



FLORIDA

Executive
Director
Leon Biegalski

TAX: Sales and Use Tax

TAA NUMBER:

ISSUE: Real Property Improvement

STATUTE CITE(S): Section(s) 212.05 and 212.06, F.S.

RULE CITE(S): Rules 12A-1.016, 12A-1051, F.A.C.

QUESTION: Whether Taxpayer's sales are retail sales of tangible personal property?

ANSWER: Yes. The Taxpayer sells and installs prefabricated panel sections that are installed into realty, easily removable for maintenance and replacement without substantial damage to the realty, and are generally removed for separate sale prior to vacating the realty.

December 29, 2017



Subject: Technical Assistance Advise ment ("TAA")
TAA 17A-025
Sales and Use Tax-Real Property Contractor

Section(s) 212.05 and 212.06, Florida Statutes ("F.S.")
Rule(s) 12A-1.016, 12A-1051, Florida Administrative Code ("F.A.C.")



Child Support – *Ann Coffin, Director* • General Tax Administration – *Maria Johnson, Director*
Property Tax Oversight – *Dr. Maurice Gogarty, Director* • Information Services – *Damu Kuttikrishnan, Director*

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Florida Department of Revenue
Tallahassee, Florida 32399-0100

Dear [REDACTED]:

This letter is a response to your petition dated October 4, 2017, for the Department's issuance of a Technical Assistance Advisement ("TAA") to Petitioner, regarding real property contractor requirements. Your petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Rule Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of section 213.22, F.S.

Issue

How should the installation purchase agreements between Taxpayer and their customers be treated for sales tax purposes?

Facts

Taxpayer manufactures, fabricates, and installs insulated panel sections and accessories used in walk-in coolers for food market retailers, retail grocery chains, and convenience store retailers (hereafter, "Customers"). Taxpayer [REDACTED] is registered for sales and use tax purposes with the Florida Department of Revenue, and remits sales tax to the State on the retail sale and installation (when included), of its products.

Based upon the Customer's preference, the panels are either sold separately, with the installation performed by an unrelated third party chosen by the Customer, or the Taxpayer provides the panels and performs the installation, or hires a sub-contractor to perform the installation. The Taxpayer may also install accessories such as doors, shelving, and lighting fixtures, but does not install any electrical wiring. If a construction permit is required for the project, typically the refrigeration contractor would be responsible for obtaining the permit, and not the Taxpayer.

For purchases, which include both the paneling materials and the installation labor, the installation purchase agreements are structured in one of two ways: itemized, in which labor and/or materials are separately stated, or as lump sum contracts, in which the Taxpayer agrees to furnish materials and labor for a single stated lump sum price. When quoting orders, the Taxpayer does not itemize each separate item of tangible personal property (including each item's price) used, in fulfilling the contract. The Taxpayer also discloses a lump sum for the total installation labor cost, in its Customer's quotes.

Generally, the Taxpayer delivers the prefabricated panel sections to its Customer's retail store location, and the panels are either assembled on-site by the Taxpayer, or by a third-party contractor. The panels and associated hardware are shipped FOB shipping point. The panels can be a standard size or manufactured to a custom size, as required by the Customer, but regardless of size, the installation method remains the same for all panels. Each of the panel sections has a tongue and groove perimeter edge that are interlocked and joined together by using cam lock fasteners. The cam lock fasteners are locked using a hex wrench and are easily unlocked the same way. The panels are placed on top of a one-inch perimeter wood strip which is screwed into the flooring. There are no additional fastenings, nails, or glue used to hold the panel walls

upright and together. The panels are easily removable for subsequent maintenance or replacement. Under normal usage, the panels have an average life span of six to ten years, and under heavy usage, about four to six years. If the Customer subsequently moves and/or sells the building after the panel installation, it is the Customer's preference whether they remove the panels and sell them separately, or choose to sell them with the building. The Taxpayer states, from experience, most of its Customers will remove the panels and sell them separately, if they later vacate and/or sell the building. Your client also installs an air-tight roof panel, but there is no separate floor installation for walk-in coolers.

Applicable Law & Discussion

Section 212.05, F.S., provides that dealers engaged in the business of selling tangible personal property are required to collect sales tax on the sales price of each retail sale. Real property improvement contractors generally are the end consumers of the tangible personal property used in the contracts, and are liable for the tax on the purchases made. *See* Rule 12A-1.051(4), F.A.C. A real property improvement contractor is liable for the tax on the fabricated cost of items it produces. *See* Rule 12A-1.051(2)(a) and (10), F.A.C.

Section 212.06(14), F.S., provides guidance in determining whether a person is making improvements to real property by providing the following relevant definitions, in part:

- (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. (Emphasis added)
- (c) "Improvements to real property" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

Rule 12A-1.051(2)(c)3., F.A.C., further provides that the determination of whether an item is a fixture depends upon the review of all facts and circumstances of each situation. Among the relevant factors, in part, that determine whether an 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. (Emphasis added)
- (b) Intent of the property holder. 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.

- (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.

Rule 12A-1.051(2)(h)1.c., F.A.C., further provides that a “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 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.

Rule 12A-1.051(6), F.A.C., further provides that contractors, manufacturers, or dealers who sell and install items of tangible personal property, including those enumerated in Rule 12A-1.016, F.A.C., must collect tax on the full selling price, including any installation or other charges, even though such charges may be separately stated.

Concluding Statement

Here, the Taxpayer entered into a purchase agreement with one of its Customers to sell and install prefabricated panel sections that are joined together to form walk-in coolers, freezers, and combination units, as specified. The standard panels are interchangeable for ease of assembly. No refrigeration systems were specified by the Customer. The installation services included erecting panels, shelving, doors, and lighting fixtures. This specific purchase agreement does not state if the Customer, the Taxpayer, or a third-party contractor acting on behalf of the Customer or Taxpayer, will perform the installation services. However, as stated in your facts, the Taxpayer installs only panels and accessories and never installs electrical wiring. The predominate nature of this purchase agreement is a contract for tangible personal property. Your client’s invoice to its Customer, itemizes the panels, installation, and freight separately, and the Taxpayer collected sales tax from its Customer, on the panels and installation cost.

Based on the Customer’s purchase agreement, the Taxpayer provides prefabricated, free-standing, factory-made panels that are not wired or plumbed to realty, but are attached to one-inch wooden strips on ground level, that are fastened together with cam action fasteners. The panels remain free-standing, and are easily removable for maintenance or replacement, without substantial damage to the underlying realty. The panels have an average life span of six to ten years under normal usage, and there is no intent on keeping the panels in place for an extended or indefinite period of time. In fact, from experience, most Customers will remove the panels

and sell them separately, prior to vacating a building. Therefore, the panels do not fall into the definition of a “Fixture” and are an item of tangible personal property. Your client should collect and remit sales tax from its Customers, on the sales price of the materials and the installation charges.

It should be noted that the above response, analysis, and conclusion is specific only to the facts outlined in one scenario as described in your Customer’s purchase agreement, for which you also included an example quotation, purchase order, and invoice. If, for example, the Taxpayer would engage in providing refrigeration or electrical installation activities to its Customers, either performed by themselves or by an unrelated third-party, the Taxpayer will be classified as a real property contractor, and should not collect sales tax from its Customers, but should pay use tax on all materials they use in the performance of these contracts.

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 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 10 days of the date of this letter.

Respectfully,

Mary Slagy

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