to Question 1. is framed as to the taxability of the sale of goods by Drop Shipper to Customer. This response remains the same if the facts are that the Florida Buyer has a physical presence in Florida. The fact that the goods are delivered in Florida to Florida Buyer creates, as was stated in the response to Question 1, the liability of the Florida Buyer for payment of the Florida use tax. If, as in the answer to Question 1., Florida sales tax is not applicable to the sale of the goods to Customer and if Customer is not registered as a Florida dealer, then the payment of the use tax is an obligation of the Florida Buyer. If Florida Buyer is indeed engaged in constructing or improving real property in Florida, the Florida use tax is clearly applicable to such consumption of the goods delivered by common carrier through Drop Shipper.

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,

Robert G. Parsons  
Tax Law Specialist  
Technical Assistance and Dispute Resolution

Ctrl. No. 41214