

SUMMARY

QUESTION: Are taxpayers exempt from Intangible Personal Property Tax because they are subject to the Government in the Sunshine Law?

ANSWER - BASED ON FACTS BELOW: No, Chapter 199, F.S., does not provide an exemption from the tax merely because the taxpayer is subject to the Government in the Sunshine Law.

Apr 26, 2000

Re: Technical Assistance Advisement 00C2-004
Intangible Personal Property Tax - Exempt Taxpayers
Section 199.183, F.S.
XXX, hereinafter referred to as "A"
XXX, hereinafter referred to as "City"

Dear:

Your letter, on behalf of the Board of Trustees of "A", dated XX, requests a Technical Assistance Advisement concerning whether or not "A" is exempt from the annual intangible personal property tax imposed under Chapter 199, F.S. This response to your request constitutes a Technical Assistance Advisement under Chapter 12-11, Florida Administrative Code, and is issued to you under the authority of s. 213.22, Florida Statutes.

FACTS

"A" is a XXX, organized as a 501(C)(9), I.R.C., association. "A" was established through a collective bargaining agreement between the City and the XXX. Contributions to "A" are made by the City and the participants. "A" is governed by a board of five trustees.

In XXX, after receiving an intangible personal property tax return, "A" determined that it was liable for the tax. On XXX,

after reviewing Attorney General Opinion 98-01, "A" requested a determination from the Attorney General that it was not subject to the Government in the Sunshine Law. On XXX, the Attorney General responded that the conclusion reached in Attorney General Opinion 98-01 appears to be applicable to "A" ("A" would be subject to the Government in the Sunshine Law).

QUESTION

Since "A" is subject to the Government in the Sunshine Law, is it exempt from the Intangible Personal Property Tax?

DISCUSSION AND ANALYSIS OF LAW

Section 199.052, F.S., states in part:...

(1) An annual intangible tax return must be filed with the department by every corporation authorized to do business in this state or doing business in this state and by every person, regardless of domicile, who on January 1 owns, controls, or manages intangible personal property which has a taxable situs in this state. For purposes of this chapter, "control" or "manage" does not include any ministerial function or any processing activity. The return shall be due on June 30 of each year. It shall list separately the character, description, and just valuation of all such property. (emphasis supplied)

(5) The trustee of a Florida-situs trust is primarily responsible for returning the trust's intangible personal property and paying the annual tax on it....

Section 199.023, F.S., states in part:...

As used in this chapter:

(3) "Person" means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, personal representative, receiver, or other fiduciary and includes the plural as well as the singular.

Section 199.183, F.S., states in part:...

(1) Intangible personal property owned by this state or any of its political subdivisions or municipalities shall be exempt from taxation under this chapter. This exemption does not apply to:

(a) Any leasehold or other interest that is described in s. 199.023(1)(d).

(b) Property related to the provision of two-way telecommunications services to the public for hire by the use of a telecommunications facility, as defined in s. 364.02(13), and for which a certificate is required under chapter 364, when such service is provided by any county, municipality, or other political subdivision of the state. Any immunity of any political subdivision of the state or other entity of local government from taxation of the property used to provide telecommunication services that is taxed as a result of this paragraph is hereby waived. However, intangible personal property related to the provision of such telecommunications services provided by the operator of a public-use airport, as defined in s. 332.004, for the operator's provision of telecommunications services for the airport or its tenants, concessionaires, or licensees, and intangible personal property related to the provision of such telecommunications services provided by a public hospital, are exempt from taxation under this chapter.

(2) Intangible personal property owned by nonprofit religious, nonprofit educational, or nonprofit charitable institutions shall be exempt from taxation under this chapter. This exemption shall be strictly defined, limited, and applied in each category as follows:

(a) "Religious institutions" means churches and ecclesiastical or denominational organizations having established physical places for worship in this state at which nonprofit religious services and activities are

regularly conducted, as well as church cemeteries.

(b) "Educational institutions" means only:

1. Public or nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Schools, Department of Education, or the Florida Council of Independent Schools; or

2. Nonprofit libraries, art galleries, and museums open to the public.

(c) "Charitable institutions" means only:

1. Nonprofit corporations operating physical facilities in this state at which are provided charitable services, a reasonable percentage of which shall be without cost to those unable to pay; or

2. Those institutions qualified as charitable under s. 501(c)(3) of the United States Internal Revenue Code of 1954.

Intangible personal property shall not be deemed to be owned by such exempt institutions if it is held in a trust of any kind under which the institution has no present interest in the trust principal except the right to compel the performance of the trust agreement.... (emphasis supplied)

Subparagraph 501(C)(9), I.R.C., identifies:

Voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

"A" is registered with the Internal Revenue Service as a 501(C)(9) association, and is not considered a government

entity. There are no provisions in Chapter 199, F.S., to exempt such an organization from the intangible personal property tax. A tax exemption must be strictly construed against the party claiming the exemption. See Regal Kitchens, Inc. v. Florida Department of Revenue, 641 So.2d 158, 164 (Fla. 1st DCA 1994) and Asphalt Pavers, Inc. v. Department of Revenue, 584 So.2d 55, 57 (Fla. 1st DCA 1991).

Qualifications for an organization to operate under the Government in the Sunshine Law are quite different from the qualifications necessary to be considered a political subdivision or municipality. The Attorney General's letter dated XX, noted that recent decisions in the courts have broadened the test used to determine whether the open government laws apply to a private entity, focussing on whether the private entity is merely providing services to the public agency or is standing in the shoes of the public agency. This test is substantially different from the strict requirements to be exempt from Chapter 199, F.S.

CONCLUSION

"A" is not an exempt entity under Chapter 199, F.S. Therefore "A" is subject to the intangible personal property 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 based 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 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,

Robert DuCasse
Technical Assistance and Dispute Resolution

RCD/
Control No.: 40396