



**QUESTION:** DOES THE PURCHASE OF MATERIALS AND EQUIPMENT BY TAXPAYER FOR INCORPORATION INTO THE HIGH-SPEED RAIL SYSTEM OWNED BY TAXPAYER, INCLUDING THE ITEMS DESCRIBED IN XX, QUALIFY FOR THE EXEMPTION FROM THE SALES AND USE TAX AS PROVIDED IN SECTION 341.840 FLORIDA STATUTES?

**ANSWER:** BASED ON THE INFORMATION PROVIDED IN THE TAA REQUEST, THE MATERIALS AND EQUIPMENT PURCHASED BY TAXPAYER FOR INCORPORATION INTO THE HIGH-SPEED RAIL SYSTEM OWNED BY TAXPAYER, INCLUDING THE ITEMS DESCRIBED IN XX, QUALIFY FOR THE EXEMPTION FROM THE SALES AND USE TAX AS PROVIDED IN SECTION 341.840 FLORIDA STATUTES.

**June 5, 2015**

Re: Technical Assistance Advisement 15A-007  
Sales and Use Tax  
Tangible Personal Property Purchased by the Owner of a High-Speed Rail System for Incorporation into the System.  
Chapter 212 F.S.; Section 341.840, F.S.  
XX (hereinafter "Taxpayer")

Dear XX:

This is in response to your request dated April 2, 2015, for a Technical Assistance Advisement (TAA) pursuant to section 213.22, Florida Statutes (F.S.), and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), regarding the exemption from sales and use tax contained in s. 341.840 F.S. applicable to the purchase of tangible personal property by the owner of a high-speed rail system for incorporation into that system as a component part thereof. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Florida Department of Revenue (hereinafter "the Department") is hereby granting your request for a TAA.

### **ISSUE**

Whether the purchase of the items tangible personal property by Taxpayer for incorporation into the high-speed rail system owned by Taxpayer, including the items described in XX, will be exempt from sales and use tax imposed by Chapter 212.

### **FACTS PROVIDED BY THE TAXPAYER**

Taxpayer is constructing a high-speed rail system between the cities of XX and XX.

Taxpayer has been determined by XX to be the owner of a high-speed rail system, within the meaning of Sections 341.8203 F.S. and 341.840, F.S. XX's letter of March 12, 2014 is XX.

Construction of the rail line will require the construction or reconstruction of multiple bridges, crossings, stations, maintenance facilities, and other real property improvements. Taxpayer intends to retain one or more contractors to do the real property improvements. The contracts will be structured to comply with the principals of a direct purchase agreement in Rule 12A-1.094(4), F.A.C. Under that structure, Taxpayer will be the direct purchaser of the various building materials that will be used in the improvements.

Taxpayer will also purchase rolling stock (trains), equipment to maintain trains and tracks, and other property that will be used within the facilities related to the rail system. An initial listing of the items required is contained on XX.

Taxpayer has determined that the tangible personal property detailed in XX will be purchased in connection with, and incorporated into, the high-speed rail system and will become a component part thereof within the meaning of Section 341.840, F.S.

### **LEGAL AUTHORITY**

XX is responsible for public transportation in the State of Florida. Accordingly, XX is the XX responsible for administering the provisions of Chapter 341, F.S. (Public Transit).

Sections 341.8201 through 341.842, F.S., of Chapter 341, F.S., comprise the Florida Rail Enterprise Act, which governs high speed rail in Florida. Section 341.8225, F.S., provides that (with one exception) no government entity other than XX may acquire, construct, maintain, or operate the high speed rail system except upon specific authorization of the Legislature.

Section 341.8203(4), F.S., defines “high-speed rail system” to mean “any high-speed fixed guideway system for transporting people or goods, which system is, by definition of the United States Department of Transportation, reasonably expected to reach speeds of at least 110 miles per hour, including, but not limited to, a monorail system, dual track rail system, suspended rail system, magnetic levitation system, pneumatic repulsion system, or other system approved by the enterprise. **The term includes a corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, and rail stations and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system.**” (emphasis added)

Section 341.840(1) F.S. provides, in pertinent part, “The design, construction, operation, maintenance and financing of a high speed rail system by . . . the owner . . . thereof, as herein authorized, constitutes the performance of an essential public function.”

Section 341.840(3), F.S., provides:

- (a) Purchases or leases of tangible personal property or real property by the enterprise, excluding agents of the enterprise, are exempt from taxes imposed by chapter 212 as provided in s. [212.08\(6\)](#). Purchases or leases of tangible personal property that is incorporated into the high-speed rail system as a component part thereof, as determined by the enterprise, by agents of the enterprise or the owner of the high-speed rail system are exempt from sales or use taxes imposed by chapter 212. Leases, rentals, or licenses to use real property granted to agents of the enterprise or the owner of the high-speed rail system are exempt from taxes imposed by s. [212.031](#) if the real property becomes part of such system. The exemptions granted in this subsection do not apply to sales, leases, or licenses **by** the enterprise, agents of the enterprise, or the owner of the high-speed rail system. (emphasis supplied)
- (b) The exemption granted in paragraph (a) to purchases or leases of tangible personal property by agents of the enterprise or by the owner of the high-speed rail system applies only to property that becomes a component part of such system. It does not apply to items, including, but not limited to, cranes, bulldozers, forklifts, other machinery and equipment, tools and supplies, or other items of tangible personal property used in the construction, operation, or maintenance of the high-speed rail system when such items are not incorporated into the high-speed rail system as a component part thereof.

### **DISCUSSION AND ANALYSIS**

Taxpayer has provided, as XX to its request, a letter from XX determining: (a) that the project described in the lease entered into between XX and the Taxpayer is a “high-speed rail system” under Section 341.8203(4), F.S.; and (b) that Taxpayer is the “owner” of a high-speed rail system within the meaning of section 341.840, F.S.

Taxpayer has indicated that the tangible personal property detailed in XX will be purchased in connection with, and incorporated into the high-speed rail system and will become a component part thereof. The key requirements for exemption are that the property will be "incorporated" into the "high speed rail system" and will become a "component part" of the system. The term "high speed rail system" is defined in Section 341.8203(4), F.S., very broadly. The component parts of a “high speed rail system” include all of the things that come together to become a part of the high-speed rail network including, without limitation, the items on XX. The components become incorporated into the system when they are combined with other components to become part of the overall “high-speed rail system.”

### **CONCLUSION**

The purchase by Taxpayer of materials and equipment for incorporation into the high-speed rail system owned by Taxpayer, including the items identified in XX, will be exempt from Sales and Use Tax imposed by Chapter 212, F.S., provided, however, purchases of materials by taxpayer for use by a contractor to improve real property will be exempt only if the criteria as outlined in Rule 12A-1.094(4)(b), F.A.C., are used to make the purchases.

Technical Assistance Advisement

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This response constitutes a Technical Assistance Advisement under Section 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 Section 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 documents are public records under chapter 119, F.S., which are subject to disclosure to the public under the conditions of Section 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure. In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

Thomas K. Butscher  
Assistant General Counsel  
Office of the General Counsel