

SUMMARY

QUESTION: If the towing charges for the towing of a motor vehicle are separately stated on a customer's invoice, are those charges non-taxable?

ANSWER: Towing charges that are separately stated on a customer's invoice are not subject to tax.

QUESTION: If the towing charges are not separately stated, and are combined with other charges such as storage, are those charges taxable?

ANSWER: 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.

QUESTION: 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?

ANSWER: 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.

QUESTION: 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?

ANSWER: 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.

QUESTION: 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?

ANSWER: 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.

QUESTION: 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?

ANSWER: 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.

September 6, 2011

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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

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 XXX (“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?
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 ‘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

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.

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,

Tammy S. Miller
Senior Attorney
Technical Assistance & Dispute Resolution

Record ID: 103339