

Sep 28, 1992

TAA 92A-070

Re: Sales and Use Tax; Sales to United States Government

Consumer's Exemption Certificate

Section 212.08(6), F.S.

Rules 12A-1.001(9)(a), 12A-1.038, F.A.C.

Dear :

Your letter of August 28, 1992, requested a Technical Assistance Advisement on the application of the sales and use tax to the above referenced matter. This response to your request constitutes a Technical Assistance Advisement under Chapter 12-11, Florida Administrative Code, and is issued to you under the authority of s. 213.22, Florida Statutes.

Information in that letter and your previous letter of June 22, 1992, indicates that your Company has performed maintenance repairs for XXX; that you attempted to collect this State's sales tax on that work, but that the purchaser has refused to pay tax, contending that these transactions are exempt as sales to the United States Government; that you requested that it present an exemption certificate in documentation of the claimed exemption, but that it has declined to do so, contending that its immunity from state taxation as a component of the United States Government is absolute and cannot be made contingent upon presentation of such a certificate. Therefore, the question you have presented is whether your Company can recognize these transactions as exempt from Florida sales tax without presentation of an exemption certificate.

Enclosed with your letter were copies of various papers relating to these sales, including a "Nonappropriated Fund Order for Supplies or Services" on XXX, ordering from your company certain enumerated items to be shipped to:

XXX

Section 212.08, F.S., provides for various exemptions from the Florida sales and use taxes. An excerpt of subsection (6) of that section that seems pertinent to your inquiry is as follows:

"(6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are also exempt from the tax imposed by this chapter sales made to the United States Government... when payment is made directly to the dealer by the governmental entity..."

Subsection (9) of this Department's Rule 12A-1.001, F.A.C., is the rule implementing the above statutory exemption. One sentence in it provides, "Such governmental entities desiring to qualify for the exemption must obtain from the Department of Revenue a consumer's certificate of exemption". Rule 12A-1.038, F.A.C., provides for application for and issuance of a consumer's exemption certificate in support of an entity's claim that it is exempt from our state's sales and use taxes.

A possible interpretation of the rules cited above, which this Department recognizes as correct, is that the rules, in effect, are a suggestion that a purchaser present a consumer's certificate of exemption as an easy way of satisfying the vendor that the sale is exempt, but that the inference should not be drawn from the rules that this is the only way of accomplishing this result in the case of the U.S. Government.

Another possible interpretation is that a sale cannot be recognized as exempt as to the United States Government, regardless of how certain the vendor may be that such is the case, unless the exemption certificate is presented. If this was ever the intent of the rules, it has now been invalidated by a court decision and administrative decision rendered after an earlier version of those rules was drafted. The court decision is Chestnut Fleet Rentals v. Department of Revenue, 559 So.2d 264 (1990), in which the District Court of Appeal of the First District of Florida held that the Supremacy Clause of the United States Constitution precludes imposition of our state's sales tax on automobile rentals to federal employees, who, being employees of the United States Government instead of the Government itself, could not have been issued an exemption certificate. The administrative decision was a Declaratory

Statement (Case No. 90-011DS) of the Department of Revenue, which, in turn was based upon the rationale of the Chestnut Fleet decision, and which held that no tax is payable by a Federal employee on transient rental accommodations if proof or documentation can be provided that such accommodations were occupied in performing the employee's duties as such employee and that a federal department, agency, or instrumentality is paying for or committed to reimburse the employee for the expense of the accommodation. Again, such an exemption is applicable without reference to whether a consumer's certificate of exemption is provided, when the vendor can be satisfied regarding certain facts necessary for the exemption.

Therefore, if the purchaser is, in fact, the United States Government or one of its instrumentalities, the sale to it is exempt whether or not it presents an exemption certificate. That the sales were to a club whose address is on the XXX creates a reasonable inference that they were made to a group of private citizens that only had an address on the XXX, rather than that they were made to the XXX itself.

When such a purchaser presents an exemption certificate, it makes it much easier for the seller to be satisfied that the purchaser is exempt on this basis, and to avoid problems with auditors of this Department. But it is possible without having such a certificate for the seller to be certain the purchaser is exempt and to document its exempt status in its records. With your letter you have presented copies of the following documents in your files that are sufficient for this purpose:

Letter of 2 April 1992 on XXX stationery (XXX) confirming that the sales were to the XXX, and, thus, exempt from State sales tax.

XXX, "Nonappropriated Fund Order for Supplies or Services" requesting that the sale be made to the club whose address is on that XXX.

Therefore, these sales were exempt from Florida sales tax, despite the failure and refusal of the purchaser to present an exemption certificate.

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 upon 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 from that which is expressed in this response.

You are further advised that this response and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details that might lead to identification of the taxpayer must be deleted by the Department before disclosure. In an effort to protect the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

J. William Norman  
Technical Assistant

JWN/pb