

Mar 29, 1994

Re: Technical Assistance Advisement 94A-022

Sales and Use Tax - Freight Charges

Section 212.02(17), F.S.

Rule 12A-1.045(2), F.A.C.

Dear :

This response is in reply to your petition received February 15, 1994, and subsequent documentation received February 21, 1994, for the Department's issuance of a Technical Assistance Advisement concerning the above referenced party and matter. Your letters dated April 16, 1993, and July 20, 1993, providing information and documentation regarding the above referenced matter, have also been carefully examined. Since your letter received February 15, 1994, provides that your recent audit has been resolved with the Department, the Department finds your latest request to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response constitutes a Technical Assistance Advisement under Chapter 12-11, Florida Administrative Code, and is issued to you under the authority of s. 213.22, F.S.

DISCUSSION OF FACTS

Your request imparts the following discussion concerning the matter under advisement:

"[Taxpayer] is a wholesaler/retailer of equipment, components, and industrial supplies. The Company ships the goods to the customer via common carrier.

"[Taxpayer's] freight policy is:

"1) F.O.B. origin

"2) title to goods passes to the buyer at the point of origin.

"3) buyer pays the transportation charges to [Taxpayer], who remits payment to the freight company

"The freight charges are listed as a separate item on the customer's invoice."

Taxpayer's stated freight policy is presented in the document entitled "Sales and Freight Terms" (copy supplied) as follows:

"FREIGHT IS PREPAID ON ORDERS FOR A SINGLE SHIPMENT OF \$900 or more of merchandise (before tax and freight) unless otherwise stated, to customer's place of business anywhere in the contiguous United States, using routing of our choice. Other terms apply to Alaska, Hawaii, Puerto Rico and export orders. Contact local branch for further information.

"Any extra charge incurred for additional services, such as customer's carrier or special handling at the destination, must be paid by consignee.

"If any item is backordered on an order qualifying for freight prepayment, that item will be shipped prepaid. Title and risk of loss pass to customer on delivery to the common carrier." (Emphasis Supplied)

REQUESTED ADVISEMENT

Your petition requests that the Department of Revenue consider whether Taxpayer is required to charge sales tax on freight charges.

DISCUSSION AND ANALYSIS OF LAW

Section 212.02(17), F.S., provides, in pertinent part:

"(17) `Sales price' means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is

given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charges, losses, or any other expense whatsoever...." (Emphasis Supplied)

Rule 12A-1.045(2), F.A.C., provides:

"(2) If the seller contracts to sell tangible personal property f.o.b. origin, the title to the property passes at such point to the buyer and the buyer pays the transportation charges, the transportation services are rendered to the buyer and are not a part of the taxable selling price. However, where the transportation charges are billed by the seller to the buyer but documentation is inadequate to establish the point at which title passed to the buyer, such charges shall be considered a part of the taxable selling price."

The appellate court in Florida Hi-Lift v. Department of Revenue, 571 So.2d 1364 (Fla. 1 DCA 1990), held that sales tax could not be imposed on transportation charges where the terms of the lease provide that the lease is f.o.b. lessor's premises and the transportation charges were not deducted from the rental price.

CONCLUSIONS OF LAW

The term "transportation charges" includes carrying, delivery, freight, handling, pickup, shipping, and other similar charges or fees. The separately stated "ship charge" included on Taxpayer's invoice to its customer is considered a transportation charge.

In determining whether separately stated transportation charges are a part of the sales price and subject to sales tax, the location where title to the property passes from Taxpayer to its customer is essential. Taxpayer's stated sales and freight terms provide that title and risk of loss pass to the customer on delivery to the common carrier. Under the provisions of Rule 12A-1.045, F.A.C., when tangible personal property is sold to

the buyer under the terms "f.o.b. origin" and title to the property passes at the seller's location, separately stated transportation charges are not a part of the sales price. Any separately stated transportation charge by Taxpayer on sales of tangible personal property shipped into Florida under the sales and freight policy as stated above is not subject to Florida sales tax.

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,

Janet L. Young
Tax Law Specialist

JLY/pb
Enclosures