SUMMARY

QUESTION: For long-term motor vehicle lease agreements entered into after July 1, 1998, must Florida sales/use tax be applied to the monthly lease payments on a vehicle that was leased and registered in another state, prior to being removed and registered in Florida?

ANSWER - Based on Facts Below: Where the other state requires the tax to be paid up-front on the full term of the lease, Florida will allow a credit only when: the other state requires the tax to be paid up-front, and it is not an option; the other state lawfully imposes the tax on the lessee; the other state does not allow a credit or a refund of taxes paid when the vehicle is removed from that state; and, the tax imposed by the other state must be a like tax, as provided in s. 212.06(7), F.S.

If the tax rate of the other state is less than the rate imposed by Florida, which would include the state tax rate of 6 percent and the county surtax rate, if applicable, the monthly lease payments will be subject to the difference of the tax paid to the other state and the rate imposed by Florida.

For states where the legal incidence of the tax falls on the lessor, Florida will not allow a credit even though the lessee may be contractually obligated to reimburse the lessor for this expense.

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Mar 18, 2002

Re: Technical Assistance Advisement 02A-018
Sales Tax
Motor Vehicles Leased in Other States
Section 212.05(1)(c)2., Florida Statutes
Section 212.06(7), Florida Statutes
Section 212.06(10), Florida Statutes

XXX (Company A)
F.E.I. #
XXX (Company B)
F.E.I. #

Dear :

This is in response to your letter of January 16, 2002, in which you request the issuance of a Technical Assistance Advisement regarding sales/use tax issues arising in connection with leases for motor vehicles originally leased outside Florida, then brought into Florida during the term of the lease agreement.

In your request you state: "The principle question is: For long-term motor vehicle lease agreements entered into after July 1, 1998, must Florida sales/use tax be applied to the monthly lease payments on a vehicle that was leased and registered in another state, prior to being removed and registered in Florida?"

Law and Discussion

Section 212.05(1)(c), F.S., states:

212.05 Sales, storage, use tax.-- It is hereby declared to be 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, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived

from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

. . .

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

Section 212.06(7), F.S., states:

The provisions of this chapter do not apply in respect to the use or consumption of tangible personal property or services, or distribution or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to or greater than the amount imposed by this chapter has been lawfully imposed and paid in another state, territory of the United States, or the District of Columbia. The proof of payment of such tax shall be made according to rules and regulations of the department. If the amount of tax paid in another state, territory of the United States, or the District of Columbia is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the department an amount sufficient to make the tax paid in the other state, territory of the United States, or the District of Columbia and in this state equal to the amount imposed by this chapter.

Section 212.06(10), F.S., provides:

No title certificate may be issued on any boat, mobile home, motor vehicle, or other vehicle, or, if no title is required by law, no license or registration may be issued for any boat, mobile home, motor vehicle, or other vehicle, unless there is filed with such application for title certificate or license or registration certificate a receipt, issued by an authorized dealer or a designated

> agent of the Department of Revenue, evidencing the payment of the tax imposed by this chapter where the same is payable. A presumption of sales and use tax applicability is created if the motor vehicle is registered in this state. For the purpose of enforcing this provision, all county tax collectors and all persons or firms authorized to sell or issue boat, mobile home, and motor vehicle licenses are hereby designated agents of the department and are required to perform such duty in the same manner and under the same conditions prescribed for their other duties by the constitution or any statute of this state. All transfers of title to boats, mobile homes, motor vehicles, and other vehicles are taxable transactions, unless expressly exempt under this chapter.

As stated above, s. 212.06(7), F.S., provides a credit for taxes paid on tangible personal property purchased in another state and brought into Florida for use in this state. Therefore, our interpretation of s. 212.05(1)(c)2., F.S., when read in conjunction with the provisions of s. 212.06(7), F.S., is that the Department will recognize and give credit for the tax paid on a long-term lease of a motor vehicle in another state, where that state requires the tax to be paid up-front, the tax is imposed on the lessee, and the motor vehicle is subsequently brought into and registered for use in Florida. However, where the other state's tax rate is less than the rate imposed by Florida, inclusive of any local surtax if applicable, the Department will assess the difference on the monthly lease payments while the vehicle is registered and used in this state.

Additionally, if the other state allows a refund of previously paid tax on the remainder of the lease once the vehicle is removed from that state, the lease payments made while the vehicle is registered and used in Florida will be subject to tax.

It has come to the attention of the Florida Department of Revenue that some states treat long-term leases differently than rentals for sales and use tax purposes. In these states, the lessor is considered to be the end user of the leased property and the one who is responsible for paying use tax when the

property is leased. The lessor is not required to collect sales tax from the lessee. We have also learned that in some states laws, nothing prohibits a lessor from increasing the lessee's monthly payment to recover this tax expense. Therefore, in these cases, tax is lawfully imposed on the lessor and not on the lessee (even though the lessee may be contractually obligated to reimburse the lessor) and credit cannot be allowed as provided in s. 212.06(7), F.S.

In states where sales tax is imposed up-front on the lessee at a rate equal to or greater than the rate imposed by Florida, and a refund of previously paid taxes is not allowed, the Department would allow a refund of Florida taxes paid on the lease payments while the vehicle is registered and used in Florida, provided applicable requirements for receiving a refund are met in accordance with s. 215.26, F.S., and Rule 12A-1.014(4), F.A.C.

The following will restate your specific questions and proposed analysis and our responses:

Questions

For all of the questions raised below, please assume that the lease agreement is for a term in excess of 12 months and is entered into on or after July 2, 1998:

(a) A New York resident executes a Closed-End Lease Agreement for the lease of a motor vehicle for consumer purposes in New York. As is required in New York, the full sales tax is paid "up-front". The lessee later moves to Florida, and registers the leased vehicle in Florida. If the lessee paid the full amount of the New York tax in cash at the time of lease execution, must tax be paid on the lease payments after registration in Florida?

Proposed Analysis: Assuming that the amount of tax paid by the lessee in New York is equal to or greater than the amount that would be due in Florida, Section 212.05(1)[(c)]2[., F.S.] is applicable and no further tax is due.

RESPONSE:

The Department concurs with the proposed analysis. The Department's interpretation of s. 212.05(1)(c)2., F.S., when read in conjunction with s. 212.06(7), F.S., is that the Department will recognize and give credit for the tax paid on a long-term lease of a motor vehicle in another state, where that state requires the tax to be paid up-front, the tax is imposed on the lessee, and the motor vehicle is subsequently brought into and registered for use in Florida. In particular, the Department is aware that the long-term lease of motor vehicles in the State of New York meets these criteria.

(b) Same situation as (a) above, except that the lessee does not pay the amount of the New York tax at lease consummation, but asks that it be included in the gross capitalized cost. The lessor remits the full amount of the tax upfront, and includes the tax amount in the gross capitalized cost under the least agreement. If the amount of the New York tax is included in the gross capitalized cost under the lease, and amortized over the term of the lease, must Florida sales tax be paid on the lease payments after registration in Florida?

Proposed Analysis: Again, because the New York tax was paid up-front, and the other qualifications stated above are met, Section 212.05(1)(c)2[., F.S.] allows a full credit for the lessee. (Section 212.05(1)(c)[2., F.S.] provides, in part, "... no tax shall be due if... tax is being paid on the lease or rental payments in another state." [Emphasis added.]) The fact that the lessor has financed this amount for the lessee (including the tax amount in the gross capitalized cost) does not vary the outcome.

RESPONSE:

The Department concurs with the proposed analysis. The tax is lawfully imposed on the lessee regardless of the financial arrangement. The same is true when a vehicle is purchased and financed. The sales tax is paid by the purchaser to the lender

through the installment payments.

(c) Is the answer different, depending upon whether or not the tax portion is itemized on the monthly billing statement sent by the Lessor?

Proposed Analysis: Where the amount of the New York tax can be established, the fact that the amount of tax was included in the gross capitalized cost (and paid by the lessee during the term of the lease) and not paid in cash by the lessee at the time of lease signing should not vary the outcome - the full amount of tax has been paid in New York up-front, and Section 212.05[1](c)2[., F.S.] allows the lessee credit.

RESPONSE:

The Department concurs with the proposed analysis. The tax is lawfully imposed on the lessee regardless of the financial arrangement.

(d) Section 212.05(1)(c)[2., F.S.] allows a credit if the taxpayer "documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state." [Emphasis added.] What documentation, if any, must the lessor under the lease agreement obtain from the lessee documenting "the use of the motor vehicle outside this state"?

RESPONSE:

A copy of the lease agreement executed in another state that reflects sales tax paid up-front would be sufficient documentation for the purposes of s. 212.05(1)(c)2., F.S. (again, provided all of the criteria as stated above are met).

(e) A consumer lessee enters into a Closed-End Motor Vehicle Lease Agreement for the lease of a motor vehicle in Ohio. The vehicle is originally registered and garaged in Ohio. Sometime later, the lessee removes the vehicle from Ohio and brings it to Florida, where the vehicle is then

garaged and registered.

Proposed Analysis. The Ohio 124th General Assembly passed Amended Substitute House Bill 405, which provides that, effective February 1, 2002, the sales tax on motor vehicle leases must be computed and paid at the beginning of the lease rather than on the monthly payments. House Bill 405 amends Section 5739.01(H)(4) to add to the definition of "Price":

"In the case of the lease of any motor vehicle designed by the manufacturer to carry a load of not more than one ton,... or the lease of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee primarily for business purposes, the sales tax shall be collected by the vendor at the time the lease is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee under the lease agreement. If the total amount of the consideration for the lease includes amounts that are not calculated at the time the lease is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee...."

Further, Section 5739.03 of the Ohio Statutes provides:

Except as provided in section 5739.05 of the Revised Code, the tax imposed by or pursuant to section 5732.02, 5739.021, 5739.023, or 5739.026 of the Revised Code shall be paid by the consumer to the vendor, and each vendor shall collect from the consumer, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sale, in the manner and at the times provided as follows:...[ ]

Does Ohio (as of February 1, 2002) meet the qualifications set forth in TAA 00A[-]060 for excluding Florida sales tax?

RESPONSE:

This office has received confirmation from the Ohio Department of Taxation, Division of Sales and Use Tax, that effective February 1, 2002, the sales tax on the long term lease of a motor vehicle is required to be paid up-front based on the total amount that will be paid throughout the term of the lease. Further, the tax is legally imposed on the lessee, and no refund is allowed for early termination of the lease or if the vehicle is removed from the State of Ohio. Therefore, for leases entered into on or after February 1, 2002, in the State of Ohio, Florida will allow credit for the tax required to be paid up-front in accordance with the criteria stated in this Technical Assistance Advisement.

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 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.

Sincerely,

Bonnie Everton
Senior Tax Specialist

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Cont. #48314