STATE OF FLORIDA DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA

INTERNATIONAL ACADEMY
OF DESIGN, INC.,

Petitioner,

DOAH Case Number: 17-1562

vs.

DEPARTMENT OF REVENUE,

Respondent.
_____/

INTERNATIONAL ACADEMY
OF MERCHANDISING AND DESIGN, INC.

Petitioner,

DOAH Case Number 17-1563

vs.

DEPARTMENT OF REVENUE,

Respondent.
_____/

FINAL ORDER

This cause came before the State of Florida, Department of Revenue ("Department" or "Respondent") for the purpose of issuing a Final Order. The Administrative Law Judge ("ALJ") assigned by the Division of Administrative Hearings ("DOAH") heard this cause and submitted a Recommended Order ("Order") to the Department. A copy of the Order, issued on September 29, 2017 by Judge J. Bruce Culpepper, is attached to this order and incorporated by reference as if fully set forth herein as Exhibit 1.

The deadline for filing exceptions to the Order with the Department was October 14, 2017. Respondent's exceptions were timely filed on October 13, 2017. A copy of Respondent's Exceptions to the Recommended Order is attached to this order as Exhibit 2. The deadline to file a response to Respondent's exceptions was October 23, 2017. Petitioner's Response to Respondent's Exceptions was timely filed on October 20, 2017. The Department has jurisdiction in this cause pursuant to sections 20.21 and 212.17, Florida Statutes (F.S.).

FINDINGS OF FACT

The Department adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

1. It has long been held that "[E]xemptions to state taxing statutes are special favors granted by the legislature, and are to be strictly construed against the taxpayer." ***Pioneer Oil Co. v. State Department of Revenue,*** 401 So.2d 1319 (Fla. 1981); ***State ex rel. Szabo Food Services, Inc. v. Dickinson***, 286 So.2d 529, 530-531 (Fla. 1973); ***Green v. City of Pensacola***, 126 So.2d 566 (Fla. 1961); ***Regal Kitchens v. Florida Department of Revenue***, 641 So.2d 158 (1st DCA 1994). Any doubt regarding the applicability of such an exemption must be resolved in favor of the state. ***United States Gypsum Co. v. Green***, 110 So.2d 409 (Fla. 1959).

2. Section 212.0602, F.S., provides:

> Education; limited exemption.—To facilitate investment in education and job training, there is also exempt from the taxes levied under this chapter, subject to the provisions of this section, the purchase or lease of materials, equipment, and other items or the license in or 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), and to qualify for an exemption for its purchase or lease of materials, equipment, and other items used for education or demonstration of the school's curriculum, including supporting

operations. Nothing in this section shall preclude an entity described in this section from qualifying for any other exemption provided for in this chapter.

3. Subsection 212.031(1)(a)9., F.S., provides:

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), 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.

> This exemption will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258.

4. "A statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts, and is not to be read in isolation, but in the context of the entire section." ***Florida Department of Environmental Protection v. ContractPoint Fla. Parks, LLC***, 986 So.2d 1260, 1265 (Fla. 2008). "The doctrine of *in pari materia* is a principle of statutory constructon that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." ***Florida Department of State v. Martin***, 916 So.2d 763, 768 (Fla. 2005). "If *part* of a statute appears to have a clear meaning if considered alone but when given that meaning is inconsistent with other parts of the *same statute* or others in pari materia, the Court will examine the entire act and those in *pari materia* in order to ascertain the overall legislative intent." ***Florida State Racing Commission v. McLaughlin***, 102 So.2d 574, 575-576 (Fla 1958). "All parts of a statute must be read *together* in order to achieve a consistent whole." ***Forsythe v. Longboat Key Beach Erosion Control District***, 604 So.2d 452, 455 (Fla 1992).

5. An agency's interpretation of a statute the agency is charged with implementing is entitled to great deference, and will not be reversed unless it is clearly erroneous, i.e. unless there is a clear conflict with the intent of the statute. ***Lakeland Regional Medical Center, Inc. v. Agency for Health Care Administration***, 917 So.2d 1024 (Fla. 1st DCA 2006); ***Florida Cable TV Association v. Deason***, 635 So.2d 14 (Fla 1994); ***Floridians for Responsible Utility Growth v. Beard***, 621 So.2d 410 (Fla. 1993); ***Department of Insurance v. Southeast Volusia Hospital District***, 438 So.2d 815 (Fla. 1983).

6. It is the Respondent/agency's interpretation of the statutes it administers that is at issue herein. The Respondent has interpreted the provisions of section 212.0602, F.S., in pari materia with the provisions of subsection 212.031(1)(a)9., F.S., as these two statutory provisions are inextricably intertwined. The latter provision requires that the real property subject to exemption be "... used as an integral part of the performance of qualified production services..."

with "qualified production services" being defined as "... any activity or service performed directly in connection with the production of a qualified motion picture, as defined in s. 212.06(1)(b) ..."

7. Subsection 212.06(1)(b), F.S., defines 'qualified motion picture' as "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."

8. There is no finding in the Recommended Order that Petitioner was engaged in teaching any 'qualified production services' as defined in subsection 212.031(1)(a)9., F.S. Such a finding would not have been possible, based upon the evidence admitted herein, as there was no evidence establishing that the activities and services taught by Petitioner were performed directly in connection with the production of a 'qualified motion picture', which is an essential element to establish 'qualified production services'.

9. When section 212.0602 and subsection 212.031(1)(a)9., F.S. are read together, the clear legislative policy is to require the exemptions provided therein to apply only when an entity is primarily engaged in teaching students to perform the activities listed in subsection 212.031(1)(a)9., F.S., directly in connection with the production of a qualified motion picture. It cannot be said that the agency's interpretation of these provisions *in pari materia* is clearly erroneous.

10. The Florida Legislature enacted section 212.0602, F.S., in 1997, and it was amended in 1999 and 2002. The legislature is presumed to know, and adopt, the construction placed on statutes by state taxing authorities who administer and interpret those statutes. ***State ex rel. Szabo Food Services, Inc. v. Dickinson***, 286 So.2d 529 (Fla. 1973).

11. Based upon the language in section 212.0602 and subsection 212.031(1)(a)9., F.S., a review of the entire record, and the foregoing case law, the following Conclusions of Law are substituted for those found in the Recommended Order:

> 42. Based upon the competent substantial evidence in the record, Petitioners did not prove by a preponderance of the evidence that they were primarily engaged in teaching their students to perform any of the activities or services described in section 212.0319(1)(a)9, F.S.
>
> 46. Based upon the evidence in the record, Petitioners did not prove that they taught their students to perform activities or services described in section 212.031(1)(a)9, F.S. Section 212.031(1)(a)9., F.S., provides an exemption from sales tax for: 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), 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.

This exemption will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258.

49. Petitioners did not meet their burden of proving by a preponderance of the evidence that they were primarily engaged in teaching students to perform any of the activities or services described in section 212.031(1)(a)9., F.S., directly in connection with the production of a qualified motion picture.

51. The Legislature restricted the tax exemption in section 212.031(1)(a)9., F.S., to only activities or services performed directly in connection with the production of a qualified motion picture.

52. An agency's interpretation of a statute the agency is charged with implementing is entitled to great deference, and will not be reversed unless it is clearly erroneous, i.e. unless there is a clear conflict with the intent of the statute. ***Florida Cable TV Association v. Deason***, 635 So.2d 14 (Fla 1994); ***Floridians for Responsible Utility Growth v. Beard***, 621 So.2d 410 (Fla. 1993);

PW Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988); ***Department of Insurance v. Southeast Volusia Hospital District***, 438 So.2d 815 (Fla. 1983); ***Pan American World Airways, Inc. v. Florida Public Service Commission***, 427 So. 2d 716, 719 (Fla. 1983); ***Lakeland Regional Medical Center, Inc. v. Agency for Health Care Administration***, 917 So.2d 1024 (Fla. 1st DCA 2006).

53. Petitioners' curricula from 2010 through 2013 was not focused primarily on "qualified production services." Competent, substantial evidence does show that Petitioners offered coursework intended to provide students with training for skills that were not focused to any specific industry. The expressed intent of section 212.0602, F.S., is to facilitate investment in education and job training by any entity, institution, or organization that is primarily engaged in teaching students to perform any of the activities or services described in subsection 212.031(1)(a) 9., F.S. The evidence in the record establishes that the "job training" Petitioners taught to the majority of their students was not performed directly in connection with the production of a qualified motion picture.

54. The Department, under the powers granted to it by the Legislature, reasonably interpreted the provisions of subsection 212.031(1)(a)9., F.S., as providing a limited exemption to be strictly construed against the taxpayer. The Department's interpretation is not clearly erroneous. It is reasonable, and does not conflict with the legislative intent set forth in the plain and ordinary meaning of the statute.

56. When read in pari materia, subsection 212.031(1)(a)9. and section 212.0602, F.S., means what their text most clearly conveys, that the "activities or services" that qualify an entity for a tax

exemption are those performed directly in connection with the production of a qualified motion picture.

61. In sum, based on the competent substantial evidence in the record, Petitioners have not demonstrated that they primarily taught their students to perform qualified production services as described in subsection 212.031(1)(a)9., F.S. Therefore, Petitioners have not met their burden of proving, by a preponderance of the evidence, that they qualified for the tax exemption authorized under section 212.0602, F.S.

12. The Department adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order, as modified herein, finding that its substituted Conclusions of Law are as or more reasonable than those that were rejected and/or modified.

Accordingly, it is ORDERED that Petitioners are denied the refund of sales tax sought herein.

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rule 9.110 Florida Rules of Appellate Procedure, with the Agency Clerk of the Department of Revenue in the Office of the General Counsel, P.O Box 6668, Tallahassee, Florida 32314-6668 [FAX (850) 488-7112], **AND** by filing a **copy** of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. **The Notice of Appeal must be filed within 30 days from the date this Order is filed with the Clerk of the Department**.

DONE AND ENTERED in Tallahassee, Leon County, Florida this 28th day of December, 2017.

STATE OF FLORIDA
DEPARTMENT OF REVENUE

Andrea Moreland
ANDREA MORELAND
DEPUTY EXECUTIVE DIRECTOR

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the foregoing FINAL ORDER has been filed in the official records of the Department of Revenue and that a true and correct copy of the Final Order has been furnished by United States mail, both regular first class and certified mail return receipt requested, to Petitioner C/O Jonathan W. Taylor, Joseph C. Moffa, and James McAuley at 100 SE 3rd Avenue #2202, Ft. Lauderdale, Florida 33394 this 28th day of December, 2017.

Agnie Warren
Agency Clerk

Copies Furnished To:

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