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May 10, 2011

Technical Assistance and Dispute Resolution
Post Office Box 7443
Tallahassee, Florida 32314-7443

Re: Request for Technical Assistance Advisement
Towing and Storage Charges
Sales and Use Tax
Section 212.03(6), Florida Statutes
Rule 12A-1.006, F.A.C.
Rule 12A-1.071, F.A.C.
Our Client: Professional Wrecker Operators of Florida, Inc.
Our File # P438-22669

Ladies and Gentlemen:

This firm represents the Professional Wrecker Operators of Florida, Inc. ("PWOFF"), an association comprised and representing the interests of wrecker operators throughout the State of Florida. We are writing, pursuant to Rule Chapter 12-11, Florida Administrative Code, to request a Technical Assistance Advisement ("TAA") concerning the application of sales taxes to transactions conducted by the wrecker operator membership of the PWOFF.

On March 2, 2011, Ms. Kimberly McCorvey of the Department of Revenue responded to the PWOFF with an informal technical advice letter. The thrust of the PWOFF's inquiry was for clarification in applying sales taxes as a result of correspondence received from the Florida Highway Patrol indicating that a towing company should never charge sales tax on a tow bill for the towing and storage of any vehicle removed at the request of law enforcement. We enclose a copy of Ms. McCorvey's correspondence, together with the referenced correspondence from the Florida Highway Patrol and email correspondence from the PWOFF, for your review.

It is PWOFF's understanding that, as long as the towing charges for the removal of a vehicle are separately stated on a customer's invoice, those towing charges are not taxable under Rule 12A-1.006(17), F.A.C. This applies to all towing charges, whether made at the request of the vehicle or property owner or law enforcement under § 715.07, Florida Statutes.

It is also PWOFF's understanding that, even if the request to tow and store a vehicle was made by law enforcement, all storage charges are taxable under Rule 12A-1.073, F.A.C. This understanding, however, is in contradiction to the correspondence received by a member of the PWOFF on December 10, 2010, from the Florida Highway Patrol, who unequivocally states that sales tax is not to be charged for the towing and storage of any vehicle as a result of law enforcement requests.

In Ms. McCorvey's Letter of Technical Advice, she advises that no sales tax should be charged for the storage of vehicles which are lawfully impounded by law enforcement, but sales tax is applicable to the storage of vehicles which are otherwise impounded, even if done at the request of law enforcement. It appears that the key to determine when a vehicle has been "lawfully impounded" turns on whether "the vehicle owner of the vehicle cannot be in a posture to control by directive to the officer where and by whom the vehicle is towed and stored."

The PWOFF provided Ms. McCorvey with a sample tow receipt, which was generated as a result of a traffic accident. The vehicle was towed at the request of law enforcement, but the receipt makes no indication as to whether or not the vehicle was "lawfully impounded." Ms. McCorvey offered no assurance that such a receipt would be sufficient to document the storage fees as being exempt from tax. Lt. Heard from the Florida Highway Patrol makes it clear that for a tow operator to charge sales tax in any situation would result in the removal of that tow operator from the FHP's rotation list. This leaves the tow operator in the untenable position of potentially violating its sales tax obligations or suffering removal from the FHP rotation list when conducting tow operations at the request of the FHP.

Additionally, we enclose hypothetical tow receipts, which are typical in form for towing and storage of vehicles as a result of law enforcement requests. The purpose in providing these receipts is to inquire into the information required to sufficiently document the non-taxable status of the storage fees resulting from such tows.

Lastly, it remains unresolved whether or not the administrative fees charged by tow operators is a taxable or non-taxable service.

We are writing, under Chapter 12-11, F.A.C., to request a formal Technical Assistance Advisement, clarifying the following issues:

1. If the towing charges for the towing of a motor vehicle are separately stated on a customer's invoice, are those charges non-taxable?
2. If the towing charges are not separately stated, and are combined with other charges such as storage, are those charges then taxable?

3. Under what specific circumstances would the storage charges for a vehicle not be subject to sales tax for a vehicle which was towed at the request of law enforcement?
4. What documentation is necessary in order to sufficiently document that the storage fees for a vehicle which has been lawfully impounded is exempt from sales tax?
5. If a tow receipt, which is generated as a result of a law enforcement request and executed by law enforcement, fails to specify whether the tow and storage of the vehicle was as a result of "lawful impounding for legal reasons," are the subsequent storage charges taxable or non-taxable?
6. Are the administrative fees, charged by tow operators to cover the administrative services related to tow operations, a taxable service? If so, does this tax also apply to the administrative fees charged for vehicles lawfully impounded for legal reasons?

Upon receipt of the Department's TAA, the PWOFF readily agrees that it will disseminate the TAA to each of its members, as contemplated under Rule 12-11.003(3)(d), F.A.C. Additionally, as stated under Rule 12-11.003(3)(e), F.A.C., the PWOFF acknowledges that the provisions of § 213.22(2), Florida Statutes, authorize the Department to publish the TAA for official purposes. To the best knowledge of the PWOFF, the below described issue is not currently an issue involved in a tax return of the PWOFF or one of its members, as addressed under Rule 12-11.003(4), F.A.C.

Thank you for your attention to these inquests. Of course, should you need anything further from this office or from our client, please do not hesitate to contact us. Additionally, if this request is deficient in any way, please contact us so we can correct the deficiency.

We look forward to receiving the Department's Technical Assistance Advisement in due course.

Very truly yours,



Robert T. Magill

RTM
Enclosures
cc: PWOFF



Executive Director
Lisa Vickers

September 6, 2011

Mr. Robert T. Magill
Fishback, Dominick, Bennett, Stepter, Ardaman,
Ahlens & Langley LLP
1947 Lee Road
Winter Park, Florida 32789-1834

Re: Technical Assistance Advise ment 11A-027
Motor Vehicle Towing and Storage
Sections 212.03(6), 212.05, and 316.193(14)(c), Florida Statutes (F.S.)
Rules 12A-1.006(17) and 12A-1.073(6), Florida Administrative Code (F.A.C.)

Dear Mr. Magill:

This is a response to your letter dated May 10, 2011, in which you have requested a Technical Assistance Advise ment on towing and storage charges.

Stated Facts

Your letter states that your firm represents Professional Wrecker Operators of Florida, Inc. ("Taxpayer"). Taxpayer is an association representing companies that provide towing and storage of motor vehicles in Florida.

One of Taxpayer's members received correspondence from the Florida Highway Patrol stating in part that tax should not be charged on towing or storage charges "arising out of any law enforcement calls for towing, roadside assistance, or storage." Taxpayer previously sought and received an informal Letter of Technical Advice, number 11A-259 issued March 2, 2011, from this office regarding the proper tax treatment on these charges. Our letter provided that charges for towing are not subject to tax if the charge is separately stated on the customer's invoice. Our letter went on to provide that storage charges are generally subject to tax; however, storage of vehicles arising from a lawful impoundment by a local, state, or federal law enforcement agency is not subject to tax. However, we stated that not all calls from law enforcement that result in storage of a vehicle qualify as a lawful impoundment; therefore, any storage charges resulting from law enforcement calls that do not qualify as a lawful impoundment are subject to tax.

You have now requested a Technical Assistance Advise ment clarifying the following issues:

1. If the towing charges for the towing of a motor vehicle are separately stated on a customer's invoice, are those charges non-taxable?
2. If the towing charges are not separately stated, and are combined with other charges such as storage, are those charges taxable?

Child Support Enforcement – Ann Coffin, Director • General Tax Administration – Jim Evers, Director
Property Tax Oversight – James McAdams, Director • Information Services – Tony Powell, Director

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Tallahassee, Florida 32399-0100

3. Under what specific circumstances would the storage charges for a vehicle not be subject to sales tax for a vehicle which was towed at the request of law enforcement?
4. What documentation is necessary in order to sufficiently document that the storage fees for a vehicle which has been lawfully impounded is exempt from sales tax?
5. If a tow receipt, which is generated as a result of a law enforcement request and executed by law enforcement, fails to specify whether the tow and storage of the vehicle was a result of “lawful impounding for legal reasons,” are the subsequent storage charges taxable or non-taxable?
6. Are the administrative fees, charged by tow operators to cover the administrative services related to tow operations, a taxable service? If so, does this tax also apply to the administrative fees charged for vehicles lawfully impounded for legal reasons?

Taxpayer’s Position

Taxpayer has not provided a specific position for any of the questions at issue.

Applicable Authority and Discussion

Towing Charges

Most services are not subject to tax in Florida.¹ The towing of a motor vehicle is considered a service and, as such, the charge for towing is not subject to tax, provided that the charges for towing are separately stated on the customer’s invoice or receipt. See Rule 12A-1.006(17), F.A.C. However, if the towing is performed as part of a larger transaction and the charges for the various parts of the transaction are not separately stated, then the towing loses its classification as a service. In those cases, the taxation of the transaction will be determined by examining the transaction as a whole. If the transaction includes both taxable and nontaxable elements, then the entire transaction becomes taxable.

Storage Charges

Section 212.03(6), F.S., provides that the lease or rental of parking or storage spaces for motor vehicles in parking lots or garages is subject to tax on the total rental charged. However, Rule 12A-1.073(6), F.A.C., specifically provides that the parking or storage of motor vehicles “arising from a lawful impoundment by a local, state, or federal law enforcement agency or an authorized towing service” does not constitute a contract for parking or storage and those charges are not subject to tax. The plain language of the rule provides that only those charges arising from a “lawful impoundment” are not subject to tax.

The term “lawful impoundment” is not defined in either Chapter 212, F.S., or Rule Chapter 12A-1, F.A.C., applicable to sales and use tax. The only definition of the term in the Florida Statutes is found in Section 316.193(14)(c), F.S., which provides that “[i]mpoundment, ‘impounding,’ or

¹ Section 212.05, F.S., imposes tax on detective, burglar protection, and protection other services and on nonresidential cleaning services. However, this request does not include or concern any of these specified taxable services.

‘impound’ means the act of storing a vehicle at a storage facility pursuant to an order of impoundment or immobilization under subsection (6) where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.” This definition is consistent with that found in Black’s Law Dictionary, 8th Edition, which defines the term “impound” as “[t]o place (something, such as a car or other personal property) in the custody of the police or the court, often with the understanding that it will be returned intact at the end of the proceeding.”

Both definitions are consistent with the Department’s position that a lawful impoundment for purposes of Rule 12A-1.073(6), F.A.C., occurs only when the owner of the motor vehicle does not have direction or control over the vehicle. We therefore affirm the opinion given in the earlier Letter of Technical Advice that only those storage charges arising from the lawful impoundment of a vehicle, where the vehicle owner does not have direction or control over the vehicle, are not subject to sales tax. Storage charges arising from law enforcement calls that do not rise to the level of a lawful impoundment are subject to tax.

Administrative Fees

Your letter does not provide any information as to the administrative fees referenced. However, as a general rule, the taxability of administrative fees will depend on the taxability of the any other property or services sold in connection with the fees. Therefore, if the administrative fees are imposed in connection with an otherwise nontaxable transaction, such as towing services only, then the administrative fees will not be subject to tax. If the administrative fees are imposed in connection with an otherwise taxable transaction, such as taxable storage fees, then the administrative fees will be subject to tax.

Advisements

Based on the above discussion, the answers to your specific questions are as follows:

1. Towing charges that are separately stated on a customer’s invoice are not subject to tax.
2. The taxation of towing charges that are not separately stated on a customer’s invoice will be determined by an examination of the transaction as a whole. If the transaction includes both taxable and nontaxable elements, then the entire charge is subject to tax.
3. Only those storage charges arising from a lawful impoundment by a law enforcement agency or authorized towing service are not subject to tax. Any other storage charges arising from law enforcement calls that do not rise to the level of a lawful impoundment are subject to tax.
4. The company providing storage must maintain documentation that clearly provides that the storage is a result of a lawful impoundment. This could include a tow receipt, an accident report, or any other document signed by a law enforcement officer. The documentation should indicate identifying information for the vehicle, the company that will provide storage, and a statement that the storage is a result of a lawful impoundment.
5. Documentation that does not specify that the storage is a result of a lawful impoundment is not sufficient to exempt the storage charges from tax. Absent sufficient documentation, the storage provider must collect and remit tax on the storage charges.

6. The taxability of any administrative fees will be determined by the taxability of the underlying transaction. If the administrative fees are imposed in connection with an otherwise nontaxable transaction, then the administrative fees are not subject to tax. If the administrative fees are imposed in connection with an otherwise taxable transaction, then the administrative fees are subject to tax.

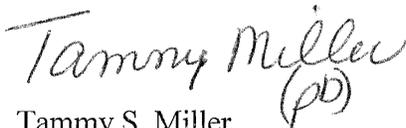
Closing Statement

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.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-7105.

Sincerely,

Handwritten signature of Tammy S. Miller in cursive script, with the initials "TD" written below the name.

Tammy S. Miller
Senior Attorney
Technical Assistance & Dispute Resolution

Record ID: 103339