



FLORIDA

Executive
Director
Marshall Stranburg

QUESTION: WHETHER TAXPAYER'S MUST COLLECT SALES TAX OR COMMUNICATION SERVICE TAX FOR THEIR INTERNET BASED SUBSCRIPTION SERVICE THAT PROVIDES FREE AND DISCOUNTED ADMISSIONS PROVIDED BY OTHER COMPANIES.

ANSWER: NO. THE ADMISSION PROVIDER, NOT TAXPAYER, MUST COLLECT AND REMIT SALES TAX ON THEIR ADMISSION SALES.

June 08, 2015

Subject: Technical Assistance Advisement ("TAA") 15A-006
Sales and Use Tax; Communication Services Tax ("CST")
Admissions

Section(s) 212.04, 212.02, Florida Statutes ("F.S."); Chapter 202, F.S.
Rule(s) 12A-1.005, Florida Administrative Code ("F.A.C.")

XXXXXX ("Taxpayer")("Petitioner")
FEIN: XXXXXX
Florida Sales Tax Number: XXXXXX
BPN: XXXXXX

XXXXXX ("Program One")
XXXXXX ("Program Two")
XXXXXX ("Admission Provider")
XXXXXX ("Certificates")

Dear XXXXXX:

This letter is a response to your petition dated March 12, 2014, for the Department's issuance of a Technical Assistance Advisement ("TAA") to Petitioner, regarding whether Taxpayer's subscription based activities require Taxpayer to collect or remit sales and use tax or CST. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Rule Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of section 213.22, F.S.

Child Support – Ann Coffin, Director • General Tax Administration – Maria Johnson, Director
Property Tax Oversight – Susan Harlan, Interim Director • Information Services – Damu Kuttikrishnan, Director

<http://dor.myflorida.com/dor/>
Florida Department of Revenue
Tallahassee, Florida 32399-0100

Facts

Taxpayer conducts two Internet based subscription services, including Program One and Program Two, throughout various States within the country, including Florida. Taxpayer subscription members may access Taxpayer's website to purchase Certificates. The Certificates allow for free admissions or price discounts at the business location of a particular Admission Provider that participates in Program One or Program Two. Taxpayer provided copies of the agreements with the Admission Providers. The agreements require Admission Providers to comply with Florida gift certificate law regarding redemption expiration dates, refunds, and credits. The agreements require Admission Provider to provide instructions to Taxpayer's subscribers regarding refunds for unused Certificates obtained from Taxpayer. Also, the agreement provides that the Admission Provider receives various marketing tools and customer data from Taxpayer's subscribers. The Admission Provider receives a share of the receipts received from Program One and Program Two sales income from the sale of Certificates.

In regard to Program One, Taxpayer's customers initially subscribe with Taxpayer. The customers then receive certain membership benefits. The subscriber must choose one particular Admission Provider. During this process, the customers provide Taxpayer with information. The subscribing members enroll their family members. Certain family members receive free admissions during certain periods with a particular Admission Provider. These family members receive a Certificate which may be redeemed with the Admission Provider. This type of Certificate is obtained without payment and has no cash value for refund.

Also in regard to Program One, Taxpayer also sells the subscribing member Certificates that may be used by the other family members. This type of Certificate allows for a limited number of admissions at no additional charge when the Certificate is redeemed at the Admission Provider. This type of Certificate is used when other family members are using the other type of Certificate obtained at no charge that provides free admission. This type of Certificate has no stated value but Taxpayer provides for refund of unused Certificates. The subscribing member downloads the Certificates and must present the Certificate to the Admission Provider when it is redeemed. The price of this type of Certificate is determined by the Admission Provider. This type of Certificate must be used in a certain period of time and use of the Certificate may be limited based upon availability of the admission facilities at the Admission Provider. The use of Certificates that allow free admission cannot be guaranteed at all times.

In regard to Program One, Admission Providers are not charged set fees by Taxpayer; however, the Admission Provider is required to pay an annual fee to Taxpayer. The agreement between the Admission Provider and Taxpayer regarding Program One requires Taxpayer to accept the free admissions Certificates during a certain agreed period of time. The agreement authorizes Taxpayer to sell the other Certificates at a predetermined price to be redeemed at the Admission Provider. Subscribers are not required to purchase Certificates to be used at the Admission Provider.

The agreement for Program One allows the Admission Provider to receive an equal portion of the proceeds from the sale of Certificates. Taxpayer sends checks twice during the Program One period. Taxpayer is entitled to deduct refunds paid from unused Certificates when making payment to the Admission Provider.

The agreement for Program One between Taxpayer and the Admission Provider provides that the funds retained by Taxpayer from the sale of Certificates are for marketing, promoting, advertising, and distributing the Certificates, and that the annual fee paid by the Admission Provider is for Internet set-up, promotional cards, and marketing tools ordered by Admission Providers.

In regard to Program Two, the agreement between an Admission Provider and Taxpayer requires the Admission Provider to accept certain Certificates offered by Taxpayer referenced by the agreement. As to Program Two, the customer accepts the Taxpayer's offer online, and the Admission Provider is bound by the Taxpayer's Certificate terms. The customer may then download the Certificate to print or store on a mobile device. The Certificate is then redeemed at the Admission Provider.

There are four mandatory Certificates, which include games and rentals of tangible personal property. The mandatory Certificates are sold as a lump sum bundled price. Each Certificate provides a stated value which exceeds the stated purchase price of the Certificate. Also, the redemption periods may be limited in time, availability, and amount. The Certificate allows for a credit of the purchase price when used beyond the stated redemption period on the Certificate as required by Florida law.

Admission Provider must pay an annual fee that is discounted if the Admission Provider also participates in Program One. The agreement provides that the annual fee is for services provided by Taxpayer.

The Program Two agreement allows the Admission Provider to send additional incentive Certificate offers to Taxpayer's subscribing members. The Program Two agreement provides for additional Certificate offers that are optional to the Admission Provider. Taxpayer retains a share of the proceeds from the sale of Taxpayer Program Two Certificates.

Taxpayer Position

Taxpayer is merely a facilitator of selling or distributing incentives which will provide customers with a discounted price for the goods and services purchased from an Admission Provider. In effect, the offers on Taxpayer's website are not unlike those found on other websites that offer a customer a discount for goods, services, and events where the provider of goods, services, or events is not the same person as the website that solicits the discounted sale.

The agreements provide Taxpayer and Admission Provider are not in an agency relationship. Also, Taxpayer's services are unlike a typical agency relationship involving the sale of a ticket to a scheduled event, such as a sporting event, because the purchaser does not automatically choose the time to use a coupon or certificate. As to Chapter 202, F.S., Taxpayer does not sell an information service simply because it charges a subscription fee.

Law and Discussion

Section 212.04, F.S., applies to the sale of admissions made by Taxpayer or the Admission Providers. The sales tax must be collected on the full sales price paid (actual consideration amount) received from the sale of the admission. Taxpayer must collect and remit sales tax when an admission is sold by Taxpayer even if the admission is provided by another party. See s. 212.04(6), F.S., regarding collectors of admissions. This includes admissions sold online by sales agents on the behalf of an admission provider. See Rule 12A-1.005(1)(c)2., Florida Administrative Code ("F.A.C."). In the event that Taxpayer makes sales of admission on the behalf of an Admission Provider, Taxpayer is liable for the collection of sales tax imposed by Chapter 212, F.S.

Rule 12A-1.089, F.A.C., provides:

The sale of a gift certificate is not taxable. When the owner of a gift certificate redeems it for tangible personal property, or a part thereof, the transaction is taxable as a sale. For example, if the owner of a gift certificate valued at \$25 purchases a \$15 pair of shoes, tax of 90 cents must be collected by the dealer and remitted to the Department of Revenue.

The sale of a gift certificate is for intangible personal property. The Taxpayer's sales of Certificates addressed by the request are required by virtue of the agreements to comply with the Florida gift certificate law. The Certificate purchasers are entitled to receive a refund or credit of the purchase price for unused certificates when the Certificate is not used within a stated redemption period. See s. 501.95, F.S. Therefore, Rule 12A-1.089, F.A.C., applies to Taxpayer's Certificates.

The Admission Provider is required to collect sales tax when the Certificates are redeemed. In regard to Program One Certificates with free admission received at no cost to the subscribing members sales tax does not apply because no consideration was paid based on the information provided by the request. In regard to the Program One Certificates sold to subscribing members, sales tax must be remitted by the Admission Provider. The sales tax is computed on the total amount paid by the subscribing member to Taxpayer. This assumes that the Admission Provider is aware of the amount paid by the subscribing members. If the Admission Provider does not know the amount paid to Taxpayer, then the Admission Provider must collect sales tax on the full retail sales price of the admission sold. The sales tax must be remitted at the earlier date of when Taxpayer pays the Admission Provider for the Certificate or when the Certificate is redeemed.

In regard to Program Two, the Admission Provider must collect and remit the sales tax when the Certificate is redeemed. The sales tax must be computed on the sales price (total consideration amount received) of the admission. The Admission Provider must separately state the sales price of the admission and the sales tax amount on the receipt provided to the subscribing member redeeming the Certificate. In the event that the sales price and sales tax are not separately stated to the subscribing member, the sales tax must be computed and remitted by the Admission Provider on the amount paid for the Certificate. If the amount paid for the Certificate is to be applied as a credit because the Certificate was not used within the allowable redemption period, the Admission Provider must compute sales tax on the full retail sales price charged without deduction for the credit. Taxpayer must separately state the sales price and the sales tax at the proper bracket rate. See s. 212.07 and 212.12, Florida Statutes (“F.S.”).

In the event that a Certificate sold by Taxpayer does not qualify as a gift certificate under Florida law, then Taxpayer is a collector of an admission and is required to collect sales tax on the consideration paid by the subscribing member to obtain the admission. See s. 212.04(1) and (6), F.S. Also, Rule 12A-1.018, F.A.C., may apply for the sale of admissions. For such sales, Rule 12A-1.005(1)(c)2., F.A.C., may apply.

In regard to CST, Chapter 202, F.S., imposes CST on the retail sale of communication services in Florida. “Communication services” are defined, in part, as the transmission, conveyance, or routing of voice, data, audio, video, and/or any other information or signals to a point or between or among points, regardless of the medium or methods used. See s. 202.11(1), F.S. The Internet is used to access and facilitate the Taxpayer’s services and sales. However, the Taxpayer does not provide Admissions Providers or subscription members communication services. Therefore, the Taxpayer’s sales are not subject to CST.

Conclusion

Based on the information provided in the request and during the telephone conference, Taxpayer’s sale of Certificates are the sale of gift certificates and are not subject to sales tax as provided by Rule 12A-1.089, F.A.C. As such, Taxpayer is not required to collect sales tax from the sale of the Certificates. The sale of the Certificates must continue to be in compliance with the Florida law regarding gift certificates. In addition, the provisions of Chapter 202, F.S., do not apply.

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 request 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 section 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 10 days of the date of this letter.

Respectfully,

Charles Wallace
Technical Assistance & Dispute Resolution
850-717-7541

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