

SUMMARY

QUESTION: Whether the facilities and equipment associated with a replacement wastewater system as required for compliance with DEP's water quality standards meet the requirements for exemption under the provisions of s. 212.051, F.S.

ANSWER: All three of the exemption criteria under the provisions of s. 212.051(1), F.S., have been satisfied by Taxpayer. Accordingly, the new system and all of its associated structures and equipment, as specifically described and required in the Industrial Wastewater Facility Permit as issued by DEP, qualify for exemption as pollution control equipment.

January 4, 2012

XXX
XXX
XXX

Re: Technical Assistance Advisement 12A-001
Sales and Use Tax
Pollution control exemption
Section 212.051, Florida Statutes (F.S.)

Dear

This is in response to your request dated October 31, 2011, for a Technical Assistance Advisement (TAA) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the applicability of an exemption from sales and use tax pursuant to s. 212.051(1), F.S., to purchases of machinery and equipment by your company (hereinafter "Taxpayer"). 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.

BACKGROUND

Taxpayer operates a manufacturing facility in Florida. The manufacturing process utilizes chemicals and generates XXX wastewater. The presence of these chemicals in the wastewater is [regulated] by the federal Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (DEP). Accordingly, the facility operates under an Industrial Wastewater Facility Permit issued by DEP. This permit also serves as the federal National Pollutant Discharge Elimination System (NPDES) permit, as that permitting process is described in s. 403.0885, F.S. The standards, rules, and regulations as established by the EPA are enforced, implemented, and permitted by DEP.

Taxpayer is required to treat its wastewater from the manufacturing process. [A] XXX schedule of compliance was established for Taxpayer to achieve applicable water quality standards as set forth in Chapter 62-302, Florida Administrative Code (F.A.C.), by a specific date.

Water quality samples have now been evaluated by DEP and it has been determined that XXX, Taxpayer is now required by DEP to relocate the facility's wastewater discharge from the current [location] to an alternate [location] of the state.

The new requirements imposed on Taxpayer by DEP include the construction of an underground large-diameter pipeline made from concrete-lined ductile iron pipe. The sub-aqueous portion of the pipeline will be made from high-density polyethylene. In addition to the pipeline itself, requirements generally include site preparation, as well as obtaining rights of way and easements where necessary, the construction of a pumping station, the construction of an MCC building, and the installation of a high-purity oxygen integration system, instrumentation, electrical controls, and a diffuser for low-impact discharge into the alternate [location].

Once completed, the new pipeline will not result in any operational cost savings to Taxpayer. The equipment and systems to be installed are subsequent to the actual production process and are solely for the purpose of pollution control.

ISSUE

Whether the facilities and equipment associated with the pipeline as required for compliance with DEP's water quality standards meet the requirements for exemption under the provisions of s. 212.051, F.S.

RELEVANT AUTHORITY

The following passage from the Florida Statutes (F.S.) is pertinent to the exemption issue in this advisement.

Section 212.051, F.S., provides in part:

Equipment, machinery, and other materials for pollution control; not subject to sales or use tax. —

(1) Notwithstanding any provision to the contrary, sales, use, or privilege taxes shall not be collected with respect to any facility, device, fixture, equipment, machinery, specialty chemical, or bioaugmentation product used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery. To qualify, such facility, device, fixture, equipment, structure, specialty chemical, or bioaugmentation product must be used, installed, or constructed to meet a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection; however, such exemption shall

not be allowed unless the purchaser signs a certificate stating that the facility, device, fixture, equipment, structure, specialty chemical, or bioaugmentation product to be exempted is required to meet such law or condition.

DISCUSSION

Three general criteria must be met before an exemption may be granted under s. 212.051(1), F.S. First, subsection (1) limits the exemption to those businesses that manufacture, process, compound, or produce tangible personal property for sale at a fixed location. Second, the facility, device, fixture, equipment, machinery, specialty chemical, or bioaugmentation product installed, reconstructed, or replaced by the eligible business must be used primarily for the control or abatement of pollution or contaminants created by those business operations. Third, those items “must be used, installed, or constructed to meet a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection.”

Taxpayer is a manufacturer with a fixed location in Florida. In connection with that manufacturing facility, XXX the replacement of the existing [wastewater] system is required by DEP. The pipeline and all of the associated structures and equipment have no purpose other than to control pollution.

It is noted that it may be necessary to obtain rights of way or easements in the event that portions of the new pipeline or other equipment must be placed upon property that does not belong to Taxpayer. Although the exemption statute may contemplate that the pollution control equipment will be located at the very same fixed location as the manufacturing operations, there is no express requirement for that scenario. It is obvious that the pipeline and its associated structures and equipment are not mobile. Once installed or constructed, such items will remain in place for years to come. The exemption provisions of s. 212.051, F.S., could be narrowly construed to only apply to those pollution control items that are exclusively on Taxpayer’s property. However, such a narrow construction would be contrary to the findings of the court in Alachua County v. Department of Revenue, 466 So.2d 1186 (Fla. 1st DCA 1985). There, the court stated that “[a]lthough an exemption in a taxing statute should be strictly construed against the person claiming it, the construction must not be so strained that it forces a conclusion that is unreasonable. . . .” Without the new pipeline, Taxpayer will not be allowed to operate its manufacturing facility. Further, Taxpayer must bear the entire cost of the system. Therefore, it would be unreasonable to disallow the exemption on any portion of the pipeline system based on its physical location.

CONCLUSIONS

It is clear that all three of the general criteria for exemption have been satisfied by Taxpayer. Accordingly, the new, replacement pipeline and all of its associated structures and equipment, as generally described above and as specifically described and required in the Industrial Wastewater Facility Permit issued by DEP, qualify for exemption as pollution control equipment under the provisions of s. 212.051(1), F.S.

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,

Jeffery L. Soff
Tax Law Specialist
Technical Assistance and
Dispute Resolution

id: 113505