

SUMMARY

FACTS: Taxpayer is a corporation registered with the Secretary of State to do business in Florida. Taxpayer is also registered with the Department of Agriculture and Consumer Services as a "seller of travel" pursuant to Florida Statutes Ch. 559, Part XI (Sections 559.926 et seq.).

Taxpayer is in the business of selling vacation packages. The vacation packages will be sold to the public for a single lump-sum price with no itemization of the individual components. The vacation packages consist of a combination of admissions to a recreational facility, meals, and other items, such as transient accommodations, automobile rentals, and golf course green fees. The vacation packages will include two or more of these identified components. Components will either be purchased from unrelated parties or be purchased from related parties at the same price charged to unrelated travel agents. Taxpayer will pay the applicable sales tax on all of the purchased components of the packages, including the transient accommodations, automobile rentals, and golf course green fees.

QUESTION: Is Taxpayer required to register as a dealer and collect and remit sales tax or local option tax under Chapter 212, F.S., on its sales of vacation packages.

ANSWER - Based on Facts Below: Under the provisions of s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., Taxpayer is not required to register as a dealer and is not required to collect and remit any sales tax or local option tax under Chapter 212, F.S., on its sales of vacation packages. If Taxpayer were to itemize the components of the vacation packages to its customers, if Taxpayer were to purchase components from related entities for a specially discounted price not available to others, or if Taxpayer were to fail to pay the applicable sales tax due on the purchase of each of the components of the vacation packages, Taxpayer would no longer meet the criteria established in s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., for tax-exempt sales of vacation packages. Taxpayer would then be required to register with the Department as a dealer and collect the applicable sales tax on its sales.

August 31, 2004

Re: Technical Assistance Advisement 04A-054

Sale of Vacation Packages

Sales and Use Tax

Section: 559.927(1), F.S.

Section: 212.04(1)(d), F.S.

Rule: 12A-1.005(6), F.A.C.

Petitioner: XXX ("Taxpayer")

FEI: XX

Dear :

This response is in reply to your petition dated August 3, 2004, requesting the Department's issuance of a Technical

Assistance Advisement ("TAA") pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., regarding the above referenced matter and party. An examination of your petition 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.

Stated Facts

In your letter, you provide the following facts:

[Taxpayer] is a foreign corporation registered to do business in Florida and also registered with the Department of Agriculture and Consumer Services as a "seller of travel" pursuant to Florida Statutes Ch. 559, Part XI (Sections 559.926 et seq.). XXX, (Corporation A) owns and operates XXX in ..., Florida doing business as XXX. XXX (Corporation B) owns and operates XXX in..., Florida doing business as XXX. [Corporation A] and [Corporation B] sell taxable admissions to XXX, to members of the general public, to [Taxpayer] and to unrelated travel agents. [Taxpayer, Corporation A and Corporation B] are all members of the same controlled group of corporations for federal income tax purposes.

[Taxpayer] will sell vacation packages on the basis hereinafter described. [Taxpayer] will purchase admissions to XXX from [Corporation A and Corporation B], respectively, and will also purchase on-site meals... from [Corporation A and Corporation B] for inclusion in the vacation packages further described below. In all cases, the prices charged to [Taxpayer] by [Corporation A and Corporation B] will be not less than those charged by [Corporation A and Corporation B] to unrelated parties under normal industry practices. More particularly, the prices charged to [Taxpayer] for admissions and meals will be the discounted amounts [Corporation A and Corporation B] regularly use in making sales to unrelated, preferred travel agents. Sales from [Corporation A] to [Taxpayer] and account settlements between the two will be recorded in internal statements, monthly reporting and intercompany accounts. The same will be true of sales from [Corporation B] to [Taxpayer]. [Taxpayer] will record the revenue and expenses from its sale of vacation packages on its books, which revenue and expenses may thereafter be transferred within the affiliated group, but such subsequent intercompany transfers will not affect the sales prices charged by [Corporation A and Corporation B] to [Taxpayer] nor affect the corresponding Chapter 212 taxes to be paid to the State of Florida. [Corporation A and Corporation B] are registered to do business in the State of Florida and are registered as sales tax dealers with the Florida Department of Revenue pursuant to Chapter 212, Florida Statutes. [Corporation A and Corporation B] will charge State sales tax, and any applicable local option surtaxes, on the sales of all taxable components to [Taxpayer] and remit such taxes to the Department. [Taxpayer] will also buy hotel accommodations from unrelated third parties for inclusion in the vacation packages it sells. Accommodations will be purchased from various established hotel chains. Those hoteliers will charge State transient rental tax and applicable local taxes on the accommodations sold to [Taxpayer] and have the responsibility for remitting the same to the Department.

[Taxpayer] may also buy other components for inclusion in vacation packages from unrelated parties, such as automobile rentals, golf course green fees, and the like, and pay to such third parties all applicable State sales taxes and local option surtaxes on all taxable components. [Taxpayer] will sell vacation packages that include two or more of the components identified above. All of the vacation packages will include admission to XXX. Most of the sales of these vacation packages will be done over the Internet. Customers will generally effect purchases by credit card and

they will receive a confirmation identifying [Taxpayer] as the seller of the vacation package. Credit card payments will be deposited to [Taxpayer's] bank account and swept on a daily basis into a central corporate account for cash management purposes. A listing of the various vacation packages to be offered will appear on a website that identifies [Taxpayer] as the seller of the vacation packages. A guest purchasing a vacation package from the website must start with a package that includes an admission and hotel accommodations; neither may be purchased separately and there is no separate pricing of these two components. The guest must enter the dates on which the admission and accommodations are to be used and the number of adults and children in the party. The guest may also select additional components at that time, none separately priced, furnishing the same dates and number in party information. When the guest has finished selecting the desired vacation package, a single package price is displayed. If the guest wants to proceed with the purchase, appropriate credit card information must then be entered and a booking confirmation is returned to the guest. All vacation packages will be sold solely on a package price basis; there will be no itemization of any of the components of any vacation package. [Taxpayer] is not making any sales in Florida except the sale of such vacation packages.

* * *

[Taxpayer] is registered as a seller of travel and intends to renew the registration annually as required. [Taxpayer] will sell several different vacation packages. Those initially being offered will be set forth on the website described above. Different or additional vacation packages may be offered from time to time and changes in the aggregate prices for any or all vacation packages may change from time to time, but in no event will the prices of the components in any such vacation package be separately itemized.

Requested Advisement

Under the fact pattern presented, you have asked the Department to issue a Technical Assistance Advisement stating that Taxpayer is not required to register as a dealer and is not required to collect and remit any sales tax or local option tax under Chapter 212, F.S., on its sales of vacation packages.

Applicable Authority and Discussion

As noted in your letter, Chapter 212, F.S., does not have a definition for the term "seller of travel." Therefore, the Department can use the definition in s. 559.927(10), F.S., which provides the following:

(10) "Seller of travel" means any resident or nonresident person, firm, corporation, or business entity who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups, including, but not limited to, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes any business entity offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold by the business entity.

Section 212.04, F.S., provides statutory guidance on sales of admissions in Florida. More specific to the issue at hand is language provided in s. 212.04(1)(d), F.S., for "sellers of travel" who purchase individual travel components for resale. Here, the law provides:

(1)(d) No additional tax is due on components incorporated as part of a package sold by a travel agent if the package includes two or more components such as admissions, transient rentals, transportation, or meals; if all of the components were purchased by the travel agent from other parties and any sales tax due on such purchases was paid; and if there is no separate itemization of the admission, transient rental, transportation, meal, or other components in the sales price of the package. This paragraph does not apply if the actual price charged for a component by the dealer to a travel agent is less than the price charged to unrelated parties under normal industry practices and the dealer and the travel agent are members of the same controlled group of corporations for federal income tax purposes. [Emphasis Supplied.]

Rule 12A-1.005, F.A.C., provides regulatory guidance on the sale of admissions in Florida. Subsection (6) of the rule provides the following:

(6) SALES OF VACATION PACKAGES.

(a) For purposes of this subsection, a "vacation package" means a bundle consisting of two or more components, such as admissions, transient rentals, transportation, or meals. Coupon books, maps, or other incidental items, that are provided free of charge as part of a vacation package are not considered "components" for purposes of this subsection.

(b) Tax is due on the purchase of taxable components of a vacation package at the time of purchase. No additional tax is due on the components that are incorporated into a vacation package and sold by a travel agent, when all of the following conditions are met:

1. The vacation package sold by the travel agent includes two or more components;
2. There is no separate itemization of the sales price of the package for the admission, transient rental, transportation, meal, or any other component of the vacation package; and
3. All components of the vacation package were purchased by the travel agent from other parties and any sales tax due on such purchases was paid at the time of purchase.

(c) A travel agent who itemizes the sales price of the taxable components of a vacation package must register with the Department as a dealer. (See Rule 12A-1.060, F.A.C., Registration). Travel agents who itemize the sales price of the taxable components of a vacation package are required to collect tax from the purchaser as follows:

1. When the itemized components are sold for the same amount or less than was paid for each of them, the travel agent is not required to collect any additional tax. No credit is allowed for tax paid on the purchase of the taxable components.
2. When the itemized components are sold for more than the purchase price of each component, the travel agent is required to collect tax on the sales price of the taxable components. The travel agent may take a credit of tax previously paid for the taxable components that are separately itemized at a sales price greater than the purchase

price of the component.

(d) When the seller of components of a vacation package and the purchasing travel agent are members of the same controlled group of corporations for federal income tax purposes and the amount charged for the component is an amount less than the price charged to unrelated travel agents under normal industry practices, the related travel agent is required to itemize the sales price of the components to the purchaser and collect tax on the itemized taxable components. The travel agent may take a credit of tax previously paid for the taxable components.

To summarize the transactions at issue, Taxpayer is registered as a seller of travel in the business of providing vacation packages. The vacation packages will be sold to the public for a single lump-sum price with no itemization of the individual components. The vacation packages consist of a combination of admissions to XXX owned by Corporation A and XXX owned by Corporation B, both of which are related companies to Taxpayer, meals purchased from Corporation A and Corporation B, and other items, such as transient accommodations, automobile rentals, and golf course green fees that are purchased from unrelated companies. The vacation packages will include two or more of these identified components. Corporation A and Corporation B charge Taxpayer discounted amounts that are regularly used in making sales to unrelated, preferred travel agents and will collect sales tax from Taxpayer. Taxpayer will also pay sales tax on the other purchased components of the packages, including the transient accommodations, automobile rentals, and golf course green fees.

Under the fact pattern you presented, Taxpayer is not required to register as a dealer and is not required to collect and remit any sales tax or local option tax under Chapter 212, F.S., on its sales of vacation packages. However, if Taxpayer were to itemize the components of the vacation packages to its customers, if Corporation A and/or Corporation B were to charge Taxpayer less than the price charged to unrelated parties under normal industry standards, or if Taxpayer fails to pay the applicable sales tax due on the purchase of each of the components of the vacation packages, Taxpayer would no longer meet the criteria established in s. 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., for tax-exempt sales of vacation packages. Taxpayer would then be required to register with the Department as a dealer and collect the applicable sales tax on its sales.

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)922-4729.

Sincerely,

Gary L. Gray

Tax Law Specialist

Technical Assistance & Dispute Resolution

Control No: 61088