

State of Florida  
Department of Revenue

Sales and Use Tax

1995-1999 Technical Assistance Advisements

SUMMARY

**QUESTION:** Are charges for a plain **carwash** taxable when the charge for the **wash** is separately priced from the charge for the wax, and the **wash** is not a required prerequisite for the wax job?

**ANSWER - Based on Facts Below:** The charge for a plain **carwash** performed in conjunction with a wax job is taxable regardless of whether the **wash** is priced separately from the charge for the wax, and regardless of whether the **wash** is not a required prerequisite for the wax job.

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Nov 01, 1999

Re: Sales and Use Tax  
Technical Assistance Advisement (99A-059)  
**Car Washes**  
Sections: 212.06 and 212.02, F.S.  
Rule: 12A-1.006, F.A.C.  
XXX (Taxpayer)  
F.E.I. # XX

Dear :

This is in response to your letter dated June 28, 1999, for the Department's issuance of a Technical Assistance Advisement (TAA) concerning the above referenced party and matter. Your letter has been **carefully** examined, and the Department finds it to be in compliance with the requisite criteria set forth in 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.

ADVISEMENT REQUESTED

You have requested guidance concerning the appropriate sales tax treatment for **car washes** and wax jobs provided by the Taxpayer. Specifically, you question whether a **carwash** that includes rinse wax, detergents, or other additives that do not leave a protective film or coating, is subject to sales tax. You also question whether a plain **carwash** purchased at the same time as a wax job is taxable when the charges for the **wash** and wax are separately priced, and the **wash** is not a required prerequisite for the wax job.

### FACTS

As stated in your request for advisement, the Taxpayer owns and operates a commercial **carwash** facility offering the following three types of packages:

1. A plain wash job in which only detergent or water softener is added to the water. "Rinse wax" is also added to treat the water so that it beads more easily for purposes of removing the water from the **car**. You state that the detergent and/or "rinse wax" may leave a residue on the vehicle; however, neither product is intended to be incorporated into the vehicle in a significant way. The price for the plain **wash** job is separately stated on the Taxpayer's menu/reader board and product sheets given to customers, and on the cash register receipts. The price for the plain **wash** job will not change when additional products are ordered.

2. A plain wax job in which wax and other substances are added that form a protective film or coating on the vehicle. The equipment that applies the wax is located in the same tunnel as the equipment that provides the **wash** but is separate and distinct equipment and is not activated when a plain **wash** is purchased. A customer may elect to clean the vehicle himself prior to purchasing a wax and in all cases has the right to refuse the purchase of a plain **wash** job. Since it is not advisable to wax or condition a dirty vehicle, a plain **wash** job precedes the purchase of a wax job in nearly every instance.

3. A hand wax or hand-conditioning job in which wax or other additives are hand applied to the vehicle.

The pricing of the various wax packages may differ depending upon how many wax products are ordered, but they are always kept separate from the charge for the plain **wash** jobs.

The Taxpayer proposes to treat all washes as exempt from sales tax, including the **wash** jobs purchased with a wax job. The Taxpayer proposes to pay sales tax on the purchase of all detergents and rinse wax.

The Taxpayer proposes to charge sales tax on each of its wax jobs and treat the purchase of the materials such as wax, silicones and the like, which form the protective film or coating, as exempt. The Taxpayer proposes to extend a resale certificate to its vendor in lieu of paying tax on these items.

### LAW

Section 212.05(1)(a)1.a., F.S., states that tax is due at the rate of 6 percent of the sales price of each item or article of tangible personal property sold at retail in this state. Pursuant to Section 212.02(16), F.S., the term sales price means the total amount paid for tangible personal property, including any services that are a part of the sale.

Rule 12A-1.006(16)(a), F.A.C., provides that the charge for a

plain **wash** job, in which only detergent or water softener is added to the water, is exempt. The purchase of detergents or water softeners for use in the performance of the **wash** job is taxable to the dealer.

Paragraph (b) of Rule 12A-1.006(16), states that the entire charge for a **wash** job, in which wax, silicones, or any other substance is added that forms a protective coating, is taxable. The purchase of wax, silicones, and the like, which form a protective film or coating, is exempt to the dealer. The dealer shall extend a resale certificate to its supplier in lieu of paying the tax.

Paragraph (d) of Rule 12A-1.006(16), F.A.C., states that dealers who operate **car wash** facilities which provide both taxable and exempt **wash** jobs must maintain documentation to distinguish the taxable status of each transaction. In all instances where a dealer is unable to differentiate and document the taxable status of each transaction, it is presumed that all **wash** jobs performed at such facility are taxable.

In support of your position that all **wash** jobs are exempt, since they are purchased separately from the wax jobs, you cite Florida Hi-Lift v. Department of Revenue, 571 So. 2d 1364 (Fla. 1st DCA 1991). In Florida Hi-Lift, the court ruled that transportation charges incidental to a taxable rental of equipment were not part of the total sales price because the equipment was delivered F.O.B. lessor's site, and the lessee had the option of picking up the equipment or having delivery made by the lessor. You also cite Department of Revenue v. B & L Concepts, Inc., 612 So.2d 720 (Fla. 5th DCA 1993), in which the court relied on Florida Hi-Lift in ruling that the delivery charges and late fees for rented home furnishings were incidental to the sale and not part of the taxable sales prices when the charges were separately itemized and applied at the sole option of the lessee.

The two court cases cited above relate to services and fees incidental to the rental of tangible personal property. Although the charge for a plain **carwash** is an exempt service transaction when no substances such as wax are added that form a protective coating, a **wash** is not incidental to a transaction involving both a **wash** and a wax. As you state in your letter, it is not advisable to wax a dirty vehicle, and in nearly every instance, a plain **wash** precedes the purchase of a wax job.

The term "incidental," as defined in American Heritage Dictionary, Second College Edition, means of a minor, casual, or subordinate nature. It is usually associated with something that is more important or essential. For instance, the delivery of an item rented was considered by the court in B & L Concepts to be an incidental service. A **carwash** on the other hand, is an essential or major element of a transaction involving a **wash** and a wax, since it is not practical or advisable to wax a vehicle prior to it being **washed**. Therefore, it is our position that Florida Hi-Lift and B & L Concepts do not apply to services that are essential to or are a major element of a sale involving tangible personal property.

Also, we consider the **wash** and the wax to be one transaction, regardless of whether the charge for the **wash** is stated separately from the wax, and regardless of whether the customer has an option of not having one or the other. The fact is, it is the Taxpayer's customary business practice to **wash** all vehicles before adding the wax. For example, in the normal course of business, a customer does not pay for a **wash**, drive through the tunnel, and upon exiting the tunnel, pay for a wax job and drive back through for the wax. Or, in the case of a hand wax, the customer does not drive off after receiving a **wash**, only to return later and receive a wax. The transaction the customers are paying for is a **wash** followed immediately by a wax, whether or not the wax is applied in the tunnel, or in the case of a hand wax, outside of the tunnel, by the Taxpayer's personnel.

Additionally, Rule 12A-1.006(16)(b), F.A.C., clearly states that the entire charge for a **wash** job, in which wax, silicones, or any other substance is added that forms a protective coating, is taxable. Simply because the charge for the **wash** is separately priced from the charge for the wax, and because the **wash** could possibly be avoided at the option of the consumer, this does not exempt the charge for the **wash**. Great weight is given to a rule that has been in effect over an extended period of time, unless it is clearly erroneous. State, Department of Commerce, Division of Labor v. Matthews Corp., 358 So.2d 256 (Fla. 1st DCA 1978), Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983). Also, properly promulgated rules are presumptively valid. Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978).

#### DEPARTMENT RESPONSE

Since the products used in the plain **wash** job do not form a protective coating on the vehicles, and since the Taxpayer maintains documentation that distinguishes the plain **wash** job from other taxable **wash** or wax jobs, the charge for a plain **wash** job is not taxable. The Taxpayer should pay sales tax on all soaps and detergents consumed in a plain **wash** job.

Plain **wash** jobs performed in conjunction with a taxable wax job are taxable regardless of whether the charge for the plain **wash** job is priced separately from the charge for the wax job. For example, if a customer enters the tunnel and receives both a plain **wash** and a wax, the entire charge is taxable. In these instances, the Taxpayer should purchase the waxes and silicones that form a protective coating, free of the sales tax, by extending a Certificate of Resale to its vendor.

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 on those facts and the specific situation summarized above. You are advised that subsequent statutory and administrative rule changes or that 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., which 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.

Sincerely,

Richard R. Parsons  
Tax Law Specialist  
Technical Assistance & Dispute Resolution  
(850) 922-4838

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