

SUMMARY

QUESTION: Are sales of timeshare units considered to be sales of real property, which provide an interest in real property, or licenses to use real property, which provide no interest in real property? If it is determined that the sales of the timeshare units are not sales of real property, then are the sales exempt as transient accommodations used for continuous residence for more than six months?

ANSWER - Based on Facts Below: Based upon the documentation provided by the Taxpayer, the sale of the timeshare unit provides no interest in the realty and is a timeshare license. The sale of a timeshare license is subject to Florida sales tax as a transient rental. The sale of these timeshare licenses do not qualify as exempt transient accommodations, because the terms of the agreements do not give the purchaser the right to continuously reside at the property for more than six months.

Dec 02, 1999

Re: Technical Assistance Advise ment 99A-065
Taxpayers: XXX [hereinafter "Developer"], and
XXX [hereinafter "Owner"]
Sales and Use Tax - Sale of "Fee Interest" (Timeshare Unit)
Sections: 212.05, 212.03, Florida Statutes (F.S.)
Rules: 12A-1.061, Florida Administrative Code (F.A.C.)

Dear :

This is a response to your letter of August 31, 1999, requesting a Technical Assistance Advise ment (TAA) regarding the above-referenced matter. This response to your request constitutes a TAA under Chapter 12-11, Florida Administrative Code (F.A.C.), and is issued to you under the authority of Section 213.22, Florida Statutes (F.S.).

FACTS

In your letter, you state:

[Developer] develops and manages certain property ("Property") located in [XXX].... Owner intends to lease property to Developer who will assign [the] lease to a not for profit corporation organized under the laws of Florida ("Association"). Developer has the right to convey timeshare rights to the public under the applicable laws governing timeshare sales. Developer intends to convey a Fee Interest for years ("Interest") in the Property to a purchaser ("Holder") pursuant to a purchase agreement ("Agreement") which gives the Holder the right to the use of a particular suite at the Property for one week a year for a period of 30 years. The Holder will be permitted to assign his or her week of the right to use a suite to an exchange agreement or, upon proper notice, to use the suite for one or more weeks for the Holder's personal use or rental to others. Under the proposed terms of the exchange agreement, the Holder would be entitled, upon proper notice, to the use of a suite at another property operated by the Developer. The other property may be located inside or outside of Florida.

At the time of purchase of the Interest, the Holder may pay in full or may pay over time. A Holder must also reimburse Developer and Association for expenses which will be assessed as his or her share of common expenses. If the Holder fails to pay these expenses as they become due, the Holder will be denied the right to use the suite and also be denied for exchanging it in the pool arrangement. If the Holder's default continues for the period described in the Agreement, the Agreement may be canceled by Developer and the Holder will forfeit all payments made and will have no further payment obligations. The Developer will have no other remedies against the Holder for the described payments.

* * *

In the discussion portion of your letter, you assert the following:

The interest conveyed in the transaction described herein is the sale of a fee interest for a certain number of years. Following the expiration period, the fee is terminated and the subject real property is reverted to the original owner. In real property terms, the estate is a fee simple determinable. Consequently, the conveyance falls under the provisions of [Rule]12A-1.061(6)(d)[,] F.A.C., and is therefore, excluded from the operation of the Florida Sales and Use Tax.

The submitted supporting documentation contained the following, pertinent information:

The document titled "Exhibit `I' PUBLIC OFFERING STATEMENT TEXT" provides the following definitions of the real property interests being offered for sale, on pages 1 and 3:

F. "Biennial Vacation Ownership Interest" means the ownership of a Vacation Ownership Interest which is an estate for years for a term of thirty (30) years, which right is neither coupled with a freehold interest nor coupled with an estate for years with a future interest in vacation ownership property as described in the Plan, which is limited to either the Odd Numbered Years or the Even Numbered Years and which is one-half (1/2) of a Vacation Ownership Interest. Every reference in the Plan which states a number with regard to an Owner of a Vacation Ownership Interest, including, but not limited to, assessment amounts shall be deemed to be divided in half for Owners of Biennial Vacation Ownership Interests.

AA. "Vacation Ownership Interest" or "VOI" means the ownership of a license which is an estate for years for a term of thirty (30) years, which right is neither coupled with a freehold interest nor coupled with an estate for years with a future interest in vacation ownership property, as described in the Plan.

These same definitions are used in the document titled "Vacation Plan for XXX at XXX, A Vacation Ownership Resort."

REQUESTED ADVISEMENTS

- 1) Whether the sale of the "Fee Interest" described above (i.e., timeshare unit) is subject to Florida sales and use tax?

- 2) Whether the sale of the "Fee Interest" described above qualifies as a transfer of non-transient accommodation such that it is not subject to Florida sales and use tax, as provided in Section 212.03(4), F.S.?

LAW and DISCUSSION

The applicable statutory and administrative provisions relevant to the issues under advisement are as follows:

Section 721.05(29) and (31), F.S., provide:

(29) "Timeshare estate" means a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof. The term shall also mean an interest in a condominium unit pursuant to s. 718.103.

* * *

(31) "Timeshare license" means a right to occupy a timeshare unit, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a timeshare property.

Section 212.03(1) and (4), provide:

(1) 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 in, from, or a part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp. However, any person who rents,

leases, lets, or grants a license to others to use, occupy, or enter upon any living quarters or sleeping or housekeeping accommodations in apartment houses, roominghouses, tourist camps, or trailer camps, and who exclusively enters into a bona fide written agreement for continuous residence for longer than 6 months in duration at such property is not exercising a taxable privilege. For the exercise of such taxable privilege, a tax is hereby levied in an amount equal to 6 percent of and on the total rental charged for such living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental....

* * *

(4) The tax levied by this section shall not apply to, be imposed upon, or collected from any person who shall have entered into a bona fide written lease for longer than 6 months in duration for continuous residence at any one hotel, apartment house, roominghouse, tourist or trailer camp, or condominium, or to any person who shall reside continuously longer than 6 months at any one hotel, apartment house, roominghouse, tourist or trailer camp, or condominium and shall have paid the tax levied by this section for 6 months of residence in any one hotel, roominghouse, apartment house, tourist or trailer camp, or condominium.... (Emphasis Supplied.)

Rule 12A-1.061(3), F.A.C., provides, in pertinent part:

(3) RENTAL CHARGES OR ROOM RATES.

(e) Rental charges or room rates include assessments required to be paid by a guest or tenant to the owner, the owner's representative, or the owner's designated payor, under the terms of an agreement for the use or possession, or the right to the use or possession, of transient accommodations. Such assessments may include charges for maintenance fees, membership dues, or similar charges.

* * *

(h) The following is a non-inclusive list of charges separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale that are NOT rental charges or room rates for transient accommodations:

* * *

15. Consideration paid by a timeshare owner for purchase of a timeshare estate, as defined in s. 721.05, F.S.

Consideration paid under a timeshare license, as defined in s. 721.05, F.S., are rental charges or room rates and are subject to tax. (Emphasis Supplied.)

DISCUSSION & DETERMINATION

Sales of Fee Interests in a Timeshare Property

Florida does not impose sales tax on sales of real property. Transfers of timeshare estates, that transfer a right to occupy with a freehold estate or an estate for years with a future interest in a timeshare property, are transfers of real property and not subject to sales tax. See Section 721.05(29), F.S., and Rule 12A-1.061(3)(h)15., F.A.C. However, transfers of timeshare licenses, that convey a right to occupy without a freehold estate nor an estate for years with a future interest in a timeshare property, are not transfers of real property. See Section 721.05(31), F.S., and Rule 12A-1.061(3)(h)15., F.A.C. The sale of a timeshare license is the sale of a right to use living quarters, or a sleeping or housekeeping accommodation, subject to the provisions of Section 212.03(1), F.S.

In the instant case, Taxpayer is not selling real property. Rather, Taxpayer is selling licenses to use living quarters or sleeping accommodations in timeshare units to the public. Taxpayer's own supporting documentation describes the interest as a license and defines the interest as a timeshare license, as defined in Section 721.05(31), F.S.

Thus, Taxpayer is exercising the taxable privilege of granting a license to use living quarters or sleeping accommodations. Therefore, all charges made to the public (licensee\owner) for the privilege of owning any vacation ownership interest or biennial vacation ownership interest are subject to Florida sales tax. Further, all charges by Taxpayer for annual assessments for common expenses, maintenance assessments, special assessments, or any other charges made to the licensee\owner when such charges are required to be paid as a

condition of the use of the property, are subject to tax. See generally, Rule 12A-1.061(3), F.A.C. Lastly, Taxpayer is required to collect and remit any locally imposed discretionary sales surtaxes and tourist development taxes, tourist impact taxes, and convention development taxes in addition to Florida sales tax.

Exemptions from Sales Tax Imposed upon Sales of Fee Interests in a Timeshare Property

Taxpayer has requested that the Department determine that the sale of the involved interest is exempt from sales tax, since the term of the agreement exceeds six (6) months. Section 212.03(4), F.S., provides that there are two types of exemptions available for the rental or lease or license of sleeping or housekeeping accommodations. One is for leases under a bona fide written lease for longer than six (6) months in duration for continuous residence. The second is for rentals by persons who live continuously for longer than six (6) months at one location and who have paid the transient rentals taxes for the first six months of residence.

In the instant case, Taxpayer is providing accommodations for one week a year, for vacation ownership interests, and one week every other year, for biennial vacation ownership interests. In both cases, the licensee\owner does not have the right to continuously reside at the property for six (6) months or longer. Since the licensee\owner is unable to continuously reside at the property for more than one week a year or every other year, the transaction does not come under either exemption found in Section 212.03(4), F.S.

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 requests 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 s. 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,

Jennifer J. Silvey
Attorney
Technical Assistance & Dispute Resolution

Control #38832
JJS/