

**SUMMARY**

Taxpayer seeks a determination that the monthly specified fee it pays to Copier for copies, office supplies, and fax, mail, delivery and courier services, is a payment for a personal service transaction involving sales as an inconsequential element for which no separate charge is made, and is thus exempt from the sales tax pursuant to Section 212.08(7)(v)1., F.S.

It is a fundamental principle of Florida law that exemptions from tax are strictly construed against the taxpayer. In the instant case, the copies are not inconsequential, but are the very essence of the transaction. Paying the monthly fee entitles Taxpayer to a specified number of copies each month. Additional and color copies may be purchased at a specified cost. The Agreement's precise specification of the number and type of copies Taxpayer will receive in exchange for the base monthly fee undermines Taxpayer's contention that the contract is for services. Consequently, all consideration paid by Taxpayer to Copier for copies is taxable, and not a payment for a service transaction that includes sales of tangible personal property as inconsequential elements for which no separate charges are made.

The Department is unable to determine which portion of the monthly charge, if any, is attributable to fax, mail, delivery, or courier services. Case law establishes that a service charge is taxable when included in a lump sum charge for a taxable sale. Currently, because the contract provides for a monthly lump sum charge, the entire amount paid by Taxpayer to Copier under the contract is taxable.

\*\*\*\*\*

Jan 20, 1999

Re: Technical Assistance Advisement 99A-002  
Sales and Use Tax

In House Copy Shop Operated by Third Party  
Rules 12A-1.071(10); 12A-1.027; 12A-1.041(1), F.A.C.  
XXX ("Taxpayer")  
XXX ("Copier")

Dear :

This response to the letter of June 11, 1998, constitutes a Technical Assistance Advisement (TAA) issued in accordance with the provisions of Chapter 12-11, Florida Administrative Code (F.A.C.), and pursuant to the authority granted by s. 213.22, Florida Statutes (F.S.).

### FACTS

In its letter, Taxpayer sets forth the facts it believes to be relevant as follows:

[Taxpayer] entered into a management contract with [Copier] to manage and operate a copy center, convenience copier, FAX, mail (including morning pickup of mail from post office(s) and delivery of mail to pre-sort corporation)[,] downtown courier runs, and general facilities services. In exchange for these personal services, [Copier] is paid a monthly fee. (Letter, page 1)

As part of the contract [Copier] agrees to provide a support service person designated as a site manager. All wages, insurance, work[ers'] compensation and other employee benefits of the support service person are paid by [Copier]. [Copier] guarantees the staffing of the support service person during regular business hours and overtime must be authorized by [Taxpayer]. The site manager is subject to the direction and supervision of [Taxpayer]. The site manager provides services exclusively for [Taxpayer] and his/her services are not available to the general public. [Copier] provides [its] own copiers. Copying supplies and copier maintenance are provided at no additional charge. (Letter, page 1)

At the Department's request, Taxpayer provided a copy of

the "Facilities Management Agreement" (Agreement) to the Department. In the Agreement, Copier agrees to provide Taxpayer with certain services, including "management service to manage and operate their copy center, convenience copier, FAX, mail (to include morning pickup of mail from post office(s) and delivery of mail to pre-sort corporation in the evening), downtown courier runs, office supplies and general facilities services." (Agreement, paragraph 3).

Additionally, paragraph 8 of the Agreement provides that "pricing" is determined as follows:

[Copier] shall charge [Taxpayer] a management fee of \$4,200 per month ["specified fee"] to include 30,000 copies ["specified number"] produced in house. All copies produced in house over [the specified number] will be billed at .05 cents [specified cost]. Additional charges for approved overtime, along with any overage will be billed to [Taxpayer] at month [sic] end. All prices quoted in this Agreement are exclusive of the applicable Florida state sales tax. [Copier] will pass on inflation and cost of living increase to [Taxpayer]... not to exceed 2% per year upon each anniversary date. Management fee includes bank depositing and courier trips restricted to [the] downtown area. (emphasis supplied).

With regard to supplies, the Agreement provides:

[Copier] will provide 8 1/2 x 11, 8 1/2 x 14 and 11 x 17 white 20 lb. bond and toner for all copiers, at no additional charge. All color papers and cover stocks will be charged separately. Paper clips, rubber bands, staplers & staples will be provided by [Taxpayer]. (Agreement, paragraph 11) (emphasis supplied).

Thus, the specified fee negotiated under the Agreement includes the "specified number" of copies; additional copies may be purchased for the "specified cost" per copy. (Agreement, paragraph 8). White paper and toner are owned by Copier and provided free of charge, while "color papers and cover stocks" are "charged separately." (Agreement, paragraph 11). Moreover,

the Agreement requires Copier to provide two copy machines, one to be placed in the "main reproduction center," and one to be placed in the "convenience copier area." (Agreement, paragraph 4). Pursuant to the Agreement, "[a]ll copy equipment [is] the property of [Copier] (or the supplier, if leased by [Copier])."

Exhibit B to the Agreement, entitled Off-Site Contract Pricing, provides prices for copies produced outside Taxpayer's office. Under Exhibit B, all copies "produced off-site at [Copier's] Main [P]lant due to size, nature of deadline, etc. will be billed at same price per copy as in [the] Management Fee." (Exhibit B, page 1). The off-site contract prices "include pick up and delivery on a 24 hour - seven days a week schedule with no extra charge for rush orders." (Exhibit B, page 2 (underlining, bolding, and capitalization omitted)).

### ISSUE

Whether fees paid by Taxpayer to Copier under the Agreement are for "personal service transactions that involve sales as inconsequential elements for which no separate charges are made" and thus exempt from sales tax under Section 212.08(7)(v)1., F.S.

### TAXPAYER'S POSITION

Taxpayer argues that all fees it pays to Copier pursuant to the Agreement are for professional services, and requests that the Department issue a Technical Assistance Advisement determining that "fees paid for Facilities Management personal services are not subject to sales tax."

In support of its argument that the fees are exempt from the sales tax, Taxpayer relies upon Section 212.08(7)(v)1., F.S., which provides an exemption from the sales and use tax for "personal service transactions that involve sales as inconsequential elements for which no separate charges are made."

### STATUTORY AND ADMINISTRATIVE AUTHORITY

The following statutory and administrative law is relevant to the issue at hand:

Section 212.05(1)(a)1.a., F.S., sets forth the legislative intent to tax "each item or article of tangible personal property when sold at retail in [Florida]."

Section 212.02(15)(a), F.S., defines a sale as "[a]ny transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration." (emphasis supplied). Section 212.02(14)(a), F.S., in turn, defines a retail sale as a sale of tangible personal property to any person for any purpose other than for resale.

Pursuant to Section 212.02(19), F.S., "tangible personal property" means "property which may be seen, weighed, measured, or touched..." Photocopies, which may be seen, weighed, measured, or touched, are tangible personal property. Absent a specific exemption, the sale in this state of photocopies at retail is a taxable transaction.

Section 212.07(8), F.S., 1998 Supplement, provides in relevant part:

Any person who has purchased at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property,... and cannot prove that the tax levied by this chapter has been paid to his or her vendor, lessor, or other person is directly liable to the state for any tax, interest, or penalty due on any such taxable transactions. (emphasis supplied).

### ANALYSIS

Pursuant to the Agreement, Copier charges Taxpayer a monthly specified fee, which includes include a specified number of copies produced in house. (Agreement, paragraph 8). There is also a specified cost for each copy above the specified provided. Id. Color copies are not included in the contract

price. (Agreement, paragraph 11). For large or high priority projects, Copier may produce copies at its main plant rather than at Taxpayer's office. (Exhibit B, page 1). These copies are "billed at the same price per copy as in [the] Management Fee." Copier is also obligated to provide certain office supplies under the terms of the agreement. (Agreement, paragraph 3).

Section 212.05(1)(a)1.a., F.S., provides that all sales at retail of "tangible personal property" in Florida are subject to the sales tax. Under Section 212.02(19), F.S., "tangible personal property" means "personal property which may be seen, weighed, measured, or touched...." Photocopies, which may be seen, weighed, measured, or touched, are tangible personal property. Thus, copiers are engaged in the sale of tangible personal property when they sell copies to their customers

On its face, the Agreement provides that Copier will produce copies for Taxpayer. Absent a specific exemption, the sale in this state of copies at retail is a taxable transaction. Sections 212.05(1)(a)1.a., and 212.02(19), F.S. Like copies, office supplies are items of tangible personal property, the sale of which is taxable under Chapter 212, Florida Statutes.

It is a fundamental principle of Florida law that exemptions from tax are strictly construed against the Taxpayer. Capital City Country Club, Inc. v. Tucker, 613 So.2d 448, 452 (Fla. 1993). See also United States Gypsum Co. v. Green, 110 So.2d 409 (Fla. 1959); State ex rel. Szabo Food Services, Inc. v. Dickinson, 286 So.2d 529 (Fla. 1973). Taxpayer argues that Section 212.08(7)(v), F.S., which exempts service transactions that include inconsequential "sales [of tangible personal property] for which no separate charges are made," is applicable to the charges made under the Agreement. Taxpayer's reliance upon this exemption, however, is misguided.

In the instant case, the copies are not inconsequential, but are the very essence of the transaction. Paying the base monthly charge under the Agreement entitles Taxpayer to the specified number of copies each month. Additional copies and color copies are not included in this base monthly fee, but may

be purchased at a specified cost. The Agreement's precise specification of the number and type of copies Taxpayer will receive in exchange for the base monthly fee undermines Taxpayer's contention that the contract is solely for services. Copier's contractual obligation to provide office supplies further undermines Taxpayer's argument.

Moreover, Exhibit B to the Agreement provides that "copies produced off-site... will be billed at [the] same price per copy as in [the] Management Fee." On occasion, then, Copier produces copies for Taxpayer at its main plant. If Copier sold these same copies to any other retail customer from its main plant, the entire amount charged for the copies would be taxable. A mere change in the location of the copy shop from the main plant to Taxpayer's office should not, and does not, render the sale of otherwise taxable copies exempt.

The sale of copies is not an inconsequential element of the transaction; therefore, Section 212.08(7)(v), F.S., does not apply. Where the sale or use of tangible personal property does not fit squarely within an exemption set forth by the legislature, the property is subject to tax. In the instant case, the sale of copies is a primary element of the transaction. Consequently, all consideration paid by Taxpayer to Copier for copies is taxable, and not a payment for a service transaction that includes "sales [of tangible personal property] as inconsequential elements for which no separate charges are made." Section 212.08(7)(v), F.S.

The Department recognizes the possibility that a portion of the monthly charge is for fax, mail, delivery, and courier services, or for the convenience of locating the copy equipment on Taxpayer's premises. Nevertheless, based upon the information supplied, the Department is unable to determine which portion of the monthly charge, if any, is attributable to these services. With regard to otherwise nontaxable services included in a lump sum contract for sale, the seminal case of Department of Revenue v. B & L Concepts, Inc., 612 So.2d 720 (Fla. 5th DCA 1993) is instructive.

In that case, the Fifth District Court of Appeal considered

whether a service charge becomes taxable when included in a lump sum charge for a taxable sale. Id. at 721-22. According to the Court:

the proper line of demarcation is that if service charges or fees incidental to the sale or lease are imposed at the option of the vendor or lessor, those service charges or fees are a part of the "sales price" and are subject to the sales tax, but if such service charges or fees are separately itemized and applied at the sole option or election of the vendee or lessee, or can be avoided by decision or action on the part of the vendee or lessee alone, then those charges and fees are only incidental to the sale, are not part of the "sales price" and are not subject to sales tax.

Id. at 721. Currently, because the contract provides for a monthly lump sum charge, the entire amount paid by Taxpayer to Copier under the contract is taxable.**(FN 1)** If tax is not paid to Copier on the full contract price, Taxpayer is liable to the state for all tax, interest, and penalties due. Section 212.07(8), F.S., (Supp. 1998).

Taxpayer limited its inquiry to the taxability of copies produced in accordance with the Agreement, and did not inquire about the taxability of the copy equipment provided. Accordingly, the Department will not address the question whether Taxpayer is deemed to be leasing any of the copy equipment provided under the Agreement.

#### DETERMINATION

Because the Agreement is for the sale of tangible personal property, Taxpayer must remit tax to Copier on the full contract price.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., and 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 from that 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.

Should you have any questions concerning this Advisement, please do not hesitate to contact me.

Sincerely,

Rebecca Newton-Clarke  
Attorney  
Technical Assistance and  
Dispute Resolution  
(850) 488-9669

RNC/

Control #: 34523

---

FOOTNOTE 1: There is no suggestion that any of the printed materials are purchased by Taxpayer for resale to its clients. If Taxpayer does purchase any of the printed materials for resale, Taxpayer should register with the Department as a dealer and extend a resale certificate to Copier. See Section 212.07(1), F.S.; Rule 12A-1.038, F.A.C.