

L. H. Fuchs
Executive Director

STATE OF FLORIDA
DEPARTMENT OF REVENUE
TALLAHASSEE, FLORIDA 32399-0100

(DOR)

General Tax Administration
Child Support Enforcement
Property Tax Administration
Administrative Services
Information Services

August 13, 1999

Mr. Scott Simpson
Assistant Finance Director
City of Miami
Miami, Florida 33130

Re: State law allowing City of Miami to assess a parking surcharge
Section 212.02(2), F.S.
Section 212.03(6), F.S.
Rule 12A-1.073, F.A.C.

Dear Mr. Simpson:

This is a response, styled a Letter of Technical Advice, to your letter dated August 6, 1999, in which you ask whether a surcharge to be levied by the City of Miami, commencing September 1, 1999, on the lease or rental of certain parking facilities is an element of the total lease or rental price of such parking which is subject to Florida sales tax. The authority to levy such a municipal surcharge was granted by the Florida legislature in a recent amendment to s. 218.503, Florida Statutes.

The amendment to s. 218.503, F.S., creates subsection (5) which provides that the governing body of any municipality "... with a resident population of 300,000 or more on April 1, 1999, and which has been declared in a state of financial emergency ... may impose a discretionary per-vehicle surcharge of up to 20 percent on the gross revenue of the sale, lease, or rental of space at parking facilities within the municipality that are open for use to the general public." In conversations on August 12, 1999, the Department learned that the surcharge is to be added to the parking fees charged by private or public parking lot operators which offer parking facilities to the general public.

The surcharge is not applicable to the gross revenue of public, on-street, metered parking. It is the understanding of the Department that if the fee for a parking space were \$1.00 and the City of Miami chooses to levy the maximum surcharge of 20 percent, the parking lot operator may charge \$1.20 to the parking space renter.

The amendment to the statute provides that the revenue from the surcharge be utilized in a manner to "... reduce its ad valorem tax millage rate or to reduce or eliminate non-ad valorem assessments." The revenue is also mandated to be used "... to increase its

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Mr. Scott Simpson

Page 2.

budget reserves . . ." and in the payment of annual debt service relayed to outstanding obligations.

Department Response

Note is first made that in a conversation with your office on August 12, 1999, during which Ms. Bertha Henry, Assistant City Manager participated, the Department learned that you seek an immediate reply to this issue because a meeting on this question is scheduled in the morning of August 13, 1999.

Section 212.02(2), F.S., defines the term "business" as including ". . . all leases or rentals of or licenses in parking lots or garages for motor vehicles . . ." Section 212.03(6), F.S., states that ". . . every person is engaging in a taxable privilege who leases or rents parking or storage spaces for motor vehicles in parking lots or garages . . ." Rule 12A-1.073, F.A.C., interprets the statute. The statute concludes with the following sentence: "For the exercise of this privilege, a tax is hereby levied at the rate of 6 percent on the total rental charged."

While no conclusive determination is made at this time, the surcharge appears to be an indirect tax that is classed as an excise tax. That is, it is not a direct tax on the parking lot operator. The parking lot operator may absorb the surcharge or may increase the price of the parking lease or rental by a portion of or all of the surcharge. The surcharge is one of the costs the parking lot operator incurs in providing parking to the public, such as salaries or utilities, which must be covered by the sales price of the service or product sold. In the case of leased parking space, the "sales price" is the rental charged for the space.

Section 212.03(6), F.S., mandates that the sales tax on the lease of or the grant of a license to use a parking space be imposed on the "total rental charged." A finding is made that the surcharge is an element of the "total rental charged" and is subject to state sales tax.

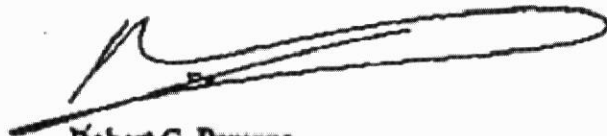
This response is based upon the facts and circumstances of your specific situation as presented and is not an official statement or opinion of this Department but, instead, represents the opinion of the writer. If you wish an official binding statement on these

Mr. Scott Simpson
Page 3.

issues, you may file a written request for a Technical Assistance Advisement by following the provisions of the Department's Rule 12-11, F.A.C., a copy of which is enclosed. The request for Technical Assistance Advisement should be sent to the Office of General Counsel, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443.

If you have further questions with regard to this matter and wish to discuss them, you may contact Technical Assistance and Dispute Resolution, (850) 488-0717. If you have specific questions and would like a written response, the request should be addressed to the Office of General Counsel, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert G. Parsons', written over a horizontal line.

Robert G. Parsons
Tax Law Specialist
Technical Assistance and Dispute Resolution

c: Bebe Blount, Director of Industry and Intergovernmental Relations

Ctrl. No. 38602