



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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Executive Director

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October 20, 2021

Mike Seamon
Executive Director
Professional Wrecker Operators of Florida, Inc.
4718 Edgewater Drive
Orlando, FL 32804
mseamon@hotmail.com

Re: Technical Assistance Advisement No. 21A-012
Sales and Use Tax – Storage of Motor Vehicles
Professional Wrecker Operators of Florida, Inc. (“Taxpayer”)
FEI No. 59-1765082
BPN: 0000675687
Section 212.03(6)(a) and (6)(b), Florida Statutes (“F.S.”)
Rules 12A-1.006(16), 12-11.002(8), and 12-11.003(3) and (4), Florida Administrative Code
 (“F.A.C.”)

Dear Mr. Seamon:

This letter is a response to your petition on behalf of Professional Wrecker Operators of Florida, Inc., dated May 12, 2021, for the Florida Department of Revenue’s (the “Department’s”) issuance of a Technical Assistance Advisement (“TAA”) regarding taxability of the parking of lawfully impounded vehicles and of the storage of vehicles which are no longer being lawfully impounded. 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, Florida Administrative Code. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

Requested Advisement

You request assistance on what constitutes “lawful impoundment” as that term is used in relation to the possible taxation of storing motor vehicles.

Facts As Provided

Professional Wrecker Operators of Florida, Inc. (the “Association”), is an association of wrecker operators. The wrecker operators tow motor vehicles, sometimes at the request of law enforcement, and store them on their tow lots once they have been towed. The Association states that there is confusion within the towing industry as to the taxability of vehicles being kept in a tow yard when they are being “lawfully

impounded” and when they are not under a “lawful impound”. Mr. Seamon is asking the Department to explain how sales tax should be assessed in “lawful impound” and “storage” situations and to explain what a “lawful impound” means.

Taxpayer’s Argument

The Association’s stated understanding is that, if the owner has the right to the vehicle, the storage is taxable and, if the owner does not have the right to the vehicle, the charges for keeping the vehicle on the lot are not taxable. The Association also believes that tax should be paid on administrative fees. The Association references Technical Assistance Advisement (TAA 11A-027) issued in 2011 by the Department on this issue. Further, the current request includes the following:

A Sheriff has made a statement that sales tax is not charged when they give a tow sheet, even though the owner has the right to his vehicle. The verbiage of the letter from the Sheriff to the rotation tow companies is as follows:

“The issue of the sales tax came up in a meeting that some of us attended that some thought it needs to be clarified. In Florida, only items sold that are tangible such as groceries, car parts, clothes, etc. allow for the collection of tax. Services are not palpable, therefore they are not subject to sales tax. By Florida Administrative Code (FAC) 12A-1.006[(16)], Wrecker and towing charges are not subject to tax. When CCSO request your services, you are performing a lawful impounding which is why you are provided a tow sheet. The tow sheet is your legal documentation for the service. Please, as done for many previous years, do not charge the customer sales tax.”

Applicable Law and Discussion

Section 212.03(6)(a), F.S., provides, in relevant part:

[E]very person who leases or rents parking or storage spaces for motor vehicles in parking lots or garages, including storage facilities for towed vehicles, . . . is engaging in a taxable privilege. . . .

However, charges for parking or storage of motor vehicles that arise from a “lawful impoundment” are not subject to sales tax. See s. 212.03(6)(b), F.S. Section 212.03(6)(b), F.S., provides:

(b) Charges for parking, docking, tie-down, or storage arising from a lawful impoundment are not subject to taxation under this subsection. As used in this paragraph, the term “lawful impoundment” means the storing of or having custody over [a] motor vehicle by, or at the direction of, a local, state, or federal law enforcement agency which the owner or the owner’s representative is not authorized to enter upon, have access to, or remove without the consent of the law enforcement agency.

Rule 12A-1.006(16), F.A.C., cited in the Sheriff's letter above, provides:

Wrecker or towing charges are not subject to tax if the charge is separately stated on the customer's invoice.

A "Taxpayer Association" or the association's representative may request the issuance of a Technical Assistance Advisement. See Rules 12-11.002(8) and 12-11.003(3) and (4), F.A.C.

It should first be noted that the statutory provision for "lawful impoundment" was added by Section 2, Chapter 2014-40, Laws of Florida. Accordingly, any advisement issued by the Department prior to that date that conflicts with this provision, including TAA 11A-027, is no longer valid and should not be relied upon as guidance.

While storage of a motor vehicle in a tow yard is normally subject to sales tax, if the storage of a vehicle meets the definition of a "lawful impoundment," as provided in s. 212.03(6)(b), F.S., above, the charges for the storage would not be subject to sales tax. Under the plain language of the statute, a lawful impoundment means the storage of a motor vehicle by or at the direction of law enforcement where the owner cannot enter upon, have access to, or remove the vehicle without the consent of the law enforcement agency.

First, the statute does not require specifics regarding *why* law enforcement directs the storage, merely that they do. The provision therefore applies regardless of whether any criminal act may have taken place or if the motor vehicle is needed as evidence. Storage resulting from a towing company being called by law enforcement due to a breakdown or accident would qualify. The statute merely requires the storage occur at the direction of law enforcement.

Second, the statute does not indicate *when* consent for access or removal must be given or in what form. Consent can be presumed if the owner of the vehicle can retake possession in exchange for paying the storage charges. It is not required that the owner or law enforcement official provide the towing company with a court order or other type of official notification of consent for access or removal. Accordingly, "lawful impoundment" reasonably ends when the owner of the vehicle retakes possession.

The company providing the storage should maintain documentation that clearly establishes that the storage is a result of a lawful impoundment. This could include a towing receipt, an accident report, a "tow sheet," or any other document signed by a law enforcement officer or that otherwise indicates the storage was at the direction of law enforcement. If the storage provider does not have sufficient documentation to establish that the storage is a result of a lawful impoundment, the storage provider will need to collect and remit tax on the storage.

Your request also references "administrative fees", but does not provide an explanation of those fees. We can therefore only provide general guidance in this area. The general rule for administrative fees is that the taxability of the fees depends on whether the property or services sold in connection with the fees

are taxable. In other words, if the administrative fees were being imposed in connection with a nontaxable transaction, such as towing service only (or "lawful impoundment"), the fees would not be subject to tax. If they were being imposed in connection with a taxable transaction, the administrative fees would be taxable. Given that you have asked only about storage charges, we therefore presume that the administrative fees relate to those. If the underlying storage charges are not subject to tax because they are the result of a lawful impoundment, then any related administrative fees would also not be subject to tax.

Conclusion

Sales tax would not be due on storage charges arising from a "lawful impoundment", defined by s. 212.03(6), F.S., as the storage of a motor vehicle by, or at the direction of, a local, state, or federal law enforcement agency. Dealers engaged in the business of storing motor vehicles should keep documentation showing that storage was at the direction of law enforcement.

This response constitutes a Technical Assistance Advisement under section 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 section 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 that 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 section 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,

Katharine Heyward

Katharine Heyward

Senior Attorney

Technical Assistance & Dispute Resolution

Record ID: 534824