



March 2, 2011

Mike Seamon, Executive Director
Professional Wrecker Operators of Florida
mseamon@hotmail.com

SENT VIA TUMBLEWEED

Re: Letter of Technical Advice 11A-259
Towing and Storage Charges
Sales and Use Tax
Section 212.03(6), F.S.
Rule 12A-1.006, F.A.C.
Rule 12A-1.073, F.A.C.

Dear Mr. Seamon:

Pursuant to Rule 12-11.003, F.A.C., taxpayers may seek informal written technical advice from the Department of Revenue (Department). This advice is issued in the form of a Letter of Technical Advice (LTA). This LTA is being issued in response to our January 2011 meeting and your request for informal guidance concerning the matter described below. Please note that this LTA constitutes the opinion of the writer only and does not represent the official position of the Department.

You state that a member of your organization received a letter from Lieutenant Solomon E. Heard, Rotation Wrecker Administrator with the Florida Highway Patrol, which indicates that a towing company should not charge sales tax on a tow bill when a member of law enforcement calls for towing, roadside assistance, or storage. You state that this is different from the information the Department provided you regarding this issue in its August 2, 2006, letter to you.

You ask us to confirm when tax is due on the towing and storage of a motor vehicle in this state. You have provided us with a copy of the letter from Lieutenant Heard and a copy of the 2006 letter you received from the Department for our review.

Towing Charges

Florida law provides that towing charges are not subject to tax if the charge is separately stated on the customer's invoice. Therefore, we agree with Lieutenant Heard that no tax should be charged for the towing of a vehicle when the towing charge is separately stated on the invoice.
Rule 12A-1.006(17), F.A.C.

Storage Fees

Florida law provides that the storage of motor vehicles in the State of Florida is subject to tax, unless specifically exempt by Chapter 212, Florida Statutes. Section 212.03(6), F.S. Thus, it is our position that when a towing company tows a vehicle and stores the vehicle on its lot, the towing company has granted a right to occupy its space for storage which is subject to tax. However, Rule 12A-1.073, F.A.C., provides that the storage of motor vehicles occurring from a lawful impoundment by a local, state, or federal law enforcement agency or an authorized towing service is not subject to tax.

The Department has also interpreted the term "authorized towing service" to mean any company that a law enforcement agency contacts or contracts with to provide towing of vehicles that are impounded by the law enforcement agency. The term "lawful impoundment by law enforcement" includes those situations where the owner of the vehicle involuntarily surrendered its vehicle to law enforcement; inclusive of those instances when the driver and/or owner is incapacitated. The vehicle owner cannot be in a posture to control by directive to the officer where and by whom the vehicle is towed and stored. For example, when a law enforcement agency contacts a towing company to tow a vehicle because the owner does not know who to call for a tow, or the owner of the vehicle asks law enforcement to call a towing company for him or her; these are not lawful impoundments by a law enforcement agency or authorized towing service. The storage fees charged associated with these tows would be subject to sales tax.

Accordingly, we disagree with Lieutenant Heard's assertion that no tax should be charged on any vehicle tow bills "arising out of any law enforcement calls" for storing (separately stated towing charges still remain nontaxable) a vehicle in this state. It is the Department's position that tax should be charged on the storage fees for those law enforcement calls where the vehicle owner does have direction or control over the towing or storage of its vehicle.

You have provided a copy of a Florida Highway Patrol Vehicle Tow Receipt and have asked us to review the tow receipt and inform you how the Department would determine if this is a lawful impoundment.

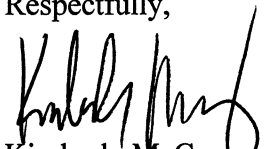
The tow receipt you provided indicates the vehicle was towed as a result of an accident and the towing company was selected under the Florida Highway Patrol's rotation system for wrecker companies. The tow receipt also indicates the vehicle overturned during the crash and sustained damage on all sides, the hood, roof and trunk. However, there is no information in the "Officer Comment" field or in any other field on the document to determine if the car was lawfully impounded for legal reasons; inclusive of the driver being incapacitated. Therefore, this office cannot provide you with assurance that a tow receipt of this type would be sufficient to documents the storage fees as being exempt from tax if the company was ever the subject of a compliance audit.

If a responding officer to a crash were to indicate in the comment field the driver and/or owner was incapacitated or the car was lawfully impounded for legal reasons, some assurance could be expressed regarding acceptance of the tow document submitted for review. The point being, not all crashes, even those with extensive damage to the vehicle, result in incapacity of the driver or a lawful impoundment. Sometimes law enforcement is merely providing assistance to a distressed driver by initiating the tow of a disabled vehicle. The Department must be able to distinguish these latter instances which result in taxable storage from those resulting from a lawful impoundment that is not subject to tax.

As noted in the first paragraph of this letter, this LTA is being issued in response to the disclosed facts and circumstances of your specific situation, and it does not constitute the official position of the Department. Rather, this letter represents the opinion of the writer only. If you wish an official binding statement, you may file a written request for a Technical Assistance Advisement. Rule Chapter 12-11, F.A.C., outlines the procedure to follow in making this request. This rule chapter of the Florida Administrative Code can be found at <http://www.myflorida.com/dor/law/>. Any request for a Technical Assistance Advisement should be sent to Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-7068.

Respectfully,



Kimberly McCorvey
Tax Law Specialist
Technical Assistance & Dispute Resolution