

SUMMARY

QUESTION:

Whether sales tax is due on the sale of stairs and stair parts or is the Taxpayer is required to pay or accrue use tax on the supplies and materials it purchases to fabricate the stairs and stair parts for which the Taxpayer installs.

ANSWER:

Taxpayer is required to collect Florida sales tax on tangible personal property it sells that it does not install, unless the sale is committed to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida. Florida sales tax applies in the same manner whether Taxpayer delivers the items with its own truck or ships them through a common carrier.

Taxpayer is a real property contractor when it sells and installs the stairs and/or stair parts and is considered as the ultimate consumer of the materials and supplies it purchases to fabricate the items. However, Taxpayer should not pay sales tax or accrue use tax on materials and supplies it purchases to fabricate stairs and stair parts when it does not install the items; because the purchase is considered a purchase for resale.

May 2, 2011

XXX

Re: Subject: Technical Assistance Advisement (TAA) 11A-012
Sections 212.02(14), 212.05, 212.06, Florida Statutes (F.S.)
Rules 12A-1.0015, 12A-1.005 and 12A-1.051, 12A-1.063, Florida Administrative Code
(F.A.C.)
XXX (Taxpayer)
FEI #: XXX

Dear XXX:

This is in response to your letter dated March 10, 2011, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the above referenced matter. An examination of your letter has established 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.

Issue

Whether sales tax is due on the sale of stairs and stair parts or is the Taxpayer required to pay or accrue use tax on the supplies and materials it purchases to fabricate the stairs and stair parts for which the Taxpayer installs.

Facts

Taxpayer specializes in fabricating and installing customized circular/curved stairs and related parts. Taxpayer may sell the stairs and/or parts to its customers in Florida and outside Florida. It may also install the stairs and/or parts as part of the sale. Taxpayer requests advice on the applicability of Florida sales and use tax when it sells stairs and/or parts to its customers in Florida and outside Florida and whether it makes any difference if Taxpayer delivers the item(s) in its own truck or ships the item(s) through a common carrier. Taxpayer also requests advice on the applicability of Florida sales and use tax when it sells and installs the stairs and/or parts for its customers.

Taxpayer provided proposals to illustrate typical transactions with its customers.

Applicable Authority and Discussion

Section 212.05, F.S., imposes a sales tax on every person who engages in the business of selling tangible personal property at retail in this state. The tax is levied on each taxable transaction or incident 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. When Taxpayer sells stair parts, circular stair carriage, and other items to builders or homeowners and does not install the item(s), Taxpayer is selling tangible personal property at retail, and the transaction is subject to sales tax.

However, tangible personal property imported, produced, or manufactured in Florida for export is not subject to Florida sales tax when the importer, producer, or manufacturer delivers the property to a licensed exporter for export outside Florida or to a common carrier for shipment outside Florida, or mails the property by United States mail to a destination outside Florida. See Section 212.06(5), F.S., and Rule 12A-1.005, F.A.C. In this case, items that Taxpayer sells and delivers to builders and homeowners outside Florida are not subject to Florida sales tax provided there is sufficient documentary evidence that the property sold was irrevocably committed to the exportation process. Rule 12A-1.0015(2)(b), F.A.C., provides the following examples of methods to commit the property to the exportation process at the time of sale:

1. The dealer is required by the terms of the sale contract to deliver the property outside Florida using the dealer's own mode of transportation;
2. The dealer is required by the terms of the sale contract to mail the property by United States mail to a destination located outside Florida; or

3. The dealer is required by the terms of the sale contract to deliver the property to a carrier, licensed customs broker, or forwarding agent for final and certain movement of the property to a destination located outside Florida.

Rule 12A-1.0015(2)(c), F.A.C., requires the following records to be maintained to document that the property is committed to the exportation process at the time of sale and that the exportation process is continuous and unbroken until the property is exported from Florida:

1. Internal delivery orders identifying the property sold and the destination and date of delivery that are supported by receipts of expenses incurred in delivering the property, such as trip tickets or truck logs signed by the person who delivers the property;
2. United States Postal Service parcel post receipts with supporting documentation identifying the property and the destination;
3. Common carriers' receipts, bills of lading, or similar documentation that evidences the delivery destination;
4. Export declaration;
5. Receipts from a licensed customs broker; or
6. Proof of export signed by a customs officer.

As provided by Rule 12A-1.0015(2)(b) and (c), F.A.C., sales you made that are committed to the exportation process at the time of sale are not subject to Florida sales tax whether the delivery is made with your truck or with a common carrier if the requirements above are met.

Use tax is imposed on "any person who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for his or her own use." Section 212.06(1)(b), F.S. Rule 12A-1.051, F.A.C. provides guidance on sales and use tax for contractors who "purchase, acquire, or manufacture materials and supplies for use in the performance of real property contracts" In this case, contracts to manufacture and install stairs and stair parts that are affixed to real property are real property contracts.

Real property contractors "are the ultimate consumers of materials and supplies they use to perform real property contracts and must pay tax on their costs of those materials and supplies" Rule 12A-1.051(4), F.A.C. Rule 12A-1.051(4), F.A.C., further provides in pertinent part as follows:

Contractors performing only ... [lump sum contracts] do not resell the tangible personal property used to the real property owner but instead use the property themselves to provide the completed real property improvement. Such contractors should pay tax to their suppliers on all purchases.... They should charge *no* tax to their customers, regardless of whether they itemize charges for materials and labor in their proposals or invoices, because they are not engaged in selling tangible personal property. Such contractors should not register as dealers unless they are required to remit tax on the fabricated cost of items they fabricate to use in performing contracts. (Emphasis added.)

When Taxpayer fabricates and installs the stairs and stair parts to be permanently attached to realty, it is making improvements to real property. Taxpayer should not charge tax to the customer in any amount, but it should accrue tax on its fabricated cost of materials it uses to make the stairs and stair parts. This rule applies whether the installation occurs inside or outside Florida, because Taxpayer is the ultimate consumer of materials and supplies it uses to perform the real property contract.

The terms “retail sales,” “sale at retail,” “use,” “storage,” and “consumption,” do not include the sale, use, storage, or consumption of industrial materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when such industrial materials become a component or ingredient of the finished product. See Section 212.02(14)(c), F.S., and Rule 12A-1.063, F.A.C. Hence, Taxpayer should not pay sales tax or accrue use tax on materials and supplies it purchases that become a component of the stair and stair parts that it sells and does not install, because the purchase is considered a purchase for resale.

Conclusion

Taxpayer is required to collect Florida sales tax on tangible personal property it sells that it does not install, unless the sale is committed to the exportation process at the time of sale, and the exportation process remains continuous and unbroken until the property is exported from Florida. Florida sales tax applies in the same manner whether Taxpayer delivers the items with its own truck or ships them through a common carrier.

Taxpayer is a real property contractor when it sells and installs the stairs and/or stair parts and is considered as the ultimate consumer of the materials and supplies it purchases to fabricate the items. However, Taxpayer should not pay sales tax or accrue use tax on materials and supplies it purchases to fabricate stairs and stair parts when it does not install the items; because the purchase is considered a purchase for resale.

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 that 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 Advise ment, 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 15 days of the date of this letter.

Sincerely,

Angel Sessions
Senior Tax Attorney
Technical Assistance and Dispute Resolution
(850) 717-7312

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