**SUMMARY**

**QUESTION:** Are contracts who install security and alarm systems contracts for real property improvements or sales of tangible personal property?

**ANSWER - Based on Facts Below:** Contracts who furnish and install security and alarm systems are contracts for real property in cases where the systems involve custom design, structural wiring, and direct-wired components that are screwed in place.

Jan 30, 2001

Re: Technical Assistance Advisement 01A-009
Sales and Use Tax -- Security Systems
Sections 212.05, 212.06, F.S.

Dear:

This is in response to your letter to the Florida Department of Revenue dated December 20, 2000, in which you asked for a technical assistance advisement concerning the taxation of the security and fire alarm systems sold and installed by XXX ("Taxpayer").

**Facts**

Taxpayer sells and installs security and fire alarm systems. The security systems may include closed circuit television systems and access control systems as well as detection and alarm systems. Security systems include control panels, audio-activated microphones, motion detectors, door contacts, and related items. These are held in place with screws. Taxpayer also installs wiring for those devices. The wiring ordinarily penetrates the walls and is concealed behind walls or in ceiling spaces. Closed circuit television systems are similar, except that the devices that are wired into the overall system include
cameras, monitors, recorders, and related items. In the case of access control systems, installation is similar but the primary parts are access control panels, card readers, and electronic door locks. Fire alarm systems also involve components that are attached with screws and wired directly into a structural wiring system. Taxpayer sells the systems at issue without retaining title of any kind. Taxpayer's customers include homeowners, businesses, nonprofit organizations, and governmental entities.

Taxpayer sends representatives to a prospective customer's location to assess the premises and the customer's needs. A system design is drawn up based on those needs and the specifics of the location (e.g., number and location of doors and windows, room configuration). Based on the nature and number of components needed for the proposed system, a price is set in a quotation. If the customer accepts, a contract is signed. Taxpayer agrees to sell, install, and service the proposed system. Sale and installation is set at one lump sum price with no itemization of components and labor. (Monitoring services are also provided for a monthly charge. Taxation of those charges is not at issue.)

**Requested Advisement**

Taxpayer requests advice on the following issues:

1. Whether sale and installation of an alarm system is performance of a real property contract or a sale of tangible personal property.

2. Whether Taxpayer should pay tax on its purchases of components and materials installed as part of the system or charge sales tax to its customers.

3. Whether the taxation of the sale and installation of a system is different if the customer holds a consumer's certificate of exemption.

**Taxpayer's Position**

Taxpayer believes, consistent with the Department's position in
a recent audit of Taxpayer's sales and use tax compliance, that installation of a system in which title is transferred is a real property improvement. Taxpayer should therefore pay tax on its purchases of components of the system and charge no tax to its customers.

**Applicable Law, Discussion, and Analysis**

If Taxpayer's installed systems are tangible personal property, Taxpayer should purchase components using a resale certificate and charge tax to customers on the full sales price unless the customer presents a valid exemption certificate. If the systems Taxpayer installs are real property improvements, Taxpayer should pay tax on its cost of components and materials but collect no tax from its customers. See ss. 212.05(1), 212.06(1), F.S.; Rule 12A-1.051, F.A.C. The fact that a customer is exempt from Florida sales and use taxes on purchases of tangible personal property is irrelevant when the customer is purchasing real rather than tangible property and the Taxpayer is the taxable consumer of the tangible personal property used to perform the real property contract.

Statutory guidance on the classification of property as real property or tangible personal property is found in section 212.06(14), F.S., which reads as follows:

(14) For the purpose of determining whether a person is improving real property, the term:

(a) "Real property" means the land and improvements thereto and fixtures and is synonymous with the terms "realty" and "real estate."

(b) "Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty.... For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.
(c) "Improvements to real property" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

Rule 12A-1.051, F.A.C., was revised after enactment of section 212.06(14), F.S., to reflect the statutory guidance and assist in applying it. In relevant part, the rule reads as follows:

12A-1.051 Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property.

(2) Definitions. For purposes of this rule, the following terms have the following meanings:

(c)1. "Fixture" means an item that is an accessory to a building, other structure, or to land, that retains its separate identity upon installation, but that is permanently attached to the realty. Fixtures include such items as wired lighting, kitchen or bathroom sinks, furnaces, central air conditioning units, elevators or escalators, or built-in cabinets, counters, or lockers.

2. In order for an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which the item is attached. A retained title provision in a sales contract or in an agreement that is designated as a lease but is in substance a conditional sales contract is not determinative of whether the item involved is or is not a fixture. Similarly, the fact that a lessee or licensee of real property rather than the lessor/owner enters into a contract for an item to be permanently attached to the real property does not prevent that item from being classified as a fixture.

3. The determination whether an item is a fixture depends upon review of all the facts and circumstances of each situation. Among the relevant factors that determine whether a particular item is a fixture are the following:

a. The method of attachment. Items that are screwed or bolted in place, buried underground, installed behind
walls, or joined directly to a structure’s plumbing or wiring systems are likely to be classified as fixtures. Attachment in such a manner that removal is impossible without causing substantial damage to the underlying realty indicates that an item is a fixture.

b. Intent of the property holder in having the item attached. If the property holder who causes an item to be attached to realty intends that the item will remain in place for an extended or indefinite period of time, that item is more likely to be a fixture. That intent may be determined by reviewing all of the property holder’s actions in regard to the item, including how the item is treated for purposes of ad valorem and income tax purposes. For example, if a property owner reports the value of the item for purposes of ad valorem taxation of the realty and depreciates the item for tax and financial accounting purposes as real property, that indicates an intent that the property is permanently attached as a fixture.

c. Real property law. If an interest in an item arises upon acquiring title to the land or building, the item is more likely to be considered a fixture. For example, if the seller of real property would be expected to leave an item behind when vacating the premises for a new owner without the contract specifically requiring that it be left, that item is likely to be classified as a fixture.

d. Customization. If items are custom designed or custom assembled to be attached in a particular space, they are more likely to be classified as fixtures. Customization indicates intent that the items are to remain in place following installation.

e. Permits and licensing. If installation of an item requires a construction permit or licensing of the contractor under statutes or regulations governing the building trades, that item is more likely to be regarded as a fixture.

f. Legal agreements. The terms of any purchase agreement,
deed, lease, or other legal document pertaining specifically to an item may be relevant in determining whether that item is a fixture of real property.

The foregoing list of factors relevant to determining whether an item is a fixture is intended to be illustrative only. Additional factors may exist in any particular case, and the weight to be given to the factors will also vary in each case.

(h)1. “Real property contract” means an agreement, oral or written, whether on a lump sum, time and materials, cost plus, guaranteed price, or any other basis, to:

(c) Furnish and install tangible personal property that becomes a part of or is directly wired or plumbed into the central heating system, central air conditioning system, electrical system, plumbing system, or other structural system that requires installation of wires, ducts, conduits, pipes, vents, or similar components that are embedded in or securely affixed to the land or a structure thereon.

(17) Specific activities classified as real property contracts.

Contractors who are engaged in the following activities are generally considered to be real property contractors, although any particular job may be determined not to involve an improvement to real property:

(m) Electrical system installation and repairs, including structural wiring and cabling, meter boxes, switches, receptacles, wall plates, and similar items;

The determination whether any particular job involves a contract for an improvement to real property will be based on the criteria set forth in paragraphs (c), (d), (e), (g), (h), (i), and (j) of subsection (2).
Taxpayer's system components are generally screwed in place, an indication of permanent attachment under the guidance of the rule. Wiring placed behind walls or in ceiling spaces is also permanently in place because it is not removable without going through the walls or ceilings themselves. Whether it is low voltage wiring or standard wiring is immaterial if the wiring is run behind walls and other structural surfaces. In addition, the rule indicates that items that are wired directly, as opposed to being simply plugged in, are generally considered to be permanently attached. Many of the components of Taxpayer's systems are directly wired, as well as being screwed to walls, doors, or other structural elements.

Taxpayer's records as reviewed in the prior audit indicate that Taxpayer installed systems in residences, commercial buildings, or institutional facilities for owners who intended to acquire a permanent improvement to real property. This determination must be made by looking at the system as a functioning unit involving structural wiring and directly wired components held in place by screws. The owners do not purchase separate components that can be individually analyzed for status as tangible personal property or real property. They purchase an integral system to protect a specific location against intrusion, fire, or other dangers. The systems do not involve freestanding components that plug into standard outlets and can be rearranged by simply picking them up and moving them. The pricing of the contracts also indicates that property owners who acquire installed systems from Taxpayer are making a major investment to obtain a custom designed and installed system tailored to protect a particular piece of real property. The custom design nature of the systems in itself supports the conclusion that the property owners that have Taxpayer's systems installed intend for the systems to remain in place as part of the property. The systems are designed to fit the specific property in which they are installed and the owner's use of that property. System components are selected and installed to fit the owner's specific needs for security, access control or fire protection at that location. The systems become part of the customer's primary residence or part of a business or institutional facility.
Another factor that is relevant to the determination is whether an activity is regulated as a construction or building trade. Chapter 489, F.S., and rules issued thereunder govern licensing or certification and regulation of alarm system contractors. See, e.g., sections 489.505(1), (2), (21), (22), (23), (24), 489.516, 489.537, F.S.; Rules 61G6-5.001, 61G6-6.015, F.A.C. These provisions treat alarm system contractors as a specialized form of electrical contracting, which is viewed as a construction trade. Rule 12A-1.051(17)(m), F.A.C., notes that electrical contractors are generally considered to be performing real property work. While inclusion under these statutes and regulations is not a controlling factor, it does support classification of Taxpayer's systems as real property contracts.

Another factor indicating real property status is that the systems add to the value of the real property as realty. Unlike furniture or appliances that simply plug in without being screwed in place and wired directly, their removal would diminish the value of the realty as such. A home or business location with an operating wired-in security system appropriate to its use as a residence or business is worth more than a home or business with screw holes in the doors and walls and holes with wires hanging out where system components used to be.

A layman's test for telling the difference between a real property fixture and an item of tangible personal property would be whether a purchaser of the real property where the item is located would expect the item to be included in the purchase price without special negotiation. If a buyer wants a piece of personalty such as furniture or draperies included in the price of real property, that must be specified in the sales contract to overcome the presumption that personally will be removed. Typically, real property fixtures are presumed to be part of the realty without such negotiation. Unless the seller specifically excludes a real property fixture (e.g., a ceiling fan and light or a built-in kitchen cabinet), it goes with the building. In this case, a buyer would expect the screwed and wired-in components of the system designed for that specific property to remain behind. Furthermore, it is also likely that a property owner who is willing to spend thousands of dollars to have a system custom designed and installed through screws and direct
wiring to fit a specific location is not thinking in terms of detaching the various components to make them try to work elsewhere. That property owner will intend to leave the system behind when the real property is sold as one of the functional systems of the property.

Consideration of all the facts and circumstances and the applicable statute and regulation results in a conclusion that a security, alarm, or access control system as described in this advisement is a fixture of or improvement to real property.

**Advisements**

Based on the foregoing discussion and analysis, Taxpayer is advised as follows:

1. Sale and installation of an alarm system is performance of a real property contract.

2. Taxpayer should pay tax on its purchases of components and materials installed as part of the system and charge no sales tax to its customers.

3. The taxation of the sale and installation of a system is the same regardless of whether or not the customer holds a consumer's certificate of exemption.

**Closing Statement**

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and
related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

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LWB/
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