

SUMMARY

QUESTION: Is the fee collected for a sport-fishing charter trip, in which the fee is based on the boat and time, and not charged per person, exempt from Florida Sales Tax?

ANSWER-Based on the Facts Below: Yes. Pursuant to Section 212.08(7)(y), F.S., the sport-fishing charter is exempt from Florida Sales Tax because it charges a flat rate per trip, independent of the number of fisherman who actually make the trip, and because the charter does not charge "per person".

Jan 28, 2003

Subject: Technical Assistance Advisement 03A-005

Charter Fishing Vessels

Sales and Use Tax

Sections 212.02; 212.04; and 212.08, F.S.

Rules 12A-1.005; and 12A-1.071, F.A.C.

XXX ("Taxpayer")

FEI: XX

Dear :

This response is in reply to your letter dated December 20, 2002, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to Section 213.22, F.S., and Chapter 12-11, F.A.C., regarding the referenced matter and party. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for issuance of a TAA.

ISSUE

Whether sport-fishing charters such as the one operated by ("Taxpayer") qualifies for the sales tax exemption under Section

FACTS

The material you provided along with your request for a TAA provides in part:

The Taxpayer is a charter-fishing operation at the ("Resort"). The Taxpayer has two (2) boats, each with a dedicated captain that provides fishing charters to guests of the resort. The Taxpayer supplies the boat, crew, tackle and bait solely for the purpose of customers chartering the boats to go sport-fishing.

Rates charged to charter a boat are per boat trip, not per person. The rates are the same whether there are 1, 2, 3, or 4 fishermen aboard. Food and drinks are not included in the charter rate. Rates are broken down into the following categories: six (6) hour trips; eight (8) hour trips; ten (10) hour trips; twelve (12) hour trips; and a per hour charge for trips over twelve (12) hours.

The two (2) boats available for charter are a 35 foot long boat and a 23 foot long boat. The former boat has a private toilet and "modest berthing." The 23 foot long boat has neither amenity and is designed to allow entry into creeks and coves. The Taxpayer's marketing brochure contains the phrases "Charter Fishing" and "Sportfishing Charters." The brochure fails to use any words that would imply sightseeing or that the charter is a "party boat."

TAXPAYER POSITION

The Taxpayer seeks an official binding statement confirming that it is exempt from collecting sales tax on its sport-fishing charters.

APPLICABLE STATUTES AND RULES

Section 212.02, F.S., provides in part:

(1) The term "admissions" means and includes the net sum of

money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including, but not limited to, theaters, outdoor theaters, shows, exhibitions, games, races, or any place where charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees, or other fees or receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation, and all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities, except physical fitness facilities owned or operated by any hospital licensed under chapter 395.

Section 212.04, F.S. provides in part:

(1)(a) It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who sells or receives anything of value by way of admissions.

Section 212.08, F.S., provides in part:

(7) MISCELLANEOUS EXEMPTIONS

* * *

(y) Charter fishing vessels.--The charge for chartering any boat or vessel, with the crew furnished, solely for the purpose of fishing is exempt from the tax imposed under s. 212.04 or s. 212.05. This exemption does not apply to any charge to enter or stay upon any "head-boat," party boat, or other boat or vessel. Nothing in this paragraph shall be construed to exempt any boat from sales or use tax upon the purchase thereof except as provided in paragraph (t) and s. 212.05.

Rule 12A-1.005, F.A.C., provides in part:

* * *

(3)(k)1. When the owner of a boat or vessel operated as a "head-boat" or "party boat" supplies the crew, which remains under the control and direction of the owner, and makes a charge measured on an admission or entrance or length of stay aboard the vessel for the privilege of participating in sightseeing, dinner cruises, sport, recreation, or similar activities including fishing, the charge is taxable as an admission.

2. The charge made by an owner or operator for chartering any boat or vessel, with a crew furnished, solely for the purpose of fishing is exempt.

Rule 12A-1.071, F.A.C., provides in part:

* * *

(16) When a boat or vessel is chartered with crew furnished, for the carriage or transportation of persons or property from one point to another and the charterer does not have any direction or control over its operation, the contract constitutes a service transaction and not the rental of tangible personal property and is exempt. See subsection (18)(c) for charter fishing vessels.

(17) When a boat or vessel is leased or rented on a "bare boat" basis, the sales tax applies to the gross proceeds derived from the lease or rental. The lease or rental is considered to be on a "bare boat" basis when:

(a) The lessor does not provide a crew;

(b) The lessor does provide a crew but it is hired by the lessee under a separate employment contract. (Under such circumstances the employment contract cost is not a part of the gross proceeds derived from the lease or rental and is not taxable.)

(18)(a) When the owner of a boat or vessel operated as a "head-boat" or "party boat" supplies the crew, which

remains under the control and direction of the owner, and makes a charge measured on an admission or entrance or length of stay aboard the vessel for the privilege of participating in sightseeing, dinner cruises, sport, recreation, or similar activities including fishing, the charge is taxable as an admission.

(b) Example: A vessel having a capacity for 6 persons operates as a "party" or "head-boat" with a charge of \$50 per person for a day fishing trip whether 1 or 6 persons are carried on the trip. The charge made is considered a charge for admission and is subject to sales tax.

(c) The charge made for chartering any boat or vessel with a crew furnished, solely for the purpose of fishing, is exempt from the tax on admissions and from the tax on leases or rentals of tangible personal property.

(d) Example: A vessel similar to that in the example in (b) above is available for a day fishing trip for a charge of \$300 per day, with crew furnished, without any reduction for the number of persons participating in the trip. This transaction qualifies as a charter fishing trip and the charge is not subject to sales tax.

RESPONSE

In reviewing the marketing material provided, The Taxpayer's operation fits squarely into example "(d)." The marketing material provides: "**(These rates are per boat TRIP, not per person)**"; and "Note: These rates are the same whether there are 1, 2, 3, or 4 fishermen." ("Charter Rates 2002," emphasis in the document).

Based on the facts and documents presented by the Taxpayer, the charges for its charter-fishing business are exempt from sales tax under Section 212.08(7)(y), F.S., because: (1) it charges a flat rate per trip, independent of the number of fishermen who actually make the trip; and (2) because it does not charge "per person."

This response constitutes a Technical Assistance Advisement under Section 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 Section 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.

Sincerely,

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Technical Assistance and Dispute Resolution
(850) 922-4714

ERP/
Ctrl# 53120
Enclosure