

Technical Assistance Advisement, No. 96A-038-- Sales and use-- Taxability of persons and transactions-- Leases and rentals-- Buses leased for cross-country tours, Florida, ¶203-183, (Aug. 7, 1996)

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¶203-183. Technical Assistance Advisement, No. 96A-038, , Florida Department of Revenue, August 7, 1996 96A-038,

Sales and use: Taxability of persons and transactions: Leases and rentals: Buses leased for cross-country tours.— The Florida owner of customized buses leased, without drivers, to entertainers for cross-country touring purposes was required to collect and remit Florida sales tax on lease payments made for periods in which the buses were present in Florida. Additionally, documentation, such as bus logs that record the location of the buses at all times, accompanied by sworn affidavits, had to be maintained to corroborate bus locations during the lease terms. Sec. 212.05, F.S.; Rule 12A-1.071, F.A.C.

See ¶60-460

This is a response to your petition received March 21, 1996 for the Department's issuance of a Technical Assistance Advisement ("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, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

DISCUSSION OF FACTS

***** and related entities (referred to collectively as *****) own a series of customized buses. These buses are generally leased to entertainers for their touring purposes. The lessees are responsible for employing and paying the bus drivers. ***** offices and facilities are located in Florida. You indicate that the buses are used for tours of the United States. Accordingly, you assert that these buses are only in Florida for a few days each year. You state:

Taxpayer's offices and other facilities are currently located in Florida. However, the buses themselves are typically present in Florida only for a few days each year since the buses transport the entertainers across the country and they may travel from one lease termination point directly to the next lease commencement point without returning to Florida. Taxpayers keep a record of the location of the buses at all times by requiring each bus driver to keep a log.

You provided a proposed lease agreement which provides for rental payment instructions to the lessee. The agreement provides in part the following:

2.1 LESSEE agrees to pay LESSOR the sum of the DAILY RATE per Coach as listed in the above schedule as rental payment for each week during the Lease term as set forth in Section 1 without deduction or offset, together with all other charges as provided for in this Agreement.

2.2 All rental payments shall be due at LESSOR's offices in the amounts and on the dates set forth in Attachment a. A 7% sales tax will be added to the coach rate on all Florida dates for each week in which there are Florida dates.

2.3 Rental payments shall be remitted to ***** , ***** . ALL PAYMENTS MUST BE REMITTED BY OVERNIGHT DELIVERY SERVICE.

The submitted lease agreement also provides that in the event of default, only accrued obligations are due to the lessor from the lessee.

REQUESTED ADVISEMENT

A determination is requested as to whether bus leases should be subject to Rule 12A-1.071(4)(a), F.A.C., or Rule 12A-1.007(14)(d), F.A.C.

DISCUSSION AND ANALYSIS OF LAW

Section 212.05, F.S. (1995), provides in part:

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: ...

(d) At the rate of 6 percent of the lease or rental price paid by a lessee or rentee, or contracted or agreed to be paid by a lessee or rentee, to the owner of the tangible personal property.

Rule 12A-1.071(1)(a), F.A.C. (1995), provides in pertinent part:

Rentals, Leases, or License to Use Tangible Personal Property.

(1)(a) For the purpose of this rule, the term "lease" includes any rental or license to use tangible personal property, unless a different meaning is clearly indicated by the context in which it is used. The term refers to all transactions that are not bailments in which there is a transfer of possession of tangible personal property, without regard to limitations upon the use, for a consideration, without a transfer of title to the property. It is not essential for a transfer of possession of tangible personal property to include the right to move the tangible personal property. It includes a transaction under which a person secures for a consideration the temporary use of tangible personal property which, although not on his premises, is operated by or under the direction or control of the person or his employees....

Paragraph (4)(a), of this rule provides:

If the lessee of tangible personal property removes the property from the State of Florida, the consideration contracted to be paid subsequent to such removal is not taxable, provided the lessee furnishes the lessor with a signed certificate identifying the property, and the date the property was or will be removed from this state. If the lessee has obtained self-accrual authority from the Department of Revenue, as provided in Rule 12A-1.0911, F.A.C., then the lessee's records must substantiate when the property was removed from this state. Rental amounts charged or paid while the property is in Florida are taxable, even though the property is moved from the state immediately after the lessee takes possession of it....

In *Kirk v. Western Contracting Corp.*, 216 So.2d 503 (Fla. 1st DCA 1968), it was held that the consummation date and the property location date at the time of a contract for the lease of tangible property would not control the taxing ramifications. The court stated:

It must be held that the privilege of conducting such business by both the leasing corporation and plaintiff was a privilege being exercised in this state so long as rental was being paid on the dredges working here.

The statute, rules and *Kirk*, supra, are all consistent with regard to the taxability of **any** payments made while the property is situated in Florida. There can be no doubt that the entire payment made for the lease term while the bus is in Florida is subject to tax. With regard to payments that are made while the subject buses are operating out of the State of Florida, we must turn to the conclusion drawn in *Kirk*, supra. In *Kirk* the taxing authority was faced with the question of taxing the leasing of dredges. The leases were executed out of state with the intent of using dredges wherever plaintiff's business required such equipment. The dredges were subsequently brought into this State and used here. The State of Florida taxed the rental payments made while the dredges were in Florida. The court agreed with this tax treatment. Property location can easily be determined with regard to movement of non-vehicular property such as the dredges, as they were used in the performance of a Florida contract. However, verification of property location becomes a difficult task with regard to property used in transportation. The control of the vehicle is transferred to the lessee and movement of the buses in and out of Florida cannot readily be ascertained. You assert that drivers are

required to maintain logs, however, as the drivers are not agents of the lessor, it will be necessary for your to insure that this information is conveyed to Coach in a timely manner so as to provide for timely payment of taxes due.

CONCLUSIONS OF LAW

The holding in *Kirk* is controlling in the application of tax to the instant transactions. Documentation, such as bus logs accompanied by sworn affidavits, must be maintained by Coach which can corroborate bus locations during the lease terms. Tax must be collected and remitted to the Department on all lease payments made with respect to a payment period for which the bus is in Florida.

This response constitutes a Technical Assistance Advisement under §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 §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 and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of §213.22, F.S. Your name, address, and any other details that might lead to identification of the taxpayer must be deleted by the Department before disclosure. In an effort to protect the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Should you have any further questions concerning this matter, please do not hesitate to contact me.