



**Florida Department of Revenue**  
*Technical Assistance and Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

TAX: Sales and Use Tax

TAA NUMBER: 12A-014

Subject: Discretionary sales surtax

STATUTE CITE(S): Section 212.02, 212.05, 212.0506, 212.055, 212.054, Florida Statutes (F.S.)

RULE CITE: Rules 12A-1.016, 12A-15.004, 12A-15.003, Florida Administrative Code (F.A.C.)

**QUESTION:**

Whether the \$5,000 limitation separately applies to the service charges included with the purchase of projector equipment?

**ANSWER:**

Yes. The service charges are not separate items of tangible personal property.

August 21, 2020

XXX

XXX

XXX

XXX

Re: Technical Assistance Advisement - 20A-014

TAA No.:

AMS #: 365588

Sales and Use Tax

Local Option Taxes-Discretionary Sales Surtax \$5,000 Limitation

Sections 212.02, 212.05, 212.0506, 212.054, and 212.055, Florida Statutes (F.S.)

Rule 12A-15.004, 12A-15.003, 12A-1.016, Florida Administrative Code ("F.A.C.")

XXX ("Petitioner") ("Taxpayer")

Business Partner Number: XXX

FEIN: XXX

Dear XXX:

This is in response to your request dated April 28, 2020, for a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.),

concerning the \$5,000 limitation on discretionary sales surtax. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

### **FACTS**

Taxpayer and a vendor entered into a contract for the purchase and installation of new projection equipment in the XXX facility conference room. The Scope of Work (“contract”) contains the equipment list and necessary services such as labor, administrative fees, etc., required to complete the job including the lump sum cost. The contract also listed an order for onsite maintenance of the equipment by the vendor. The petition includes attachments, including the Scope of Work (“contract”), invoice, and a purchase order.

The vendor billed taxpayer for equipment, administrative fee, professional service integration, and onsite maintenance support. During a telephone conference, you indicated that the service integration was for labor required to complete installation of the projector equipment.

On the first billing, the vendor charged the discretionary sales surtax on all charges for the full amount charged for all items. The vendor issued a revised billing that included a charge for the discretionary sales surtax on the first \$5,000 of equipment, and on the full amount for the other charges.

### **TAXPAYER POSITION**

Taxpayer believes that the \$5,000 discretionary sales surtax limitation applies to the total amount of the charges for the projection equipment, administration fee, and the professional service integration. Taxpayer believes that all of the charges, except for the onsite maintenance support charges, relate to one working unit. Taxpayer believes that the surtax applies to the full amount of the onsite support maintenance.

### **VENDOR’S POSITION**

The vendor believes that the \$5,000 surtax limitation applies separately to each line item charge on the invoice. The issue is whether the services to engineer, design, program, deliver, and install the working unit are an “item” as that word is used by Rule 12A-15.004, F.A.C. The Rule provides that the discretionary sales surtax limit applies to any “item of tangible personal property” and that services are not subject to the discretionary surtax limit. The Rule for the working unit exception references “items of tangible personal property” and does not refer to services that are part of the sale of tangible personal property. It is unclear whether the word “item” as referenced in the working unit exception can be interpreted to include items that are not tangible personal property but are instead services. The working unit exception examples that appear later in the same rule do not include any situation in which services are a part of the sale of the tangible personal property.

Vendor cites the following from Rule 12A-15.004, F.A.C.:

(2)(a) The surtax does not apply to the sales amount above \$5,000 on any item of tangible personal property. However, the surtax does apply to the first \$5,000 of the sales amount on the sale, use, lease, rental, or license to use any item of tangible personal property, including electric power or energy. The surtax applies, without limitation, to sales of admissions; sales and use of services; sales of service warranties; charges for prepaid calling arrangements; leases, rentals, and licenses to use real property or transient accommodations; leases or rentals of parking or storage space for motor vehicles in parking lots or garages, docking or storage space in boat docks and marinas, and tie-down or storage space for aircraft; and all other transactions subject to the discretionary sales surtax.

(b) ITEMS NORMALLY SOLD IN BULK OR ITEMS THAT COMPRISE A WORKING UNIT. A single sale must be a sale of items of tangible personal property that meets at least one of the following conditions:

1. The items are multiple quantities of a single item that the dealer normally sells in multiple quantities in the normal course of the dealer's business or that the purchaser normally buys in multiple quantities in the normal course of the purchaser's business;
2. The items are normally sold as a set or a unit and the utility of each for its intended purposes is dependent on the set being complete;
3. The items are normally sold in single sale by the seller to the purchaser for use in the normal business practice of the purchaser as an integrated unit; or
4. The items are component parts that have no utility unless assembled with each other to form a working unit or part of a working unit  
(Emphasis added in petition)

#### **ADVISEMENT REQUESTED**

What is the proper application of the State sales tax, and the local option discretionary sales surtax?

#### **LAW AND DISCUSSION**

Section 212.05(1)(a)1.a., F.S., provides, in part, the following:

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 [...]

(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:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale

for the purpose of remitting the amount of tax due the state, and including each and every retail sale.[...]  
(Emphasis added)

As provided by section 212.05(1)(a)1.a., F.S., sales tax is imposed on dealers who sell tangible personal property. The sales tax is computed on the “sales price” on each item or article of tangible personal property. “Sales price” is defined by s. 212.02(16), F.S. It provides in part, the following:

(16) “Sales price” means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, [...] labor or service cost, [...] or any other expense whatsoever. “Sales price” also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property. [...]  
(Emphasis added)

As provided by s. 212.02(16), F.S., “sales price” includes **services that are part of the sale of an item(s) or article(s) of tangible personal property**. This includes engineering, design, and installation services and labor charges sold in connection with the projection equipment. As to installation charges, Rule 12A-1.016(3), F.A.C., provides, in part, the following:

(3)(a) The total consideration received for labor or services used in installing tangible personal property which is sold and does not become a part of realty, is taxable even though such charge may be separately stated.  
(Emphasis added)

Also, in AT&T v. Department of Revenue, 764 So.2d 665 (Fla. 1<sup>st</sup> DCA 2000) the court ruled that service charges for engineering and installing telecommunications equipment were subject to sales tax because the charges were part of the “sales price” for the sale of the telecommunications equipment. Similarly, the charges for the projection equipment, the professional fee integration, and the administrative fee are part of the “sales price” of the tangible personal property (the projection equipment) sold. As provided by s. 212.05(1)(a)1.a., the charges are part of the “sales price” for an item of tangible personal property (the equipment).

The charge for maintenance support is not part of the “sales price” related to the equipment because the charges are for a “service warranty.” Section 212.0506, F.S., provides, in part, the following:

- (1) It is the intent of the Legislature that every person is exercising a taxable privilege who engages in this state in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty.
- (2) For exercising such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable at the rate of 6 percent on the total consideration received or to be received by any person for issuing and delivering any service warranty.
- (3) For purposes of this section, “service warranty” means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property. [...] (Emphasis added)

Section 212.055, F.S., authorizes a County to require the imposition of local option discretionary sales surtax. Section 212.054, F.S., addresses the administration of the local option discretionary sales surtax. Section 212.054(4)(a), F.S., provides, in part, the following, “The department shall administer, collect, and enforce the tax authorized under s. 212.055 pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under the provisions of this chapter, except as provided in this section.”

Also, s. 212.054(2), F.S., provides, in part, the following:

(2)(a) The tax imposed by the governing body of any county authorized to so levy pursuant to s. 212.055 shall be a discretionary surtax on all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by this chapter and communications services as defined for purposes of chapter 202. The surtax, if levied, shall be computed as the applicable rate or rates authorized pursuant to s. 212.055 times the amount of taxable sales and taxable purchases representing such transactions. [...]

(b) However:

1. The sales amount above \$5,000 on any item of tangible personal property shall not be subject to the surtax. However, charges for prepaid calling arrangements, as defined in s. 212.05(1)(e)1.a., shall be subject to the surtax. For purposes of administering the \$5,000 limitation on an item of tangible personal property, if two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items that, when assembled, comprise a working unit or part of a working unit, such items must be considered a single item for purposes of the \$5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental.[...]

(Emphasis added)

As required by s. 212.054(2)(a), F.S., the discretionary sales surtax is required to be computed on the amount of taxable sales. As to transactions involving the sale of tangible personal

property, the taxable sales amount is computed using the sales price of tangible personal property. See s. 212.05, F.S.

The \$5,000 discretionary sales surtax limitation on the sale of an item of tangible personal property is further addressed by Rule 12A-15.004, F.A.C. It provides, in part, the following:

(1) SCOPE. This rule is intended to provide guidelines regarding the limitation for the sales amount above \$5,000 provided for any item of tangible personal property subject to the discretionary sales surtax imposed under sections 212.054 and 212.055, F.S. For the application of the limitation to the fabrication of items used in the performance of a real property contract, see rule 12A-15.008, F.A.C.

(2)(a) The surtax does not apply to the sales amount above \$5,000 on any item of tangible personal property. However, the surtax does apply to the first \$5,000 of the sales amount on the sale, use, lease, rental, or license to use any item of tangible personal property, including electric power or energy. The surtax applies, without limitation, to sales of admissions; sales and uses of services; sales of service warranties; [...]

(Emphasis added)

As provided by Rule 12A-15.004(2)(a), F.A.C., the limitation does not apply to service warranty charges. Therefore, the discretionary sales surtax calculation for maintenance support charges is computed on the total charge for the maintenance support.

Vendor believes that the charges for the administrative fee and the professional integration fee are separate items of tangible personal property. For the reasons already provided herein, these charges are part of the “sales price” for one item of tangible personal property, the projection equipment. In addition, Rule 12A-15.003(4)(a), F.A.C., provides for examples as to the collection of the discretionary sales surtax on sales of tangible personal property. Examples 1, 2, and 3 provide that the discretionary sales surtax is computed on the “sales price.” This is consistent with the requirement provided for by s. 212.054(2)(a), F.S., that the discretionary sales surtax must be computed on the taxable sales amount, which is the sales price amount which includes services that are part of the sale of tangible personal property. See s. 212.02(16), and 212.05, F.S.

Both sections 212.05(1), F.S., and 212.054(2)(a), F.S., indicate that a taxable sale involves the sale of an “item . . . of tangible personal property.” “Tangible personal property” is defined by s. 212.02(19), F.S., in part, to mean and include, “personal property which may be seen, weighed, touched or is in any manner perceptible to the senses....” The administrative fee and professional service integration charge are not items that are perceptible to the senses, and therefore are not separate items of tangible personal property. Therefore, for the reasons provided herein, the discretionary sales surtax \$5,000 limitation is calculated on the total of the charges for

equipment, the administrative fee, and the charge for professional service integration – as the sale of an item of tangible personal property including those services that are part of the sale. See section 212.02(16), F.S.

As a result of this determination, there is no need to address the Taxpayer’s alternative argument that the charges for the projection equipment, administration fee, and the professional service integration are for a “working unit” pursuant to Rule 12A-15.004(3)(b), F.A.C.

### **RESPONSE**

The charges for the equipment, administrative fee, and the professional service integration are combined when making the calculation of the \$5,000 limitation on the discretionary sales surtax. The discretionary sales surtax is calculated separately with no limitation on the maintenance support charge.

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 documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure.

In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

*Chuck Wallace*

Chuck Wallace  
Conferee  
Technical Assistance and Dispute Resolution

Record ID: 7000365588