

Dec 09, 1993

Re: TAA 93A-075

Sales and Use Tax - Sale of Construction Materials to Tax
Exempt Entity

Rules 12A-1.001(3)(a), and 12A-1.038(1), (3), F.A.C.

Dear :

This is in response to your letters of October 4, 1993, and November 5, 1993, in which you request, on behalf of your client, XXX, (hereinafter, Taxpayer) the issuance of a Technical Assistance Advisement, regarding the application of sales and use tax to construction materials purchased by Taxpayer for resale to a religious institution, the XXX, a XXX (hereinafter, Church). This response to your request constitutes a Technical Assistance Advisement under Chapter 12-11, F.A.C., and is issued to you under the authority of s. 213.22, F.S.

FACTS

As ascertained from your letters, an unexecuted proposed document entitled "Materials Purchase Agreement," and a "Special Conditions to Material Purchase/Payment" submitted for review, the following conclusions of fact have been reached.

The parties in this proposed transaction are:

- Taxpayer, who will act as the "supply house" vendor through which contractors and subcontractors will be required by the Church to place all orders for construction materials.
- Church is the owner of the construction site. Church will enter into the proposed contract with Taxpayer to purchase all construction materials from Taxpayer, as requested by the contractor and subcontractor(s), using the Church's purchase order.
- Contractor or General Contractor is the entity which has contracted with the Church to undertake the construction project for the Church.

- Subcontractor is a contractor who takes a portion of the contract for the (general) contractor.

Taxpayer will enter into a contract with Church to act as a supply house for Church's renovation project. The contract will require Taxpayer to purchase construction materials and sell these materials directly to Church, as directed by Church.

The contract will also require Church to designate Taxpayer as its authorized vendor of materials, thereby requiring the contractor and subcontractor(s) to order the construction materials for the project from Taxpayer. Taxpayer will provide Church with specifications relating to the purchase and payment of materials that it will furnish to Church, and Church will be required to include these specifications in the supplementary conditions of its contract with the general contractor.

At the time of purchase, Taxpayer will provide the material vendor(s) with a blanket resale certificate. Taxpayer will be invoiced by the material vendor(s), and will remit to the vendor(s) payment due upon receipt of the Church's payment for such construction materials. Taxpayer will obtain title and possession of the materials from the vendor(s) and be responsible for the delivery of these materials to the construction site.

Title to and possession of the materials will transfer directly from Taxpayer to Church upon delivery of those materials to the construction site. Although the contractor may accept the materials on behalf of Church, at no time will title to these materials vest in the contractor, nor will the contractor provide any consideration to Taxpayer or to the vendor(s) for these materials. The contractor will obtain a warranty bond to protect against manufacturer defects in workmanship; however, this bond will not protect against theft or loss of the materials after purchase. Therefore the risk of loss regarding the materials is on Taxpayer or Church at all times, never on the contractor.

RELEVANT PROVISIONS

The following provisions of the Florida Administrative Code (F.A.C.), are pertinent to the issues presented by the aforementioned transaction.

Rule 12A-1.001, F.A.C., provides:

"(3) RELIGIOUS, EDUCATIONAL, CHARITABLE, VETERANS' AND SCIENTIFIC ORGANIZATIONS, FEDERAL AND STATE CHARTERED CREDIT UNIONS, FLORIDA RETIRED EDUCATORS ASSOCIATION AND LOCAL CHAPTERS, AND ORGANIZATIONS PROVIDING SPECIAL EDUCATIONAL AND SOCIAL BENEFITS TO MINORS.

"(a) A sale or lease directly to... nonprofit religious... institutions,... for use in the course of their customary... nonprofit... religious... activities,... are exempt from the tax imposed by Part I, Chapter 212, F.S.... However, such institutions or organizations desiring to qualify for the exemption must obtain from the Department of Revenue a consumer's certificate of exemption, and payment must be made directly to the dealer by the exempt entity.... This exemption shall not inure to any transaction otherwise taxable when payment is made by an exempt entity's employee by any means, including but not limited to, cash, check, or credit card, when that employee is subsequently reimbursed by the exempt entity...."

Rule 12A-1.038, F.A.C., provides, in pertinent part, as follows:

"(1) It is the specific legislative intent that every sale,... is taxable under Chapter 212, F.S., unless such sale, admission, use, storage, consumption or rental is specifically exempt. The exempt status of the transaction must be established by the dealer. Unless the dealer shall have taken from the purchaser a certificate to the effect that the property or service was purchased for resale and bearing the name and address of the purchaser, the effective date of the certificate and the number of his dealer's certificate of registration, or a certificate bearing the number of his consumer's exemption certificate, and the effective date of the certificate, the sale shall be deemed to be a taxable sale at retail...."

* * *

"(3) A resale certificate is required from every purchaser who purchases tangible personal property or service for resale,.... Otherwise, the dealer will be required to collect and remit the tax to the Department of Revenue."

DISCUSSION

Florida sales and use tax is an excise tax, levied in the chain of manufacture and distribution, imposed for exercising the privilege of selling, using, consuming or renting items of tangible personal property or services that are taxable in this state. When tangible personal property is sold at retail, tax is due and payable based on the sales price and is collectible by the dealer from the purchaser. However, when such items are not purchased for sale but are used, consumed, distributed or stored for use or consumption in this state, tax is due and payable based on the cost price by such user or consumer. Since the sale or purchase of real property is not subject to Florida sales or use tax, tangible personal property which becomes real property is taxed at the last transaction prior to being converted into real property.

A party to this proposed transaction is a religious institution; therefore, the Department must look to Rule 12A-1.001(3), F.A.C., supra. This Rule states that sales made directly to a religious institution are exempt, when payment is made directly to the dealer by that religious institution.

Therefore, pursuant to Rule 12A-1.001(3), F.A.C., when Taxpayer, the "supply house" dealer of the construction materials, sells these materials directly to Church, a religious institution, such sales are exempt from sales tax. However, Taxpayer is required to obtain from Church its blanket exemption certificate as provided in Rule 12A-1.039, F.A.C., in order to make sales to Church tax exempt.

With regard to Taxpayer's purchase of the construction materials and supplies, Rule 12A-1.038(1), F.A.C., provides that a sale is exempt from tax if, at the time of purchase, the dealer (seller) takes from the purchaser a certificate to the effect that the property is purchased for resale. The

application of Rule 12A-1.038, F.A.C., to Taxpayer's case, provides that Taxpayer may purchase the construction materials for resale to Church, exempt from sales tax liability, insofar as Taxpayer complies with the requirements of Rule 12A-1.038, F.A.C.

Rule 12A-1.038(3), F.A.C., provides that a completed resale certificate is required from every purchaser who purchases tangible personal property for resale, subject to the provisions of subsection 12A-1.038(1), F.A.C.; otherwise the selling dealer will be required to collect and remit the tax to the Department.

The Department does not supply dealers with preprinted forms which meet the standards of Rule 12A-1.038, F.A.C., and has therefore promulgated Rule 12A-1.039, F.A.C., providing only a suggested form for a blanket resale and exemption certificate that meets the minimum requirements of Rule 12A-1.038, F.A.C. (A copy of Rules 12A-1.038 and 12A-1.039 is enclosed for your review).

Please be advised that a blanket resale certificate does not expire, as this is not a document issued by the Department. It may continue to be used until the issuer, in this case Taxpayer, revokes it by written notice to the supplier, or until such time as the Florida Department of Revenue cancels Taxpayer's tax registration, should such an event occur.

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 based 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 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 which 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 the response.

Sincerely,

Nydia Men,ndez
Technical Assistant

NM/pb

Con. #11478