

SUMMARY

QUESTION: Whether the sale of adult fantasy sports packages are subject to tax or exempt as a "vacation package."

ANSWER - Based on Facts Below: Under the facts presented, the taxpayer rents all facilities utilized in the events either from the team or the city or county that owns the facility, and provides the services of former professional players. Therefore, those components are being provided by the taxpayer, and not by a third party, as the statute requires. Accordingly, the taxpayer would not qualify for the exemption provided in section 212.04(1)(d), F.S., and sales tax is due on the sports package.

September 10, 2004

Subject: Technical Assistance Advisement 04A-055

Adult fantasy sports program

Sales and Use Tax

Sections and Rules

Dear :

This response is in reply to your petition dated July 19, 2004, requesting the Department's issuance of a Technical Assistance Advisement pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., regarding the above referenced matter and parties. 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.

ISSUE

Whether the sale of adult fantasy sports packages is subject to tax.

FACTS

Your request provides in part:

[The taxpayer] executes a license agreement with the respective team to create, sell and implement an adult sports fantasy program under the team's name. The agreement calls for [the taxpayer] to obtain the necessary facilities, obtain the services of former professional players, certified athletic trainers, equipment[,] personnel, and professional umpires. None of the personnel are employees of [the taxpayer] and all are paid as independent contractors.

A license fee is paid to the respective team for the use of its trademarks and service marks.

The [taxpayer] undertakes the marketing of respective programs, handles all leads and all sales related and customer related communications.

All facilities utilized in the events are rented by [the taxpayer] either from the team, or [from] the city or county [that] owns the facility. [The taxpayer] does not own any facility at which programs are conducted.

All elements necessary are purchased by [the taxpayer] from third parties which include but are not limited to:

Air transportation

Hotel Accommodations

Uniforms (shirts, pants, belts, socks, caps, jackets)

Playing equipment; bats, balls, catcher's gear

Bus transportation for attendees from airport & venue

Food Services: breakfast, lunch, dinners

Insurance

All other materials necessary to implement program

[The taxpayer] budgets for and pays Florida Sales Tax on all taxable components of the "Adventure" package.

DOCUMENTS PROVIDED BY TAXPAYER

1. A collection of Taxpayer's promotional materials,
2. Sample contract between the taxpayer and a major league baseball team, and
3. Copy of a project budget, showing that sales tax is paid on taxable components.

TAXPAYER POSITION

The taxpayer believes that it sells nontaxable vacation packages, as defined in section 212.04(1), F.S., and Rule 12A-1.005, F.A.C., and therefore, it should not be required to register as a Florida dealer.

APPLICABLE STATUTES AND RULES

Section 212.02(1), F.S., provides:

(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.

* * *

(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....

Section 559.927(10), F.S., provides:

(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.

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

(1)(a) Every person is exercising a taxable privilege when such person sells or receives anything of value by way of admissions, as defined in s. 212.02(1), F.S., except those admissions that are specifically exempt. Such seller is required to collect on each admission charge for 10 cents or more the amount of tax provided for by the applicable bracket provided in s. 212.12(9), F.S. Each admission is a single sale.

* * *

(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.

DISCUSSION

Section 212.04(1)(d), F.S., allows travel agents to pay the tax on the purchase of taxable portions of travel packages sold as a lump sum instead of collecting the tax from the purchaser on the sales price.

"Travel agent" is not defined by statute. Section 559.927(10), F.S., defines "sellers of travel," under which the taxpayer may qualify. With such qualification, the taxpayer may be considered a travel agent for purposes of section 212.04(1)(d), F.S.

In order to qualify for treatment under Section 212.04(1)(d), F.S., and Rule 12A-1.005(6), F.A.C., a vacation package must meet several criteria. First, the vacation package must include multiple components, such as admissions, transient rental accommodations, transportation, and meals. Second, all of the components must be provided by

vendors other than the "travel agent," and sales tax must have been paid on the purchase price of all taxable components. Third, the vacation package must be priced and billed as a single lump sum; there can be no separate pricing and itemization of the component parts of the vacation package. Finally, if any of the components of the vacation package were purchased from a related entity, the price paid for those components must be equal to the price paid by unrelated travel agents for the components under normal industry practices. If these criteria are met, the sale of the vacation package by a travel agency is not subject to additional sales tax under Rule 12A-1.005(6), F.A.C.

According to the facts provided, the taxpayer rents all facilities utilized in the events either from the team or the city or county that owns the facility, and provides the services of former professional players. Therefore, those components are being provided by the travel agent, and not by a third party, as the statute requires. Accordingly, the taxpayer would not qualify for the exemption provided in section 212.04(1)(d), F.S., because it does not meet the second criterion stated therein.

RESPONSE

The fee charged to attend the taxpayer's fantasy camp is an admission, and sales tax is applicable to the fee, pursuant to section 212.04, F.S.

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 advisement 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,

Kelley A. Cramer
Attorney
Technical Assistance and Dispute Resolution
(850) 922-4835

KC/
Ctrl# 60937
Enclosure

