



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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Executive Director

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Questions: Whether materials and hardware used to contain cattle on a farm are exempt from Florida sales tax and use tax? Whether pre-fabricated containment devices used to contain cattle are exempt from Florida sales and use tax?

Answer: Fencing materials, hardware, and pre-fabricated containment devices used to contain cattle on a farm are subject to Florida sales and use tax given there are no specific exemptions granted under Chapter 212, F.S., for such materials.

October 30, 2020

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Technical Assistance Advisement (TAA) 20A-017
Sales & Use Tax – Fencing Materials
Section 212.02, 212.05, and 212.08, Florida Statutes (F.S.)
Rule 12A-1.087, Florida Administrative Code (F.A.C.)

Dear XXXXXXXX:

This is in response to the letter dated January 7, 2020, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to s. 213.22, F.S., and Chapter 12-11, Florida Administrative Code (Fla. Admin. Code) regarding the taxability of pre-assembled meals. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, Fla. Admin. Code. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

As provided in s. 213.22(1), F.S., a technical assistance advisement may be issued to a taxpayer who requests an advisement relating to the exemptions in s. 212.08(1) or (2), F.S., at any time. "Technical assistance advisements shall have no precedential value

except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement.”

REQUESTED RULINGS

- Whether materials and hardware used to contain cattle on a farm are exempt from Florida sales tax and use tax?
- Whether pre-fabricated containment devices used to contain cattle are exempt from Florida sales and use tax.

FACTS

XXXXXXXXXX XXXXXXXX consists of cattle ranchers engaged in the business of producing cattle. As presented in the request for technical advisement, the cattle must be contained within certain areas as Florida law requires the containment of livestock to prevent them from roaming onto public roadways, public property, or impeding waterways. In containing the cattle, farmers and ranchers purchase various materials that fall into the following two groups:

- Materials and hardware. For example: [P]osts, wire, braces, boards, planks, beams, guardrail, metal tubing, channels, staples, nails, screws, nuts, bolts, rivets, clamps, and clips.
- Prefabricated containment devices. For example; [G]ates, cattle panels, cattle guards, cattle pens, and electric fencing materials.

Taxpayer seeks guidance regarding whether the exemption granted under s. 212.08(5)(a), F.S., for items purchased by farmers to contain, produce, or process an agricultural commodity extends to the materials noted above when used to contain cattle.

LAW

Pursuant to Section 212.05(1)(a), F.S., sales tax is imposed at the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state. As defined in s. 212.02(14)(c), F.S., the term “retail sale” does not include materials, containers, labels, sacks, bags, or similar items intended to accompany a product sold to a customer without which delivery of the product would be impracticable because of the character of contents and be used one time only for packaging tangible personal property for sale or for the convenience of the customer.

Section 212.08(5)(a), F.S., provides an exemption for specific items purchased for agricultural use. Included in the list of specific items exempt under s. 212.08(5)(a), F.S., are cellophane wrappers, glue to tin and glass (apiarists), mailing cases for honey,

shipping cases, window cartons, and baling wire and twine used or baling hay, when used by a farmer to contain, produce, or process an agricultural commodity.

Rule 12A-1.087(10)(f), F.A.C., provides a suggestive purchaser's exemption certificate for use by farmers in making exempt purchases of items that qualify for exemption as items for agricultural use or items for agricultural purposes. The list is not intended to be an exhaustive list. Included in the suggested certificate are:

Items that are used by a farmer to contain, produce, or process an agricultural commodity, such as: glue for tin and glass for use by apiarists; containers, labels, and mailing cases for honey; wax moth control with paradichlorobenzene; cellophane wrappers; shipping cases; labels, containers, clay pots and receptacles, sacks or bags, burlap, cans, nails, and other materials used in packaging plants for sale; window cartons; baling wire and twine used for baling hay; and other packaging materials for one time use in preparing an agricultural commodity for sale.

No transactions shall be exempt from the tax imposed by Chapter 212, F.S., except those expressly exempt. See s. 212.08(13), F.S. Furthermore, Florida courts have consistently held that exemptions must not be expanded beyond their express terms and must be strictly and narrowly construed against the taxpayer. See Department of Revenue v. Anderson, 403 So.2d 397 (Fla. 1981); State ex rel. Szabo Food Services, Inc. v. Dickinson, 286 So.2d 529 (Fla. 1973). See also Asphalt Pavers v. Dept. of Revenue, 584 So.2d 55 (Fla. 1st DCA 1991), at 57 (citing the rule that exemptions from tax are strictly construed against the taxpayer, with any ambiguity resolved in favor of the administrative agency).

Narrowly and strictly construed, the exemption granted in s. 212.08(5)(a), F.S., applies specifically to the items listed (cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire) when used by a farmer to contain, produce, or process an agricultural commodity, and cannot be construed to include fencing material used to contain cattle on a farm.¹ Other items listed in the suggested certificate in Rule 12A-1.087, F.A.C., such as clay pots and receptacles, burlap, sacks, bags, cans, and other materials qualify only when used purchased for one-time use in packaging or preparing an item for sale.

¹ We also note that in response to Hurricanes Irma and Michael, the Legislature provided relief in the form of refunds for sales tax paid on eligible purchases of fencing material and nonresidential farm building materials that were used to repair or replace those types of items damaged by Hurricanes Irma and Michael. See Ch. 2018-118, §§ 57, 58, and Ch. 2019-42, §§ 20, 21. This reiterates to us that the Legislature intended to subject the items described in this TAA to Florida Sales Tax.

CONCLUSION

Fencing materials, hardware, and pre-fabricated containment devices used to contain cattle on a farm are subject to Florida sales and use tax given there are no specific exemptions granted under Chapter 212, F.S., for such materials.

This response constitutes a Technical Assistance Advisement under Section 213.22, Fla. Stat., 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, Fla. Stat. 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, Fla. Stat., and are subject to disclosure to the public under the conditions of Section 213.22, Fla. Stat. 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.

Sincerely,

Richard R. Parsons

Richard R. Parsons
Tax Law Specialist
Technical Assistance & Dispute Resolution

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

Persons needing an accommodation to participate in any proceeding before the Technical Assistance and Dispute Resolution Office should contact that office at 850-617-8346, or you may also call via the Florida Relay System at 800-955-8770, at least five working days before such proceeding.