

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASSOCIATED MARINE INSTITUTES,)
INC.,)
)
Petitioner,)
)
vs.) Case No. 99-1679RX
)
DEPARTMENT OF REVENUE,)
)
Respondent.)
_____)

SUMMARY FINAL ORDER

After waiving the requirement to hold the hearing within 30 days after the assignment of the case, the parties, on September 8, 1999, presented this case for disposition by Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, based upon opposing motions for a summary final order. By Joint Motion to Abate Final Hearing Pending Entry of Order on Motions for Final Summary Order filed September 8, 1999, the parties agreed that there were no factual issues.

APPEARANCES

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For Respondent: Kevin J. ODonnell
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STATEMENT OF THE ISSUE

The issue is whether portions of Rules 12A-1.001(3)(b) and 12A-1.001(3)(q), Florida Administrative Code, are invalid exercises of delegated legislative authority.

PRELIMINARY STATEMENT

By Petition for Administrative Determination of Invalidity of Rule filed April 8, 1999, Petitioner alleged that portions of Rules 12A-1.001(3)(b) and 12A-1.001(3)(q), Florida Administrative Code, are invalid exercises of delegated legislative authority.

The petition alleges that Section 212.08(7)(n), Florida Statutes, exempts from the Florida sales and use tax certain organizations that provide certain benefits to minors. The petition alleges that Rule 12A-1.001(3)(a), Florida Administrative Code, exempts the purchases of these organizations, but Rule 12A-1.001(3)(b) taxes the sales by such organizations.

The petition alleges that Rule 12A-1.001(3)(q), Florida Administrative Code, conditions the exemption extended to organizations providing benefits to minors upon the receipt by such organizations of a consumer certificate of exemption. The petition alleges that this is an additional example of Respondent's improper limitation of the exemption to the purchases, rather than purchases and sales, of organizations providing benefits to minors.

Each of the parties has filed a motion for summary final order. As the parties concede, there are no factual issues, so a summary final order is appropriate. The parties have offered oral argument on their motions, but the Administrative Law Judge has determined that oral argument is unnecessary.

On August 12, 1999, Petitioner filed a Motion to Strike Documents Filed for Judicial Notice. The Administrative Law Judge denies this motion.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the subject matter. Sections 120.56 and 120.57(1), Florida Statutes. (All references to Sections and Chapters are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

2. Section 120.56(1)(a) authorizes the invalidation of a rule on the ground that it is an invalid exercise of delegated legislative authority. Section 120.52(8) defines an "invalid exercise of delegated legislative authority" to include a rule that "enlarges, modifies, or contravenes the specific provisions of law implemented."

3. Section 212.08(7)(n) provides that "[t]here shall be exempt from the tax imposed by this chapter" certain organizations providing certain services to minors (Organizations). This case does not raise an issue concerning the type of qualifying organizations or services; this case

raises only the issue of whether the exemption attaches to sales by Organizations. The parties agree that the exemption attaches to purchases by Organizations.

4. Pursuant to Section 212.08(7)(n), Respondent promulgated two subsections of Rule 12A-1.001(3)(b) and (q):

(b) Sales or rentals of tangible personal property, rentals or leases of transient rental accommodations, rentals or leases of real property, rentals or leases of parking, docking, or tie down spaces, admissions, or other transactions subject to the tax imposed by Chapter 212, F.S., made by exempt entities, with the exception of sales or leases of tangible personal property by churches, are taxable. Such entities are required to register in the same manner as other dealers and collect and remit tax on transactions which are subject to the tax imposed by Chapter 212, F.S. For admission charges imposed by not-for-profit sponsoring organizations qualifying under the provisions of s. 501(c)(3) of the U.S. Internal Revenue Code, see Rule 12A-1.005(3)(g), F.A.C.

(q) Nonprofit organizations providing special educational, cultural, recreational, and social benefits to minors which are incorporated pursuant to Chapter 617, F.S., or which hold a current exemption from federal corporate income tax pursuant to s. 501(c)(3) of the United States Internal Revenue Code whose primary purpose is providing activities which contribute to the development of good character, good sportsmanship, or to the educational or cultural development of minors are exempt from the tax imposed by Chapter 212, F.S., providing such organizations hold a consumer's certificate of exemption. (See Rules 12A-1.038 and 12A-1.039, F.A.C.) This exemption is extended only to that level of the organization that has a salaried executive officer or an elected non-salaried executive officer.

5. Rule 12A-1.001(3)(a) exempts Organizations from the tax imposed by Chapter 212, but Respondent obviously interprets this rule to be limited to purchases by Organizations.

6. Chapter 212 is the Florida Revenue Act of 1949. Section 212.01. In general, the Florida Revenue Act of 1949 imposes a sale or use tax on taxable transactions involving the sale of taxable property when the sale is in Florida (sales tax) or, in the case of an out-of-state sale into Florida, the use or consumption is in Florida (use tax). Section 212.05.

7. Section 212.06(1)(a) imposes upon the dealer the responsibility of collecting the sales or use tax. Section 212.07(1)(a) states that the dealer is to collect the sales or use tax from the purchaser or consumer. However, Section 212.07(3) imposes upon the noncollecting dealer the responsibility of paying a penalty equal to the uncollected sales or use tax. And Section 212.07(8) imposes upon the purchaser or consumer direct liability for uncollected sales or use tax, if the purchaser or consumer cannot prove that the purchaser or consumer paid the tax to the vendor.

8. The structure of Section 212.08 assists in the interpretation of Section 212.08(7)(n). The first five subsections create exemptions of certain items (Item Exemptions) from the sales and use tax. The sixth subsection creates an exemption for certain entities (Entity Exemptions) from the sale and use tax.

9. Section 212.08(7) is well named, "Miscellaneous Exemptions." These exemptions are a mixture of Item Exemptions, Entity Exemptions, and three other types of exemptions. The first two additional types of exemption are exemptions extended to certain purchases, which are typically distinguished by some attribute of the purchaser (Purchase Exemptions), and exemptions extended to certain sales, which are typically distinguished by some attribute of the seller (Sale Exemptions). The third type of exemption is an Entity Exemption that extends to all transactions in which the entity is either a seller or a purchaser (Blanket Entity Exemption).

10. For example, Section 212.08(7)(a) exempts from the sales and use tax sales of artificial commemorative flowers by bona fide nationally chartered veterans' organizations. This is a Sale Exemption because the exemption is driven by the identity of the seller and does not extend to any purchases by such organizations. It is also an Item Exemption and Entity Exemption because the exemption extends to only certain items--i.e., artificial commemorative flowers--in which only certain entities--i.e., bona fide nationally chartered veterans' organizations--participate in the transaction.

11. Among Section 212.08(7) exemptions, Section 212.08(7)(a) is unusual in one respect: it is a Sale Exemption. Most of the exemptions in Section 212.08(7) are Purchase Exemptions. For instance, Section 212.08(7)(c) exempts the

purchase of certain bait by commercial fishers intending to trap certain crustaceans; Section 212.08(7)(g) exempts the purchase of office supplies, equipment, and publications by the Florida Retired Educators Association; and Section 212.08(7)(l) exempts purchases by certain military museums.

12. However, there are numerous other Sale Exemptions. Section 212.08(7)(i) exempts the sales of residents' meals by facilities caring for the ill, aged, or disabled; Section 212.08(7)(o)1.b exempts sales by churches; Section 212.08(7)(ll) exempts admission sales by the Florida Folk Festival; Section 212.08(7)(pp) exempts sales by nonprofit corporations conducting correctional work programs; and Section 212.08(7)(vv) exempts sales by owner-breeders of racing dogs.

13. Section 212.08(7) also contains a Sale/Purchase Exemption, in which certain attributes of both the seller and buyer must exist for the exemption to attach. Section 212.08(7)(j) exempts the sales of utilities to residents by companies paying the gross receipts tax.

14. Another form of Sales/Purchase Exemption, which, but for the statutory language, more closely resembles the Blanket Entity Exemption discussed below, is found at Section 212.08(7)(jj), which exempts the sales to or by a fair association. Instead of focusing on the attributes of the purchasers, this exemption focuses solely on the identity of the selling or purchasing entity--i.e., a fair association--and then

extends a blanket exemption to all purchases and sales by such an organization.

15. Blanket Entity Exemptions occur at Section 212.08(7)(m) (nursing homes), Section 212.08(7)(n) (Organizations), Section 212.08(7)(r) (State Theater organizations), Section 212.08(7)(cc) (Coast Guard auxiliaries), Section 212.08(7)(kk) (citizen support organizations), and Section 212.08(7)(mm) (nonprofit cooperative hospital laundries). In contrast to all of the previously described exemptions, these seven exemptions, using identical, comprehensive statutory language, provide the identified entity with an exemption from the tax imposed by Chapter 212. Blanket Entity Exemptions are thus unlike Entity Exemptions because Blanket Entity Exemptions do not contain limiting language in terms of purchases, sales, or items.

16. As already noted, Chapter 212 requires the purchaser or consumer to pay the sales or use tax to the dealer or vendor, who then remits the tax to Respondent. If the dealer or vendor fails to collect the tax, though, Chapter 212 requires the dealer or vendor to pay the tax (by requiring the dealer or vendor to pay a penalty equal to the uncollected tax). Thus, neither nonexempted party to a sale is relieved from the economic burden of the sales and use tax. Given this dual exposure, an effective Blanket Entity Exemption must necessarily cover purchases and sales by the exempted entity.

17. Respondent contends that Section 212.08(7)(n) is ambiguous and requires careful construction. To the contrary, the statute's meaning is plain. On its face, Section 212.08(7)(n) exempts Organizations from the sales and use tax. There is no reason not to extend the more broadly phrased Blanket Entity Exemption to sales, as well as purchases, by a covered entity. Section 212.08(7) contains numerous Sale Exemptions. Also, Respondent has already interpreted, in Rule 12A-1.001(3)(i), the identical statutory exemption language that applies to Organizations as extending an exemption to nursing homes for their sales, as well as purchases.

18. Rule 12A-1.001(3)(b) is thus invalid because it modifies or contravenes the legislative direction, contained in Section 212.08(7)(n), to provide Organizations a Blanket Entity Exemption from the sales and use tax for its purchases and sales.

19. Rule 12A-1.001(3)(q) is partly invalid because of the language requiring that Organizations seeking the benefit of their statutory Blanket Entity Exemption obtain a consumer's certificate of exemption. Associated with an exemption for purchases, this certificate is irrelevant to the exemption legislatively extended Organizations for their sales.

ORDER

It is

ORDERED that:

1. Rule 12A-1.001(3)(b) is invalid in its entirety.

2. Rule 12A-1.001(3)(q) is invalid to the extent that it requires that Organizations hold consumer's certificates of exemption for sales by Organizations.

3. The Administrative Law Judge reserves jurisdiction regarding Petitioner's request for attorneys' fees and costs. Petitioner shall have 20 days from the date of this order to file a motion with supporting documents, or else it shall be deemed to have waived its request.

DONE AND ORDERED this 13th day of September, 1999, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
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this 13th day of September, 1999.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.