

**CITY OF MIAMI
CITY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Albert Manduca, Chief Financial Officer
Department of Off-Street Parking

FROM: Jorge L. Fernandez, City Attorney

DATE: July 13, 2005

RE: Request for Legal Opinion – Whether Parking Revenue Derived from the Biscayne Boulevard Parking Lots is Subject to Sales Tax (MIA 05-00008)

You have requested a legal opinion on substantially the following question:

IS PARKING REVENUE RECEIVED BY THE DEPARTMENT OF OFF-STREET PARKING (“DOS”), WHICH IS DERIVED FROM THE USE OF BISCAYNE BOULEVARD PARKING LOTS (“PARKING LOTS”) BY MOTOR VEHICLES, SUBJECT TO FLORIDA SALES TAX (“TAX”)?

For the reasons set forth hereinafter, the answer to your question is answered in the affirmative. Parking revenue derived from the use of Parking Lots by motor vehicles is subject to Tax. However, any off-street metered lots and garages which provide for less than \$0.10 for a unit of time are exempt, only where the insertion of two or more nickels or more than one dime is not allowed.

DISCUSSION

You have stated that DOS operates Parking Lots for use by motor vehicles for parking purposes, from which revenue is received by DOS. The Florida Legislature has declared that every ‘person’ engaged in ‘business’ is exercising a taxable privilege.¹ In determining whether Tax attaches to revenue received by DOS from the rental of Parking Lots, it is essential to first determine whether DOS falls within the purview of the statutory definitions of a “person” conducting “business.”

¹ § 212.05, F.S. (2005).

A "person" is defined by section 212.02(12), F.S., so as to include any municipality, bureau or department. In order for the revenue derived from Parking Lots to be a taxable privilege it must be shown that DOS is engaged in the business of renting or leasing Parking Lots. A "business" means any activity engaged by any person, with the object of private or public gain, benefit, or advantage, either directly or indirectly; and shall include all rentals of real property.² The Tax on such rentals shall be collected by the municipality, agency, bureau, department, or local governmental instrumentality in the same manner as other dealers³, ***unless specifically exempted.***⁴

There is no specific exemption in Chapter 212, F.S., exempting the lease or rental of parking spaces in Parking Lots. The exemption found in section 212.031(1)(a)6, which is applicable to the use of a public street or road, should not be read so broadly so as to exclude from Tax the lease or rental of parking spaces. As clarified by the Florida Administrative Code, the exemption from Tax under section 212.031(1)(a)6, applies to charges (e.g., tolls) imposed exclusively for the ***right to travel*** on public streets or roads.⁵ Unless it is specifically exempted, DOS is required to register with the Department of Revenue as a "person" or "dealer" engaged in the "business" of leasing or renting parking spaces for motor vehicles using Parking Lots.⁶

No exemption appears intended for the privilege of renting or leasing parking spaces. To the contrary, the taxability of revenue derived from the lease or rental of parking spaces for motor vehicles is clearly expressed in the Florida Statutes and Florida Administrative Code. Specifically, it is the Legislative intent that every person is engaging in a taxable privilege who ***leases or rents parking for motor vehicles in parking lots*** or garages.⁷ Therefore, the lease or rental of parking for motor vehicles in parking lots is taxable.⁸ For the exercise of this privilege, Tax is levied at the rate of six percent (6%) on the total rental charged.⁹ The Tax is intended to be imposed on the purchaser or consumer of the parking space. The only exemption from Tax is limited to off-street metered lots which provide for less than \$0.10 for a unit of time, and only where the insertion of two or more nickels or more than one dime is not allowed.¹⁰

² Moreover, the term "business" also includes ***all leases or rentals of or licenses in parking lots*** or garages for motor vehicles, § 212.02(2), F.S. (2005). (Emphasis added).

³ A "dealer" which includes any municipality, agency, bureau, department, or ***local governmental instrumentality*** is charged with the collection of Tax on revenue derived from the lease of spaces in parking lots. § 212.06(i) and (j), F.S. (2005). (Emphasis added).

⁴ § 212.02(2), F.S. (Emphasis added).

⁵ 12A-1.070(1)(a)5, F.A.C.

⁶ 12A-1.060(1), F.A.C.

⁷ § 212.03(6), F.S. (2005). (Emphasis added).

⁸ 12A-1.073(1)(a), F.A.C.

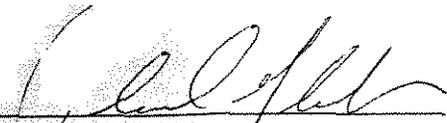
⁹ § 212.03(6), F.S., F.A.C.

¹⁰ 12A-1.073(5)(a), F.A.C.

CONCLUSION

To avoid a taxable privilege, the Tax must be specifically exempted. In the absence of a clear indication that the Legislature intended to exempt the rental or lease of parking spaces, parking revenue received by DOS from motorists using Parking Lots is subject to Tax. Lacking a specific exemption from Tax, DOS is considered engaged in a 'business' or a taxable privilege when it rents or leases Parking Lots. It is therefore, imperative for DOS as a "dealer" engaged in a taxable privilege to collect Tax from those paying to occupy parking spaces in Parking Lots.¹¹ The Tax would apply to the aggregate rental charge for parking paid by the one who parks.¹²

PREPARED BY:



Roland C. Galdos
Assistant City Attorney

REVIEWED BY:



Rafael O. Diaz
Assistant City Attorney

cc: Mayor and Members of the City Commission
Joe Arriola, City Manager
Priscilla Thompson, City Clerk
Art Noriega, Executive Director

¹¹ § 212.07(1)(a), F.S. (2005).

¹² 12A-1.073(1)(a), F.A.C.