

SUMMARY

QUESTION: Whether newspaper delivery charges are subject to sales tax when the charge is separately stated and can be avoided by the customer?

ANSWER – Based on Facts Below: No. The Taxpayer is not required to collect sales tax on the charge for newspaper delivery by independent carriers if: 1) at the time of the initial subscription or subsequent renewal, the subscriber is informed of the carrier delivery charge and mail delivery charge; 2) at the time of the initial subscription or subsequent renewal, the subscriber is informed that the delivery charge can be avoided by an election to either pick up the newspaper at a distribution center or to receive the newspapers by mail; and 3) the carrier delivery charge is separately stated on the invoice.

April 9, 2010

XXX

Re: Subject: Technical Assistance Advisement (TAA) 10A-015
Sales and Use Tax – Newspaper Delivery Charges
Sections 212.02 and 212.05, Florida Statutes (F.S.)
Rule 12A-1.045, Florida Administrative Code (F.A.C.)
XXX (Taxpayer)
FEI #: XXX

Dear XXX:

This is in response to your letter dated January 28, 2010, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning transportation charges. An examination of your letter has established you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

Issue

Whether newspaper delivery charges are subject to sales tax when the charge is separately stated and can be avoided by the customer?

Facts

In your letter dated January 28, 2010, you provided that Taxpayer is a newspaper publisher, who publishes a daily newspaper. Taxpayer is implementing a new subscription system, in which subscribers have three delivery options at the commencement or renewal of a subscription period. These options are:

- (1) Delivery by carrier.
- (2) Pick up at the distribution center.
- (3) Mail delivery.

You provided the following documents proposed to be used by the Taxpayer in its business operation, along with a brief explanation on the use and purpose of each:

- (1) "XXX Customer Notice." This is a notice sent to a new or renewing subscriber who pays by bank debit to notify the subscriber that the subscription will automatically renew unless the Taxpayer is notified that the subscriber wants to cancel or change their service.

The notice provides the rate per month, and separately states the sales tax and transportation charges included in the rate. It also states "[y]ou may pick up your newspaper at our ... Plant between 2AM & 5AM to avoid the transportation cost or you may have it mailed."

- (2) "Renewal Notice." This is a notice that is sent to a renewal subscriber to notify the subscriber that they need to pay one of the suggested amounts to continue service.

The notice provides that the rates will remain a certain amount per month, which includes sales tax and transportation fee. It provides subscribers with an option to pick up their newspaper at [Taxpayer's address], between 2AM and 5AM or to receive it by mail to avoid the transportation cost.

You further provided the following in a fax on March 8, 2010:

We typically do not use price point advertising and our customer service representatives and telemarketers are trained to inform all customers of the unfettered choice option as well as the breakdown of transportation fees and tax. Attached is a copy of that verbiage. Over 90% of our customers speak to a telemarketer or customer service representative when purchasing a subscription.

The telemarketers are instructed to inform the customers regarding the breakdown of the subscription cost, including tax, delivery costs, and delivery options.

Requested Advisement

Taxpayer requests that the Department determine that the Taxpayer's procedure described herein on or after February 1, 2010, and setting out the charge for delivery and applicable sales tax of a subscription will not be subject to sales tax.

Applicable Authority and Discussion

Section 212.05, F.S., provides that it is the legislative intent that the business of selling tangible personal property is a taxable privilege. The tax is imposed on the sales price of each item or article of tangible personal property when sold at retail in this state. Section 212.05(a)1.a., F.S. Sales price is the total amount paid for tangible personal property plus any services that are part of the sale. Section 212.02(16), F.S. Rule 12A-1.045, F.A.C., provides that transportation

charges which are included in the sales price, but not separately stated, are subject to tax. "Transportation charges" include carrying and delivery charges. Id.

Rule 12A-1.045(4), F.A.C., provides that transportation service is not subject to tax when both of the following conditions have been met:

1. The charge is separately stated on an invoice or bill of sale; and
2. The charge can be avoided by a decision or action solely on the part of the purchaser.

In this case, the charge is separately stated on the renewal notice and on the XXX postcards. The notices provide the total subscription amount, with the separately stated sales tax and transportation charges. The subscribers are informed through the notices or telemarketers that the transportation charge may be avoided if the subscribers pick up the newspaper at the plant or choose to have the subscription mailed to them. The notices provided to the subscribers and the instructions to the telemarketers show that the transportation charge is separately stated and that the charge can be avoided by a decision or action solely on the part of the purchaser; hence, the transportation charge is not subject to sales tax.

Conclusion

Pursuant to the facts you submitted in your correspondence, the Taxpayer is not required to collect sales tax on the charge for newspaper delivery by independent carriers given that, at the time of the initial subscription or subsequent renewal, the Taxpayer 1) informs the subscriber of the carrier delivery charge and mail delivery charge, 2) informs the subscriber that the delivery charge can be avoided by an election to either pickup the newspapers at a distribution center or receive the newspapers by mail, and 3) separately states the amount of the carrier delivery charge on the invoice.

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 that 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 15 days of the date of this letter.

Sincerely,

Angel Sessions
Senior Tax Attorney
Technical Assistance and Dispute Resolution
(850) 922-4708

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