

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INTERNATIONAL ACADEMY OF DESIGN,
INC.,

Petitioner,

vs.

Case No. 17-1562

DEPARTMENT OF REVENUE,

Respondent.

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INTERNATIONAL ACADEMY OF
MERCHANDISING AND DESIGN, INC.,

Petitioner,

vs.

Case No. 17-1563

DEPARTMENT OF REVENUE,

Respondent.

_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569, 120.57(1), and 120.80(14)(b), Florida Statutes (2016), on June 27, 2017, by video teleconference with sites in Tallahassee and Tampa, Florida.

APPEARANCES

For Petitioner: Joseph C. Moffa, Esquire
James H. Sutton, Esquire
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Jonathan W. Taylor, Esquire
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For Respondent: Ginette Alexandria Harrell, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioners qualify for an exemption from paying sales tax on the lease of real property under sections 212.0602 and 212.08(7), Florida Statutes (2013),^{1/} from July 1, 2010, through April 30, 2013.

PRELIMINARY STATEMENT

Petitioners International Academy of Design, Inc., and International Academy of Merchandising and Design, Inc. (collectively referred to as "Petitioners"),^{2/} contest a Notice of Decision of Refund Denial issued by the Department of Revenue (the "Department") on February 3, 2017.^{3/} Petitioners specifically challenge the Department's decision to deny refunds for sales tax Petitioners paid on the lease of real property for the period of July 1, 2010, through April 30, 2013.

Petitioners assert that they are entitled to refunds because they qualified for the tax exemptions established in sections 212.0602 and 212.08(7)(o).

On March 3, 2017, Petitioners timely requested a chapter 120 hearing. On March 15, 2017, the Department forwarded the matters to the Division of Administrative Hearings ("DOAH") for assignment of an Administrative Law Judge.

The final hearing was originally set on May 19, 2017. At Petitioners' (unopposed) request, the final hearing was rescheduled for June 27, 2017, and held on that date.

At the final hearing, Petitioners presented the testimony of Bob Swain (President of Petitioner International Academy of Merchandising and Design), Kenneth Zilch (Petitioners' Vice President of Tax), and James Kane. Petitioners' Exhibits 1 through 11 were admitted into evidence. The Department presented the testimony of Heather Miller (a Revenue Program Administrator) and Chris Whittier (a Tax Conferee). The Department's Exhibits 1 through 3 were admitted into evidence.

A one-volume Transcript of the final hearing was filed on July 10, 2017. At the close of the hearing, the parties were advised of a ten-day timeframe after receipt of the hearing transcript at DOAH to file post-hearing submittals. Following the unopposed request from Petitioners, the deadline for filing post-hearing submissions was extended beyond, which waived the 30-day time period for filing the Recommended Order.^{4/} Both parties timely filed Proposed Recommended Orders which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Department is the Florida agency charged with administering the state's tax laws under chapter 212, Florida Statutes. See § 212.18(2), Fla. Stat. The Department's responsibilities specifically include the imposition and collection of Florida's sales tax pursuant to chapter 212.

2. Petitioners are private colleges that provide post-secondary education in design and technology. From July 2010 through April 2013, Petitioners specialized in courses and degrees in areas including audio and video production and recording, digital media production, fashion design, film, graphic design, and photography. Petitioners offered both Bachelor's and Associate's degrees. Petitioners were accredited by the Accrediting Council for Independent Colleges and Schools.

3. Between July 2010 and April 2013, Petitioners enrolled over 500 students a year at each campus. Petitioners were licensed by the Florida Department of Education as educational entities under chapter 1005, Florida Statutes.^{5/}

4. Petitioner International Academy of Design was located in Orlando, Florida. Petitioner International Academy of Merchandising and Design was located in Tampa, Florida. Petitioners leased their campus properties in both Orlando and Tampa. The lease payments Petitioners paid to their respective landlords included sales tax.

5. Through this administrative action, Petitioners seek a refund from the Department of the sales tax they paid between July 1, 2010, and April 30, 2013, on the property they leased. Petitioners assert that they qualified for a tax exemption. Petitioners contend that section 212.0602 entitled them to an exemption because they were primarily engaged in teaching activities or services described in section 212.031(1)(a)9., i.e., "qualified production services." In addition, Petitioners claim they were exempt under section 212.08(7)(o) because they were "state tax-supported schools."

6. Petitioners each submitted an "Application for Refund - Sales and Use Tax" to the Department on or around July 25, 2013. Petitioners sought a combined tax refund in the amount of \$914,097.13. Of this amount, Petitioner International School of Design applied for a refund of \$159,785.20. Petitioner International School of Merchandising and Design applied for a refund of \$754,311.93.^{6/}

7. On May 13, 2016, the Department issued an Internal Technical Advisement ("ITA") stating that Petitioners were not qualified for the exemptions provided in either section 212.0602 or section 212.08(7)(o). As articulated in the ITA, the Department agreed that Petitioners conducted classes at fixed locations in Florida, were licensed under chapter 1005, and enrolled at least 500 students at each institution. However, the

Department determined that Petitioners had not demonstrated that they were "primarily engaged" in teaching students to perform the activities or services described in section 212.031(1)(a)9. As such, the Department deemed Petitioners not eligible for a refund of sales tax.

8. On May 31, 2016, the Department issued a Notice of Intent to Make Refund Claim Changes notifying Petitioners that the Department intended to deny Petitioners' refund requests. Thereafter, on July 1, 2016, the Department issued each Petitioner a Notice of Proposed Refund Denial for the Refund Claim.

9. On August 29, 2016, Petitioners filed an informal protest with the Department challenging the proposed refund denials.

10. On February 3, 2017, the Department issued a Notice of Decision of Refund Denial officially denying both Petitioners' requests for refunds of sales tax. The Department concluded that Petitioners do not qualify for a sales tax exemption under either section 212.0602 or section 212.08(7)(o).

11. Bob Swain is the current President of Petitioner International Academy of Merchandising and Design (Tampa).^{7/} He has served in this capacity since January 2014.

12. At the final hearing, Mr. Swain described Petitioners' student body as "creative students." Mr. Swain testified that the

academic programs Petitioners taught between 2010 and 2013 were fashioned to provide students with hands-on development and training necessary for work in creative services and vocations. Petitioners presented students a traditional educational roadmap to help develop their individual artistic talents.

13. Mr. Swain explained that the courses and degrees his school offered were not focused on a particular industry (such as film production). Instead, his school endeavored to foster creativity and teach to the "craft." With this objective, Petitioners equipped students with skill sets they might use should they choose to pursue a career in motion picture production or a similar entertainment medium. Mr. Swain explained that the courses Petitioners taught, including subjects such as animation, audio and video production, photography, film, and graphic design, could all be performed in connection with motion picture production services. Mr. Swain expressed that approximately two-thirds of Petitioners' students received training in film-related skills.

14. Mr. Swain relayed that Petitioners' campuses included lecture rooms, design studios, drafting labs, film production studios, a green room for animation, photography studios, recording studies, sewing and pattern drafting labs, and computer labs. Petitioners use these facilities to instruct students on

design, programming, sound and video editing, word processing, and database management.

Course Descriptions:

15. From July 2010 through April 2013, Petitioner International Academy of Design (Orlando) offered degree programs in: Advertising Design (marketing), Digital Media Production (also referred to as Interactive Media), Fashion Design and Merchandising, Graphic Design, Game Design and Production, Information Technology, Interior Design, Internet Marketing, Retail Merchandise Management, and Web Design and Development. Over that same period of time, Petitioner International Academy of Merchandising and Design (Tampa) offered degrees in: Advertising Design (marketing), Animation, Audio Production, Building Information Modeling, Digital Media Production, Digital Photography, Fashion Design, Fashion Merchandising, Game Design and Production, Graphic Design (Visual Communication), Interior Design, Photography, and Post Production.

16. The coursework required to earn those degrees was described as follows:

a. Advertising Design (Marketing): Petitioners' Advertising Design degrees and curricula provided students with training to design, create and implement graphic, typographic, photographic, and audio/video elements in the concepts of marketing, business, and advertising. The primary coursework

included Advertising Concepts, Elements of Visual Advertising, Principles of Marketing, Photography for Advertising, Audio/Video for Advertising, Art Direction Project, Advertising Design Capstone, Design Fundamentals, Introduction to Drawing, Digital Illustration, Typography, Digital Imaging, Storyboarding, Creativity in Design, Graphic Design, Advertising Design Internship or Capstone, and Advertising Design Portfolio.

b. Animation: The Animation degree curriculum offered students training necessary to create 2D animation, 3D animation, character development, game art, and special effects animation to enter the field of computer animation. The primary coursework included: Animation Fundamentals, 2D Animation, 3D Animation, Animation Physics, Studio Techniques, Advanced Modeling, Production Studio, Animation Capstone, Digital Imaging, Drawing Techniques, Texture and Lighting, Animation Internship or Capstone, and Animation Portfolio.

c. Audio Production: The Audio Production degree offered students training in recording and mixing and mastering for audio, film, and video productions. The primary coursework included: Digital Audio Specifications, Digital Audio Workstations, Introduction to Audio Production, Audio Recording Techniques, Studio Design and Maintenance, Music Design and Synthesis, Recording on Location, Mixing and Mastering, Surround Sound Techniques, Studio Concentration, Music Composition and

Songwriting, Digital Composition, Foley for Film and Television, Session Recording and Mastering, and Audio Production Internship or Capstone.

d. Digital Media Production: The Digital Media Production degree offered students training in the production of multimedia presentations through web design, print media, 3D modeling animation, digital audio, and video production. The primary required coursework included: Design Fundamentals, Web Design, Drawing, Digital Illustration, Typography, Digital Imaging, Visual Composition, Interactive Media, Audio Production, Screenwriting, Video Production, Digital Imaging, Interactive Design, Video Editing, Motion Graphics, Media Production, Media Distribution, Internship or Capstone, and Digital Media Production Portfolio.

e. Digital Photography: The Digital Photography degree offered students training in photographic skills and production of photographs for use in digital format. The primary required coursework included: Photography Foundation, Lighting Basics, Photoshop, Photojournalism, Portrait Photography, Digital Pre-Press for Photographers, Still Life and Product Photography, Digital Presentation Techniques, and Photography Portfolio Presentation.

f. Fashion Design and Fashion Merchandising: The Fashion Design and the Fashion Merchandising degrees provided students

with training to design, prepare, and manage original materials and wardrobe, as well as the ability to market and promote their products. The primary coursework included: Visual Merchandising, Electronic Marketing, Introduction to Fashion, Fashion Sketching, Clothing Construction, Computer Graphics for Fashion Design, Pattern Drafting, Draping, Fashion Design, Apparel Production, Pattern Techniques, Textile Design, and Fashion Internship or Capstone.

g. Game Design and Production: The Game Production degree provided students with training in the creation, development, and production of interactive 2D and 3D computer games. The primary coursework included: Digital Imaging, Drawing Techniques, Principles of Design, Modeling, Game Play Scripting, Texture and Lighting, Storyboard and Storytelling, Web Game Development, Sound Design, Level Design, Game Production, Internship or Capstone, and Game Portfolio.

h. Graphic Design (Visual Communication): The Graphic Design degree provided students with training to create and produce editorial, digital, and web designs. The primary coursework included: Design Fundamentals, Web Design, Introduction to Drawing, Digital Illustration, Typography, Digital Imaging, Visual Composition, Interactive Media, Design Process, Graphic Design, Advertising Design, Print Production Internship or Capstone, and Graphic Design Portfolio.

i. Interior Design: The Interior Design degree offered training in enhancing the function, quality, and safety of interior spaces. The primary required coursework included: Drafting, Sketching and Rendering, Textiles, Interior Design Issues and Programming, Resources and Materials, Digital Media for Interior Design, Computer Aided Design, Spatial Environments, Interior Design, Lighting Design for Interiors, Interior Design Project, and Interior Design Portfolio.

j. Professional Photography: The Professional Photography degree offered students training in photographic skills through technical competency in lighting, image capture and manipulation, and media production. The primary required coursework included: Design Fundamentals, Image Software, Foundations of Photography, Integrated Media, Color Management, Environmental Lighting, Portraiture, Location Lighting, People Photography, Studio Lighting, Video, Commercial Photography, Visual Journalism, Web Design for Photographers, and Professional Photography Portfolio.

k. Web Design and Development: The Web Design and Development degree offered students training in the development and programming of graphics, interactivity, and text for use on the web. The primary required coursework included: Media Design Concepts, Web Design Fundamentals, Programming for the Internet, Usability and Interface Design, Multimedia Design, Advanced Scripting Techniques, Content Management Systems, Website

Advertising and Design, Interactive Mobile Application, Project Management, Designing for Server-Side Technology, Advanced Server-Side Technology, Database, Programming, Web Commercialization, Web Administration, Internship or Capstone, and Web Design Project.

17. As the last course for their degrees, as well as a graduation requirement, students were required to develop and complete a "Portfolio." For their Portfolio, students produced and created a collection of work applying the skills taught in their degree programs. For example, Mr. Swain explained that the Animation degree required students to develop an animation program. Similarly, the Game Production degree required students to create a computer game or software design. At the end of their final semester, students presented their Portfolios to Petitioners' faculty and staff, as well as potential employers to demonstrate their capabilities.

Petitioners' Enrollment Statistics

18. International Academy of Design (Orlando): From July 2010 through April 2013, approximately 95 percent of the students enrolled at the International Academy of Design studied degrees in: Advertising Design (marketing), Digital Media Production, Fashion Design, Game Design and Production, Graphic Design, Interior Design, and Web Design and Development, specifically:

a. 2010 School Year: Total enrollment of 1,710 students. Of these students, 634 were enrolled in Fashion Design and Merchandising; 304 in Game Design; 225 in Digital Media Production; 262 in Interior Design; 99 in Advertising Design (marketing); and 185 in Graphic Design (Visual Communication).

b. 2011 School Year: Total enrollment of 1,328 students. Of these students, 522 were enrolled in Fashion Design and Merchandising; 226 in Game Design; 169 in Digital Media Production; 170 in Interior Design; 62 in Advertising Design (marketing); and 179 in Graphic Design (Visual Communication).

c. 2012 School Year: Total enrollment of 980 students. Of these students, 365 were enrolled in Fashion Design and Merchandising; 139 in Game Design; 94 in Digital Media Production; 75 in Interior Design; 25 in Advertising Design (marketing); 203 in Graphic Design (Visual Communication); and nine in Web Design and Development.

d. 2013 School Year: Total enrollment of 626 students. Of these students, nine were enrolled in Animation; 239 in Fashion Design and Merchandising; 79 in Game Design; 64 in Digital Media Production; 20 in Interior Design; ten in Advertising Design (marketing); 129 in Graphic Design (Visual Communication); and seven in Web Design and Development.

19. International Academy of Merchandising and Design (Tampa): From July 2010 through April 2013, approximately

90 percent of the students enrolled at Petitioner International Academy of Merchandising and Design studied degrees in: Advertising Design (marketing), Animation, Audio Production, Building Information Modeling, Digital Media Production, Digital Photography, Fashion Design, Fashion Merchandising, Game Design and Production, Graphic Design (Visual Communication), Interior Design, Photography, and Post Production, specifically:

a. 2010 School Year: Total enrollment of 2,565 students. Of these students, 35 were enrolled in Advertising Design; 216 in Animation; 597 in Audio Production; 25 in Digital Media Production; 535 in Fashion Design; 52 in Game Design; 302 in Interior Design; 313 in Photography; and 250 in Graphic Design (Visual Communication).

b. 2011 School Year: Total enrollment of 1,742 students. Of these students, 26 were enrolled in Advertising Design; 112 in Animation; 472 in Audio Production; 11 in Digital Media Production; 287 in Fashion Design; 52 in Game Design; 180 in Interior Design; 196 in Photography; 60 in Video Production, and 200 in Graphic Design (Visual Communication).

c. 2012 School Year: Total enrollment of 1,265 students. Of these students, 15 were enrolled in Advertising Design; 54 in Animation; 329 in Audio Production; five in Digital Media Production; 209 in Fashion Design; 34 in Game Design; 136 in

Interior Design; 181 in Photography; 26 in Video Production, and 184 in Graphic Design (Visual Communication).

d. 2013 School Year: Total enrollment of 819 students. Of these students, four were enrolled in Advertising Design; 30 in Animation; 244 in Audio Production; two in Digital Media Production; 139 in Fashion Design; 21 in Game Design; 103 in Interior Design; 86 in Photography; nine in Video Production, and 124 in Graphic Design (Visual Communication).

20. Petitioners also applied to the Department for a refund of sales tax under section 212.08(7)(o). Section 212.08(7)(o), directs that "leases to state tax-supported schools, colleges, or universities" are specifically exempt from the tax imposed under chapter 212. Petitioners assert that between July 1, 2010, and April 30, 2013, they participated in several financial aid programs which they administered for the benefit of their students. Two of these programs included the Florida Bright Futures Program ("Bright Futures") and the federal Workforce Investment Act.

21. Bright Futures is a financial aid program awarded to students who meet specific academic requirements upon high school graduation and continue to maintain specific grades and earned hours while in college. Mr. Swain testified that Bright Futures paid tuition directly to Petitioners on behalf of the qualifying students.

22. The Workforce Investment Act was a federal program administered by the Florida Department of Economic Opportunity and managed by local workforce investment boards. (See Workforce Investment Act of 1998, P.L. 105-220, 20 U.S.C. § 9201, which was repealed in 2014.)

23. Because they received scholarship money from these financial aid programs, Petitioners claim that they were "state tax-supported schools." Between July 1, 2010, and April 30, 2013, Petitioner International Academy of Design (Orlando) received approximately \$95,000 in scholarship funds from Bright Futures. Petitioner International Academy of Merchandising and Design (Tampa) received approximately \$177,000 over the same period. Petitioners did not present evidence of any funds they received from the Workforce Investment Act between July 2010 and April 2013.

24. Chris Whittier, a Tax Specialist for the Department, was assigned to review Petitioners' refund applications. Mr. Whittier subsequently issued the Department's Notice of Decision of Refund Denial, dated February 3, 2017.

25. At the final hearing, Mr. Whittier explained that in considering Petitioners' refund requests, the Department reviewed Petitioners' respective course catalogues, curricula, and academic objectives.^{8/} Regarding Petitioners' request for a tax exemption under section 212.0602, Mr. Whittier conveyed that

Petitioners offered multiple degree programs in a broad range of industries. The Department acknowledged that these degrees could prove useful for students who desired careers in movie production. However, the Department ascertained that the job skills Petitioners taught could be applied to a number of activities or businesses, not just "qualified production services." Therefore, the Department determined that Petitioners were not "primarily engaged" in teaching students skills or trades "performed directly in connection with the production of a qualified motion picture" as delineated in section 212.031(1)(a)9.

26. Mr. Whittier further expressed that to qualify for an exemption under section 212.0602, Petitioners must show that the job training they provided was directly connected to the actual production of a "qualified motion picture." In other words, for Petitioners to establish that they taught the "activities or services described in s. 212.031(1)(a)9.," Petitioners' students must receive substantive instruction on a bonafide motion picture production.

27. Mr. Whittier remarked that Petitioners never submitted an example of any motion picture that either they or their students developed or produced. Further, Petitioners did not provide evidence that any of their former students have found employment in the motion picture industry. Consequently,

Petitioners did not establish that they qualified for the tax exemption authorized under section 212.0602, and are not entitled to a refund of the sales tax they paid on the property they leased.

28. Regarding Petitioners' request for a tax exemption under section 212.08(7)(o) as "state tax-supported schools," the Department argues that Petitioners did not meet the minimum requirements for the exemption. Initially, the Department asserts that simply receiving money through Bright Futures or the Workforce Investment Act is not enough to characterize a private college as a "state tax-supported school." Funds from these scholarship programs are awarded to students to assist with their college tuition. The Florida Legislature did not appropriate tax money to "support" Petitioners.

29. In addition, the funds from Bright Futures and the Workforce Investment Act are not "state tax" funds. Bright Futures is funded by proceeds from the Florida-run lottery program. The Workforce Investment Act is a federal program.

30. Further, by its terms, exemptions under section 212.08(7)(o) do not inure to any transaction that is otherwise taxable under chapter 212, unless the entity "has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department." Petitioners have never applied for, nor have they

been provided, a sales tax exemption certificate from the Department. Therefore, Petitioners are not eligible for the exemption in section 212.08(7)(o).

31. Based on the evidence and testimony presented during the final hearing, Petitioners proved, by a preponderance of the evidence, that they qualify for an exemption under section 212.0602. Accordingly, the Department should take the necessary steps to refund the amount of sales tax Petitioners paid on the lease of real property from July 1, 2010, through April 30, 2013.

CONCLUSIONS OF LAW

32. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. See §§ 72.011(1)(a), 120.569, 120.57(1), and 120.80(14)(b), Fla. Stat. (2016).

33. Petitioners contest the Department's denial of their requests for a refund of sales tax Petitioners paid on the lease of real property for the period of July 1, 2010, through April 30, 2013. Petitioners claim they are entitled to refunds by qualifying for the tax exemptions under: 1) section 212.0602 because they are primarily engaged in teaching "activities and services described in s. 212.031(1)(a)9.," and 2) section 212.08(7)(o) because they are "state tax-supported schools."

34. Exemptions to the tax statutes are special favors granted by the Legislature and are to be strictly construed

against the taxpayer. Dep't of Rev. v. Daystar Farms, Inc., 803 So. 2d 892, 895 (Fla. 2d DCA 2002); and State ex rel. Szabo Food Servs., Inc. v. Dickinson, 286 So. 2d 529, 530-531 (Fla. 1973).

35. In this proceeding, the Department bears the initial burden of showing 1) that an assessment has been made against the taxpayer, and 2) the factual and legal grounds upon which the assessment was made. See § 120.80(14)(b)2., Fla. Stat.; and IPC Sports, Inc. v. State, Dep't of Rev., 829 So. 2d 330, 332 (Fla. 3d DCA 2002).

36. Once the Department establishes the factual and legal grounds for the assessment, the burden shifts to Petitioners to demonstrate, by a preponderance of the evidence, that the assessment is incorrect. IPC, 829 So. 2d at 332; and § 120.57(1)(j), Fla. Stat. Accordingly, Petitioners carry the ultimate burden of proving that they are entitled to receive a tax refund.

37. The preponderance of the evidence standard is applicable to this case. See § 120.57(1)(j), Fla. Stat.; Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). Preponderance of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not" tends to prove a certain proposition. S. Fla. Water Mgmt. v. RLI Live Oak, LLC, 139 So. 3d 869, 872 (Fla. 2014).

38. The expressed purpose of section 212.0602 is to "facilitate investment in education and job training." Section 212.0602 further states, in pertinent part:

[T]here is also exempt from the taxes levied under this chapter, subject to the provisions of this section, the . . . lease of real property by any entity, institution, or organization that is primarily engaged in teaching students to perform any of the activities or services described in s. 212.031(1)(a)9., that conducts classes at a fixed location located in this state, that is licensed under chapter 1005, and that has at least 500 enrolled students. Any entity, institution, or organization meeting the requirements of this section shall be deemed to qualify for the exemptions in ss. 212.031(1)(a)9. and 212.08(5)(f) and (12) Nothing in this section shall preclude an entity described in this section from qualifying for any other exemption provided for in this chapter.

39. Accordingly, pursuant to section 212.0602, Petitioners were exempt from paying sales tax on their lease of real property from July 2010 to April 2013, if they:

- 1) were primarily engaged in teaching students to perform any of the activities or services described in s. 212.031(1)(a)9.;
- 2) operated at a fixed location in the state of Florida;
- 3) were licensed under chapter 1005; and
- 4) had at least 500 enrolled students.

40. The Department does not dispute that Petitioners established the last three prongs of the requirements in section 212.0602. Petitioners operated in a fixed location in

Florida. Petitioners were licensed by the state of Florida under chapter 1005. And, Petitioners enrolled at least 500 students from July 1, 2010, through April 30, 2013, at each Florida location. Therefore, the central dispute in this administrative proceeding is whether Petitioners were "primarily engaged in teaching students to perform any of the activities or services described in s. 212.031(1)(a)9."

41. Section 212.031(1)(a)9. states:

Property used as an integral part of the performance of qualified production services. As used in this subparagraph, the term "qualified production services" means any activity or service performed directly in connection with the production of a qualified motion picture, as defined in s. 212.06(1)(b),^[9/] and includes:

a. Photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, set and stage support (such as electricians, lighting designers and operators, greensmen, prop managers and assistants, and grips), wardrobe (design, preparation, and management), hair and makeup (design, production, and application), performing (such as acting, dancing, and playing), designing and executing stunts, coaching, consulting, writing, scoring, composing, choreographing, script supervising, directing, producing, transmitting dailies, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing, and distributing;

b. The design, planning, engineering, construction, alteration, repair, and maintenance of real or personal property including stages, sets, props, models, paintings, and facilities principally required for the performance of those services listed in sub-subparagraph a.; and

c. Property management services directly related to property used in connection with the services described in sub-subparagraphs a. and b.

42. Based on the competent substantial evidence in the record, Petitioners proved that, between July 2010 and April 2013, they were "primarily engaged" in teaching their students to perform "any of the activities or services described in section 212.031(1)(a)9." The resolution of this matter centers on statutory interpretation.

43. The interpretation of section 212.0602 begins with the question of whether the language is clear and unambiguous. "When construing a statute, the court must first look to the plain meaning of the words used by the Legislature." Brandy's Prods. v. Dep't of Bus. & Prof'l Reg., Div. of Alcoholic Beverages & Tobacco, 188 So. 3d 130 (Fla. 1st DCA 2016) (citing Verizon Bus. Purchasing, LLC v. Dep't of Rev., 164 So. 3d 806, 809 (Fla. 1st DCA 2015)). "When a statute is clear, a court may not look behind the statute's plain language or resort to rules of statutory construction to determine legislative intent." Dep't of High. Saf. & Motor Veh. v. Peacock, 185 So. 3d 632, 633 (Fla. 1st DCA 2016). See also Holly v. Auld, 450 So. 2d 217, 219 (Fla.

1984) (“[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.”). The undersigned concludes that the language in section 212.0602 is clear and unambiguous.

44. Section 212.0602 does not define the term “primarily engaged.” Where the Legislature has not specifically defined the words used in a statute, “the language should be given its plain and ordinary meaning.” Greenfield v. Daniels, 51 So. 3d 421, 426 (Fla. 2010) (citing Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Schs., Inc., 3 So. 3d 1220, 1233 (Fla. 2009) (quoting Fla. Birth-Related Neurological Injury Comp. Ass’n v. Fla. Div. of Admin. Hrgs., 686 So. 2d 1349, 1354 (Fla. 1997))).

45. The words “primarily” and “engaged” have plain and ordinary meanings. “Primarily” is defined as “for the most part.” “Engaged” is defined as “involved in activity.” Merriam-Webster Dictionary, at <http://www.merriam-webster.com>. See Seagrave v. State, 802 So. 2d 281, 286 (Fla. 2001) (“When necessary, the plain and ordinary meaning of words [in a statute] can be ascertained by reference to a dictionary.”); see also Raymond James Fin. Servs. v. Phillips, 110 So. 3d 908, 910 (Fla. 2d DCA 2011) (“It is appropriate to refer to dictionary definitions when construing statutes or rules.”). Therefore,

using the plain and ordinary meaning of the term "primarily engaged," to qualify for the tax exemption under section 212.0602, Petitioners, "for the most part," must be "involved in" teaching students to perform "any of the activities or services described in section 212.031(1)(a)9."

46. The undersigned finds that, based on the evidence in the record, Petitioners proved that they taught their students to perform "activities or services described in section 212.031(1)(a)9." The list of activities or services described in section 212.031(1)(a)9. includes: photography, sound and recording, (film) shooting, creation of special and optical effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, set and stage support, lighting designers and operators, wardrobe (design, preparation, and management), hair and makeup (design, production, and application), performing (acting, dancing, and playing), (film) consulting, writing, scoring, composing, script supervising, directing, producing, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing, and distributing, as well as the design, planning, engineering, construction, alteration, repair, and maintenance of real or personal property including stages, sets, props, models, paintings, and facilities principally required for the performance of those services.

47. The documentary evidence (primarily Petitioners' course catalogues), as well as witness testimony (principally Mr. Swain) establishes that, between July 1, 2010, and April 30, 2013, Petitioners offered the following academic instruction:

a. Petitioner International Academy of Design (Orlando):
Petitioner International Academy of Design offered degree programs in Digital Media Production, Fashion Design, Graphic Design, Game Design and Production, Interior Design, Internet Marketing, Retail Merchandise Management, and Web Design and Development. Further, this Petitioner offered classes in Audio Production, Clothing Construction, Computer Aided Design, Computer Graphics for Fashion Design, Design Fundamentals, Drafting, Draping, Drawing, Digital Illustration, Digital Imaging, Digital Media for Interior Design, Fashion Design, Fashion Sketching, Game Play Scripting, Interactive Design, Interactive Media, Interior Design Issues and Programming, Lighting Design for Interiors Media Distribution, Media Production, Modeling, Motion Graphics, Pattern Drafting, Principles of Design, Resources and Materials, Screenwriting, Sketching and Rendering, Spatial Environments, Storyboard and Storytelling, Textiles, Texture and Lighting, Typography, Video Editing, Video Production, Visual Composition, and Web Design.

b. Petitioner International Academy of Merchandising and Design (Tampa): Petitioner International Academy of

Merchandising and Design offered degree programs in Animation, Audio Production, Digital Media Production, Digital Production, Fashion Design and Marketing, Game Production, Graphic Design, Interior Design, Post Production, Photography, Retail Merchandise Management, and Web Design and Development. This Petitioner offered classes in Advanced Modeling, Animation Physics, Apparel Production, Audio Production, Audio Recording Techniques, Clothing Construction, Computer Graphics for Fashion Design, Design Process, Digital Composition, Digital Illustration, Digital Imaging, Draping, Drawing Techniques, Environmental Lighting, Fashion Design, Fashion Sketching, Foley for Film and Television, Game Play Scripting, Interactive Design, Interactive Media, Interior Design, Lighting Basics, Lighting Design for Interiors, Location Lighting, Mixing and Mastering, Modeling, Motion Graphics, Music Composition and Songwriting, Music Design and Synthesis, Pattern Drafting, Pattern Techniques, People Photography, Photography Foundation, Principles of Design, Portraiture, Production Studio, Recording on Location, Screenwriting, Session Recording and Mastering, Sound Design, Storyboard and Storytelling, Studio Concentration, Studio Design and Maintenance, Studio Lighting, Studio Techniques, Surround Sound Techniques, Textile Design, Texture and Lighting, Typography, Visual Composition, Video, Video Editing, Video Production, and Web Game Development.

48. All of the above areas of study and courses can be directly associated with one or more of the "activities or services described in s. 212.031(1)(a)9." The evidence further shows that from July 2010 to April 2013, between 60 to 95 percent of the students enrolled at Petitioner International Academy of Design (Orlando) received instruction in one or more of the above courses. Over that same time period, Petitioner International Academy of Merchandising and Design (Tampa) taught approximately 60 to 90 percent of the students enrolled in its facility in one or more of these degrees or courses.

49. Therefore, Petitioners met their burden of proving that they were "primarily engaged in teaching students to perform any of the activities or services described in section 212.031(1)(a)9." Accordingly, Petitioners are exempt under section 212.0602 from paying taxes on the lease of real property from July 1, 2010, through April 30, 2013.

50. The Department argues that Petitioners are not entitled to the tax exemption under section 212.0602 because they did not teach students to perform "qualified production services." In other words, the Department interprets the phrase "activities or services described in s. 212.031(1)(a)9." as stated in section 212.0602 to include only job training that is taught "directly in connection with the production of a qualified motion picture."

51. The Legislature did indeed restrict the tax exemption in section 212.031(1)(a)9. to only "activities or services performed directly in connection with the production of a qualified motion picture." However, in interpreting the phrase "activities or services" in section 212.0602, the Department is not permitted to expand on the words the Legislature specifically used in that statute. "[C]ourts are not at liberty to add words to statutes that were not placed there by the Legislature." Caceres v. Sedano's Supermarkets, 138 So. 3d 1224, 1225 (Fla. 1st DCA 2014); see also L.G. v. State, 939 So. 2d 1141, 1143 (Fla. 1st DCA 2006) ("Where the Legislature has used a term in one part of the statute and excluded it in another, it is improper to imply the term in a provision where it has been otherwise excluded.")

52. If the Legislature intended to tie the tax exemption in section 212.0602 to the actual production of a motion picture, the drafters would have said so. They did not. Section 212.0602 does not restrict the "activities or services" included in that section only to those actually "performed directly in connection with the production of a qualified motion picture." Neither does section 212.0602 state that its exemption is limited to activities or services "as defined in" section 212.031(1)(a)9. or "defined as 'qualified production services.'" Furthermore, section 212.0602 does not require students to have actually found

jobs in the motion picture industry in order for the school to receive the exemption. Instead, the Legislature specifically used the broad phrase "any of the activities or services described in s. 212.031(1)(a)9." (emphasis added).^{10/}

53. The Department argues that Petitioners' curricula from 2010 through 2013 was not focused primarily on "qualified production services." The evidence does show that Petitioners offered coursework that exposed their students to more expansive career opportunities than just the movie business. However, this fact should not disqualify Petitioners from receiving the section 212.0602 tax exemption. The expressed intent of section 212.0602 is to "facilitate investment in education and job training" that could be used to perform "any of the activities or services" the Legislature listed in section 212.031(1)(a)9. The evidence in the record establishes that the "job training" Petitioners taught to the majority of their students was applicable and usable to perform the activities and services described in 212.031(1)(a)9.

54. Consequently, the Department's application of the narrow definition of "activities or services" from section 212.031(1)(a)9. is contrary to the clear and unambiguous meaning of the language the Legislature expressly used in section 212.0602. The tax exemption set forth in section 212.0602 must not be restricted only to entities that teach activities or services "performed directly in connection with the production of

a qualified motion picture.” If Petitioners were “primarily engaged” in teaching any of the activities itemized in section 212.031(1)(a)9., then the Legislature intended for them to receive the section 212.0602 tax exemption.^{11/}

55. Notwithstanding the plain and ordinary meaning of section 212.0602, the undersigned recognizes that Florida courts defer to agency interpretation of their own statutes. However, because the language in section 212.0602 is unambiguous and conveys a clear and definite meaning, the court must apply that meaning even if it conflicts with the interpretation of the administrative agency charged with enforcing it. See Muratti-Stuart v. Dep’t of Bus. & Prof’l Reg., Constr. Indus. Licensing Bd., 174 So. 3d 538, 540 (Fla. 4th DCA 2015) (“An agency’s interpretation of a statute is entitled to great deference unless the agency’s interpretation conflicts with the plain and ordinary meaning of the statute.”); and Verizon Bus. Purchasing, 164 So. 3d at 812 (“Judicial deference does not require that courts adopt an agency’s interpretation of a statute when the agency’s interpretation cannot be reconciled with the plain language of the statute.”)

56. The undersigned concludes that section 212.0602 means what its text most clearly conveys, that the “activities or services” that qualify a college for a tax exemption are those “described in” (not “defined in”) section 212.031(1)(a). Those

"activities or services" referenced in section 212.0602 are not limited to only those that are performed directly in connection with the actual production of a motion picture.

57. Regarding Petitioners' requests for tax exemptions under section 212.08(7)(o), notwithstanding the above conclusion, Petitioners' argument that they were "state tax-supported schools" is not persuasive. Section 212.08 states, in pertinent part:

Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

* * *

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

* * *

(o) Schools, colleges, and universities.
—Also exempt from the tax imposed by this chapter are sales or leases to state tax-supported schools, colleges, or universities.

58. Petitioners assert that they were “state tax-supported schools” because they received funds from Bright Futures and the Workforce Investment Act. However, Petitioners did not sufficiently prove that their institutions are “supported” by the state tax funds that were awarded to their students through these two scholarship programs. Neither did Petitioners establish that the operation of their private colleges was based on the financial assistance they received from the state of Florida. No evidence was presented that the Florida Legislature appropriated state tax funds to support Petitioners’ private institutions.^{12/}

59. Instead, the evidence shows that the scholarships were awarded for the use of Petitioners’ students. In other words, the funds Petitioners received from Bright Futures did not “support” Petitioners. The money channeled to Petitioners through Bright Futures scholarships “supported” the students who were enrolled with Petitioners.

60. Further, section 212.08(7) specifically states that, “exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable . . . unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation

as required by the department.” Petitioners did not present any evidence that they have obtained the requisite certificate (or other documentation) from the Department to qualify for an exemption under section 212.08.

61. In sum, based on the competent substantial evidence in the record, Petitioners demonstrated that they taught their students to perform “activities or services described in s. 212.031(1)(a)9.” Therefore, Petitioners met their burden of proving, by a preponderance of the evidence, that they qualified for the tax exemption authorized under section 212.0602. Accordingly, Petitioners are entitled to refunds from the Department for the sales tax they paid on their leases of real property during the period of July 1, 2010, through April 30, 2013.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue enter a final order refunding Petitioner International School of Design (Orlando) \$159,785.20 and refunding Petitioner International School of Merchandising and Design (Tampa) \$754,311.93.

DONE AND ENTERED this 29th day of September, 2017, in
Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of September, 2017.

ENDNOTES

^{1/} The undersigned applies the 2013 Florida Statutes (the statutes in effect during the last tax year of Petitioners' refund request) to this matter unless otherwise stated. The undersigned notes that section 212.0602 has not been amended since 2010. Section 212.031 remained unchanged from 2010 through 2017. (The 2017 amendment did not affect section 212.031(1)(a)9.) Section 212.08 has been amended every year since 2010. However, the language in section 212.08(7)(o) has not changed.

^{2/} Petitioners are separate legal entities. Both Petitioners are wholly-owned and operated by Career Education Corporation, which is the parent company of both institutions. Career Education Corporation submitted the tax refund requests on behalf of both Petitioners.

^{3/} Because they involve identical issues of law and fact, DOAH Case Nos. 17-1562 and 17-1563 were consolidated pursuant to an Order entered sua sponte on March 22, 2017.

^{4/} See Fla. Admin. Code R. 28-106.216.

^{5/} Petitioner International Academy of Design (Orlando) is an inactive, for-profit Florida corporation. Petitioner

International Academy of Merchandising and Design (Tampa) is an active Florida for-profit corporation.

^{6/} The Lessors of the property Petitioners leased provided an Assignment of Rights to Petitioners for the full amount of sales tax in the refund claim.

^{7/} In March 2014, Petitioner International Academy of Merchandising and Design changed its name to Sanford-Brown College - Tampa.

^{8/} Mr. Whittier's testimony is directly supported by the testimony of Heather Miller, a Revenue Program Administrator for the Department. In 2006, Ms. Miller reviewed this same issue regarding Petitioners' eligibility for a sales tax exemption under section 212.0602. Ms. Miller prepared a Technical Assistance Advisement in which she pronounced that:

[Q]ualified production services are activities or services performed directly in connection with the production of a qualified motion picture. While the programs and curriculum that [Petitioners] mention may be useful to someone wishing to seek employment in motion picture production, they are not focused specifically on teaching students to perform the activities or services directly in connection with the production of motion pictures. Instead, [Petitioners offer] multiple degree programs with a broad curriculum that would be advantageous to students wishing to perform work in a number of different positions for different industries.

Therefore, Ms. Miller opined that Petitioners were not primarily engaged in teaching students to perform activities or services directly connected to motion picture production.

^{9/} The term "qualified motion picture" is defined in section 212.06(1)(b) to mean, "all or any part of a series of related images, either on film, tape, or other embodiment, including, but not limited to, all items comprising part of the original work and film-related products derived therefrom as well as duplicates and prints thereof and all sound recordings created to accompany a motion picture, which is produced, adapted, or altered for exploitation in, on, or through any medium or device and at any

location, primarily for entertainment, commercial, industrial, or educational purposes.”

^{10/} Legislative intent is the polestar that guides a court’s statutory construction analysis. “To discern legislative intent, a court must look first and foremost at the actual language used in the statute.” Larimore v. State, 2 So. 3d 101, 106 (Fla. 2008). “The Legislature must be understood to mean what it has plainly expressed and this excludes construction. The Legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms.” DMB Inv. Tr. v. Islamorada, 42 Fla. L. Weekly 1615 (Dist. Ct. App. 2017) (quoting Van Pelt v. Hilliard, 78 So. 693, 694-95 (Fla. 1918).

^{11/} The undersigned’s conclusion is supported by the fact that the Legislature created two separate and distinct tax exemptions in sections 212.0602 and 212.031. The expressed legislative intent behind section 212.0602 is to provide a tax exemption for educational institutions to encourage training for certain jobs and skills. Section 212.031, on the other hand, authorizes a tax exemption for landowners who rent or lease their real property for use in a “qualified production service.” The two statutes address the same industry (the motion picture business), but the tax exemptions do not relate to the same activity. This broad interpretation gives “full effect” to section 212.0602, as well as section 212.031(1)(a)9. and is not inconsistent. See Larimore, 2 So. 3d at 106.

^{12/} This conclusion is supported by a document Petitioners presented at the final hearing entitled Funding for Florida School Districts Statistical Report for 2014-15. The first page of the document states that the report “is a description of the state program for financing public schools in Florida.” (emphasis added). Both Petitioners were incorporated as private, for-profit educational institutions.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.