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QUESTION #1: Does the tax exemption extend to other garage door materials such as tracks, rails, load springs or door operators if purchased at the same time intended for use with the corresponding impact-resistant garage doors?

ANSWER #1: The transaction materials provided for review do not include garage doors, therefore an analysis regarding this question is not part of the response of this TAA.

QUESTION #2: Does the term “retail sale” as defined in Section 212.02(14)(a), F.S., extend to the purchase and use of impact-resistant window and door materials by real property improvement contractors for use in supply and install contract jobs?

ANSWER #2: Yes. The Taxpayer is contracted to install the window and door systems that become fixtures to real property. The taxpayer’s purchase of materials to complete the job is a retail sale.

QUESTION #3: Does the exemption extend to orders made and accepted during the exemption period pursuant to a binding purchase contract, where title, possession, control, and delivery will occur after the exemption period where any delay in delivery is beyond the control of the purchaser?

ANSWER #3: Yes. Sales of impact-resistant windows, doors, and garage doors during the exemption period are tax-exempt when the order is accepted during the exemption period for immediate shipment, even if delivery is made after the exemption period. An order is accepted when action has been taken to fill the order for immediate shipment. Actions to fill an order include assigning an “order number” to a telephone order, confirming an internet order by an email to the customer, or placing a date received on an order received by mail. An order is considered to be for immediate shipment when delayed shipment is not requested by the customer. An order is considered to be for immediate shipment even if the shipment may be delayed because of a backlog of orders or stock is currently unavailable or on back order.

QUESTION #4: Does the exemption extend to orders made and accepted pursuant to a binding purchase contract prior to effective date of the exemption period, but delivered during the exemption period where title, possession and control will occur within the exemption period?

ANSWER #4: No. In order to qualify for the exemption, the retail sale of the product must occur during the exemption period. The retail sale of impact-resistant windows, doors, and garage doors prior to the exemption period does not qualify, regardless of the installation date. An order received by the selling dealer prior to the exemption period would not qualify as a sale made within the exemption period.

QUESTION #5: Emergency Rule 12AER22-7 defines “impact-resistant” as used in Chapter 212, F.S., to mean windows, doors, and garage doors “labeled as impact resistant or has an impact-resistance rating”. Does a Notice of Acceptance issued by Miami-Dade County Product Control Section or Florida Product Approval issued by the Department of Business and Professional Regulation satisfy this requirement?

ANSWER #5: Quotation 37534 provides that all of the window wall and sliding glass door systems are identified as “impact resistant.” A Notice of Acceptance issued by Miami-Dade County Product Control Section or Florida Product Approval issued by the Department of Business and Professional Regulation would serve as additional documentation that the requirement was met.

August 17, 2022

XX

Re: Technical Assistance Advisement – TAA #: 22A-015
Sales and Use Tax –
XX
FEI No. XX
BP #: XX
Section 52, of Chapter 2022-97, Laws of Florida
Emergency Rule 12AER22-7, Florida Administrative Code (F.A.C.)
Rule 12A-1.051, F.A.C.

Dear XX,

This is in response to your letters dated June 22, 2022, and July 5, 2022, requesting this Department’s issuance of a TAA pursuant to Section 213.22, F.S., and Chapter 12-11, Florida Administrative Code, regarding the Sales Tax Exemption Period on Impact-Resistant Doors, Garage Doors, and Windows, during the period of July 1, 2022 through June 30, 2024. 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, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

Stated Facts

Your letter dated, June 22, 2022, provides the following in part:

We represent a taxpayer who performs contracts for the improvement of real property in the state of Florida. In general, those contracts are for a fixed fee to supply and install impact-resistant storm windows and doors. Such contracts and services are described in

Rule 12A-1.051, Florida Administrative Code. The Taxpayer remits a use tax on materials purchased for use on those contracts.

The Taxpayer is aware of the recent legislation effecting the taxability of impact resistant storm windows and doors enacted in Section 52, Chapter 2022-97, Laws of Florida, amending Section 212.08, Florida statutes. Specifically, that legislation exempts from tax under Chapter 212, F.S. the retail sale of impact-resistant windows, impact-resistant doors, and impact-resistant garage doors sold during the period July 1, 2022, through June 30, 2024.

The Florida Department of Revenue issued Emergency Rule 12AER22-7 on May 9, 2022, however due to the unique nature of real property construction there are several issues the Taxpayer is requesting written advisement on.

* * *

Your letter dated July 5, 2022 provides the following:

Taxpayer purchases impact rated windows and doors from suppliers outside of . . . Florida who do not collect Florida sales tax. Accordingly, the taxpayer accrues a use tax and remits such tax monthly with Florida Form DR-15. The business process to purchase window and door materials begins with obtaining engineering blueprints from a customer [a General Contractor] which detail design, size, functionality, quantity and wind load ratings, required for a specific job. Typically, all projects are high-rise commercial and residential buildings. The blueprints are turned over to their supplier requesting a for quotation for the materials specified in the blueprints for that particular job. The supplier in turn presents a quotation and proposed contract document which includes price, terms, delivery dates and legal terms of the sale. The Taxpayer uses the quotation to in-turn submit a bid to their customer which is a fixed fee contract to supply and install windows and doors as detailed on the blueprints. If the Taxpayer is awarded the contract, they in-turn execute the contract for the purchase of materials from their supplier(s).

* * *

You provide the following regarding the “standard business practices of window and door construction.” These facts are not specific to the transaction provided for review.

Each contract with a subcontractor calls out an expected starting date for installation and the estimated completion date of the overall project.

The job materials for an entire project are so voluminous, that they cannot all be accepted at the jobsite in a single delivery. Since window and door installation begins approximately 60 percent through the project and ends before the completion of building, the general contractor dictates the scheduled materials load-in and installation times.

The delivery schedules are dictated by the general contractor, local conditions, weather events or local building authorities. The Taxpayer will not modify a delivery schedule except for such events.

The materials required are unique for each project, highly detailed, and are scheduled in the engineering blueprints for that job. The purchase price of the job materials is fixed and does not allow for additional materials to be purchased under the contract for the current job or any future jobs. The vendor invoices each individual shipment under the master contract terms and is contractually required to provide all the materials and components scheduled in the engineering blueprints.

In order to meet the requirements for impact-rating the product approval documents detail the required components of the window and door systems such as mullions, trim, headers, thresholds, jambs, trickle vents, closer mechanisms, locking mechanisms and fasteners. These items are integral to the window and door systems however they are separately called out in the engineering drawings as field conditions will dictate exact quantity and dimensions. Without these items, the windows and doors would not achieve the required impact-ratings.

* * *

On July 12, 2022, you provided the following for review:

- Quotation XX.
- Sub-Contractor Agreement XX.
- Proposal prepared by Taxpayer for XX.
- 8 Invoices from XX.

* * *

Quotation XX provides the following list of “window wall systems” and “sliding glass door systems.” All of the window wall and sliding glass door systems are identified as “impact resistant.”

- XX

* * *

Quotation XX provides a “detailed scope of work” for each of the window wall and sliding glass door systems. The quotation provides the following items are included with the “window wall systems” and “sliding glass door systems:”

- XX

* * *

In addition to the window wall and sliding glass door systems, Quotation XX provides the following “included and not included” lists:

INCLUDED:

- XX

NOT INCLUDED:

- XX

* * *

Quotation XX provides “Trims, flashing, caps, fins, receptors and any additional extrusion to be shipped loose.”

Requested Advisement

Your request for technical assistance included several questions regarding the Florida Sales Tax Exemption Period on Impact-Resistant Doors, Garage Doors, and Windows. In response to your request, I will provide a general discussion of sales tax as it relates to the scenarios provided. I will then address your questions in the "conclusion" section of this letter.

Taxpayer Position

The Department has previously ruled that windows, doors and integrated materials comprise a “single working unit” for the application of the local option discretionary sales tax. Applying this ruling consistently, all integrated window and door parts, components and accessory items should be exempted as they comprise a single working unit.

* * *

In general, a retail sale is any sales transaction where the purchaser does not supply a resale certificate or claims a sale for resale exemption.

* * *

We believe these purchases controlled by a binding contractual agreement should be exempted based upon the date of the sale. Section 212.02(15)(a), F.S., defines a sale as any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

* * *

Both governing agencies provide clear guidance of the required performance, specifications, design and installation of impact-ratings for windows and doors. Florida law recognizes and authorizes those agencies to issue ratings and mandate the use of those products.

Law and Discussion

The Sales Tax Exemption Period on Impact-Resistant Doors, Garage Doors, and Windows is established through the lawmaking authority of the Florida Legislature. The exemption period for the retail sale of impact-resistant doors, garage doors and windows is provided in section 52, of Chapter 2022-97, Laws of Florida, as follows:

The tax levied under chapter 212, Florida Statutes, may not be collected during the period from July 1, 2022, through June 30, 2024, on the retail sale of impact resistant windows, impact-resistant doors, and impact-resistant garage doors.

The exemption from sales tax for the sale of impact doors, garage doors, and windows applies, so long as the door, garage door, or window is rated or classified as “impact resistant” and the retail sale of such a product is exempt from sales tax during the exemption period.

Emergency Rule 12AER22-7, F.A.C., provides guidance regarding the administration of the holiday. Subsection 7 provides the following regarding “remote sales”:

(7) Remote Sales.

(a) Eligible items purchased through a marketplace provider or from a remote seller are exempt when the order is accepted by the marketplace provider or remote seller during the sales tax exemption period for immediate shipment, even if delivery is made after the sales tax exemption period.

(b) An order is accepted by the company when action has been taken to fill the order for immediate shipment. Actions to fill an order include assigning an “order number” to a telephone order, confirming an Internet order by an email to the customer, or placing a date received on an order received by mail.

(c) An order is considered to be for immediate shipment when delayed shipment is not requested by the customer. An order is for immediate shipment even if the shipment

may be delayed because of a backlog of orders or stock is currently unavailable or on back order.

* * *

Rule 12A-1.051, F.A.C., governs the taxability of the purchase, sale, or use of tangible personal property by contractors and subcontractors who purchase, acquire, or manufacture materials and supplies for use in the performance of real property contracts. Rule 12A-1.051(4), F.A.C., provides that real property contractors are generally considered to be the ultimate consumers or users of the tangible personal property they purchase to perform a real property contract (i.e., they are not reselling the tangible personal property). The stated general rule for real property contractors is that they should not charge tax to their customers, regardless of whether or not they itemize charges for materials or labor, because they are not engaged in the activity of selling tangible personal property. Real property contractors are considered the ultimate consumers of the materials and supplies they use to perform real property contracts, so, they must pay tax on the costs of those materials and supplies.

Review of the Sub-Contractor Agreement provides that the Taxpayer is to “perform and furnish all the work, labor, services, materials, plant, equipment tools, scaffold, appliances and other things necessary for windows & doors & glass rail system . . . for and at XX.” The taxpayer’s purchase of materials to complete the job is a retail sale.

Conclusion

It is important to note that Quotation XX, the Sub-Contractor Agreement, and the Invoices submitted for review all predate the exemption period and therefore do not qualify as exempt products purchased at retail during the exemption period. The subject transaction serves as an example for purposes of determining the type of products and sales that qualify for exemption when purchased during the exemption period.

* * *

Question:

Does the tax exemption extend to other integrated window and door materials such as mullions, trim, headers, thresholds, jambs, trickle vents, closer mechanisms and inserts if purchased at the same time and intended for use with the corresponding impact-resistant windows and doors?

Response:

In this case, the purchase of window wall and door systems as described in the “detailed scope of work” would be considered a window or door for purposes of the exemption period. Some of the items listed in your question are included with the window wall and sliding door systems. However, some of the items listed in your question are specifically “not included” by the terms of the quotation.

The “detailed scope of work” provides that most products include gaskets, fasteners, setting blocks, anchors, frame assembly fasteners, and “standard hardware,” which includes wheels, lock mechanisms, handle kits, rollers, piles, window balances, keyed cylinders, and thumb turns. These items would be considered to be part of the retail sale of the window or door system and would be exempt when purchased by the Taxpayer during the exemption period.

The “detailed scope of work” specifically does not include trickle vents, metal screens, stool trim, louvers, head and jamb receptors, and installation hardware. Such items would not qualify for the exemption period if ordered and provided separately by the window and door supplier.

Question:

Does the tax exemption extend to other garage door materials such as tracks, rails, load springs or door operators if purchased at the same time intended for use with the corresponding impact-resistant garage doors?

Response:

The transaction materials provided for review do not include garage doors, therefore an analysis regarding this question is not part of the response of this TAA.

Question:

Does the term “retail sale” as defined in Section 212.02(14)(a), F.S., extend to the purchase and use of impact-resistant window and door materials by real property improvement contractors for use in supply and install contract jobs?

Response:

Yes. The Taxpayer is contracted to install the window and door systems that become fixtures to real property. The taxpayer’s purchase of materials to complete the job is a retail sale.

Question:

Does the exemption extend to orders made and accepted during the exemption period pursuant to a binding purchase contract, where title, possession, control, and delivery will occur after the exemption period where any delay in delivery is beyond the control of the purchaser?

Response:

Yes. Sales of impact-resistant windows, doors, and garage doors during the exemption period are tax-exempt when the order is accepted during the exemption period for immediate

shipment, even if delivery is made after the exemption period. An order is accepted when action has been taken to fill the order for immediate shipment. Actions to fill an order include assigning an "order number" to a telephone order, confirming an internet order by an email to the customer, or placing a date received on an order received by mail. An order is considered to be for immediate shipment when delayed shipment is not requested by the customer. An order is considered to be for immediate shipment even if the shipment may be delayed because of a backlog of orders or stock is currently unavailable or on back order.

Question:

Does the exemption extend to orders made and accepted pursuant to a binding purchase contract prior to effective date of the exemption period, but delivered during the exemption period where title, possession and control will occur within the exemption period?

Response:

No. In order to qualify for the exemption, the retail sale of the product must occur during the exemption period. The retail sale of impact-resistant windows, doors, and garage doors prior to the exemption period does not qualify, regardless of the installation date. An order received by the selling dealer prior to the exemption period would not qualify for exemption period.

Question:

Emergency Rule 12AER22-7 defines "impact-resistant" as used in Chapter 212, F.S., to mean windows, doors, and garage doors "labeled as impact resistant or has an impact-resistance rating". Does a Notice of Acceptance issued by Miami-Dade County Product Control Section or Florida Product Approval issued by the Department of Business and Professional Regulation satisfy this requirement?

Response:

Quotation XX provides that all of the window wall and sliding glass door systems are identified as "impact resistant." A Notice of Acceptance issued by Miami-Dade County Product Control Section or Florida Product Approval issued by the Department of Business and Professional Regulation would serve as additional documentation that the requirement was met.

* * *

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 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 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 ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-7754.

Best Regards,

Brinton Hevey

Brinton Hevey
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