

SUMMARY

QUESTION: Do the charges for certain software support qualify for the exemption provided in section 212.08(7)(xx), F.S.

ANSWER— Based on the Facts Below: Yes. Based on the information provided, The charges for the software support qualify for the exemption provided in section 212.08(7)(xx), F.S., as they are repairs to equipment and machinery that are used to prepare printed material for shipping.

July 2, 2009

XXX

Re: Technical Assistance Advisement 09A-036
Software Updates for Manufacturing Equipment
Sales and Use Tax
Sections 212.08 and 212.0506, Florida Statutes (F.S.)

Dear XXX:

This is in response to your letter dated March 23, 2009, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of end-of-life services offered by your company. 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 of a TAA.

ISSUE

Whether the charges for the Software Support qualify for the exemption provided in section 212.08(7)(xx), F.S.

FACTS

Your letter dated, February 11, 2009, provides the following in part:

Please find copies of our monthly Software Subscription Service invoice and our Software Support Agreement. Currently, we are paying sales tax on our monthly software updates, but we believe that since the software updates are for manufacturing equipment, the updates should be sales tax exempt just like repair parts. When we purchased this equipment we paid sales tax on the software as well as the physical equipment. The software must be updated in order for the equipment to continue to function, just like if a bearing or a belt failed it must be

replaced in order for the equipment to function. All software updates are also required by the United States Postal Service.

In addition, the software updates are provided to us via the Internet so we do not receive any of these update on physical media.

In addition to your request for a Technical Assistance Advisement dated March 23, 2009, you provided copies of the monthly Software Subscription Service invoice, the Software Support Agreement, the Master Equipment Service and Software Support Agreement and page 3 of your Federal Corporate Tax Return.

The Software Support Schedule that was enclosed with your letter provides the following in part:

THIS SOFTWARE SUPPORT SCHEDULE (the “Schedule”).. . is entered into pursuant to the terms and conditions of that certain Master Equipment Service and Software Support Agreement. . . dated 1/1/2004 as amended from time to time (the “Agreement”), which is incorporated by reference herein.

2) Service Coverage. Software Maintenance and Subscriptions Services are described below.

2.1) “Software Maintenance Service” will consist of the following:

2.1.A) “Telephone and E-Mail Assistance”.

2.1.B) “Remote Diagnostic Service”.

2.1.C) “Maintenance Releases” XXX may periodically prepare and provide to Customer software fixes or patches that are otherwise not separately marketed or priced (the “Maintenance Releases”). Customer will be solely responsible for integrating Maintenance Releases into Customer’s Equipment and Software environment. XXX may[,] at its sole discretion charge a fee for Maintenance Releases that provide new functionality.

2.1.D) “Documentation Configuration Management”....

2.1.E) “Enhancement Releases”....

2.2) “Software Subscription Service” For an annual fee, XXX will provide updates to Customer of the latest USPS CASS directories and current USPS tables

3) Service Fees. Customer shall pay to XXX the Annual Service Fee.... The Annual Service Fee is exclusive of applicable taxes, which will be invoiced with Service Fee.

Page 3 of the enclosed 2007 Federal 1120, provides a Business Activity Code of “XXX,” a Business Activity of “Printing/Mail Sorting,” and lists the Product or Service of “Mail Sorting.”

Review of your website, “XXX” provides the following list of the products and services your company offers Coupon Payment Books, Mailing Services and Commercial Printing.

During a telephone discussion on April 10, 2009, you verified the equipment is used to prepare printed material for shipping. As a result of that conversation, you provided the following statement dated, April 13, 2009:

The equipment that is covered under the software supports agreement is our XXX. This equipment is used in the mail manufacturing process to sort and barcode the mail. The equipment reads the address on the mail piece, sprays a barcode on the mail piece, and then sorts the mail piece to zip code order for delivery to the US Post Office. The process and software is required by the US Postal Service. Without this software the sorters would not function and the mail would not be compliant with the US Postal Service.

The Department conducted an audit of your company’s books and records for the period of July 1, 1999, through June 30, 2002. After touring your production facilities and reviewing the company’s records, the Department’s auditor determined that your company qualified for the exemption provided in section 212.08(7)(ff), F.S., which provides that charges for electricity or steam, used to operate machinery and equipment for specific industries, is exempt. The exemptions provided in section 212.08(7)(ff), F.S., and section 212.08(7)(xx), F.S., apply to industries classified under the same XXX XXX XXX XXX numbers.

APPLICABLE AUTHORITY AND DISCUSSION

Section 212.08(7)(xx), F.S., provides an exemption for “. . . all labor charges for the repair of, and parts and materials used in the repair of and incorporated into, industrial machinery and equipment which is used for the manufacture, processing, compounding, production, or preparation for shipping of items of tangible personal property at a fixed location within this state.”

The statutory language contains numerous limitations on the exemption:

- It applies only to charges for labor or for parts and materials that are incorporated into qualifying machinery and equipment in the course of a repair. It does not apply to any other expenses related to a repair transaction. For example, rentals of equipment used in making repairs and purchases of consumable supplies that are not incorporated into the machinery or equipment being repaired are not exempted by this statute.
- The taxpayer must use the machinery and equipment being repaired in an activity described in the specified SIC Major Group numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry Group Number 212.
- The machinery and equipment must be used to manufacture, process, compound, or produce tangible personal property or to prepare tangible personal property for shipping.
- The machinery and equipment must be used at a fixed location in Florida.

Specific charges for repairs to computer equipment and software will be exempt if the above conditions are met.

Section 212.0506, F.S., provides that an agreement that covers the cost of maintaining, repairing, or replacing tangible personal property is subject to sales tax. However, the section also provides that the term “service warranty” does not include contracts or agreements to repair, maintain, or replace tangible personal property, if the parts and labor to repair tangible personal property qualify for an exemption.

The determination of whether a business may qualify for an exemption on repairs to machinery and equipment must be made on a case-by-case basis based on the SIC code of that business activity and the actual usage of production machinery and equipment. A business activity is classified under a particular SIC code based on the primary activity of that business. It is presumed that the primary activity of your business is the production of printed materials for sale. Printing businesses are properly classified under SIC Major Group 27. That group is one of the business activities that qualifies for exemption under section 212.08(7)(xx), F.S.

Conclusion

The charges for the Software Support qualify for the exemption provided in section 212.08(7)(xx), F.S., as they are repairs to equipment and machinery that are used to prepare printed material for shipping.

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

Technical Assistance Advisement

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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 section 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,

Brinton Hevey
Tax Law Specialist
Technical Assistance and Dispute Resolution
(850) 488-7157

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