

SUMMARY

QUESTION: Where a taxpayer collects sales tax from a customer on additional and separately itemized admissions, goods and/or services that it provides simultaneous to, and in connection with, an underlying vacation package, does the underlying vacation package fall under the exemption provided by Section 212.04, F.S.?

ANSWER - Based on Facts Below: Yes. The Taxpayer's sale of base vacation packages or enhanced vacation packages on a stand-alone basis may be attendant to its sale of "Add-Ons," without altering the tax status of the underlying vacation package. However, in order to maintain their nature as separate from the package, neither the availability, nor the sales price, of the "Add-Ons" can be contingent on the purchase of a vacation package, or vice-versa. If the price or availability of the "Add-Ons" is contingent on the purchase of a vacation package, the "Add-Ons" are part of the vacation package. Keep in mind that the Taxpayer must also fulfill the requirements of the pertinent rule for the sale of the underlying vacation packages or enhanced vacation packages, in order to fall within the exemption provided by Section 212.04, Florida Statutes.

August 25, 2005

Re: Technical Assistance Adviseements 05A-034
Sales and Use Tax
XXX (Taxpayer)
XXX (A)
XXX (B)
Vacation Packages
Sections 212.04 ("Florida Statutes")
Rule 12A-1.005, F.A.C. ("Florida Administrative Code")

Dear:

This is in response to your correspondence to the Department, dated July 22, 2005, requesting the Department's issuance of a Technical Assistance Adviseement ("TAA") pursuant to Section 213.22, F.S., and chapter 12-11, F.A.C., regarding the application of sales tax to vacation package "add-ons." An examination of your letter established that you complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is granting your request for issuance of a TAA.

ISSUE

Where a taxpayer collects sales tax from a customer on additional and separately itemized admissions, goods and/or services that it provides simultaneous to, and in connection with, an underlying vacation package, does the underlying vacation package fall under the exemption provided by Section 212.04, F.S.?

FACTS

Your letter dated July 22, 2005, provides in part, the following facts:

XXX (Taxpayer) is a XXX corporation 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.). **(FN 1)** XXX (A) owns and operates a XXX, Florida under the name XXX. XXX (B) owns and operates a XXX, Florida under the name XXX. XXX (Taxpayer), XXX (A) and XXX (B) are all members of the same controlled group of corporations for federal tax purposes.

XXX (Taxpayer) sells vacation packages on the basis described in TAA XXX and, pursuant to that ruling, pays tax on the purchase of transient rentals, admissions and other taxable components and sells the vacation packages in which such components are included free of Florida sales tax. XXX (Taxpayer) will continue to sell vacation packages. It also proposes to offer guests, in addition to vacation packages, the option of purchasing additional goods and services on an [a]la carte basis. All vacation packages offered by XXX (Taxpayer) will include, at a minimum, admission to XXX and a hotel stay (referred to hereinafter as the "Base Vacation Package"). XXX (Taxpayer) may also offer non-itemized vacation packages that include more than just a XXX admission and hotel stay, one that includes another admission or meals, for example (referred to hereinafter as the "Enhanced Vacation Package"). Neither the Base Vacation Package offering nor the Enhanced Vacation Package offering will reflect any itemization of package components. The guest purchasing either package would see only a combined or aggregate price for the Base Vacation Package or Enhanced Vacation Package and the same would be sold without Florida sales or use tax charged to the purchaser in accordance with XXX.

However, you also stated that: "XXX (Taxpayer) will pay all applicable State sales and local option taxes due with respect to its purchase of hotel accommodations from the hotelier. The hotelier will be responsible for collecting and remitting those taxes to the State." Your letter also provides that:

XXX (Taxpayer) will purchase admissions for inclusion in the Vacation Package from XXX (A), in the case of XXX, or XXX (B), in the case of XXX, on the arms' length basis described in TAA XXX and those selling entities will be responsible for collecting and remitting sales tax on such admissions to the State.... XXX (Taxpayer) will purchase admissions that will be Add-Ons, either from third parties, or from affiliates on the arms' length basis described in XXX, and pay applicable Florida sales tax on same to the seller. XXX (Taxpayer) will purchase other Add-On components using its Annual Resale Certificate.

In addition, you stated that:

Guests would also have the option of adding other goods and services, other admissions and meals, for example ..., on an ala carte basis, as further described below. XXX (Taxpayer) will register as a Florida sales and use tax dealer pursuant to Chapter 212, Florida Statutes, for this purpose and collect and remit all applicable Florida sales tax applicable to its sale of such Add-Ons to guests.

You also indicated that:

Add-Ons to Vacation Packages will be offered on an [a'la] carte basis, with the prices of each such Add-Ons shown in the offering. Such prices and applicable Chapter 212 taxes, will be shown in the electronic confirmation/receipt, invoice or other written documentation of sale given to the purchaser. Applicable Chapter 212 taxes will be collected by XXX (Taxpayer) from the purchaser on the Add-Ons, and will be timely reported and remitted to the State. Some items may be purchased either as part of an Enhanced Vacation Package (in which case there is no itemized price for the item and no tax would be charged the purchaser on that or any other Vacation Package component) or as Add-Ons, meaning from a list reflecting a separate price for such item, in which case XXX (Taxpayer) will collect applicable Chapter 212 taxes from the purchaser on such [a'la] carte item(s) and timely remit the same to the Department.

Furthermore, you represented that:

The sale of Vacation Packages together with [a'la] carte Add-Ons is illustrated by the following description of proposed sales via the Internet. Prospective guests would start by selecting a Base or Enhanced Vacation Package. There will be no separate prices shown for any of the Base or Enhanced Vacation Package components. Guests will not see any pricing for the Base Vacation Package until they have selected both a hotel and admission, indicating the numbers of guests (adults and children), arrival and departure dates, and the accommodations and admission(s) they desire. Likewise, there would be no itemization of any Enhanced Vacation Package components. No Florida sales tax would be shown as due or collected from the guest on the Vacation Package price. XXX (Taxpayer) will pay sales tax, in accordance with XXX, to the hotelier, to XXX (A), XXX (B) or other party from which such Vacation Package components are purchased and those parties will be responsible for reporting and remitting the same to the Department.

Having selected that Vacation Package, the family would then be able to purchase Add-Ons on [a'la] carte basis. Neither the availability nor the sales price of any Add-Ons will be contingent upon the purchase of a Vacation Package, or vice versa. That is, the items available to guests as Add-Ons will also be available to guests who are not purchasing any Vacation Package and at the same prices. With respect to the Add-Ons, XXX (Taxpayer) would generally purchase any such taxable components on an exempt purchase-for-resale basis and would charge Florida sales tax to the guest to whom XXX (Taxpayer) sells the same. In the case of admissions sold as Add-Ons, XXX (Taxpayer) would comply with the requirements of Rule 12A-1.005, generally prohibiting resale treatment.

TAXPAYER'S REQUESTED ADVISEMENT

In your letter to the Department, dated July 22, 2005, you requested that the Department issue a TAA confirming that "XXX (Taxpayer) may continue selling Base and Enhanced Vacation Packages, pursuant to TAA XXX, and that the non-itemized price for which such Vacation Packages are sold will not be subject to sales tax even if the guest chooses to purchase one or more Add-Ons at the same time." Additionally, you requested that the Department confirm "that with respect to separately-priced Add-Ons, XXX (Taxpayer) must register as a sales tax dealer pursuant to Chapter 212, Florida Statutes, and collect and remit applicable States sales tax and local option surtaxes on any taxable Add-Ons that guests elect to buy with the Vacation Package."

APPLICABLE STATUTES AND RULES

As noted in your letter, Chapter 212, F.S., does not provide a definition for the term "seller of travel." Therefore, the Department adopts the definition in Section 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 for admissions and "sellers of travel" who purchase individual travel components for resale. 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.** (e.s.)

* * *

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

(5) RESALE OF ADMISSIONS.

(a) There is no tax exempt sale for resale of an admission. If a purchaser of an admission resells the admission for more than he paid for the admission, he shall collect tax on his sales price, take a credit for the amount of tax previously paid on the admission, and remit the balance to the Department of Revenue.

(b) However, if the purchaser of an admission resells the admission for the same amount or less, tax shall not be collected, and no credit is allowed for tax previously paid.

(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. (e.s.)

LAW AND DISCUSSION

Generally, in Florida, sales of vacation packages by a seller of travel to a customer are not subject to tax if the seller of travel meets the following criteria:

1. The vacation package includes two (2) or more components, such as admissions, transient rentals, transportation, or meals.
2. The seller of travel priced and billed the vacation package to show only a lump sum amount. In other words, the components of the vacation package are not separately priced and itemized.

3. The seller of travel paid any and all applicable sales taxes due on its purchase price of all components of the vacation package at the time of such purchase.

4. Finally, if the seller of travel purchased any components included in the vacation package from a related party and member of the same controlled group for federal income tax purposes, the price of such components cannot be less than what the dealer would have charged any unrelated party. See Section 212.04, F.S., and Rule 12A-1.005, F.A.C.

Your request concerns a scenario where XXX (Taxpayer), as a seller of travel, simultaneously offers separately itemized admissions, goods and/or services, hereinafter, "Add-Ons," on an a la carte basis, along with a Base Vacation Package or Enhanced Vacation Package.

According to your letter, XXX (Taxpayer) will offer Base Vacation Packages and Enhanced Vacation Packages pursuant to the descriptions found in TAA XXX. Accordingly, said packages are not subject to tax, as long as XXX (Taxpayer) meets the criteria in Section 212.04, F.S., and Rule 12A-1.005, F.A.C. However, if XXX (Taxpayer) were to itemize the components of the Base Vacation Package or the Enhanced Vacation Package, if the seller of those components were to charge XXX (Taxpayer) less than the price charged to unrelated parties under normal industry standards, or if XXX (Taxpayer) fails to pay the applicable sales tax due on the purchase of each of the components of the Base Vacation Packages or Enhanced Vacation Packages, XXX (Taxpayer) would no longer meet the criteria established in Section 212.04(1)(d), F.S. and Rule 12A-1.005, F.A.C., for tax-exempt sales of vacation packages. In that case, XXX (Taxpayer) would be required to register with the Department as a dealer and collect the applicable sales tax on its sales.

In regard to the "Add-Ons," you explained that once the customers choose a Base Vacation Package or Enhanced Vacation Package, they may choose additional items from a list of "Add-Ons." You also state that XXX (Taxpayer) will separately itemize those "Add-Ons" and show the applicable sales tax for all such items. In sum, the customer will see one price for a Base Vacation Package or Enhanced Vacation Package, plus separately itemized prices for each of the "Add-Ons" he or she chooses, including an amount for the applicable sales tax.

Rule 12A-1.005(6)(c), F.A.C. provides that a travel agent who itemizes the sale price of a vacation package's taxable components is required to collect sales tax. Moreover, when the seller of a vacation package component and "the purchasing travel agent are members of the same controlled group of corporations for federal income tax purposes and the amount [the seller charged to the travel agent for said component is less than the price the seller would charge an unrelated party] under normal industry practices, the related **travel agent [must] itemize the sale price of the components to the purchaser and collect tax** on the itemized taxable components." See Rule 12A-1.005(6)(d), F.A.C. (e.s.) Subsequently, the purchasing travel agent may take a credit for tax it previously paid for said components. See Rule Id. Furthermore, if the purchaser of admissions or vacation package components resells the admission or component at the same or lower price it paid, then the purchaser does not owe additional tax on the admission or component, as long as the purchaser paid tax at the time it purchased said component. See Rule 12A-1.005, F.A.C. **(FN 2)**

Consistent with the foregoing, XXX (Taxpayer) sale of Base Vacation Packages or Enhanced Vacation Packages,

which packages by themselves would fall within the exemption provided by Section 212.04, Florida Statutes, in connection with the sale of "Add-Ons," does not alter the tax status of those underlying vacation packages. However, in order to maintain their nature as separate from the package, neither the availability, nor the sales price, of the "Add-Ons" can be contingent on the purchase of a vacation package, or vice-versa. **(FN 3)** If the price or availability of the "Add-Ons" is contingent on the purchase of a vacation package, the "Add-Ons" are part of the vacation package. However, you specifically state in your letter that "[n]either the availability nor the sales price of any Add-Ons will be contingent upon the purchase of a Vacation Package, or vice versa." As such, the underlying Vacation Package is not subject to tax, as it is separate from the "Add-Ons."

CONCLUSION

According to the facts you presented that, XXX (Taxpayer) will fulfill the requirements of the pertinent rule for the sale of Base Vacation Packages, Enhanced Vacation Packages and vacation package "Add-Ons"; therefore, the underlying Vacation Package or Enhanced Vacation Package is not subject to tax, merely because the invoice separately states the price of the "Add-Ons." However, to benefit from this advisement, XXX (Taxpayer) must always comply with any and all conditions set out in the foregoing analysis.

Furthermore, "[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-1.005(6)(c). Consequently, under the facts you presented, XXX (Taxpayer) must register as a sales tax dealer and collect and remit applicable Florida sales tax and local option surtax on any taxable "Add-Ons" that guests elect to buy with the underlying Base Vacation Package or Enhanced Vacation Package.

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,

Jessica A. Olmedillo

Attorney

Technical Assistance and Dispute Resolution

(850) 488-7758

Ctrl # 15123

FOOTNOTE 1. Taxpayer intends to renew the registration annually as required.

FOOTNOTE 2. Please note that the purchaser is not entitled to a credit if it resells the admission or component at a lower price. See Rule 12A-1.005, F.A.C.

FOOTNOTE 3. The Merriam-Webster dictionary defines package as a "preassembled unit."