## SUMMARY

**QUESTION:** Is an out-of-state dealer, registered in Florida for sales and use tax purposes, obligated to collect sales tax on a sale to an unregistered out-of-state buyer with no nexus with the State, where the merchandise will be drop-shipped to the out-of-state buyer's customer in Florida from a vendor/drop shipper's facility in Florida, and the Florida dealer has submitted its Annual Resale Certificate to the vendor/drop shipper?

**ANSWER:** The dealer is required to collect the sales tax from the out-of-state buyer's Florida customer, since the merchandise is in Florida at the time of sale, and the unregistered out-of-state buyer cannot collect the tax and remit it to the State when the merchandise is resold to the Florida customer.

**QUESTION:** Is an out-of-state dealer, registered in Florida for sales and use tax purposes, obligated to collect sales tax on a sale to an unregistered out-of-state buyer with no nexus with the State, where an out-of-state vendor drop ships the merchandise to the out-of-state buyer's Florida customer via common carrier?

**ANSWER:** The sale between the dealer and the out-of-state buyer does not come within the jurisdiction of Florida's sales and use tax laws, since both the dealer and the out-of-state buyer are located outside Florida, and the goods, when purchased, are outside the State.

November 8, 2007

XXX
XXX
XXX
XXX

Re: Technical Assistance Advisement 07A-043
Sales and Use Tax – Drop Shipment
Sections 212.02(14)(a), 212.05, and 212.06(1)(a), (3)(a), Florida Statutes (F.S.)
Section 212.07(1)(b), Florida Statutes (F.S.)
Rule 12A-039(1)(c), Florida Administrative Code (F.A.C.)

XXX ("Dealer")
FEIN: XXX
XXX ("Vendor/Drop Shipper")

Dear XXX:

This is a response to your letter dated August 15, 2006, requesting the issuance of a Technical Assistance Advisement (TAA) concerning the above referenced parties and matter. Your letters

and supporting documents have been carefully examined, and the Department finds your request 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, Florida Statutes.


## Facts

The Dealer, an out-of-state XXX, has employees in Florida and is registered with the State for sales and use tax purposes. Dealer has a Vendor/Drop Shipper, also headquartered out-of-state, that has a XXX facility in Florida.

Dealer makes sales to Florida customers, and either collects the sales tax from the customer or accepts the customer's Annual Resale Certificate. Dealer also makes sales to customers who have no nexus with Florida and are not registered with the State for sales and use tax purposes ("Non-Resident Customers"). The Non-Resident Customer will sometimes direct Dealer to ship the merchandise directly to its customer in Florida.

Dealer also has an out-of-state vendor that is not registered as a Florida dealer for sales and use tax purposes. The out-of-state vendor will ship the merchandise from outside Florida by common carrier to Dealer's customer in Florida.

## Issue I

Is an out-of-state dealer, registered in Florida for sales and use tax purposes, obligated to collect sales tax on a sale to an unregistered out-of-state buyer with no nexus with the State, where the merchandise will be drop-shipped to the out-of-state buyer's customer in Florida from a vendor/drop shipper's facility in Florida, and the Florida dealer has submitted its Annual Resale Certificate to the vendor/drop shipper?

## Taxpayer's Position

Your letter states in part:

> "[T]he physical presence of [Vendor/Drop Shipper] requires it to register as a Florida dealer. Such status, in turn, obligates [Vendor/Drop Shipper] to collect sales tax whenever appropriate . . . . [Dealer] should be able to extend a resale certificate to [Vendor/Drop Shipper] in lieu of collecting tax[,] because [Dealer] is registered in the State of Florida for sales tax purposes. However, Rule 12A-1.039, F.A.C., prohibits [Dealer's] Non-Resident Customer from extending a resale certificate[,] because it is not registered in the State of Florida for sales tax purposes.

## 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 . . . ."

Section 212.02(14)(a), F.S., defines the terms "Retail sale" or "sale at retail" to mean "a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter . . . ."


Under the provisions of section 212.06(3)(a), F.S., " . . . every dealer making sales, whether within or outside the state, of tangible personal property for distribution, storage, or use or other consumption, in this state, shall, at the time of making sales, collect the tax imposed by this chapter from the purchaser."

Section 212.07(1)(b), F.S., requires that a resale be in strict compliance with section 212.18, F.S., and the rules and regulations of the Department. Under the provisions of section 212.18, F.S., every person desiring to engage in or conduct business in Florida as a dealer must file with the Department an application for a certificate of registration. An out-of-state dealer who has no nexus with Florida may also choose to register as a dealer for the purpose of collecting tax on retail sales in the State.

In your letter, you cite two previous Technical Assistance Advisements issued by the Department (TAA 04A-44 and TAA 07A-008) regarding drop shipments. We would point out that "[t]echnical assistance advisements shall have no precedential value except to the taxpayer who requests the advisement . . . ." (Section 213.22(1), F.S.)

We agree, however, that, if the Non-Resident Customer does not have nexus with Florida, and does not elect to register as a dealer with the State, it would not be able to collect the tax or extend a Florida Certificate of Resale to Dealer. Rule 12A-1.039(1)(c), F.A.C., prohibits the acceptance of resale certificates by Florida dealers, unless the resale certificate is issued in turn by a dealer who is "registered with the Department as a dealer for sale tax purposes . . . ."

Where an out-of-state dealer, registered in Florida for sales and use tax purposes, sells merchandise to an unregistered, out-of-state buyer with no nexus with the State, and the merchandise will be drop-shipped to the out-of-state buyer's customer in Florida from a vendor/drop shipper's facility in Florida, the registered, out-of-state dealer should extend its Annual Certificate of Resale to the vendor/drop shipper. In turn, since the out-of-state buyer is not a registered Florida dealer and, thus, cannot collect sales tax from the Florida customer, the responsibility for collecting the tax from the Florida customer falls upon the registered, out-of-state dealer.

If the registered out-of-state dealer cannot ascertain the out-of-state buyer's selling price to its Florida customer, the registered out-of-state dealer should collect sales tax from the Florida customer, based on the dealer's selling price to the out-of-state buyer. In lieu of collecting the tax, the registered out-of-state dealer may accept any exemption certificate, resale certificate, or direct pay authority from the Florida customer, applicable to the transaction.

## Conclusion

The Dealer, being registered with Florida as a dealer for sales and use tax purposes, is required to collect the sales tax from the Florida buyer, since the merchandise is in Florida at the time of



sale, and the unregistered Non-Resident Customer cannot collect the tax and remit it to the State


when the merchandise is resold to its Florida customer.

## Issue II

Is an out-of-state dealer, registered for Florida sales and use tax purposes, obligated to collect sales tax on a sale to an unregistered out-of-state buyer with no nexus with the State, where an


out-of-state vendor drop ships the merchandise to the out-of-state buyer's Florida customer via common carrier?

## Taxpayer's Position

It is your contention that neither Dealer nor its out-of-state vendor should be required to collect the sales tax, since neither of them, nor the property itself, is located in Florida at the time of sale.

## Law and Discussion

Section 212.06(1)(a), F.S., levies sales tax "at the rate of 6 percent of the retail sales price as of the moment of sale, 6 percent of the cost price as of the moment of purchase, or 6 percent of the cost price as of the moment of commingling with the general mass of property in this state . . . ."

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

## Conclusion

The sale between Dealer and the out-of-state buyer does not come within the jurisdiction of Florida's sales and use tax laws, since both the dealer and the buyer are located outside Florida, and the goods, when purchased, are outside the State.


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 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 from that which is 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.

Sincerely,

Dee Overcash
Technical Assistance and Dispute Resolution

Record ID: 34783