

State of Florida Department of Revenue

Sales and Use Tax	1995-1999 Technical Assistance Advisements
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SUMMARY

Taxpayer manufactures component parts of building structures at its manufacturing facility. These component parts are later transported to job sites for assembly and installation into finished building structures. Taxpayer's building structures do not qualify as "factory built buildings," therefore, tax must be paid on the manufactured cost of the component parts produced by Taxpayer.

Apr 02, 1997

Re: Technical Assistance Advisement 97(A)-023
Taxation of Lump Sum Contractors Factory-Built Buildings
Section 212.06(1)(b), F.S.
Rule 12A-1.051(5), F.A.C.

Dear :

This response is in reply to your letter dated October 28, 1996, requesting the Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to s. 213.22, F.S., and Chapter 12-11, F.A.C., regarding the referenced matter and parties. An examination of your petition 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 issuance of a TAA.

FACTS

Taxpayer is a contractor that manufactures component parts, which are later assembled and erected as buildings for a fixed price, pursuant to lump sum contracts. The component parts are manufactured at its facility in XXX. The component parts fabricated by Taxpayer are normally transported from Taxpayer's facility to job sites for assembly as a building. Taxpayer does not equip the component parts or the buildings it erects with non-structural components such as heat, air, electricity, and plumbing. Taxpayer's products are also sometimes sold to other contractors F.O.B. Plant. Taxpayer currently pays tax on the manufactured cost of its building projects.

ISSUES

1. Whether the building structures fabricated by Taxpayer are taxable as "factory-built buildings" as the term is set forth in Section 212.06(1)(b), F.S.
2. If the building structures fabricated by Taxpayer are not taxable as factory-built buildings, how are they taxed?

APPLICABLE LAW

Section 212.02, F.S., provides in part:

(7) "Factory-built building" means a structure manufactured in a manufacturing facility for installation or erection as a finished building; "factory-built building" includes, but is not limited to, residential, commercial, institutional, storage, and industrial structures.

(19) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses....

Section 212.06(1)(b), F.S., provides in part:

(b) Except as otherwise provided, any person who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for his or her own use shall pay a tax upon the cost of the product manufactured, produced, compounded, processed, or fabricated without any deduction therefrom on account of the cost of material used, labor or service costs, or transportation charges, notwithstanding the provisions of s. 212.02 defining "cost price"... A person who manufactures factory-built buildings for his or her own use in the performance of contracts for the construction or improvement of real property shall pay a tax only upon the person's cost price of items used in the manufacture of such buildings.

Section 320.01(2)(a), F.S., provides in part:

(2)(a) "Mobile home" means a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein....

The following provisions of Rule 12A-1.051, F.A.C., govern the taxation of contractors:

(1) This rule shall govern the taxability of purchases or use of tangible personal property by contractors who purchase or manufacture materials and supplies for use in the performance of non public works contracts.... The

method by which contractors or subcontractors arrive at the total contract price charged for repair, alteration, improvement and construction of real property or for a combination of work on both real and personal property must be determined for the purpose of ascertaining whether the receipts from sales made to or by them are taxable.

(2) Such contractors may include, among others, building, electrical, plumbing, heating, painting, decorating, ventilating, paper hanging, sheet metal, bridge, road, landscape or roofing contractors and they may use one of the following methods in arriving at the total contract **price:**

(a) Contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services for a lump sum;

(b) Contracts in which the contractor or subcontractor agrees to furnish the materials and supplies and necessary services on a cost plus or fixed fee basis;

(c) Contracts in which the contractor or subcontractor agrees to furnish materials and supplies and necessary services with an upset or guaranteed price which may not be exceeded; and

(d) Contracts in which the contractor or subcontractor repairs, alters, improves or constructs real property and wherein he agrees to sell specifically described and itemized materials and supplies at an agreed price or at the regular retail price and to complete the work either for an additional agreed price or on the basis of time consumed.

(e) When a contractor or subcontractor uses materials and supplies in fulfilling either a lump sum, cost plus, fixed fee, guaranteed price or any kind of contract except one falling in class (d) above, he becomes the ultimate consumer thereof. The person or dealer who sells such materials and supplies to such contractor or subcontractor is making sales at retail and is required to collect the tax from him based upon the receipts from such sales....

(3) If a contractor's or subcontractor's business is only that of taking contracts in classes (2) (a), (b) or (c), he should not give a resale certificate and should pay tax on any of the materials and supplies purchased....

(5) (a) Contractors, except asphalt contractors, who operate fabricating or manufacturing plants which make items of tangible personal property for their own consumption and use in the performance of contracts for the construction or improvement of real property are subject to tax upon the fabricated or manufactured cost of such items.

(b) The tax is based upon the cost price of the product

manufactured, produced, compounded, or processed or fabricated. Elements of cost price will include those costs that are directly or indirectly attributable to the manufacturing, producing, compounding, processing, or fabricating of an article of tangible personal property for one's own use and which is properly chargeable to a capital account or to the cost of the product under generally accepted cost accounting standards. Major elements to be included in the manufactured cost price of tangible personal property for one's own use include direct materials, direct labor, and indirect manufacturing costs.

1. Direct material costs include all materials and related freight costs, that are physically observable as being identified to the finished tangible personal property, that are consumed in producing the property, or that become a component or ingredient of the finished property. See paragraphs (c) and (d), below, for calculating the tax on the cost of the finished product when sales tax has or has not been paid on direct materials.

2. Direct labor includes labor costs that are traceable to the production of the finished property.

3. Indirect manufacturing costs refer to all costs other than direct materials and direct labor that are associated with the manufacturing process and include both variable and fixed factory overhead. Other terms describing this category include "factory overhead," "factory burden," and "manufacturing overhead." Such indirect manufacturing costs include, but are not limited to the following, notwithstanding the fact that sales tax has been paid:

- a. Indirect labor and all direct and indirect labor overhead including overtime premium, vacation and holiday pay, sick leave pay, shift differential, payroll taxes, payments to a supplemental unemployment benefit plan, and employee fringe benefits and supervisory personnel;
- b. Compensation of officers, to the extent it is related to production and not administrative functions;
- c. Indirect materials and supplies;
- d. Rework labor, scrap, and spoilage;
- e. Tools and equipment, to the extent not capitalized;
- f. Depreciation;
- g. Amortization;
- h. Depletion;
- i. Insurance;
- j. Rent of equipment, facilities, or land;

- k. Interest expense attributable to production costs;
- l. Costs of administrative, service, or support departments allocable to production;
- m. General and administrative expenses incurred in production activities (for example, security services, factory accounting, and data processing);
- n. Material handling and warehousing of direct materials and goods in process;
- o. Repairs and maintenance related to production facilities;
- p. Taxes, other than taxes based on or measured by income;
- q. Freight costs of direct materials (freight-in);
- r. Expenses incurred in implementing quality control;
- s. Utilities, including electricity, water, telephone, etc.;
- t. Waste disposal; and/or
- u. Any other indirect costs allocable to production, however described or classified.

(c) Direct materials on which the tax has been paid shall not be included when computing the tax on the cost price of items of tangible personal property manufactured, produced, compounded, processed, or fabricated.

(d) Persons who manufacture, produce, compound, process, or fabricate items of tangible personal property for resale or for their own use or consumption may purchase direct materials tax exempt but shall include the cost of the direct materials when computing tax on the cost price of the items so manufactured, produced, compounded, processed, or fabricated for such persons' own use or consumption. If tax has been paid on the direct materials, the method described in paragraph (c) should be used when computing the tax on the cost price of the items so manufactured, produced, compounded, processed, or fabricated.

(e) The tax is due at the moment the contractor manufactures an item of tangible personal property for his own use, and such tax shall be remitted to the Department of Revenue in accordance with Rule 12A-1.056, F.A.C....

DISCUSSION

A. What is a factory-built building?

Contractors constructing factory-built buildings are taxed on

the cost price of items used to manufacture the buildings. s. 212.06(1)(b), F.S. (1995). The term "factory-built building" must be interpreted in accordance with its usual and customary meaning as well as in conformance with the intent of its legislative enactment. 7 Fla. Jur. 2d, Building s. 1. Section 212.02(7), F.S. (1995), defines the term "factory-built building" as a structure manufactured in a manufacturing facility for installation or erection as a finished building. This definition requires: (1) a structure manufactured as a finished building in a manufacturing facility; and (2) the installation and erection of the finished building at a job site. Thus, the term "factory-built building" only includes structures that are constructed as finished buildings prior to leaving a manufacturing facility.

The term "finished" is synonymous with the phrase "to complete". Webster's II New Riverside University Dictionary (1988). The term "complete" is defined as "[h]aving all necessary or normal parts, elements, or steps: WHOLE." Id. These definitions limit the term "finished building," as it is used in Section 212.06(1)(b), F.S., to fully functional buildings. Fully functional buildings have heat, air, electrical, and plumbing systems as well as a complete interior and exterior. Component parts manufactured at a manufacturing facility cannot be classified as a finished building even though the component parts can be transported to a job site for assembly into a building.

The Department's interpretation of the term "factory-built building" is supported by a review of pertinent legislative history. The provision in Section 212.06(1)(b), F.S., stating that items used in the manufacture of factory-built buildings are subject to tax, was originally enacted in the 1982 Legislative Session as part of Senate Bill 46 ("SB 46"). A Departmental bill analysis of SB 46 identifies the term "factory-built building" as a modular building. A modular building contains heat, air, plumbing, and electricity. This analysis provides the basis of the Department's position that a factory-built building is a structure that leaves a factory as a fully functional building.

The express intent of the sponsor of SB 46 was to tax factory-built buildings in the same manner as buildings built by on-site contractors. See State Government Impact Statement for SB 46, Committee on Appropriations, March 15, 1982. As was previously discussed, the term "factory-built building," as used in SB 46, is limited to manufacturers of modular buildings. SB 46 did not change the portion of Section 212.06(1)(b), F.S., governing the taxation of other types of off-site manufacturers. Thus, the pre-existing tax structure in Section 212.06(1)(b), F.S. (1981), which mandated that off-site contractors be taxed on the manufactured cost of their products, including labor and overhead, remained in effect. s. 212.06(1)(b), F.S. (Supp. 1982).

B. How should Taxpayer be taxed?

Taxpayer fabricates component parts of buildings at its factory. Generally, these component parts are transported to a job site for assembly and installation as a building. Taxpayer does not equip its products with heat, air, electricity, or plumbing systems. Because these component parts do not leave Taxpayer's factory as finished buildings they cannot be taxed as a factory-built building pursuant to Section 212.02(7), F.S. This advisement does not discuss the meaning of the phrase "items used" as it is used in Section 212.06(1)(b), F.S., because Taxpayer is not a manufacturer of factory-built buildings. Instead, the component parts fabricated by Taxpayer are properly classified as items of tangible personal property. s. 212.02(19), F.S.; Green v. Reed Construction Corp., 91 So.2d 634, 636 (Fla. 1957); Harvey v. Green, 85 So.2d 829, 831 (Fla. 1956).

Lump sum contractors, such as Taxpayer, that fabricate, construct, or install tangible personal property into real property are classified as ultimate consumers of their products. s. 212.06(1)(b), F.S.; Reed Construction Corp., 91 So.2d at 636; Harvey, 85 So.2d at 831. As ultimate consumers of the tangible personal property they produce, these contractors are subject to taxation on the manufactured cost of their products. s. 212.06(1)(b), F.S.; Reed Construction Corp., 91 So.2d at 636; Harvey, 85 So.2d at 831. The manufactured cost of a product fabricated at an off-site facility includes all direct and indirect costs incurred in the manufacture of the product, including labor and overhead expenses. s. 212.06(1)(b), F.S.; Rule 12A-1.051(5), F.A.C. Thus, Taxpayer, as an off-site manufacturer of tangible personal property for assembly and installation into real property for a fixed price, is subject to taxation on the manufactured cost of its building projects.

Taxpayer also sells component parts to other contractors F.O.B. Plant. These contractors assemble and install the component parts into real property. It is the Department's understanding that the purchasing contractors are involved in the construction and/or improvement to real property for a fixed lump sum. Therefore, the purchasing contractors are considered the ultimate consumers of tangible personal property used in the performance of their contractual duties. This includes component parts purchased from Taxpayer. s. 212.06(1)(b), F.S. Taxpayer should collect tax on sales of tangible personal property to these contractors. Purchasing contractors can purchase items from Taxpayer without paying sales tax if they are purchasing such items for further fabrication in their plants and they issue a resale certificate at the time of sale.

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 and your request 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 by the Department before disclosure. In an effort to protect confidential information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

Paul Chmielewski, Attorney
Technical Assistance and Dispute
Resolution

/PC

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