

SUMMARY

QUESTION: Whether Taxpayer's newspapers delivery charges are subject to sales tax when the charge is separately stated and can be avoided by the customer?

ANSWER: No. Taxpayer is not required to collect sales tax on the charge for newspaper delivery based on the facts provided, if: 1) at the time of the initial subscription or subsequent renewal, the subscriber is informed of the carrier delivery charge and mail delivery charge; 2) at the time of the initial subscription or subsequent renewal, the subscriber is informed that the delivery charge can be avoided by an election to either pick up the newspaper at a distribution center or to receive the newspapers by mail; and 3) the delivery charge is stated on the invoice.

May 24, 2011

XXX

Subject: Technical Assistance Advisement 11A-016
Sales and Use Tax
Newspapers delivery charges
XXX ("Taxpayer"), Petitioner
XXX ("Owner")
FEI#: XXX
Business Partner#: XXX
Section 212.02 and 212.05, Florida Statutes (F.S.)
Rule 12A-1.045, Florida Administrative Code (F.A.C.)

Dear XXX:

This letter is a response to your firm's petition dated March 11, 2011, correspondence provided thereafter, and previous requests for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced party and matter. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

Issue

Whether newspaper delivery charges are subject to sales tax when the charge is separately stated and can be avoided by the customer?

Facts

The Owner, a newspaper publisher, publishes a daily newspaper commonly known as XXX. Subscribers receive and pay for the newspaper for a specified period of time, typically XXX weeks. The newspaper is delivered to the subscriber by the newspaper carrier. Subscribers may, upon request, have the newspaper mailed to them rather than

have the paper delivered by a carrier. In most situations, the Taxpayer will act as the carrier's agent in accepting a subscription and collecting payment for the subscription price, including applicable sales tax.

On March 1, 2011, the Taxpayer and the carriers collectively commenced implementing a change in their delivery and billing practices. Subscribers will now pay a separate price for the newspaper and a charge for delivery. Pursuant to the new procedure, subscribers will have three delivery options at the commencement or renewal of a subscription period. These options are:

- (1) A subscriber may elect to have the paper delivered by carrier.
- (2) A subscriber may elect to pick up the paper at a specific location, the primary location made available to the carrier by the Taxpayer.
- (3) A subscriber may elect to receive the paper by mail delivery.

The request includes copies of the "XXX Notice" and the "Renewal Notice" (the "Documents") that are used by the Taxpayer in its business operation. The "XXX Notice" is a notice sent to a new or renewing subscriber who pays by bank debit card to notify the subscriber that the subscription will automatically renew unless the Taxpayer is notified that the subscriber wants to cancel or change their service. The "Renewal Notice" is a notice that is sent to a renewal subscriber to notify the subscriber that they need to pay one of the suggested amounts to continue service.

The Documents comprise most of the literature that will be distributed to virtually all potential new and renewing subscribers. Many subscribers telephone in their purchase of a subscription. The Taxpayer's telemarketers act as agents for the newspaper carriers and receive subscriptions over the telephone on behalf of the carriers. The Taxpayer then sells the appropriate amount of newspapers to the carriers. If payment is made over the telephone at this time via a credit card, the telemarketing representative taking or confirming the order will inform the customer that the subscription includes transportation charges and that they can avoid those transportation charges by picking up the newspaper. Subscribers are free to choose their delivery options at the commencement of the initial subscription period or at the commencement of any renewal period.

In the case of new subscriptions or renewals, all subscribers will be sent an invoice renewal notice confirming the subscription or renewal. The renewal notice sets forth the amount due for a subscription and separately states the charge for delivery and the amount of sales tax that is imposed on the price for the newspaper. The specific amount for the newspaper cost is not separately stated. Under the new procedure, appropriate sales tax (including local option taxes where applicable) will be charged on the implicit sales price of the newspaper but not on the delivery charge, because the subscriber has the option to receive the paper by carrier delivery or to pick up the newspaper at a distribution center and avoid the delivery charge. The Documents provide that the mail delivery method may be chosen at Taxpayer's postal rate. Consistent with the Taxpayer's existing practice, sales tax will not be imposed on the sales price of a

newspaper when the subscriber elects to receive the newspaper by mail at the beginning of a subscription period.

Requested Advisement

The Taxpayer requests that the Department of Revenue determine that the Taxpayer's procedures described above that set out the charge for delivery (i.e., the transportation cost) as well as the applicable sales tax of a subscription will not be subject to sales tax. This is because (i) the delivery charge is separately stated on the Documents, and (ii) the procedures implemented by the Taxpayer and the Documents it is using to complement these procedures clearly reflect to the subscriber how the delivery charge can be avoided by the election of the subscriber to receive the newspaper by other means.

Applicable Authority and Discussion

Section 212.05, F.S., provides that it is the legislative intent that the business of selling tangible personal property is a taxable privilege. The tax is imposed on the sales price of each item or article of tangible personal property when sold at retail in this state. Section 212.05(a)1.a., F.S. Sales price is the total amount paid for tangible personal property, including any services that are part of the sale. Section 212.02(16), F.S. Rule 12A-1.045, F.A.C., provides that transportation charges which are included in the sales price, but not separately stated, are subject to tax. "Transportation charges" include carrying and delivery charges. Id.

Rule 12A-1.045(4), F.A.C., provides that transportation service is not subject to tax when both of the following conditions have been met:

1. The charge is separately stated on an invoice or bill of sale; and
2. The charge can be avoided by a decision or action solely on the part of the purchaser.

In this case, the delivery charge is separately stated on the Documents, including the invoice. The subscribers are informed by telemarketers and by the Documents that the transportation charge may be avoided if the subscribers pick up the newspaper at a specified address or choose to have the subscription mailed to them at Taxpayer's postal rate. The Documents provided to the subscribers and the instructions by the telemarketers demonstrate that the transportation charge is separately stated and that the charge can be avoided by a decision or action solely on the part of the purchaser; hence, the transportation charge is not subject to sales tax.

Conclusion

Pursuant to the facts you submitted in your correspondence, the Taxpayer is not required to collect sales tax on the charge for newspaper delivery by independent carriers, given that, at the time of the initial subscription or subsequent renewal, the Taxpayer: 1) informs the subscriber of the carrier delivery charge and mail delivery charge; 2) informs

the subscriber that the delivery charge can be avoided by an election to either pick up the newspapers at a distribution center or receive the newspapers by mail; and 3) separately states the amount of the carrier delivery charge on the invoice.

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 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 10 days of the date of this letter.

Sincerely,

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CW/lp
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