

## SUMMARY

### QUESTIONS:

1. Whether twenty-two (22) specifically described areas of work in a contract for the expansion of the production capacity of a cement manufacturing facility, completed after July 2006, qualify for exemptions from sales and use tax.
2. Whether the taxpayer may take a credit for a payment of \$50,000 in use tax made in April 2006 for the expansion project purchases.

### ANSWERS:

1. Based on the documentation provided, the twenty-two (22) specifically described areas of work in the expansion project qualify for an exemption as machinery and equipment for pollution control, or as machinery and equipment used in a qualifying expanding business, or as professional services.
2. Since the tax threshold payment made in April 2006 was applicable to purchases that were not completed until after July 1, 2006, the tax was not yet “imposed” within the provisions of the expanding business exemption statute. Accordingly, the use tax was paid when no tax was due, and the taxpayer may take a credit for that tax.

May 22, 2008

XXX  
XXX  
XXX  
XXX

Re: Technical Assistance Advisement 08A-015  
Sales Tax – Cement Manufacturing Facility  
Sections 212.051, 212.08(5)(b), and 212.08(7)(v), Florida Statutes (F.S.)  
Rule 12A-1.096, Florida Administrative Code (F.A.C.)

Dear XXX:

This is in response to your letter of February 7, 2008, requesting a Technical Assistance Advisement (TAA) concerning the applicability of certain sales and use tax exemptions to the construction of a cement manufacturing facility by XXX, hereinafter “Taxpayer.” This response to your request constitutes a TAA under Chapter 12-11, Florida Administrative Code (F.A.C.), and is issued to you under the authority of Section 213.22, Florida Statutes (F.S.).

### Stated Facts

Taxpayer is a manufacturer of XXX cement for sale in Florida. Taxpayer is in the

process of expanding its cement manufacturing facility. The expansion project will involve two separate contracts. The first contract is a design-build agreement. Work under this contract began on July 24, 2006. This contract generally involves the preparation of the land at the fixed location for the installation of the process facilities and machinery and equipment. As a part of this preparation, certain improvements must be made in order to comply with the requirements of the facility's operating permit as issued by the Florida Department of Environmental Protection (DEP). The second contract is an equipment purchase agreement. Under the provisions of this contract, Taxpayer is required to make various progress payments in advance of the fabrication and delivery of the production machinery and equipment to the facility. By May 2006, payments were made toward the purchase of the machinery and equipment. In addition, Taxpayer remitted \$50,000 in use tax on its April 2006 sales and use tax return. That amount represents the tax threshold requirement as provided in s. 212.08(5)(b), F.S. (2005). None of the machinery and equipment arrived at the facility before October 1, 2006.

### Issues

The following issues have been presented with respect to Taxpayer's expansion project at the XXX cement manufacturing facility.

Issue 1. SWITCHYARD Whether the equipment located at the switchyard, which controls the electricity of the entire plant, is subject to sales and use tax.

Issue 2. SWITCHGEAR Whether the switchgear, which is used to route and split the electricity to the five different sub-process areas, qualifies as exempt machinery and equipment.

Issue 3. ARCHITECTURAL BUILDINGS Whether Electrical Room 1 (ER1), a stand alone architectural building, and four additional electrical rooms, specifically designed and constructed to house electrical equipment and located at the plant's sub-process areas, are exempt from sales and use tax.

Issue 4. DUCT BANK CONDUITS Whether duct banks, including cables, wires, and concrete, which run from the switchyard to ER1, and whether duct banks, including cables, wires, and concrete, which run from ER1 to the four electrical rooms, will qualify for exempt status.

Issue 5. TRANSFORMERS Whether the transformers in the sub-process production areas are subject to sales and use tax.

Issue 6. MOTOR CONTROL CENTERS (MCCs), VARIABLE FREQUENCY DRIVES (VFDs), AND CONTROL SYSTEMS Whether the MCCs, VFDs, and control systems used to operate and control the machinery and equipment in the production areas are subject to sales and use tax.

Issue 7. POWER CABLES, CABLE TRAYS, AND CONDUITS Whether the power cables, cable trays, and conduits that run above ground in each sub-process area are subject to sales and use tax.

Issue 8. AIR CONDITIONING Whether the air conditioning systems that will ventilate the electrical rooms will be subject to sales and use tax.

Issue 9. FIRE DETECTION AND ALARM Whether the fire detection and alarm systems that will be installed at each of the electrical rooms are subject to sales and use tax.

Issue 10. LIGHTING CONTROL DISTRIBUTION PANELS Whether the lighting control distribution panels that allow the use of lighting at the machinery and equipment are subject to sales and use tax.

Issue 11. RECEPTACLE DEVICES Whether the receptacle devices that are installed throughout the plant for repair and maintenance purposes of the machinery and equipment are subject to sales and use tax.

Issue 12. LINERS Whether the liners that are used to line the retention ponds are subject to sales and use tax.

Issue 13. DRAINAGE PIPES Whether the drainage pipes that are used within the production areas and to route storm water run-off to treatment ponds are subject to sales and use tax.

Issue 14. MANHOLES/INLETS/CATCH BASINS Whether the manholes, inlets, and catch basins that are used within the production areas and to route storm water run-off to treatment ponds are subject to sales and use tax.

Issue 15. HDPE PIPES AND FITTINGS Whether the new HDPE pipes and fittings that are used to supply water to the expanded production areas and to hydrants at the facility are subject to sales and use tax.

Issue 16. PAVING Whether the paving of roads in compliance with the DEP permit will be exempt, notwithstanding the fact that paving is a real property improvement.

Issue 17. LANDSCAPING/SEEDING Whether the landscaping and seeding in compliance with the DEP permit will be exempt, notwithstanding the fact that such items are real property improvements.

Issue 18. SIDING/ROOFING Whether siding and roofing, and the structures and foundations necessary to support those items, installed at the kiln, kiln feed area, coal mill, and finish mill are subject to sales and use tax.

Issue 19. LIGHTNING PROTECTION Whether lightning protection equipment, which does not serve a production function, is subject to sales and use tax.

Issue 20. TIRE FUEL HANDLING EQUIPMENT Whether that portion of the tire fuel handling equipment that will be incorporated into, and will initially only service, the existing tire

fuel system at the plant, is subject to sales and use tax.

Issue 21. SOIL COMPACTION AND TESTING Whether soil compaction and testing services that will be performed at the site where the additional machinery and equipment will be erected are subject to sales and use tax.

Issue 22. ADDITIVE STORAGE BUILDING Whether the pre-engineered additive storage building that will be installed at the plant in compliance with the DEP permit will be subject to sales and use tax.

Issue 23. PAYMENT OF THE FIRST \$50,000 OF SALES TAX Whether Taxpayer should have remitted the \$50,000 in use tax for calendar year 2006, when the transactions at issue were not completed prior to July 1, 2006. Further, whether Taxpayer may take a credit for the \$50,000 payment on a subsequent sales and use tax return.

### Applicable Authority

The following passages from the Florida Statutes (F.S.) and the Florida Administrative Code (F.A.C.) are applicable to the issues under consideration. The passages, as presented, are those that were in effect for the time period of Taxpayer's transactions. Specific citations may be different under current statutes and rules.

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

(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.

Section 212.06(14), F.S., provides in part:

(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 . . . 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. . . .

Section 212.08(5)(b), F.S. (2006), provides in part:

2. Industrial machinery and equipment purchased for exclusive use by an expanding facility which is engaged in spaceport activities as defined by s. 212.02 or for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such expanded facility or business by not less than 10 percent.

3.a. To receive an exemption provided by subparagraph 1. or subparagraph 2., a qualifying business entity shall apply to the department for a temporary tax exemption permit. The application shall state that a new business exemption or expanded business exemption is being sought. Upon a tentative affirmative determination by the department pursuant to subparagraph 1. or subparagraph 2., the department shall issue such permit.

d. In the event a qualifying business entity fails to apply for a temporary exemption permit or if the tentative determination by the department required to obtain a temporary exemption permit is negative, a qualifying business entity shall receive the exemption provided in subparagraph 1. or subparagraph 2. through a refund of previously paid taxes. No refund may be made for such taxes unless the criteria mandated by subparagraph 1. or subparagraph 2. have been met and commencement of production has occurred.

6. For the purposes of the exemptions provided in subparagraphs 1. and 2., these terms have the following meanings:

a. "Industrial machinery and equipment" means tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. A building and its structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The term includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph. . . .

Section 212.08(7)(v), F.S., provides in part:

1. Also exempted are professional, insurance, or personal service transactions that involve sales as inconsequential elements for which no separate charges are made.

Rule 12A-1.096, F.A.C. (2006), provides in part:

(1) Definitions - The following terms and phrases when used in this rule shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

...  
(b) "Industrial machinery and equipment" means tangible personal property or other property with a depreciable life of 3 years or more that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. Buildings and their structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment itself is replaced. Heating and air conditioning systems are not considered industrial machinery and equipment, unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees, or serves, to an insubstantial degree, non-production activities. For example, a dehumidifier installed for the sole purpose of conditioning air in a factory, where the manufacturing of electronic components requires a controlled-humidity environment, will be considered industrial machinery and equipment. (See subsection (9) of this rule.)

(c) "Integral to" means that the machinery and equipment provides a significant function within the production process, such that the production process could not be complete without that machinery and equipment.

...  
(9) Types of industrial machinery and equipment that will or will not qualify for the exemption.

(a) For the purpose of this exemption industrial machinery and equipment includes:

1. Special foundations required for the support of such qualifying machinery and equipment;
2. Electrical wiring from the nearest power panel or disconnect box to the qualifying machinery and equipment; and
3. Plumbing connections necessary to connect the machinery and equipment to the nearest water supply or drain line.

...  
(f) Pollution control equipment, or sanitizing and sterilizing equipment that is an integral part of the production process qualifies for exemption.

...  
(s) General or task lighting fixtures will not qualify for the exemption. . . .

### Discussion and Response

Subparagraph 2. of s. 212.08(5)(b), F.S., provides an exemption from sales and use tax to expanding businesses that manufacture, process, compound, or produce tangible personal

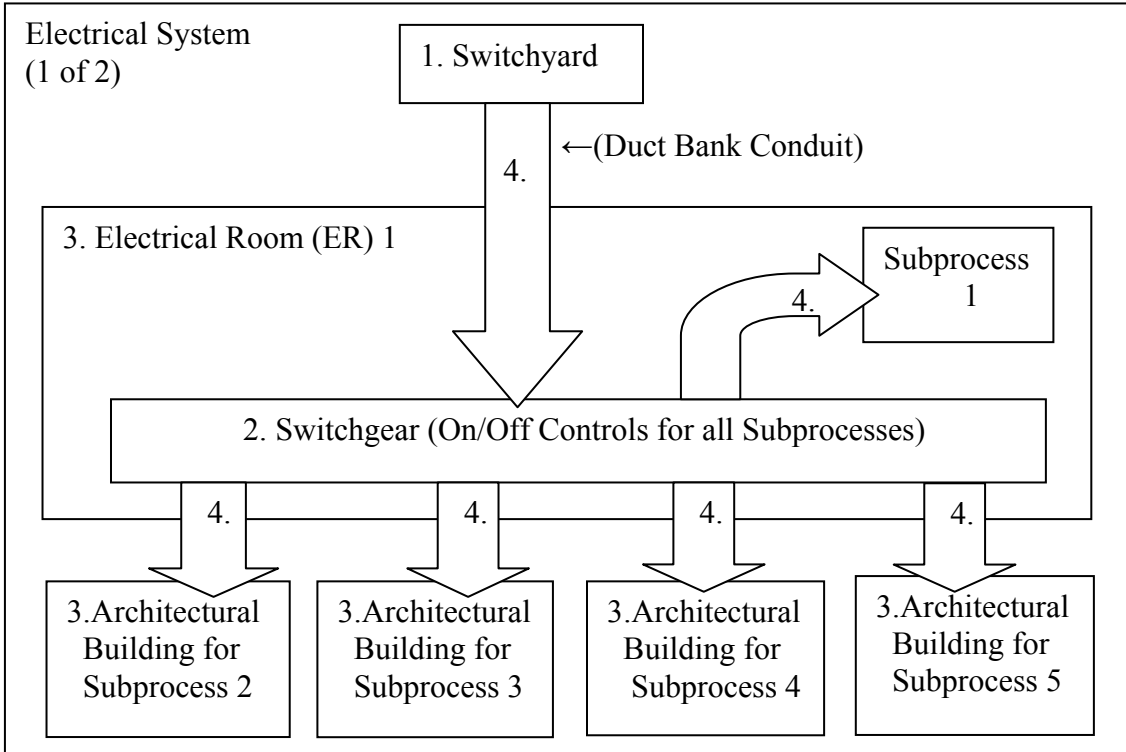
property for sale at a fixed location. In order to qualify for exemption, the additional or replacement industrial machinery and equipment that is purchased by the expanding business must increase the productive output of the business by not less than 10 percent. However, it is important to understand that pursuant to subparagraph 3. of that exemption statute, no exemption exists until such time as the expanding business has applied for the exemption by submitting an Application for Temporary Tax Exemption Permit, form DR-1214.

Generally, the exemption begins at that point in the production process where raw materials are received, and the exemption ends at that point where the product is packaged for sale or is in saleable form if packaging is not done. Industrial machinery and equipment that is integral to the production process will qualify for exemption. Rule 12A-1.096(9), F.A.C., provides some guidelines as to the various types of machinery and equipment that will or will not qualify for exemption. It should be noted that the administrative rule has been written from the perspective of a manufacturing operation that is contained within a factory building. Accordingly, the rule makes a distinction between machinery and equipment issues and real property improvement issues. Taxpayer's production process is, effectively, an operation that is performed completely outdoors. However, the Department has often encountered outdoors manufacturing operations. When such situations do occur, the exemption can still be consistently administered between interior and exterior operations.

Section 212.051, F.S., provides an exemption from sales and use tax on purchases by manufacturing operations and by landfill operations for pollution control purposes. The scope of the exemption is somewhat different for the two different operations. Unlike the industrial machinery and equipment exemption for expanding businesses, neither type of operation is required to submit any kind of exemption application to the Department before making tax exempt purchases of pollution control items. Instead, the purchaser must sign a certificate stating that the items to be exempted are required to meet a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection. The Department of Revenue has not established, nor would it be possible to establish, a comprehensive list of the kinds of items that would or would not qualify for the pollution control exemption. Generally, it may be stated that the kinds of items qualifying for exemption must be purchased to meet required provisions of a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection. Items purchased in accordance with non-mandatory or optional permit provisions or suggestions for best business practices will not satisfy the conditions for exemption under s. 212.051, F.S.

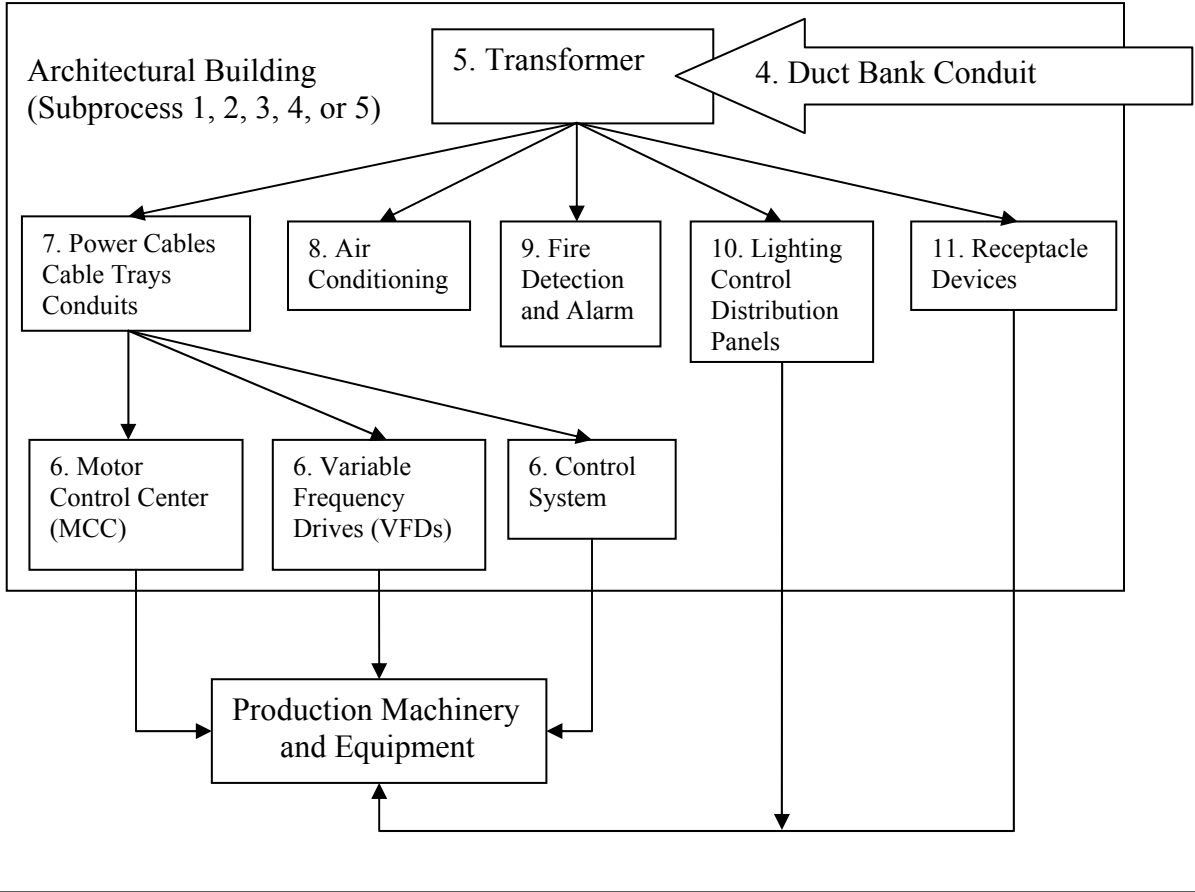
Your letter asks whether Taxpayer's various systems and structures would be subject to sales and use tax or whether such items would qualify for an exemption from sales and use tax. In general terms, these systems and structures may be classified as electrical systems, water systems, special purpose buildings, and site work. Many of these systems and structures are interrelated and complex. Accordingly, the three following flowcharts have been prepared for the electrical systems and the water systems to assist in the overall understanding of the processes and the conclusions in this letter. Various steps within the flowcharts have been numbered. These numbers directly correspond to numbered issues as presented in your request for technical advice. Other steps within the flowchart are not numbered. No specific question

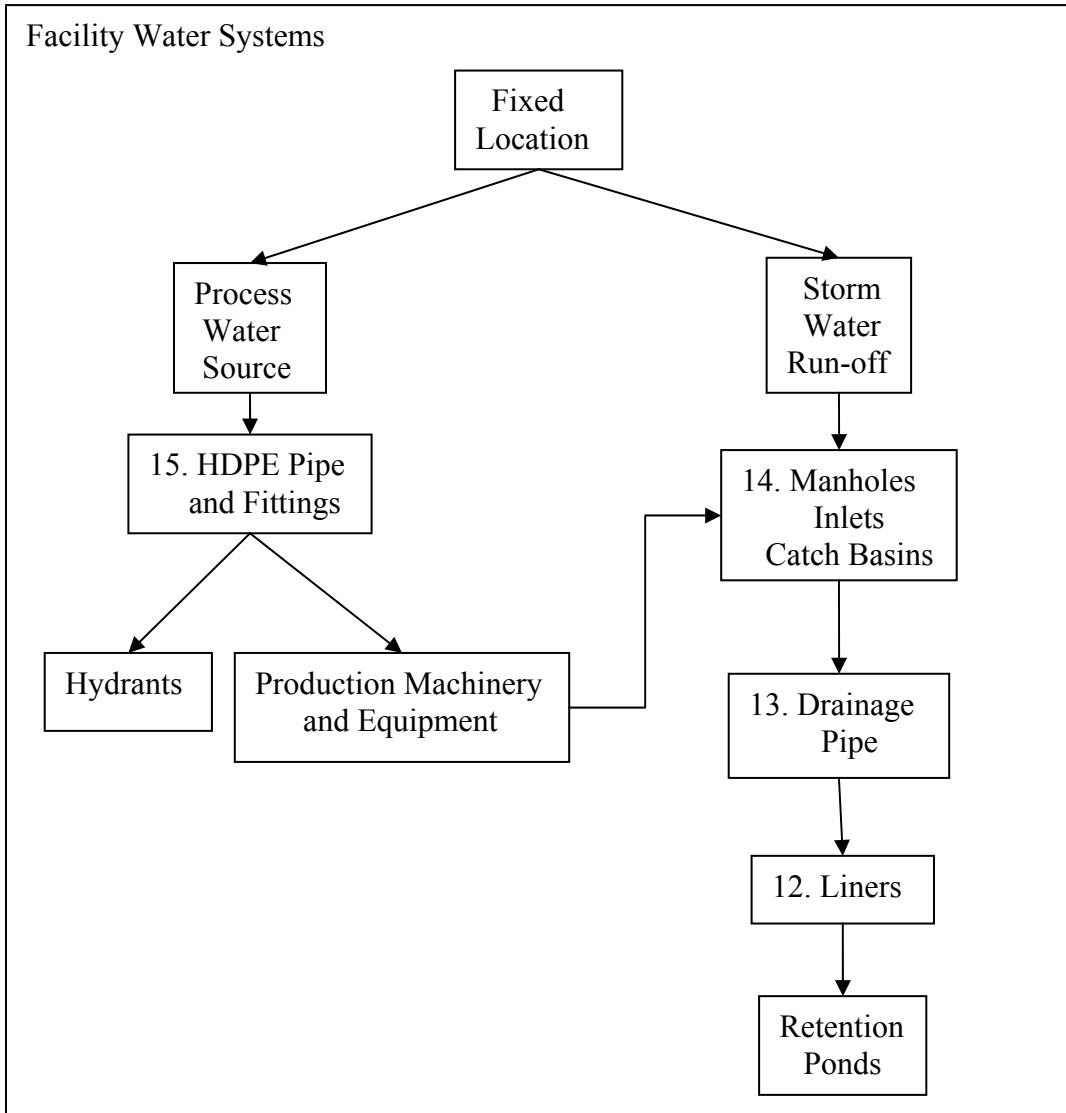
has been asked with respect to these steps. These steps are included to assist in the understanding of the overall operations at Taxpayer's facility.





Electrical System  
(2 of 2)





### Conclusions

Issue 1. SWITCHYARD The switchyard controls the electricity of the entire plant. This is the electrical service entrance to the fixed location. It could be thought of as the large-scale equivalent of an electrical masthead for a factory building and, as such, would be a real property improvement. The purchase of machinery and equipment for the switchyard is subject to sales and use tax.

Issue 2. SWITCHGEAR The switchgear receives electricity from the switchyard (Issue 1.). The switchgear is used to route and split the electricity to the five different sub-process areas. Power for the five sub-process areas can be turned on and off at the switchgear. The switchgear would be the large-scale equivalent of a main power panel (fuse box/circuit breaker box) in a factory building and, as such, would be a real property improvement. The purchase of the switchgear would not qualify for an exemption as industrial machinery and equipment.

Issue 3. ARCHTECTURAL BUILDINGS Electrical Room 1 (ER1) is a stand alone architectural building that has been specifically designed to house electrical equipment. That equipment is all of the switchgear for the sub-processes and all of the controlling electrical equipment for sub-process 1. Notwithstanding the fact that ER1 encloses the nonexempt switchgear, ER1 still conforms to the definition of industrial machinery and equipment as provided in Rule 12A-1.096(1)(b), F.A.C., in that it also provides an enclosure for a part of the exempt production machinery and equipment for sub-process 1. Accordingly, the ER1 structure will qualify for an exemption as industrial machinery and equipment.

The four additional electrical rooms are structures located in the same sub-process areas that they serve. The four additional electrical rooms conform to the definition of industrial machinery and equipment as provided in Rule 12A-1.096(1)(b), F.A.C., in that they provide an enclosure for a part of the production machinery and equipment for sub-processes 2 through 5. Accordingly, the four additional electrical room structures will qualify for an exemption as industrial machinery and equipment.

Issue 4. DUCT BANK CONDUITS The duct banks, including cables, wires, and concrete that run from the switchyard (Issue 1.) to ER1 (Issue 3.) all occur before the first items of exempt electrical equipment. Such items are real property improvements. As such, these items will not qualify for exemption as industrial machinery and equipment.

The duct banks, including all cables, wires, and concrete that run from the switchgear (Issue 2.) within ER1 (Issue 3.) to the five sub-processes, all occur after the nearest point in the facility's electrical system where power can be disconnected to those sub-processes. These items conform to the description of qualifying industrial machinery and equipment as provided in Rule 12A-1.096(9)(a)2., F.A.C. As such, these items will qualify for exemption.

Issue 5. TRANSFORMERS The transformers in the sub-process production areas are dedicated to specific industrial machinery and equipment. The transformers are integral to the production process and will qualify for an exemption as industrial machinery and equipment.

Issue 6. MOTOR CONTROL CENTERS (MCCs), VARIABLE FREQUENCY DRIVES (VFDs), AND CONTROL SYSTEMS The motor control centers (MCCs), variable frequency drives (VFDs), and control systems are used to operate and control the industrial machinery and equipment in the production areas. These items will qualify for an exemption as industrial machinery and equipment.

Issue 7. POWER CABLES, CABLE TRAYS, AND CONDUITS The power cables, cable trays, and conduits that run above ground in each of the sub-process areas carry electrical power from the transformers (Issue 5.) to the MCCs, VFDs, and control systems (Issue 6.). These items will qualify for an exemption as industrial machinery and equipment.

Issue 8. AIR CONDITIONING The primary purpose of the air conditioning systems in the electrical rooms (Issue 3.) is to ventilate those structures and to prevent extreme temperatures from damaging the MCCs, VFDs, and control systems (Issue 6.). The air conditioning systems will qualify for an exemption as industrial machinery and equipment.

Issue 9. FIRE DETECTION AND ALARM The fire detection and alarm systems will be installed at each of the electrical rooms (Issue 3.) in compliance with National Fire Protection Association (NFPA) code requirements. Although the fire detection and alarm systems do not actively participate in the production process, they are integral to the operation of the production plant. Consistent with prior determinations by the Department, the fire detection and alarm systems will qualify for an exemption as industrial machinery and equipment.

Issue 10. LIGHTING CONTROL DISTRIBUTION PANELS The lighting control distribution panels allow the use of lighting at the machinery and equipment. This equipment does not relate to general yard or area lighting at the facility. This lighting will be installed at, or mounted directly on, the production machinery and equipment itself for the purpose of providing light to the operators of the machinery and equipment. Notwithstanding the provisions of Rule 12A-1.096(9)(s), F.A.C., such lighting controls are integral to the industrial machinery and equipment. These items may also be considered as accessories pursuant to the definition provided by s. 212.08(5)(b)6.a., F.S. The lighting control distribution panels will qualify for an exemption as industrial machinery and equipment.

Issue 11. RECEPTACLE DEVICES The receptacle devices are installed throughout the plant for repair and maintenance purposes to prevent stoppages of the machinery and equipment. Although it has not been expressly stated, it is presumed that, similar to the lighting in Issue 10., the receptacle devices will also be installed at, or mounted directly on, the production machinery and equipment itself. These devices serve no purpose other than for maintenance of the production equipment. Accordingly, they may also be considered as accessories pursuant to the definition provided by s. 212.08(5)(b)6.a., F.S. As such, the receptacle devices may be considered as machinery and equipment qualifying for exemption.

Issue 12. LINERS The liners at the retention ponds are used to collect waste cooling water from production machinery and equipment and storm water run-off. The liners are an integral part of the pollution control system for the production process and are required as a condition of the permit issued by DEP. Accordingly, the liners may be considered as exempt parts of the production process pursuant to Rule 12A-1.096(9)(f), F.A.C., as well as exempt pursuant to s. 212.051(1), F.S., as items used primarily for the control or abatement of pollution or contaminants in manufacturing.

Issue 13. DRAINAGE PIPES The drainage pipes are used within the production areas to

route waste cooling water and storm water run-off to the lined treatment ponds (Issue 12.). The drainage pipes are integral parts of the pollution control system for the production process and are required as a condition of the permit issued by DEP. The drainage pipes may be considered as exempt parts of the production process pursuant to Rule 12A-1.096(9)(f), F.A.C., as well as exempt pursuant to s. 212.051(1), F.S., as items used primarily for the control or abatement of pollution or contaminants in manufacturing.

Issue 14. MANHOLES/INLETS/CATCH BASINS The manholes, inlets, and catch basins are used within the production areas to collect waste cooling water and storm water run-off for transport through the drainage pipes (Issue 13.) to the lined treatment ponds (Issue 12.). The manholes, inlets, and catch basins are integral parts of the pollution control system for the production process and are required as a condition of the permit issued by DEP. The manholes, inlets, and catch basins may be considered as exempt parts of the production process pursuant to Rule 12A-1.096(9)(f), F.A.C., as well as exempt pursuant to s. 212.051(1), F.S., as items used primarily for the control or abatement of pollution or contaminants in manufacturing.

Issue 15. HDPE PIPES AND FITTINGS The new HDPE (high-density polyethylene) pipes and fittings are used to supply water for cooling of machinery and equipment in the expanded production areas and to hydrants (for fire protection) at the facility. The expanding business exemption parameters for water systems are equivalent to those for electrical systems. The exemption for electrical systems starts at, but does not include, the nearest panel box or disconnect to the industrial machinery and equipment. Similarly, the exemption for water systems starts at, but does not include, the nearest water supply or drain line connection at the fixed location. Accordingly, the new HDPE pipes and fittings that connect to the existing plant water system for the expanded production areas will qualify for exemption under the provisions of s. 212.08(5)(b), F.S. It is noticed in the DEP permit conditions that Taxpayer is required to use water for dust suppression. If water is drawn from production area supply points or from the hydrants for dust suppression purposes as well as production purposes, then all of the new HDPE piping and fittings would also qualify for exemption pursuant to s. 212.051(1), F.S., as items used primarily for the control or abatement of pollution or contaminants in manufacturing.

Issue 16. PAVING The paving of roads at the fixed location will be performed in compliance with DEP's "Conditions of Certification" and "Section II. Facility-wide Specific Conditions" for the air construction permit. Paving is consistent with the definition of "fixture" as provided in s. 212.06(14)(b), F.S., in that paving is an accessory to land that does not lose its identity when installed. Since the pollution control exemption pursuant to s. 212.051(1), F.S., extends to "fixtures," the paving will qualify for exemption as an item that is a condition of a permit issued by the Department of Environmental Protection.

Issue 17. LANDSCAPING/SEEDING Landscaping and seeding at the fixed location will be performed in compliance with DEP's "Conditions of Certification" and "Section II. Facility-wide Specific Conditions" for the air construction permit. Landscaping and seeding are consistent with the definition of "fixture" as provided in s. 212.06(14)(b), F.S., in that landscaping and seeding are accessories to land that do not lose their identity when installed. Since the pollution control exemption pursuant to s. 212.051(1), F.S., extends to "fixtures," the landscaping and seeding will qualify for exemption as items that are conditions of a permit

issued by the Department of Environmental Protection.

Issue 18. SIDING/ROOFING Siding and roofing, and the structures and foundations necessary to support those items, will be installed at the kiln, kiln feed area, coal mill, and finish mill as protection for the industrial machinery and equipment in those production areas. The siding, roofing, structures, and foundations are consistent with the definition of “industrial machinery and equipment” as provided in Rule 12A-1.096(1)(b), F.A.C. Accordingly, the siding, roofing, structures, and foundations will qualify for an exemption as industrial machinery and equipment.

Issue 19. LIGHTNING PROTECTION The lightning protection equipment does not serve a direct production function. However, such protection equipment is integral to the safe operation of the industrial machinery and equipment. These items may also be considered as accessories pursuant to the definition provided by s. 212.08(5)(b)6.a., F.S. Accordingly, the lightning protection equipment will qualify for an exemption as industrial machinery and equipment.

Issue 20. TIRE FUEL HANDLING EQUIPMENT Taxpayer’s facility burns tires as an alternate fuel source for the production process. A portion of the existing tire fuel handling system for the facility will be replaced, and eventually, the entire tire fuel system will then accommodate both the existing and the additional (new) production machinery and equipment. Provided the productive output of Taxpayer’s facility increases by not less than 10 percent, the additional/replacement tire fuel handling equipment would qualify for exemption under s. 212.08(5)(b)2., F.S., even though the replacement tire fuel handling equipment only initially services the existing machinery and equipment.

Issue 21. SOIL COMPACTION AND TESTING Soil compaction and testing services will be performed at the site where the additional machinery and equipment will be erected. No tangible personal property will be added to the existing soil in connection with these activities. The soil compaction and testing is a professional service pursuant to s. 212.08(7)(v), F.S. As such, these services will not be subject to tax.

Issue 22. ADDITIVE STORAGE BUILDING The pre-engineered additive storage building will be installed at the plant in compliance with the DEP air construction permit condition that raw materials must be stored under roof for dust control purposes. This building is also consistent with the definition of “industrial machinery and equipment” as provided in Rule 12A-1.096(1)(b), F.A.C., in that it provides protection to raw materials for the production process. Accordingly, the additive storage building will qualify for an exemption pursuant to Rule 12A-1.096(1)(b), F.A.C., as well as an exemption pursuant to s. 212.051(1), F.S., as an item that is a condition of a permit issued by the Department of Environmental Protection and as an item that is used primarily for the control or abatement of pollution or contaminants in manufacturing.

Issue 23. PAYMENT OF THE FIRST \$50,000 OF SALES TAX Taxpayer began making expenditures for the expansion project in May 2006. At that time, pursuant to s. 212.08(5)(b)2.a., F.S. (2005), expanding businesses were exempt from any amount of tax

imposed in excess of \$50,000 in a calendar year. Effective July 1, 2006, that tax threshold requirement was removed from the exemption provisions. Tax is “imposed” on a transaction upon the transfer of title and possession of tangible personal property to the purchaser. Prior to July 1, 2006, Taxpayer had only made deposits or progress payments for the future delivery of machinery and equipment. Although Taxpayer remitted \$50,000 in use tax in April 2006 on the machinery and equipment, that tax was not yet due or “imposed.” Since the purchase transactions were not completed before July 1, 2006, no tax threshold is applicable. Accordingly, Taxpayer has paid \$50,000 in use tax when no tax was due. That tax payment would be eligible for a refund or allowed as a credit on a subsequent sales and use tax return.

However, pursuant to s. 212.08(5)(b)3.a., F.S., no exemption as an expanding business for the above issues is available, or refund or credit allowed, until such time as an Application for Temporary Tax Exemption Permit, form DR-1214, has been submitted, and the statutory productive output increase requirement has been satisfied.

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 upon 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 from that which is 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# 41449