



FLORIDA

Executive
Director
Marshall Stranburg

QUESTION: IS ANY PORTION OF TAXPAYER’S CONTRACT WITH AN INTERIOR DESIGNER SUBJECT TO FLORIDA SALES AND USE TAX?

ANSWER: INTERIOR DESIGN FEES RELATED TO THE SALE OF TANGIBLE PERSONAL PROPERTY ARE SUBJECT TO TAX AS PART OF THE SALES PRICE OF TANGIBLE PERSONAL PROPERTY. ACCORDINGLY, BASED ON THE CONTRACT SUPPLIED, THE INTERIOR DESIGN FEES ARE SUBJECT TO SALES AND USE TAX.

May 4, 2015

XXX

Re: Technical Assistance Advise ment 15A-004
Sales and Use Tax – Interior Design Services
Subsection: 212.02 and 212.06, Florida Statutes (F.S.)
Rules: 12A-1.001, 12A-1.006, Florida Administrative Code (F.A.C.)
Petitioner: XXX [hereinafter “Taxpayer”]
SSN: XXX

Dear XXX:

This letter is a response to your petition dated XXX, for the Department's issuance of a Technical Assistance Advise ment (“TAA”) concerning the above referenced party and matter. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, Florida Administrative Code. This response to your request constitutes a TAA and is issued to you under the authority of Section 213.22, F.S.

Issue

Whether the interior design fees that Taxpayer was charged by an interior design company are subject to Florida sales and use tax.

Presented Facts

Taxpayer entered into a contract dated December 4, 2012, for interior design services with an interior design firm (Designer).

The contract calls for Designer to provide a number of specified services. The Designer will:

- Provide preliminary layouts, which will be coordinated with all mechanical and electrical requirements.
- Suggest interior detail changes.
- Provide all design work for review and approval by Taxpayer.
- Provide an overall color scheme with suggestions for window treatments, built-ins, cabinetry, floor coverings, hardware, etc., design fireplace treatments, and develop a furniture plan.
- Provide paint specifications, charts, and color sheets for interiors.
- Shop for all materials, furnishings, and accessories to be used and purchased through Designer. Furnishings are specified to be sold to Taxpayer with a mark-up that varies depending on the vendor and/or item type. Purchases to be made will be offered to the client and will be submitted to client for approval in the form of proposals.
- Supervise installation of all items purchased through Designer.
- Provide information needed to secure subcontractors to implement Designer's design plans. Designer will not act as a construction manager, and it is not liable for actions of subcontractors paid directly by Taxpayer or the builder.

Designer is paid in the form of mark-ups on materials purchased. The materials purchased includes a \$200,000 minimum. Designer's \$10,000 fee/retainer is applied to purchases once the \$200,000 minimum is met. Designer charges \$125 per hour for drafting time for all drawings, sketches, and details of treatments or elevations, including coordination and documentation of all consultants to produce design documents, and including phone conferences to coordinate the efforts. Travel time is billed at \$50 per hour.

Your petition also includes, as "Exhibit 3," invoices for various service fees charged by Designer to Taxpayer. The invoices are numbers 23219, dated 12/31/2012, 23478 dated 3/5/2013, and 23578 dated 4/15/2013. The petition also includes "Exhibit 4," two proposals separately detailing various furniture, lighting, and other tangible personal property to be purchased from the Designer and installed in the Taxpayer's home upon Taxpayer's approval. On all of these invoices and proposals, the designer charged the Taxpayer for or included sales tax.

In a recent phone conversation, you confirmed that after some negotiation, you did purchase furniture and other tangible personal property pursuant to this contract.

TAXPAYER'S POSITION

It is your position that the proposed rule¹ cited in Technical Assistance Advisement (TAA) 02A-014, provides guidance regarding Taxpayer's designer services. You provide a breakdown of the then proposed rule and opine that the services for which the Designer charged you are not subject to tax based on your reading of the proposed rule.

¹ This proposed rule was not promulgated at the time of the referenced TAA; nor is it at this time proposed or promulgated.

Law and Discussion

The charges for services provided by Designer are not taxable unless or until they are part of the sale of tangible personal property by Designer to the client charged for those services.

Sections 212.02(16) and 212.06(1)(a), F.S., provide that every sale of tangible personal property is taxable, **including any services that are a part of the sale**. Rule 12A-1.006(12), F.A.C., states that charges by an interior decorator are exempt from tax when no materials or supplies are used. According to Rule 12A-1.001(2)(a)1., F.A.C., an interior decorator's fee is taxable and **cannot be exempted as a professional or personal service charge when the transaction involves the sale of tangible personal property**. Rule 12A-1.001(2)(a)2. and 3., F.A.C., make it clear that the design fee is exempt only if it is charged for advice and is not contingent on or part of the sale of tangible personal property.

Rule 12A-1.001(2)(a), F.A.C., provides as follows:

(2) SERVICE TRANSACTIONS.

(a)1. An interior decorator's so-called fee is taxable as a part of the selling price under Section 212.02(16), F.S., or as a part of the cost price under Section 212.02(4), F.S., and cannot be exempted as a professional or personal service charge when the transaction involves the sale of tangible personal property. This is true when the so-called fee is paid in the form of a trade discount, as is the case when a supplier grants the decorator a trade discount and the decorator in turn bills the client for the full list price. The decorator fee is also taxable when it appears as an amount added to the decorator's cost when billed to the client for tangible personal property on a cost plus basis.

2. If the decorator's fee is solely for designing the interior and exterior decorative scheme or for advising his clients and recommending colors, paints, wallpaper, fabrics, brands, sources of supply, etc., and there is no sale of tangible personal property involved, then such fee would be exempt as a professional or personal service transaction.

3. In some instances, the decorator may receive a fixed sum, which is not in any way contingent upon the sale of tangible personal property, as a so-called decorator fee. Then, in other completely unrelated transactions, he may sell tangible personal property to the same client. In such cases the decorator's fee cannot be considered as a part of the selling price of the property sold because there is no connection between the transactions.

4. If the decorator's client reimburses the decorator for the payroll cost of personnel on the decorator's payroll assigned to a specific project, the duties performed by such employees will determine whether or not this item is taxable. For example, if these employees were engaged in painting murals on walls, etc., the charge made for their services is exempt, whereas, if these employees fabricate tangible personal property such as making bedspreads or draperies then the charge for their labor is taxable.

Regardless of whether Designer's design fee is calculated as a lump sum or on an hourly basis, its taxability depends on whether Designer sells tangible personal property in conjunction with the design.

Tax is due on the design fee related to the sale of tangible personal property regardless whether it is on an invoice with the charges for the tangible personal property or invoiced separately.

As stated, the taxable sales price of tangible personal property includes **any** services that are a part of the sale. This includes charges for meetings, phone and correspondence, travel time, installation, etc. The taxable sales price is not limited to the straight charge for the tangible personal property (plus mark-up, if applicable).

The invoices provided with Taxpayer's petition specifically denoted above as "Exhibit 3" do not contain any charges for tangible personal property or the implementation of the design. However, because you did purchase tangible personal property from the designer, the interior design fees are subject to tax as they are part of a transaction that involved and are related to the sale of tangible property.

As to your contention regarding a previously issued TAA, it is important to note that a Technical Assistance Advisement has no precedential value except to the taxpayer who requests the advisement. Moreover, such an advisement is not an order or rule or policy of general applicability. See Section 213.22(1), F.S. We note that the facts presented in the TAA you cite are different than the facts presented in your request. The controlling contract in the cited TAA involved a project implemented in phases with the client having the option to move forward with each phase. Further, it relied on a proposed rule which was not promulgated and is no longer proposed. However, the TAA confirms that once there is the sale of tangible personal property, all of the designer fees become subject to tax, even the designer fees charged in the earlier phases, if they are related to the sale of tangible personal property.

Conclusion

The subject interior design fees are related to the sale of tangible personal property and are subject to tax.

Closing Statement

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 upon 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 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 10 days of the date of this letter.

Sincerely,
R. Clay Brower
Revenue Program Administrator
Technical Assistance and Dispute Resolution