



STATE OF FLORIDA
DEPARTMENT OF REVENUE

TALLAHASSEE, FLORIDA 32399-0100

March 8, 1991

J. THOMAS HERNDON
Executive Director

MEMORANDUM

TO: Glenn A. Bedonie, Director, Division of Audits

THROUGH: Charles B. Strausser, Chief, Bureau of Tax
Information and Assistance

FROM: Robert G. Parsons, Technical Assistant

SUBJECT: Request for Technical Advice - BAS 90-4
Sales tax - third party drop-shipments

In your request for technical assistance dated February 14, 1990, you seek guidance on the imposition of sales tax on third party drop-shipments. Please be advised that the department intends to change its position soon on this issue through the formal rule making process. When the rule is in place, this RTA should be disregarded.

You pose four questions in the following form:

1. Since personnel in multi-state audit regions are encountering a variety of tax questions arising from drop-shipment transactions, guidance is sought as to the taxability of eight such transactions which are presented in diagram form.
2. Is there an implied agency relationship between the out-of-state seller and the Florida customer simply because the drop-shipper has been directed by the out-of-state seller to deliver the goods to its Florida customer?
3. Is the imposition of the tax on drop-shipment transactions affected by the F.O.B. shipping point?
4. Is the imposition of the tax on drop-shipment transactions affected by whether the Florida customer pays the drop-shipper for the goods at time of delivery?

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To lessen confusion with other internal communications written on this subject, the designations previously used to identify the parties to these transactions will be retained.

These designations are:

- P - Florida purchaser ~~(may be a registered Florida dealer)~~
- R - Out-of-state retailer - ~~generally~~ not a registered Florida dealer (may be a manufacturer or retailer) and is P's seller
- W - Drop-shipper - ~~generally~~ out-of-state and ~~generally~~ a registered Florida dealer. May be a wholesaler, manufacturer, or retailer and is R's seller

DISCUSSION - QUESTIONS 1 AND 4

The discussion which follows will consider various transactions in which P will purchase goods from R, who may or may not be a registered dealer. R's supplier of the goods will be W and R will instruct W to drop-ship the goods directly to R's customer in Florida. The eight diagrams which you submitted as part of your first question will be incorporated in this discussion. The last paragraph of this discussion will also consider the last question you asked in regards to payment by the Florida customer to the drop-shipper at the time of delivery. The discussion will also consider some elements not found in your request or diagrams.

First, sales tax may not be collected from P unless the transaction is a Florida sale. With this simple fact established, it is now the position of the Department that if any sales tax is applicable to any of the possible transactions between P, R, and W, the tax shall be collected from P, except in the instances where W is not a registered dealer or where P is a registered dealer and extends a resale certificate or direct pay permit. In some of the instances presented, use tax will apply. (This discussion will not consider instances where P may be a holder of a valid consumer's certificate of exemption, in which event a Florida sale will be exempt from sales or use tax.)

In **DIAGRAM #1**, R, W, and P are all unregistered. Here P will be liable for use tax on the goods based on P's purchase price from R. If the terms of the sale require W to collect R's sales price to P when the goods are drop-shipped, W, as an unregistered dealer, is not authorized to collect the tax from P.

In **DIAGRAM #2**, R and W are unregistered, but P is registered by virtue of the fact that he is a retail dealer or he possesses a direct pay permit. If P is a reseller of the goods, no sales tax is applicable. If P is a consumer of the goods, P is liable for use tax. If the terms of the sale require W to collect R's sales price to P when the goods are drop-shipped, no sales tax will be due in that no sales tax is due on this transaction.

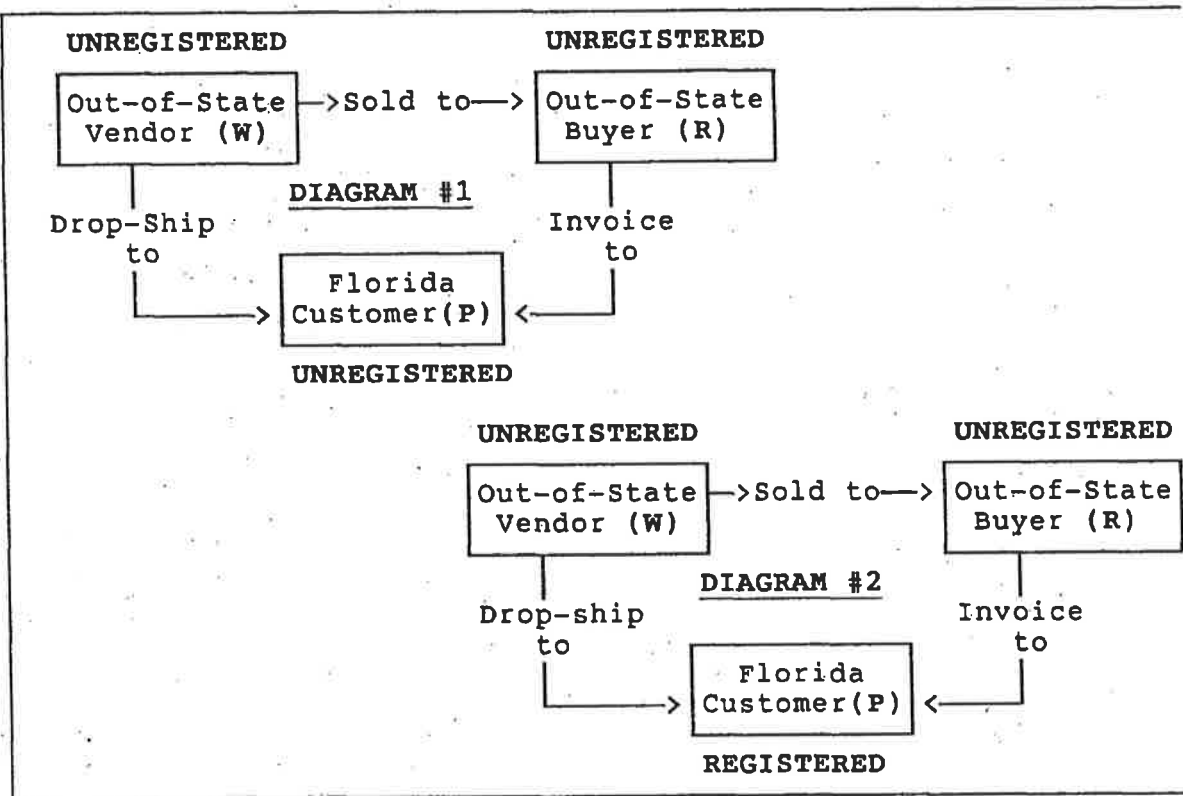
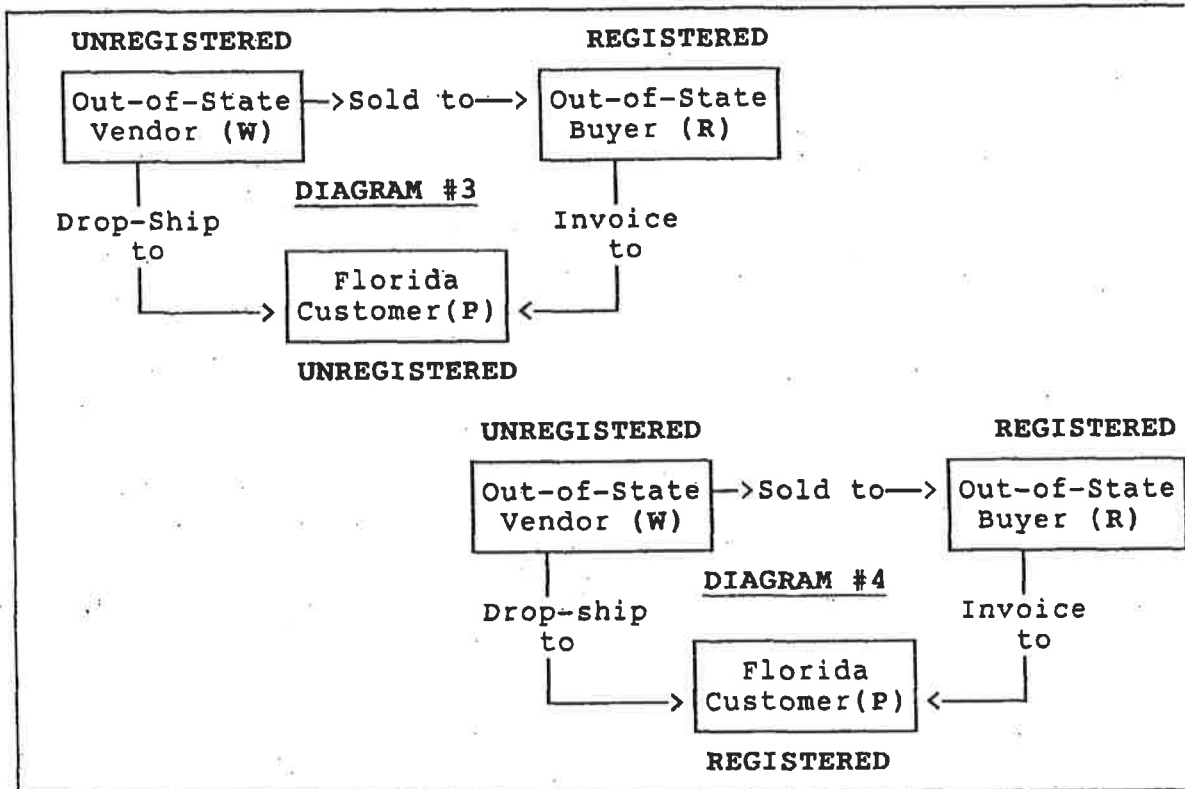


DIAGRAM #3 and #4 depicts W as unregistered, but R is a registered dealer. In DIAGRAM #3, R is obligated as a dealer to collect the sales tax from P since it is a sale in which a registered dealer sells goods to an unregistered Florida consumer. If the terms of the sale require W to collect R's sales price to P when the goods are drop-shipped, W may collect the tax from P as part of the invoiced price of the goods. R will be responsible for remitting the tax to this state.

In DIAGRAM #4, where P is registered, R is relieved of collecting sales tax from P once R obtains a resale certificate or direct pay permit from P. If the terms of the sale require W to collect R's sales price from P when the goods are drop-shipped, W will not collect tax from P as part of the invoice in that there should be no sales tax on the invoice. If P uses the good for its own consumption, then use tax will be due from P.



In **DIAGRAM #5** and #6, both R and W are registered dealers.

In **DIAGRAM #5**, since all parties are registered (including P), R would receive a resale certificate from P, and extend a resale certificate to W. Here no sales or use tax is due until the goods are sold to the final consumer. If P is the final consumer of the goods then use tax will be due from P. If the terms of the sale require W to collect R's sales price to P when the goods are drop-shipped, W will not collect the tax from P as part of the invoiced price of the goods as there should be no sales tax on the invoice.

In **DIAGRAM #6**, where P is unregistered, R will also extend a resale certificate to W, but charge sales tax to P based on it's selling price. If the terms of the sale require W to collect upon delivery, W will collect the tax from P as part of the invoiced price of the goods. R will be responsible for remitting the tax to the state.

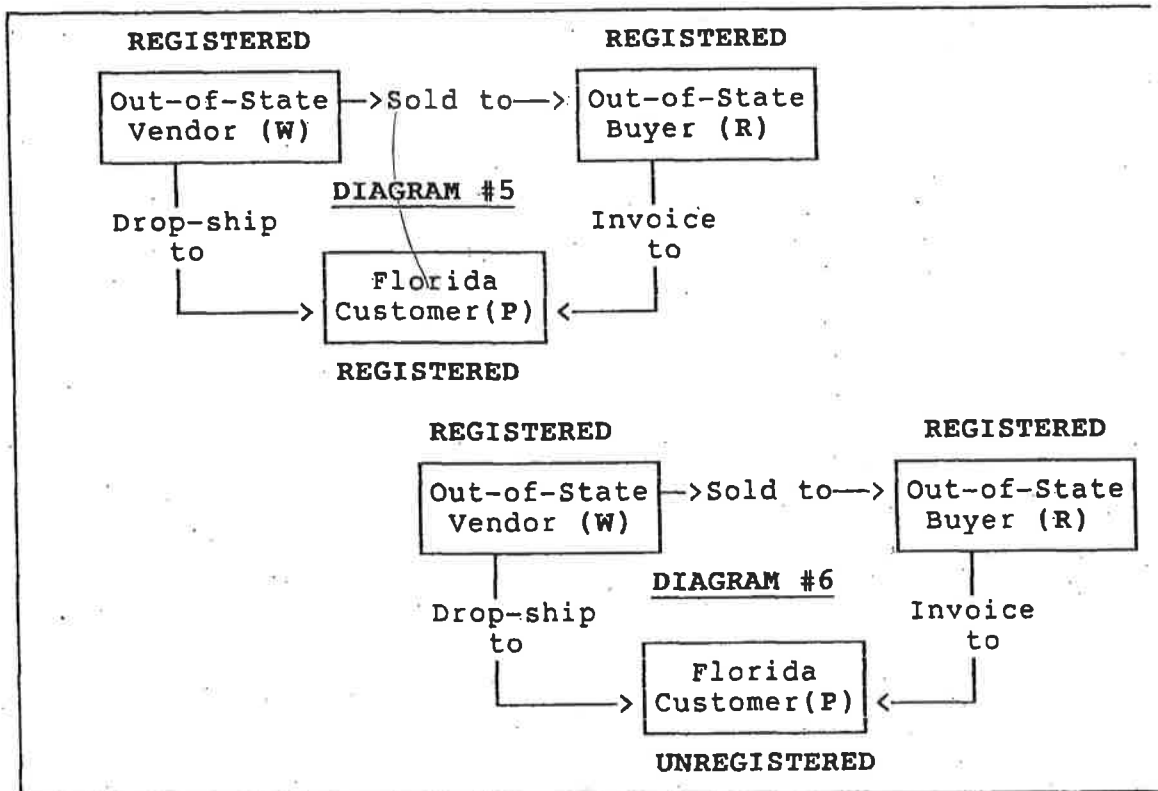


DIAGRAM #7 AND #8 will be discussed with the following conditions considered as establishing evidence that the transaction results in a Florida sale. A Florida sale will occur under the following conditions when the goods are shipped to P, irrespective of whether P is registered, by W, a registered dealer, under an order given by R, an unregistered dealer:

- W ships the goods to P from W's facility in Florida or
- W ships the goods to P from W's facility located outside of Florida, but uses transportation owned or leased by W or
- W ships the goods to P from W's facility outside Florida but the terms of the delivery require W to collect the sales price, in whole or in part, from P at the time of delivery of the goods to P.

In DIAGRAMS #7 and #8, W is a registered dealer and R is an unregistered dealer, with P unregistered in DIAGRAM #7 and registered in DIAGRAM #8. The conditions and terms of the delivery are any of the combinations as stated above.

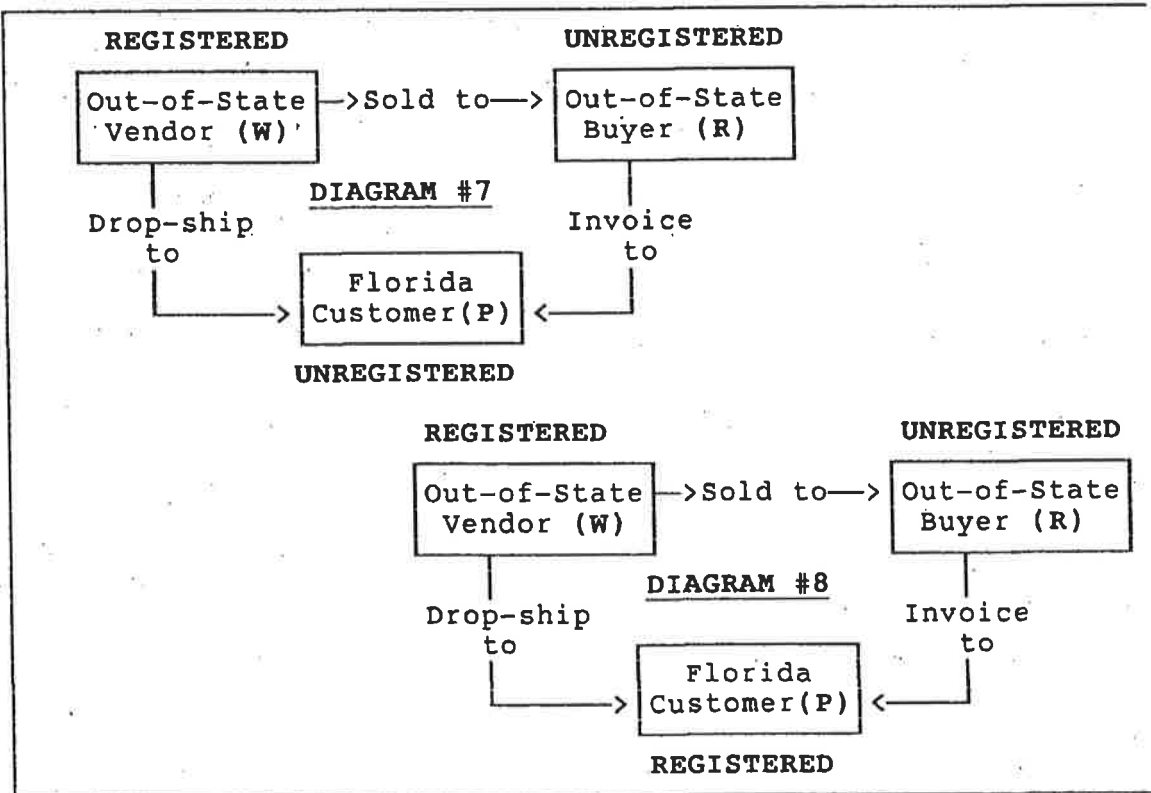
If P is an unregistered customer (DIAGRAM #7), then the delivery terms above will require W to collect the tax from P. The tax collected shall be based on the total sales price, including transportation charges, billed P by R. If W cannot ascertain R's selling price to P, then W shall collect sales tax from P based on the total sales price, including transportation charges, which W has billed R. Thus, since a Florida sale has been established and W is the only registered dealer in the transaction, W shall collect the tax from P.

If P is a registered Florida customer (DIAGRAM #8), then P may extend a resale certificate or direct pay permit to W in lieu of paying the tax. As a Florida sale, W would be obligated to collect the tax from P, but may accept these two documents from P in lieu of tax. In event P is the consumer of the goods purchased with these certificates then P will have an obligation to pay use tax based on P's purchase price.

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In these two instances where W has the obligation to collect the tax resulting from R's sale to P, W shall receive from R and retain in its records any exemption certificate, resale certificate or other similar document given R by R's domiciliary state which is applicable to the transaction between W and R. Similarly, W shall receive from P and retain in its records any exemption certificate, resale certificate, or direct pay authority applicable to the delivery of the goods to P.

The direct payment from P to W for the goods delivered by W in **DIAGRAM #7** and **#8** determines the taxability of the goods. Such COD shipments have created an obligation by W to collect the tax on the sales price of the goods--first, on R's selling price to P if it is known, then if this price is not known, on W's selling price to R.



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DISCUSSION: QUESTION #2

Question #2 asks whether there is an implied agency relationship between P and R based on W's delivery to P. The Department finds no agency between P and R. However, it does consider that W is acting in behalf of R when W collects the sales price in a COD transaction, when W delivers the goods in either W's own transportation (irrespective from where the goods were shipped), or when the goods are shipped from W's facility in Florida. The basis of imposing the obligation on W to collect the tax on a sale not made by W rests on the concept of agency. However, W is not deemed to be acting in behalf of R until W's activity in Florida, even recognizing the dealer status of W, is sufficient to create a Florida sale based solely on such presence.

DISCUSSION: QUESTION #3

Your third question asks whether the imposition of the tax on drop-shipments is affected by the FOB shipping points. The delivery terms do not determine the mere taxability of the transactions. Taxability rests on whether the sale is considered a Florida sale and if W's activity in Florida with respect to shipping goods establish the transaction as a Florida sale.

RGP/p