

SUMMARY

QUESTION: Are sales of timeshare membership units in the form of points subject to sales and use tax, when the sale of such units has been declared a timeshare estate by the Department of Business and Professional Regulation?

ANSWER - Based on Facts Below: No, the sales of timeshare units in the form of points are not subject to sales and use tax, when such units meet the definition of "timeshare estate" under s. 721.05(32), F.S.

Oct 03, 2002

Re: Technical Assistance Advisement 02A-040

Petitioner: XXX "Taxpayer"

FEI number: XXX

Sales and Use Tax - Timeshare Membership Points

Section: 721.05(32), (35), F.S.

Rule: 12A-1.061(3)(h)14., F.A.C.

Dear :

This is a response to your letter dated March 4, 2002, in which you have requested a Technical Assistance Advisement concerning the above referenced petitioner. 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 s. 213.22, F.S.

Stated Facts

In your letter, you state the following facts:

An affiliate of the Taxpayer created a multisite vacation club and timeshare plan in November, 1993, by incorporating

XXX, a nonstock, nonprofit XXX corporation (the "Club"), and transferring unencumbered condominium units ("Units") ... to an independent trustee for the exclusive benefit of the Club and its members (the "Club Members"). A trust agreement and a master declaration were recorded in the appropriate jurisdictions against the title of each Unit owned by the Club....

Each member's rights are set forth by the Club instruments, which include the Master Declaration and Bylaws. A copy of the "Club Bylaws" is attached as Exhibit B. Club Members are entitled to use the Units, based on a reservation system (see Exhibit C for description of the reservation system). Under the Club Bylaws, the Club Members are entitled to vote at Club meetings, based on the number of membership interests they own. The Club Members elect a board of directors which manage and operate the operations of the Club (see Section 3.6 of the Club Bylaws providing that Club Members are entitled to vote at the annual meeting and Section 4.2 of the Club Bylaws providing that Club Members elect the Board of Directors). Article X of the Club Bylaws provide that upon a 90% vote of the membership units, the Resort is to be sold, and the proceeds after payment of all obligations distributed pro rata to the Club Members in proportion to their membership interest in the Club. Club Members are entitled to transfer their membership units, subject to a right of first refusal by the Club.

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes (the "Division") has approved the filings submitted by Taxpayer, pursuant to a letter dated February 5, 2002 ("Timeshare Approval Letter"), a copy of which is attached as Exhibit D. The Timeshare Approval Letter concludes that the timeshare interests of the Club are timeshare estates, pursuant to [Section] 721.05(32), F.S.

The Taxpayer desires to offer memberships for sale to the public in Florida pursuant to the Timeshare Approval Letter....

... The [T]axpayer requests a binding ruling from the Department of Revenue that the sale of the membership units by the Taxpayer to the Club Members will not be subject from [S]tate of Florida sales tax or any local option sales tax and that the Club Members use of a Unit in the Club's resort in Florida will not be subject to State of Florida use tax, or any local option use tax...."

Taxpayer's Position

In your letter, you state:

... Florida sales and use tax is not due on the sale of real property or on the sale of intangible personal property. The timeshare membership units have been determined to be a timeshare estate by the Division. Rule 12A-1.061(3)(h)15 [., F.A.C.,](sic) provides that consideration paid by a timeshare owner for the purchase of a timeshare estate per [Section] 721.05[, F.S.,] is not subject to Florida sales and use tax. Accordingly, the sale of the membership units should not be subject to Florida sales and use tax, since they qualify as a timeshare estate per [Section] 721.05, [F.S.,] as determined by the Division. Although not binding on the Department, we would note that TAA 01A-072 discusses a very similar timeshare program, and concludes that the interests sold are not subject to sales and use tax. The Membership Units purchased by Club Members are in the nature of a cooperative interest discussed in TAA 01A-072. Club Members have the right to vote for the board of directors, they have the right to use the Units pursuant to the reservation system, they have the right to transfer their membership interests, and they have the right, upon a super majority vote, to cause the Club to sell all of the Units and distribute the net proceeds, pro rata, to the Club Members. Accordingly, the rationale of TAA 01A-072 is applicable to this case.

Applicable Authority and Discussion

Section 721.05(32), F.S., states:

(32) "Timeshare estate" means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof. The term shall also mean an interest in a condominium unit pursuant to s. 718.103, an interest in a cooperative unit pursuant to s. 719.103, or an interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)3.

Section 721.05(35), F.S., states:

(35) "Timeshare license" means a right to occupy a timeshare unit, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a timeshare property.

Rule 12A-1.061(3)(h)14., F.A.C., states:

(h) The following is a non-inclusive list of charges separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale that are NOT rental charges or room rates for transient accommodations: ...

14. Consideration paid by a timeshare owner for purchase of a timeshare estate, as defined in s. 721.05, F.S.
Consideration paid under a timeshare license, as defined in s. 721.05, F.S., are rental charges or room rates and are subject to tax.

Advisements

Timeshare estates are not subject to sales or use tax because they are considered the purchase of real property. As such, they will be subject to ad valorem, or real property, taxation. The documents submitted with your letter state that club members will receive an annual allotment of resort or INDI points in perpetuity, which can be used for resort accommodations. The club member has a right to use his points to reserve a unit in any of the resort's properties. The points cannot be used by

the club member for any purpose other than to reserve accommodations in resort properties.

This department agrees with the determination of the Department of Business and Professional Regulation that these transactions would be the sale of timeshare estates. The sale of these resort and INDI points that can be used only for Club accommodations is essentially the same as purchasing a timeshare estate in a particular piece of property. As stated in the statute, a timeshare estate is the right to occupy a timeshare unit together with a freehold estate or an estate for years with a future interest. The key difference between a timeshare estate and a timeshare license is the element of time. A timeshare purchaser must hold a freehold interest or an estate for years coupled with a future interest to qualify as owning a timeshare estate. Here, the Club member would be entitled to timeshare accommodations in perpetuity. This element of time with regards to the purchaser's interest, together with the purchaser's right to occupy timeshare property owned by the Club, meets the essential requirements of a timeshare estate. Therefore, the sale of resort or INDI points to club members will be considered the purchase of a timeshare estate, not subject to sales or use tax.

An instrument that conveys an interest in Florida real property, such as an instrument that conveys an interest in a Florida timeshare, is subject to documentary stamp tax as imposed under s. 201.02(1), F.S. Where the purchase of a timeshare interest is financed, the documentary stamp tax as imposed under s. 201.08(1) or (2), F.S., is due if the note or other obligation to pay money is executed or delivered in Florida or if there is a mortgage filed or recorded in Florida. The nonrecurring intangible personal property tax as imposed under s. 199.135, F.S., is also due if Florida real property secures a note or other obligation to pay money.

Closing Statement

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, 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.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 488-9669.

Sincerely,

Tammy S. Manke
Attorney
Technical Assistance & Dispute Resolution

TSM/

Control No: 49136