

Status: See TAA 96A-048, issued September 19, 1996

Jul 01, 1997

Re: Technical Assistance Advisement - 96(A)-048R

Sales by a Nonprofit Religious Institution Holding a
Current Consumer's Certificate of Exemption
ss. 212.03(1); 212.04(2); 212.06(9); 212.08(7)(o);
409.175(2), F.S.

Rules 12A-1.001(2),(3); 12A-1.008(12)(b);
12A-1.061(30),F.A.C.

Taxpayer: XXXX ("Group")

FEI#: XXXX

Consumer's Certificate of Exemption #: XXXX

XXXXX ("Center")

XXXXX ("Parent")

Dear :

This response is to your petitions of March 13, 1997, December 12, 1996, and April 24, 1996, requesting the Department's issuance of a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Ch. 12-11, F.A.C., regarding the referenced Taxpayer and matter. TAA 96(A)-048 was issued on September 19, 1996, based upon the information provided. After an informal conference with the Department, you submitted new information in your correspondence of March 13, 1997, with respect to tax treatment of the charge for religious retreats which includes accommodations. Your letters and supporting documents provided the following pertinent information.

FACTS PRESENTED

Parent is a worldwide religious organization. Group is a not-for-profit religious corporation which is a constituent organization of Parent operating in the United States. Group is exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code, and exempt from Florida sales and use

taxes on purchases pursuant to its Consumer's Certificate of Exemption.

Group has a location in Florida with an 80 seat prayer room. Group is also completing construction of a "spiritual retreat facility" in Florida referenced as the "Center". The facility will have a sanctuary, conference center, chapel, cafeteria, amphitheater, multi-purpose building, four dormitory-style structures, guest house, administrative office space, caretaker's residence, guardhouse and a pump house.

Group will have retreats that typically involve a 3 night or 4 day stay at the facility. The retreats are for Parent members. Your letter of December 12, 1996, requesting a revision of TAA 96-048, provided a general information brochure of the "[The Group] Conference Series." The brochure indicates that the program activity schedule includes recreational and fellowship events, a sightseeing tour, morning and evening XXX, lectures, presentations, and meals. You describe "XXXX" as prayers and recitation of the XXXX. You further provide that the listed "XXXX" lectures involve study of the doctrines of the Parent organization. Sleeping accommodations and meals are provided to retreat participants. Your correspondence of March 13, 1997 indicates that future brochures will state the price of retreats as follows: "The cost of the XX-day, XX-night religious retreat is \$XX.

Other events will also be hosted and offered to Parent members and non-members. Fees may be charged for these events. Also, religious publications and goods, commemorative items and other tangible personal property will be available for sale to attendees. The sale of these items would be separate from any fees for the retreat or other events.

REQUESTED ADVISEMENT

The issue in question is whether Group is required to collect from purchasers and remit to the Department sales taxes on monies received by it from persons attending religious retreats and purchasing religious publications and commemorative items at the Group Center. A significant portion of the determination of

this issue hinges upon whether Group is considered a "church" for sales tax purposes.

RELEVANT AUTHORITIES

Section 212.03(1), F.S., provides in part:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages **in the business of renting**, leasing, letting, or granting a license to use any living quarters or sleeping or housekeeping accommodations.... (Emphasis Supplied)

Section 212.04(2)(a)2.a., F.S., provides:

No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations. To receive the exemption, the sponsoring organization must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended.

Section 212.06(9), F.S., provides:

The taxes imposed by this chapter do not apply to the use, sale, or distribution of religious publications, bibles, hymn books, prayer books, vestments, altar paraphernalia, sacramental chalices, and like church service and ceremonial raiments and equipment.

Section 212.08(7)(o), F.S., provides in pertinent part:

(o) Religious, charitable, scientific, educational, and veterans' institutions and organizations.

1. There are exempt from the tax imposed by this part transactions involving:

a. Sales or leases directly to churches or sales or leases of tangible personal property by churches;

b. Sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions when used in carrying on their customary nonprofit religious, nonprofit charitable, nonprofit

scientific, or nonprofit educational activities, including church cemeteries; and

. . .

2. The provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category as follows:

a. "Religious institutions" means churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on. The term "religious institutions" includes nonprofit corporations the sole purpose of which is to provide free transportation services to church members, their families, and other church attendees. The term "religious institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of religious organizations or members.... (Emphasis Supplied)

Section 409.175(2)(k) and (l), F.S. (1995), provides:

(k) "Summer day camp" means recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older.

(l) "Summer 24-hour camp" means recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older, that are not exclusively educational.

The following rule provisions were promulgated and adopted by the Department to interpret, inter alia, the above statutory exemptions for churches and religious institutions:

Rule 12A-1.001(2)(a), F.A.C., provides:

Bibles, hymn books, prayer books and religious publications similar thereto, altar paraphernalia, sacramental chalices, and like church service and ceremonial raiment and equipment are exempt. (See Rule 12A-1.008[(12)], F.A.C., for the sale or purchase of religious publications.)

Rule 12A-1.001(3), F.A.C., provides in pertinent part:

(3) RELIGIOUS, EDUCATIONAL, CHARITABLE, VETERANS' AND SCIENTIFIC ORGANIZATIONS, HOMES FOR THE AGED, NURSING HOMES OR HOSPICES, FEDERAL AND STATE CHARTERED CREDIT UNIONS, FLORIDA RETIRED EDUCATORS ASSOCIATION AND LOCAL CHAPTERS, ORGANIZATIONS PROVIDING SPECIAL EDUCATIONAL AND SOCIAL BENEFITS TO MINORS, STATE THEATER CONTRACT ORGANIZATIONS, MILITARY MUSEUM FUNDRAISERS, COAST GUARD AUXILIARIES, AND CEMETERY ASSOCIATIONS.

(a) A sale or lease directly to or sales or leases of tangible personal property by churches, or a sale or lease directly to nonprofit religious... organizations, for use in the course of their customary nonprofit religious,... activities including church cemeteries, 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. See subparagraph (9)(d)2. of this rule for a suggested document to be provided the dealer by an employee who has been authorized to make purchases on behalf of a nonprofit organization when payments are 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. See Rules 12A-1.038 and 12A-1.039, F.A.C.

(b) Sales or rentals of tangible personal property, rentals or leases of transient rental accommodations, rentals or leases of real property, rentals or leases of parking, docking, or tie down spaces, admissions, or other transactions subject to the tax imposed by Part I, Chapter 212, F.S., made by exempt entities, with the exception of sales or leases of tangible personal property by churches, are taxable. Such entities are required to register in the same manner as other dealers and collect and remit tax on transactions which are subject to the tax imposed by Part

I, Chapter 212, F.S. For admission charges imposed by not-for-profit sponsoring organizations qualifying under the provisions of s. 501(c)(3) of the U.S. Internal Revenue Code, see Rule 12A-1.005(3)(g), F.A.C.

(c) "Church" means a religious institution having an established physical place of worship where persons regularly assemble for worship and instruction for religious purposes. Religious organizations whose functions are radio or television broadcasting or those organizations conducting services for short periods of time at temporary locations, and religious associations that provide administrative functions only, are not considered to be churches.

(d) "Religious institutions" means churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on.... (Emphasis supplied)

Rule 12A-1.005(3)(g) and (h), F.A.C., provides in part:

(g)1.... [N]o tax shall be levied on dues membership fees, and admissions charges imposed by not-for-profit sponsoring organizations.... To receive this exemption, the organization making any such charges must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

...

(h) For the purposes of this rule, sponsorship of an event or program is determined by using the following criteria:

1. Active participation by the entity in the planning and conduct of the event or program;
2. Assumption by it of responsibility for the safety and success of the event or program, such that it will be subject to a suit for damages for alleged negligence in its conduct;
3. Entitlement by it to the gross proceeds from the event or program and to the net proceeds after payment of its costs; and
4. Responsibility by it for payment of costs of the event or program and for bearing any net loss if the costs exceed

gross proceeds.

Rule 12A-1.008(12)(b), F.A.C., provides:

Religious publications are exempt. For purposes of this exemption, "religious publications" are defined as publications, except those referred to in paragraph (a), that are used, sold, or distributed by a church, or religious institution, holding an exemption certificate based on its exemption under s. 212.08(7)(o), F.S.

Rule 12A-1.061(30), F.A.C., provides in part:

Day Nurseries, kindergartens, church-operated and other custodial camps which primarily provide supervisory and instructional services which are professional and personal, are exempt and are not required to collect tax on fees charged for admissions, participation in sports or recreation, or for food, lodging, or other similar accommodations, services or privileges.... (Emphasis supplied)

ADVISEMENT

As you have concluded in your TAA request, the sale of certain items of a religious nature is specifically exempt by statute, and the sale of religious publications is also exempt when sold by a religious institution holding an exemption certificate pursuant to s. 212.08(7)(o), F.S. In addition, admissions sold by an I.R.C. Section 501(c)(3) organization are exempt when the sponsorship requirements outlined in Rule 12A-1.005(3)(h), F.A.C., are met. Therefore, religious items sold by Group which meet the requirements of s. 212.06(9), F.S. and Rules 12A-1.001(2) and 12A-1.008(12), F.A.C., are exempt. Because Group qualifies as an I.R.C. Section 501(c)(3) organization, admissions sold by Group will be exempt in those instances in which the Group is deemed to be a "sponsoring" organization pursuant to Rule 12A-1.005(3)(h), F.A.C.

Group already holds a valid Consumer's Certificate of Exemption as a "religious institution" pursuant to s. 212.08(7)(o)2.a.,

F.S. Group currently has an established physical place of worship where persons regularly assemble for worship, and will have a chapel and sanctuary at the Center that will serve to satisfy the definition of "church" found in Rule 12A-1.001(3)(c), F.A.C. Accordingly, sales of tangible personal property by Group qualify as exempt from sales and use tax pursuant to s. 212.08(7)(o)1.a., F.S., as a sale by a church. Therefore, Group bears no obligation to charge and collect sales tax on its sales of tangible personal property.

With respect to the question whether the lump-sum charge for retreats, which include overnight accommodations, is subject to tax, your original letter of April 24, 1996, had argued the applicability of the exemption for church-operated custodial camps, provided by Rule 12A-1.061(30), F.A.C. However, this Rule is not applicable to the circumstances of this situation. Subsection (30) of Rule 12A-1.061, F.A.C., specifically exempts "[d]ay nurseries, kindergartens, church-operated and other custodial camps which primarily provide supervisory and instructional services." The construction of the sentence in the referenced rule indicates that a church-operated camp entitled to the exemption would have to be a "custodial camp." The Rule does not provide a definition of "custodial camp." Thus we must look to other sources to define this term. Webster's Dictionary defines "custodial" as relating to guardianship. Webster's also defines "camp" as being "a place provided with tents or cabins... designed for rest or recreation, especially for children in the summer". The terms "summer day camp" and "summer 24-hour camp" are defined in Section 409.175(2), F.S. Both of these definitions specify that they are offered for children during summer vacation. Thus, relying on these sources and the doctrine of "plain and ordinary meaning," we must conclude that a "custodial camp" is a program for children which is of temporary or limited duration conducted during a period when school is not normally being attended. The spiritual retreats being offered at the Center would not qualify as a "custodial camp." The primary focus of the retreats is not custodial supervision and instruction of children. However, that does not mean that the retreat fee is taxable.

While the lump-sum retreat fee includes dormitory

accommodations, the true purpose of the retreats, as stated in your correspondence, is the provision of "religious and spiritual instruction," and not the provision of sleeping or housekeeping accommodations. In fact, the price paid for a retreat by a participant electing to stay in accommodations other than those provided at the retreat facility would be the same as that charged to any participant staying on the retreat facility. The price of the retreats is to be described in the Group's future brochures as follows: "The cost of the x-day, x-night religious retreat is \$x."

From the additional information you have provided, (and assuming that the Group will list the charge for the retreat as stated above), the Group is not engaged in the business of leasing transient accommodations to its retreat participants. The Group receives the same consideration for its retreats whether or not the retreat participants stay in the dormitories on the retreat facility. Because the dormitories, owned by the Group, are used in carrying on the Group's customary nonprofit religious activities and are not rented to persons participating in the retreat, no tax is due pursuant to s. 212.03, F.S.

If the Group elects to separately charge or itemize for accommodations at the facility, then the Group will be engaged in the business of leasing accommodations for consideration, and the total consideration received will be subject to the taxes imposed on transient rentals under s. 212.03, F.S. The exemption provided to churches for their sales under s. 212.08(7)(o)1.a., F.S. (1996 Supp.), is limited to sales or leases of tangible personal property.

The provision of lectures during the retreats constitutes services that are not subject to the taxing statutes. With respect to meals provided during the retreats, such meals are tangible personal property that is incorporated into the provision of a non-taxable service transaction. However, the Group, as the ultimate consumer of the meals in providing its customary nonprofit religious activities, will not need to remit use tax with respect to such meals.

This response constitutes a revised 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 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 confidential 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,

Carol Schwarz
Senior Tax Specialist
Tax Policy and Dispute
Resolution

CS/

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