



Executive
Director
Marshall Stranburg

QUESTION: ARE THIRD PARTY DROP SHIPMENTS TAXABLE (UNDER THE FACTS OF THIS CASE)?

ANSWER: NO.

December 7, 2015

Re: Technical Assistance Advise ment 15A-020
Drop Shipments
Sales & Use Tax
Section 212.05, Florida Statutes (F.S.)
FEI #: XXXX

Dear Mr. XXXX:

This is in response to your letter dated XXXX, requesting this Department's issuance of a Technical Assistance Advise ment ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), regarding the taxability of drop shipments into Florida. An examination of your letter has established that 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

The issue concerns the taxability and record retention responsibilities regarding third party drop shipments in Florida.

FACTS AS PRESENTED

- Taxpayer is a manufacturer/distributor of heavy equipment headquartered in XXXX.
- Taxpayer has no physical locations nor maintains saleable inventory within the state lines of Florida.
- Taxpayer employs traveling sales force that does visit the State of Florida.
- Taxpayer is registered for Florida sales tax collection as a non-resident retailer on all taxable sales shipped to Florida customers who buy directly from the taxpayer.
- All sales shipped into Florida are done so by common carrier.

You further provide in part:

The taxpayer has a significant number of sales whereby their customer requests/directs the taxpayer to drop-ship the goods to the customer's customer [in Florida].

RULINGS REQUESTED

Your inquiry poses three questions as follows:

- A. Is the taxpayer liable to collect sales tax on sales to purchasers who are legally nonregistered, non-residents of Florida when directing the taxpayer to ship the goods to the purchaser's customer located in Florida based upon the facts presented?
- B. If taxpayer is not liable to collect sales tax on the sale noted in Question A above, what is the required documentation necessary to substantiate the exemption upon review by the State of Florida absent a Florida resale certificate?
- C. What is the taxpayer's legal obligation to insure that the customer is not registered in the State of Florida and is not required to do so?

LAW AND DISCUSSION

Section 212.05, F.S., provides the legislative intent that "every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales"

On third-party drop shipments, if the dealer and the buyer are both located outside Florida, and the goods, when purchased, are outside the State, the sale between the dealer and the buyer does not come within the jurisdiction of Florida sales and use tax laws.

The taxability of the third-party transaction occurs when the goods are drop-shipped to the buyer's customer in Florida. If the Florida customer is a reseller of the goods, then the Florida customer is responsible for collecting tax when the merchandise is resold. If the Florida customer is the consumer of the goods, then the Florida customer is responsible for remitting use tax on the cost of the goods.

RESPONSE

The sales (resulting in drop shipments to Florida as described) do not come within the jurisdiction of Florida sales and use tax laws. Accordingly, the answer to Question A is no.

With regard to Question B, the Taxpayer should retain documentation to establish that the subject sales take place outside Florida's jurisdiction and delivery is made via common carrier. The invoices to the non-Florida dealers should indicate the non-Florida dealer's physical location. Further, the invoices should indicate the common carrier destination point as that of the non-Florida dealer's customer.

With regard to Question C, since the Taxpayer has indicated it maintains no physical presence in the State of Florida, it is under no obligation to determine if a customer should (or should not) be registered for sales and use tax in Florida. However, as stated above, the Taxpayer must establish that the sales do not fall within the taxing jurisdiction of the State of Florida.

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 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.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-6306.

Sincerely,

R. Clay Brower
Revenue Program Administrator
Technical Assistance & Dispute Resolution

Record ID: 205960