



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

QUESTION: Whether the installation of a conveyor system is a real property improvement?

ANSWER: No. Since a conveyor system, such as the pneumatic tube system, is “machinery and equipment” the installation of the system by Taxpayer is not a fixture. Therefore, the installation is not for a real property improvement.

May 15, 2020

XXX
XXX
XXX

Re: Technical Assistance Advisement No. 20A-008
AMS #: 358290

Sales and Use Tax
Real Property Improvement or Installation of Tangible Personal Property
Sections 212.05, 212.06(14), Florida Statutes (F.S.)
Rule 12A-1.051, Florida Administrative Code (“F.A.C.”)

XXX(“Taxpayer”)
Business Partner Number: XXX
FEIN: XXX

XXX: (“Site”)

Dear XXX:

This is in response to your request dated April 1, 2020, for a Technical Assistance Advisement (TAA) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, Florida Administrative Code (F.A.C.),

concerning sale and installation of tangible personal property. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

FACTS

Taxpayer designs, sells and installs pneumatic tube systems primarily for use in hospitals. Pneumatic tube systems serve hospitals by transporting pharmaceuticals, laboratory specimens, and sensitive medical items between different departments within hospitals.

Taxpayer sells pneumatic tube systems and pneumatic tube installation services directly to hospitals and to prime contractors who construct, renovate, and build additions to hospitals.

On its invoices to customers, Taxpayer separately states the price of the pneumatic tube systems, and the design and installation services. Taxpayer's customers can purchase pneumatic tube systems from Taxpayer with or without Taxpayer's installation services. Per contract, title to the components of the pneumatic tube systems transfers to Taxpayer's customers before installation, regardless of whether Taxpayer performs the installation.

Pneumatic tube systems are composed primarily of carriers, user stations, tubing, blower units, and transfer units.

Carriers

Carriers are plastic cylindrical containers that transport pharmaceuticals, laboratory specimens, and sensitive medical items to user stations located within different departments in hospitals. Carriers can be removed from the user stations so that materials to be transported in them can be easily inserted into the carriers. Taxpayer assembles the carriers at its Site facilities and ships the assembled carriers to its customer's sites.

User Stations

Hospital employees utilize user stations to send and receive carriers between different departments in the hospitals. User stations are constructed of sheet metal, are connected to tubing through which carriers are sent and received, and contain software control panels that allow users to determine the destinations of the carriers.

Taxpayer builds user stations and software control units at its Site facilities. After assembling the user stations, Taxpayer sends the user stations to customer's sites for installation. Since user stations are XXX components of a pneumatic tube system, it is important that the user stations can be easily removed from a hospital room as the needs of a hospital change.

Accordingly, user stations are generally connected to hospital rooms in one of two ways. First, a user station can be attached directly to the floor and walls of a hospital room using bolts. Second,

a user station can be bolted to racks that are attached to the walls and floor of a hospital room. In either case, since the bolts that attach user stations to hospital rooms can be unscrewed user stations can easily be removed from hospital rooms without incurring damage to the user stations or to the hospital rooms.

Tubing

Carriers are transported between hospital departments by tubing. Tubing is comprised of galvanized steel cylindrical tubing, bends, couplings, and assorted fittings. Depending upon the particular needs of a hospital and the design of a pneumatic tube system, tubing can be located in the interstitial space of a hospital, between hospital floors, in hospital warehouse space, and outside the walls and roves of a hospital.

Tubing is one of the XXX components of a pneumatic tube system. Taxpayer generally has tubing drop shipped from its vendors to its customer's sites for installation.

Tubing is generally connected to a hospital structure by metal braces which are attached to the structure itself. Tubing can be removed from a hospital without incurring in significant damage to the tubing or to the hospital structure. Even when tubing is located in the interstitial space of a hospital, it can easily be accessed and removed. This is necessary because it is vital that hospital employees be able to access a carrier and its contents quickly—due to the potentially important materials being sent through a carrier—if there is a breakdown in the operation of a pneumatic tube system.

Although tubing can be removed from a hospital without damage to the tubing and to the hospital structure, and retains its value upon removal from a hospital structure XXX tubing is rarely removed from a hospital.

Blower Units

Blower units are the engines which propel carriers through the tubing using air pressure and vacuums. Taxpayer assembles blower units at its Site facilities and sends the blowers to customers' sites for installation.

Since blower units are the power source of pneumatic tube systems XXX, it is important that blower units can be moved as necessary to support changes to a pneumatic tube system. Therefore, similar to user stations, blower units are generally connected to a hospital structure in one of two ways. A blower unit can be attached directly to the floor and walls of a hospital room by bolts, or can be bolted to racks that are attached to the walls and floor of a hospital room. In either case, since the bolts that attach blower units to the hospital structures can be unscrewed, blower units can be easily be removed from hospitals without incurring damage to the blower unit or to the hospital structure.

Transfer Units

Transfer units are located at the intersections of tubing and are switching units that direct carriers to the appropriate tube paths and user stations within hospitals. Taxpayer constructs transfer units at its Site facilities and sends the transfer units to customers' sites for installation.

Since transfer units physically control the locations to which carriers are sent, it is important that the transfer units can be moved and exchanged within a pneumatic tube system as per the needs of a hospital. Accordingly, similar to user stations and blowers, transfer units are connected to hospital structures by bolts screwed directly into the floors and walls of a hospital, or by bolts screwed into racks which are attached to the floors and walls of a hospital. Transfer units are easily removable from a hospital structure without incurring any damage to the transfer units or to the hospital structure.

Documents Provided

Taxpayer provided the following documents to assist the Department with its analysis and conclusions: (i) sample contracts, (ii) a sample pricing proposal where Taxpayer worked as a subcontractor, and charged sales tax to the general contractor, (iii) a sample pricing proposal involving a direct sale to a hospital where no sales tax was charged because the hospital presented its exemption certificate.

ADVISEMENT REQUESTED

Is the installation of Taxpayer's pneumatic tube systems an installation of tangible personal property or a real property improvement?

LAW AND DISCUSSION

Section 212.05, F.S., requires dealers to collect sales tax on the sales price of retail sales of tangible personal property. "Sales price" as defined by s. 212.02(16), F.S., includes services that are part of the sale of tangible personal property. Rule 12A-1.016, F.A.C., provides that services part of the sale of tangible personal property include installation labor. As provided by Rule 12A-1.043, F.A.C., it also includes fabrication labor.

Contractors who perform real property improvement contracts are generally not considered to be resellers of tangible personal property. Contractors who install tangible personal property as part of a real property improvement are required to pay the sales tax on the purchase of tangible personal property. Rule 12A-1.051(4), F.A.C.

In regard to real property contracts, section 212.06(14), F.S., provides, in part, the following:

- (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. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government . . . or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property [. . .].

(c) “Improvements to real property” includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

(Emphasis added)

In regard to the types of real property contracts, Rule 12A-1.051(2)(h), F.A.C., provides, in part, the following:

(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:

- a. Erect, construct, alter, repair, or maintain any building, other structure, road, project, development, or other real property improvement;
- b. Excavate, grade, or perform site preparation for a building, other structure, road, project, development, or other real property improvement; or
- 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.

2. The term “real property contract” does not include:

- a. A contract for the sale or for the sale and installation of tangible personal property such as machinery and equipment; or
- b. A contract to furnish tangible personal property that will be installed or affixed in such a way as to become a fixture or improvement to real property if the person furnishing the property has not also contracted to affix or install it.

3. A contract is a real property contract if described in subparagraph 1. above, whether or not such agreement also involves providing property or services that would not be considered improvements to real property. See subsection (8) of this rule for discussion of such contracts.

4. A contract contains the terms of the agreement between the contractor and the owner (or other interest holder) of the real property and is entered into in advance of any work being undertaken. A proposal prepared by a contractor prior

to entering an agreement is not a contract. Statements, invoices, or other billings submitted after work has begun are not contracts [. . .].

As to examples of “machinery and equipment” addressed by s. 212.06(14), F.S., Rule 12A-1.051(2)(e), F.A.C., provides in part, the following:

- (e)1. “Machinery or equipment” means and includes property that:
 - a. Is intended to be used in manufacturing, producing, compounding, processing, fabricating, packaging, moving, or otherwise handling personal property for sale or other commercial use, in the performance of commercial services, or for other purposes not related to a building or other fixed real property improvement; and,
 - b. May, on account of its nature, be attached to the real property but which does not lose its identity as a particular piece of machinery or equipment.
- 2. “Machinery or equipment” generally does not include junction boxes, switches, conduits, wiring, valves, pipes, and tubing incorporated into the electrical, cabling, plumbing, or other structural systems of fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment.
- 3. “Machinery or equipment” serves a particular commercial activity that is carried on at a location rather than serving general uses of land or a structure. Examples of machinery or equipment include conveyor systems [. . .].

(Emphasis added)

As provided by Rule 12A-1.051, contracts to install fixtures are generally construed to be improvements to real property. As provided by s. 212.06(14), F.S., the definition for “fixtures” does not include “machinery and equipment.”

Rule 12A-1.051(2)(e), F.A.C., provides examples of installations of items normally attached permanently that are not considered a fixture for purposes of s. 212.06(14), F.S. The Rule specifically includes conveyor systems. An example of a conveyor system is a pneumatic tube system. Therefore, the installation of a pneumatic tube system is a sale of tangible personal property subject to the provisions of s. 212.05, F.S.

CONCLUSION

The installation of a pneumatic tube system used as a conveyor system is an installation of “machinery and equipment,” and not the installation of a fixture for purposes of s. 212.06(14), F.S., and Rule 12A-1.051, F.A.C.

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 documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 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,

Chuck Wallace

Chuck Wallace

Conferee

Technical Assistance and Dispute Resolution

Record ID: 358290