



SUMMARY:

QUESTION:	What is the taxable classification of a factory-built manufactured home when the new home and related items and services are sold to a purchaser as part of a single transaction, and how is a determination made at the point of fabrication?
RESPONSE:	<p>The imposition of tax on the sale of a new factory-built home and related items and services sold to a purchaser as part of a single transaction depends on whether the factory-built home is classified as real property or tangible personal property, and can be determined at the point of fabrication, if the customer contracts with a manufacturer for the purchase of a factory-built manufactured home, to be delivered pursuant to specific contract terms.</p> <p>If at the time of the sale, it is determined that the home will not be affixed to realty by placement on a permanent foundation or connected to utilities of any kind, the sale is subject to tax as the sale of tangible personal property.</p> <p>Any related items and services sold to the purchaser as part of a single transaction would be dependent upon the contract terms. If the customer purchases a factory-built home from a dealer and in a separate and independent transaction, contracts with a third-party for installation of the home on realty, the sale of the factory-built manufactured home is classified as a sale of tangible personal property, and the customer must pay sales tax to the selling dealer on the sales price. No use tax would be due from the selling dealer.</p>
QUESTION:	<p>When included in a single transaction for the sale of a new manufactured home, what is the taxable status of the following items and/or services, if the manufactured home is tangible personal property:</p> <ul style="list-style-type: none">○ Charges associated with the manufactured home:<ul style="list-style-type: none">▪ Base price of the manufactured home;▪ Home financing processing fees;▪ Optional upgrades (cabinets, flooring, etc.);▪ Floorplan expense (inventory financing);○ Survey costs:<ul style="list-style-type: none">• Site plan and elevation certificate;• Permits (building, installation, electric, plumbing, demo, etc.);• Impact fees;○ Site Preparation:<ul style="list-style-type: none">• Demolition;

	<ul style="list-style-type: none"> • Tree trimming/removal; • Grading; • Filling and fill dirt; ○ Freight/delivery; ○ Installation of the manufactured home; ○ Well installation; ○ Septic installation; ○ Electric pedestal; ○ Stairs; ○ Foundation surrounding (skirting); ○ Air Conditioning; ○ Hook-ups <ul style="list-style-type: none"> ▪ Electrical; ▪ Plumbing; ○ Appurtenances (garage/carport, screen room, storage shed); ○ Concrete or Pavers used for driveway/walkways, patio, apron/culvert; ○ Sod; ○ Landscaping, including plants, trees, and irrigation system; ○ Post-construction, pre-sale cleaning costs.
<p>RESPONSE:</p>	<p>When included in a single transaction for the sale of a new manufactured home, the taxable status of the following items and/or services, if the manufactured home is tangible personal property is as follows:</p> <ul style="list-style-type: none"> ○ Charges associated with the manufactured home: <ul style="list-style-type: none"> ▪ Base price of the manufactured home: Taxable ▪ Home financing processing fees: When separately stated, the home financing processing fees would not be included in the sales price of the mobile home and would not be subject to tax. ▪ Optional upgrades (cabinets, flooring, etc.) Taxable ▪ Floorplan expense (inventory financing); When separately stated, the inventory financing would not be included in the sales price of the mobile home and would not be subject to tax. ○ Survey costs: <ul style="list-style-type: none"> ▪ Site plan and elevation certificate ▪ Permits (building, installation, electric, plumbing, demo, etc.) ▪ Impact fees Charges for site plan and elevation certificate, impact fees, and permits are part of the taxable sales price. ○ Site Preparation:

	<ul style="list-style-type: none"> ▪ Demolition; ▪ Tree trimming/removal; ▪ Grading; As cited in Rule 12A-1.051(17)(gg), F.A.C., contractors who are engaged in site work, including clearing, grading, demolition, and excavation are generally considered real property contractors. In this case, when these activities are performed in conjunction with the sale of a manufactured home which is not attached to real property at the time of sale, the contractor is likely engaged in a mixed contract and the taxation would be based on the predominate nature of the work performed pursuant to the contract terms. ▪ Filling and fill dirt As provided in s. 212.06(15), F.S. and Rule 12A-1.051(13), F.A.C., the taxation of fill dirt is dependent upon the source and contractor’s use of the material. When a contractor obtains fill dirt from a location that is owned or leased by the contractor and uses the materials to fulfill a real property contract on property owned by another, the contractor is the ultimate consumer of the material and must remit use tax based on either the fair retail market value or the land cost plus cost of clearing, excavating, and loading material as the taxable basis. When a contractor does not own or lease land, but has agreed to purchase fill dirt for use and to excavate and remove the material, tax is due on the purchase price plus all cost of material plus the cost incurred by the contractor. No tax is due if the contractor secures the material from land that he or she owns, or leases and the material will be used on the contractor’s property. Freight/delivery; ○ Installation of the manufactured home; Charges related to the sale, delivery, and installation of the home, are part of the sales price of the factory-built home and must be taxed accordingly, regardless of whether such charges are separately stated on the customer’s invoice. ○ Well installation/Septic installation When the company installs septic tanks, drills wells, installs well pumps or makes other improvements to realty, it must pay tax to its suppliers on materials used, but need not charge the customer tax. A well drilling company must collect tax from its customers when it invoices specifically described and itemized materials at an agreed price. ○ Electric pedestal; ○ Stairs;
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	<ul style="list-style-type: none"> ○ Foundation surrounding (skirting); ○ Air Conditioning; ○ Hook-ups ○ Electrical; ○ Plumbing; ○ Appurtenances (garage/carport, screen room, storage shed); ○ Concrete or Pavers used for driveway/walkways, patio, apron/culvert; ○ Sod; ○ Landscaping, including plants, trees, and irrigation system; <p>As previously cited in Rule 12A-1.051(17), F.A.C., contractors who are engaged in the above referenced activities are generally considered real property contractors. In this case, when these activities are performed in conjunction with the sale of a manufactured home which is not attached to real property at the time of sale, the contractor is engaged in a mixed contract and the taxation would be based on the predominate nature of the work performed pursuant to the contract terms.</p> <ul style="list-style-type: none"> ○ Post-construction, pre-sale cleaning costs. <p>The referenced cleaning costs are not taxable under s. 212.05(1)(i)1.b., F.S., and Rule 12A-1.0091(1)(a), F.A.C., as the pre-sale and post-construction cleaning services are not rendered to maintain the clean and sanitary appearance and operating condition of nonresidential building interiors. However, if the services are part of a mixed contract the taxation would be based on the predominate nature of the work performed under contract.</p>
<p>QUESTION:</p>	<p>How does the taxable status change for the aforementioned items if the manufactured home is considered to be real property with a qualifying “RP” decal?”</p>
<p>RESPONSE:</p>	<p>If the manufactured home is considered to be real property with a qualifying “RP” decal, these types of activities would generally be considered real property improvements. However, as previously stated, in the case of mixed contracts, which include both real property work and tangible personal property, the taxability is dependent on the predominate nature of the work performed under the mixed contract.</p>
<p>QUESTION:</p>	<p>Who is responsible for paying and remitting the sales and use taxes in these scenarios?</p>
<p>RESPONSE:</p>	<p>Contractors, manufacturers, or dealers who sell and install items of tangible personal property must collect tax on the full selling price, including installation or other charges, even if the charges are separately stated. When selling a manufactured housing unit, a determination must be made as to whether the home will be sold as tangible personal property or real property. If the unit is installed on</p>

land owned by the selling dealer prior to being sold to the dealer's customer, the transaction is considered the sale of real property and is not subject to Florida sales or use tax.

However, when the selling dealer purchases the home from the manufacturer and installs the home on the property owned by the purchaser, the dealer, as the real property contractor, is considered the end user of the material used in the installation of the home and is liable for use tax on the cost price of the material used to complete to contract. No tax is due from the customer.

If the manufacturer sells the home directly to a developer who in turn sells the home to the buyer, the manufacturer is relieved of the responsibility of collecting sales tax on the sale if the developer issues a valid resale certificate. If the home is resold as tangible personal property, the developer is responsible for charging and collecting sales tax. If the developer attaches the home to real property and subsequently sells the home in conjunction with the land to a buyer, the home is considered real property, and the developer or contractor is liable for use tax on the cost price of material used in the installation of the home as an improvement to real property.

If the home buyer also owns the property upon which the home is installed and has filed Form DR-402 – requesting that the mobile home be assessed as real property, the transaction is a sale of real property - not subject to sales tax.

June 9, 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via email: [REDACTED]

Re: Technical Assistance Advisement – TAA # 23A-013
[REDACTED]. (“[REDACTED]” - “Association”)
Sales and Use Tax – Sales of New Manufactured Housing and Related Components
Sections 212.02, 212.05, 212.06, 212.08, 319.001, and 320.01, Florida Statutes - (“F.S.”)
Rules 12A-1.007, 12A-1.0091, 12A-1.043, 12A-1.051, and 12A-1.091, Florida
Administrative Code - (“F.A.C.”)
BP #: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated, September 19, 2022, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C., regarding the matter discussed below. 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.

REQUESTED ADVISEMENTS

1. What is the taxable classification of a factory-built manufactured home when the new home and related items and services are sold to a purchaser as part of a single transaction, and how is a determination made at the point of fabrication?
2. When included in a single transaction for the sale of a new manufactured home, what is the taxable status of the following items and/or services, if the manufactured home is considered to be tangible personal property:
 - Charges associated with the manufactured home:
 - Base price of the manufactured home;
 - Home financing processing fees;
 - Optional upgrades (cabinets, flooring, etc.);
 - Floorplan expense (inventory financing);
 - Survey costs:
 - Site plan and elevation certificate;
 - Permits (building, installation, electric, plumbing, demo, etc.);
 - Impact fees;
 - Site Preparation:
 - Demolition;
 - Tree trimming/removal;
 - Grading;
 - Filling and fill dirt;
 - Freight/delivery;
 - Installation of the manufactured home;
 - Well installation;
 - Septic installation;
 - Electric pedestal;
 - Stairs;
 - Foundation surrounding (skirting);
 - Air Conditioning;
 - Hook-ups
 - Electrical;

- Plumbing;
 - Appurtenances (garage/carport, screen room, storage shed);
 - Concrete or Pavers used for driveway/walkways, patio, apron/culvert;
 - Sod;
 - Landscaping, including plants, trees, and irrigation system;
 - Post-construction, pre-sale cleaning costs.
3. How does the taxable status change for the aforementioned items if the manufactured home is considered to be real property with a qualifying “RP” decal?”
 4. Who is responsible for paying and remitting the sales and use taxes in these scenarios?

FACTS

Your request provides in part:

...

██████, a taxpayer association as defined in rule 12-11.002, F.A.C., represents the interests of its ██████ members by promoting modern, precision-built manufactured housing, while also educating homebuyers and interacting with both the government and the private sector to create the best possible manufacturing and purchasing environments for all parties involved in the construction and sale of a manufactured home.

On behalf of its member taxpayers, ██████ seeks a TAA determining the taxability of several items and services commonly included in the price of a new manufactured home.

* * *

██████’s members produce manufactured homes in a variety of methods and deliver such products pursuant to the terms of individualized sale contracts. In [TAA] 97A-023, DOR took the position that to qualify as a factory-built building, a structure must be a finished building prior to leaving a manufacturing facility. Thus, those modular structures that contained heating, air, plumbing and electricity, thereby leaving the factory as fully functional buildings were what the Florida Legislature intended to be classified as “factory-built buildings.” See *also* Rule 12A-1.007(11), F.A.C. Applying this standard, if the homes produced by ██████’s members are fully functional at the time the homes leave the factory, then its members are responsible for the sales and use tax upon the cost price of items used in the manufacturing of the homes pursuant to [s.] 212.06(1)(b), [F.S.]. ...

Presumably, when the members’ manufactured homes are erected and attached to real property in a permanent manner prior to being sold, the sale of the items on the list would fall within the categories of either fixtures or improvements to real property pursuant to the factory-built building related provisions of [R]ule 12A-1.051, F.A.C., particularly when

such items are individually itemized on the purchase invoice. As such, no additional tax would be required to be collected from the ultimate consumer of the home.

In contrast, [R]ule 12A-1.007(11)(g)3., F.A.C., provides when manufactured homes are sold prior to being affixed to realty, the sale of the home would be considered a sale of tangible personal property and taxed as such. As a result, any associated improvements and related labor costs would be taxable at their full sales price. Thus, the tax liability to the purchaser of the home, and the amount of tax to be collected by ██████'s members, depends on the state of the manufactured home at the time of the sale.

Additionally, some of the homes manufactured by ██████'s members may also fall within the scope of the [s.] 320.01(2)(a), [F.S.], and therefore be defined as mobile homes despite their intended final use. In DOR GT-800047 (R. 08/22), titled "Taxation of Mobile Homes in Florida," DOR identifies mobile homes as tangible personal property and states that Florida sales tax (at 3% rather than 6%) and any applicable discretionary sales surtax applies to the sale of any new mobile home. See [s.] 20, Chapter 2022-97, Laws of Florida [L.O.F.]. Additionally, the guidance document states that sales tax and applicable discretionary sales surtax applies to both the sale of a new mobile home as well as any improvements and appurtenances sold in conjunction with the mobile home. Presumably, these taxes are applied on both the items themselves as well as any associated labor, transportation, or other costs. Thus, it again appears that when the manufactured home is sold greatly affects the taxable status of the listed items.

Furthermore, it appears that some of DOR's guidance may conflict or otherwise be unclear to taxpayers without the provision of additional information and interpretation. TAA 01A-056, for example appears to treat a manufactured home as a mobile home, but yet excludes services required for the set-up of the home (wells, septic, electric, driveways etc.) from the taxable sales price as real property improvements. TAA 00A-005 also draws a distinction between "modular home" and "mobile homes" without including any discussion on how the distinction is made. As such, ██████ seeks clarification from DOR on behalf of its members to ensure that the proper amount of taxes are collected and remitted to the state.

* * *

LAW AND DISCUSSION

Section 212.05(1)(a), F.S., provides that tax is due on all sales of tangible personal property¹, unless a specific exemption applies². If tangible personal property is not sold but is used, consumed,

¹ "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" See s. 212.02(19), F.S.

² The Department must point out that while taxing statutes are strictly construed against the taxing authority, statutes that grant an exemption are strictly construed against the taxpayer. See *Asphalt Pavers v. Dept. of Revenue*, 584 So.2d 55 (Fla. 1st DCA 1991), at 57 (citing the rule that exemptions from tax are strictly construed against the taxpayer, with any ambiguity resolved in favor of the administrative agency); *State ex rel. Szabo Food Services Inc. v. Dickinson*, 286 So.2d 529 (Fla. 1973) ("Exemptions to taxing statutes are special favors granted by the Legislature and are to be strictly construed against the taxpayer."). See also,

distributed, or stored for use or consumption in Florida, then tax is due under s. 212.05(1)(b), F.S. The tax is due and payable as of the moment of the sale, at the rate of six percent (6%), plus any applicable surtaxes on the total “sales price” of tangible personal property or taxable services when sold at “retail,” or the “cost price” of each item or article of tangible personal property when used, consumed, distributed or stored for use or consumption by the purchaser. See Section (s.) 212.05(1)(a)1. and (b), F.S.

The terms “sales price,” “retail sale,” and “cost price” are defined in part, by s. 212.02, F.S., to mean:

(4) “Cost price” means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

* * *

(14)(a) “Retail sale” or a “sale at retail” means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and includes all such transactions that may be made in lieu of retail sales or sales at retail. ...

* * *

(16) “Sales price” means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. ...

* * *

MOBILE/MANUFACTURED HOMES

The sale of a mobile or manufactured home, which is classified as tangible personal property is subject to tax on the full sales price, including any tangible personal property included within or that becomes a part of, or that is attached to the mobile or manufactured home at the time of the sale. Such tangible personal property may include but is not limited to interior equipment and furnishings; skylights, carport roof; or storage structures. A mobile or manufactured home that is sold with land which is not also owned by the homeowner is considered a sale of taxable tangible personal property. See Rule 12A-1.007(11)(b)4., F.A.C.

Effective July 1, 2022, sales tax at the rate of 3 percent of the sales price is due on the retail sale of a “new mobile home,” which is defined as “a mobile home the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.” See ss. 212.05(1)(n) and 319.001(8), F.S.

United States Gypsum Co. v. Green, 110 So.2d 409 (Fla. 1959) (also stating that exemptions from tax are strictly construed against the taxpayer) and Wanda Marine Corp. v. Dep’t of Revenue, 305 So.2d 65, 69 (Fla. 1st DCA 1975).

The term “mobile home” as defined by Rule 12A-1.007(11)(a), F.A.C., means and includes “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.” *See also* s. 320.01(2)(a), F.S.

Pursuant to s. 320.01(2)(b), F.S., a “manufactured home” is “a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.”

Rule 12A-1.007(11)(e), F.A.C., provides:

1. The sale of land and a mobile home which is classified as real property as a packaged deal is not taxable. The person converting the mobile home into realty is deemed a contractor engaged in improving realty. A mobile home is presumed to be real property when such mobile home bears a valid “RP” decal. A mobile home which does not bear a valid “RP” decal is classified as real property only if:

a. The mobile home is permanently affixed to land owned by the owner of the mobile home. A mobile home is permanently affixed to land for sales tax purposes if the mobile home sits on a foundation with its wheels either removed or off the ground and if the mobile home is connected to utility services; and,

b. Prior to the sale, and not simultaneously thereto, the owner of the mobile home and of the realty to which it is affixed files with the county property appraiser a declaration [*Declaration of Mobile Home as Real Property* (Form DR-402)] requesting the mobile home be assessed as real property....

PREFABRICATED/MODULAR HOMES

The terms “modular home” or “prefabricated housing unit” as defined by Rule 12A-1.007(11)(g)4.a, F.A.C., mean and include “structures which are designed to be used as dwellings when connected to the required utilities including the plumbing, heating, air-conditioning, and electrical systems contained therein, but which are not built on an integral chassis and which are not designed to be transported on their own wheeled assembly.”

The sale, use, or rental of a modular home or prefabricated housing unit prior to being “affixed to realty” is taxable as tangible personal property. The term “affixed to realty” means “a condition whereby the unit or building is either served by utility service other than electricity or is in place on land or on a foundation, or is on, attached to, or incorporated in another structure by any means other than by its own weight.” A prefabricated or modular housing unit which is not manufactured upon a chassis or undercarriage as an integral part thereof is not a mobile home. *See* Rule 12A-1.007(11)(g), F.A.C.

REAL PROPERTY IMPROVEMENTS

The taxability of real property improvements or “real property contracts” is addressed in, and governed by, Rule 12A-1.051, F.A.C. Real property improvements include “the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.” See Rule 12A-1.051(2)(d), F.A.C. Real property is “land and improvements thereto, including fixtures.” See s. 212.06(14)(a), F.S. Section 212.06(14)(b), F.S., defines the term “fixture” to mean “an item that is an accessory to a building, other structure, or to land, that retains its separate identity upon installation, but that is permanently attached to the realty. ...” See also Rule 12A-1.051(2)(c), F.A.C. Although the determination of whether an item is a fixture requires review of all the facts and circumstances, a prerequisite is that the item must be attached to the real property in some manner indicating that it has become part of the real property and will remain in place indefinitely.

Section 212.06(15), F.S., states that when rock, shell, fill dirt, or similar materials are secured from a location owned or leased by the contractor for use in fulfilling a real property contract on property owned by another person, the contractor is deemed the ultimate consumer and is liable for use tax on the cost of the materials. Likewise, when the contractor enters into an agreement to purchase such materials for his or her own use wherein the contractor will excavate and remove the material, tax is due on the cost of the material in addition to the costs of clearing, excavating, removing, and labor incurred by the contractor. However, no use tax is due in the case where the contractor secures the material from a location that he or she owns or leases and uses the material on his or her own property. See also, Rule 12A-1.051(13)(a) - (c), F.A.C.

Contractors who make improvements or repairs to mobile homes must ascertain the status of the home as either real property or tangible personal property to determine how tax should be paid. Contracts for mobile homes assessed as real property with an RP decal should be treated as real property – in which case, the contractor will generally be liable for the tax on the materials used and the customer would owe no tax. If the mobile home does not have a RP decal, the improvements or repairs are generally treated as contracts to improve or repair tangible personal property. In this case, the contractor should charge tax on the full price paid by the customer, including charges for labor. The contractor is not subject to tax on materials that are incorporated into and become a part of the improvement or repair of the mobile home. Upon initial installation of the mobile home, classification is dependent on the method of installation and whether title to the land and the mobile home are held by the same person. See Rule 12A-1.051(14), F.A.C.

Rule 12A-1.051(17), F.A.C., provides in part:

Contractors who are engaged in the following activities are generally considered to be real property contractors, although any particular job may be determined not to involve an improvement to real property:

* * *

(h) Cement and concrete work;

* * *

(m) Electrical system installation and repairs, including structural wiring and cabling, meter

boxes, switches, receptacles, wall plates, and similar items;

* * *

(q) Foundations;

* * *

(s) Heating, ventilating, and air conditioning system work;

* * *

(u) Iron work, such as railings, banisters, and stairs, incorporated into buildings;

(v) Landscaping work, including walls, walkways, permanent structures such as greenhouses, arbors, or gazebos, and permanent plantings such as trees, perennial shrubs, and lawns;

* * *

(aa) Plumbing work;

* * *

(dd) Septic tank installation or maintenance;

* * *

(ff) Siding installation;

(gg) Site work, including clearing, grading, demolition, and excavation;

* * *

(oo) Utility poles and lines installation and maintenance;

* * *

(ss) Well drilling and installation.

* * *

MIXED CONTRACTS

Contracts that include both the sale of tangible personal property and the improvement to real property are referred to as "mixed contracts." The taxability of mixed contracts is addressed in Rule 12A-1.051(8), F.A.C. In short, the taxability of a mixed contract is based on the predominant nature of the contract, unless a clear allocation of the price is made between the tangible personal property sold and the improvements to real property. If the predominant nature of the mixed contract is for the improvement to real property, then the taxation of the contract is as if the entire job is an improvement to real property (i.e., the contractor should pay tax on its purchase/cost of all materials and supplies used in the performance of the contract, and it should not separately charge tax to its customer). If the predominant nature of the mixed contract is for the sale of tangible personal property, then the taxation of the contract is as if the entire job is a sale of tangible personal property. If the mixed contract clearly allocates the cost of the various elements of the contract, then the taxation of the contract will be in accordance with the allocation (i.e., the portion of the contract price allocated to improvements to real property will be taxed as improvements to real property, and the portion of the contract price allocated to the sale of tangible personal property will be taxed as a sale of tangible personal property).

Section 212.08(7)(mm), F.S., provides that items purchased by developers for purposes of fulfilling a contract wherein the developer sells a factory-built home to a buyer and makes improvements to the

property upon which the home will be installed for a single lump-sum price can be purchased tax-exempt for resale. The developer must collect and remit sales tax on the entire lump-sum price.

Rule 12A-1.007(11)(c), F.A.C., further provides that mobile home park developers (owners) who also sell mobile homes and enter into agreements with purchasers for the sale of mobile homes, the placing of the mobile home on the developer's mobile home lot, and for making certain improvements to the mobile home lot as requested by the purchaser, shall charge or pay tax as follows:

1. If the sale of the mobile home, the placing of the mobile home on the developer's lot, and making improvements to the mobile home lot are for a single lump sum amount, sales tax is due on the total amount. The sales tax is to be separately stated as Florida sales tax in the agreement and on the invoice and is to be collected by the developer from the purchaser. In this instance, the developer may extend his resale certificate for the purchase of the mobile home and for the items used in making improvements to the mobile home lot. Examples of these improvements include mobile home skirting or blocking, screen porches or other attached rooms, central heating and air conditioning units, shrubbery and other plants, lawn grass, and driveways.

2. If the sale of the mobile home, the placing of the mobile home on the developer's lot, and the making of improvements to the mobile home lot are separately stated in the agreement and on the invoice, sales tax is due on the selling price of the mobile home and the placing of the mobile home on the developer's lot. If the agreement provides that the purchaser has an option of having a third party place the mobile home on the developer's lot, only the sale of the mobile home is subject to tax. The sales tax is to be separately stated as Florida sales tax in the agreement and on the invoice and is to be collected by the developer from the purchaser. Under this subparagraph, the developer is liable for the tax on its purchases of tangible personal property used in making the improvements to the realty, unless the requirements of paragraph 12A-1.051(3)(d), F.A.C., are met. If the developer contracts with a third party to make improvements to realty, the third party is liable for the tax on the purchase of tangible personal property used in making improvements to the real property.

MANUFACTURE/FABRICATION

Persons who manufacture factory-built buildings for their own use in performing contracts to construct or improve realty only pay tax on their cost price of items used to manufacture the building. See s. 212.06(1)(b), F.S. and Rule 12A-1.043(3)(a), F.A.C. A "factory built-building" is a structure manufactured in a manufacturing facility for installation or erection as a finished building. It includes residential, commercial, institutional, storage, and industrial structures. See s. 212.02(7), F.S.

Additionally, as provided in Rule 12A-1.091(12), F.A.C:

- (a) Any person who manufactures factory-built buildings out-of-state for his own use in the performance of a contract for the construction or improvement of real property in

Florida shall pay tax at the time such building is imported into Florida. The tax shall only be computed on the cost price of the items used in the manufacture of the building.

(b) For the purpose of this subsection, “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.

Real property contractors may maintain shops, plants, or similar facilities where they manufacture, produce, compound, process, or fabricate items for their own use in performing real property contracts. The contractors are required to remit use tax on the fabricated cost of items manufactured, produced, compounded, processed, or fabricated for their own use in performing real property contracts. Rule 12A-1.051(2), F.A.C., defines “fabricated cost,” as “the cost to a real property contractor of fabricated items Fabricated cost does not include the cost of transporting fabricated items from the contractor’s plant to the job site or the cost of labor at the job site where the fabricated items are incorporated into the real property improvement.” The term “fabricated items” means “items contractors manufacture, produce, process, compound, or fabricate for their own use in performing contracts for improvements to real property. The term applies only to items the contractor manufactures, produces, processes, compounds, or fabricates at a plant or shop maintained by the contractor. For this purpose, a temporary facility established at a job site that is used exclusively in connection with performing a contract for a real property improvement at that job site is not considered to be a plant or shop maintained by the contractor.” See Rule 12A-1.051(2)(a) and (b), F.A.C.

INSTALLATION AND SETUP FEES

In determining whether tax should be imposed upon certain charges related to the installation and setup of a factory-built manufactured home, the classification of the home as either real property or tangible personal property must be ascertained. If the home is classified as real property Rule 12A-1.051, F.A.C., governs the transaction and the dealer/contractor is considered the ultimate consumer of the material used in the installation of the home and is liable for use tax on the cost price of those materials. If the customer purchases the home from the dealer and in a separate transaction, contracts to have the home installed on real property, the sale of the home would be considered tangible personal property and the customer would be responsible for paying sales tax to the dealer.

CLEANING SERVICES

Section 212.05(1)(i)1.b., F.S., and Rule 12A-1.0091(1)(a), F.A.C., provide that nonresidential cleaning services, as enumerated in North American Industry Classification System (NAICS) National Number 561720, as published in 2007, are subject to sales tax. Nonresidential cleaning services are those services rendered to maintain the clean and sanitary appearance and operating condition of nonresidential building interiors. The cited provisions clearly state that nonresidential cleaning services pertain to cleaning services provided to maintain building interiors. Therefore, pre-sale and post- construction cleaning services provided pursuant to the installation and setup of a manufactured housing unit would not be taxable cleaning services.

* * *

In this case, Association's members produce various types of manufactured housing units which are delivered pursuant to the terms of the specific sales contract. The term manufactured housing unit describes both modular and mobile homes, as both are manufactured in a manufacturing facility and transported to the installation site. As noted in your analysis and further detailed in the department's response, the taxation as it relates to the sale of factory-built manufactured homes and any costs related to the setup and installation, is ultimately determined by the terms of the contract under which the manufactured home is sold.

Referencing TAA 97A-023, you state that the department concluded that for a structure to qualify as a factory-built building the structure must be a finished building prior to leaving a manufacturing facility as a fully functional building. It is your opinion that if the modular structures produced by the association's members are fully functional upon leaving the factory, the association's members, rather than the manufacturer, are responsible for the sales and use tax upon the cost price of the materials used in the manufacturing process.

While the definition of "factory-built building" is "a structure manufactured in a manufacturing facility for installation or erection as a finished building," if the components and systems such as structural, plumbing, mechanical, heating, electrical, or ventilating, are assembled or installed on site during the process of affixing a prefabricated/modular housing unit to land or a foundation rather than at the manufacturing facility, the prefabricated/modular housing unit cannot be classified as a "finished building." A prefabricated/modular housing unit generally leaves the manufacturing facility in modules for delivery and installation on realty and are therefore, not "fully functional" factory-built buildings upon leaving the factory, in which case, the manufacturer would be liable for tax on the cost price of materials used in the manufacture of the prefabricated modular housing units, pursuant to s. 212.06(1)(b), F.S.

When a manufactured housing unit which is not fully functional is sold and assembled on real property owned by the customer, the sale of items that are separately stated and itemized would be considered fixtures or improvements to real property pursuant to Rule 12A-1.051, F.A.C., and the taxation of the transaction would be dependent upon the terms of the sales contract. In the case of a mixed contract, the taxability would be based on the predominant nature of the contract, unless a clear allocation of the price is made between the tangible personal property and improvements to real property.

You state that TAA 00A-005, draws a distinction between "modular homes" and "mobile homes" but does not include any discussion on how the distinction is made. Pursuant to the definitions provided in Rule 12A-1.007(11), F.A.C., the primary difference between mobile/manufactured homes and modular homes is that a mobile home is built on an integral chassis and designed to be transported on its own wheeled assembly, whereas a prefabricated or modular housing unit – is set on its own frame and foundation and can only be moved utilizing the same means by which a traditional site-built home is moved. Essentially, a prefabricated or modular housing unit, is designed to be

permanently attached to the real property and the resulting tax consequences for sales of mobile/manufactured homes and prefabricated/modular homes can differ.

As to your reference to TAA 01A-056, which you state appears to treat a manufactured home as a mobile home, but excludes services required for the set-up of the home from the taxable sales price as real property improvements. However, as provided in Rule 12A-1.051(8), F.A.C., the determination of the predominate nature of a contract will depend on the facts and circumstance of each case. The taxpayer in TAA 01A-056, entered into a mixed contract which clearly allocated the contract price among the various elements of the contract. Upon review, the allocations were deemed reasonable in terms of the costs of materials and nature of the work performed. Therefore, taxation in that case was in accordance with the allocation.

Additionally, related to your reference to DOR GT-800047 (R. 08/22), titled "Taxation of Mobile Homes in Florida," regarding the reduced sales tax rate of 3% plus any applicable discretionary sales surtax on the sale of new mobile homes, the taxation in those instances would be based on whether the new mobile home is classified as tangible personal property or real property when purchased.

Sales tax applies to any tangible personal property such as interior equipment and furnishing, carport roof or porch extension that is attached to or which becomes part of a manufactured housing unit before or at the time of the sale. The customer should not be charged tax for tangible personal property purchased by a contractor for incorporation into a manufactured housing unit when the tangible personal property is sold as an improvement to real property. If improvements are made to the real property after the sales contract is executed, Rule 12A-1.051, F.A.C., governs the application of tax. The contractor, as a real property contractor in fabricating and erecting modular homes, is the ultimate consumer and would be required to pay sales tax or accrue use tax on its purchases of tangible personal property used in fabricating and erecting manufactured home. Additionally, the discretionary sales surtax is applicable based on the county where the home is fabricated rather than where installed.

CONCLUSIONS

QUESTION: What is the taxable classification of a factory-built manufactured home when the new home and related items and services are sold to a purchaser as part of a single transaction, and how is a determination made at the point of fabrication?

RESPONSE: The imposition of tax on the sale of a new factory-built home and related items and services sold to a purchaser as part of a single transaction depends on whether the factory-built home is classified as real property or tangible personal property, and can be determined at the point of fabrication, if the customer contracts with a manufacturer for the purchase of a factory-built manufactured home, to be delivered pursuant to specific contract terms.

If at the time of the sale, it is determined that the home will not be affixed to realty by placement on a permanent foundation or connected to utilities of any kind, the sale is subject to tax as the sale of tangible personal property.

Any related items and services sold to the purchaser as part of a single transaction would be dependent upon the contract terms. If the customer purchases a factory-built home from a dealer and in a separate and independent transaction, contracts with a third-party for installation of the home on realty, the sale of the factory-built manufactured home is classified as a sale of tangible personal property, and the customer must pay sales tax to the selling dealer on the sales price. No use tax would be due from the selling dealer.

QUESTION: When included in a single transaction for the sale of a new manufactured home, what is the taxable status of the following items and/or services, if the manufactured home is tangible personal property:

- **Charges associated with the manufactured home:**
 - **Base price of the manufactured home;**
 - **Home financing processing fees;**
 - **Optional upgrades (cabinets, flooring, etc.);**
 - **Floorplan expense (inventory financing);**
- **Survey costs:**
 - **Site plan and elevation certificate;**
 - **Permits (building, installation, electric, plumbing, demo, etc.);**
 - **Impact fees;**
- **Site Preparation:**
 - **Demolition;**
 - **Tree trimming/removal;**
 - **Grading;**
 - **Filling and fill dirt;**
- **Freight/delivery;**
- **Installation of the manufactured home;**
- **Well installation;**
- **Septic installation;**
- **Electric pedestal;**
- **Stairs;**
- **Foundation surrounding (skirting);**
- **Air Conditioning;**
- **Hook-ups**
 - **Electrical;**
 - **Plumbing;**
- **Appurtenances (garage/carport, screen room, storage shed);**

- **Concrete or Pavers used for driveway/walkways, patio, apron/culvert;**
- **Sod;**
- **Landscaping, including plants, trees, and irrigation system;**
- **Post-construction, pre-sale cleaning costs.**

RESPONSE: When included in a single transaction for the sale of a new manufactured home, the taxable status of the following items and/or services, if the manufactured home is tangible personal property is as follows:

- Charges associated with the manufactured home:
 - **Base price of the manufactured home:**
Taxable
 - **Home financing processing fees:**
When separately stated, the home financing processing fees would not be included in the sales price of the mobile home and would not be subject to tax.
 - **Optional upgrades (cabinets, flooring, etc.)**
Taxable
 - **Floorplan expense (inventory financing);**
When separately stated, the inventory financing would not be included in the sales price of the mobile home and would not be subject to tax.
- Survey costs:
 - **Site plan and elevation certificate**
 - **Permits (building, installation, electric, plumbing, demo, etc.)**
 - **Impact fees**
Charges for site plan and elevation certificate, impact fees, and permits are part of the taxable sales price.
- **Site Preparation:**
 - **Demolition;**
 - **Tree trimming/removal;**
 - **Grading;**
As cited in Rule 12A-1.051(17)(gg), F.A.C., contractors who are engaged in site work, including clearing, grading, demolition, and excavation are generally considered real property contractors. In this case, when these activities are performed in conjunction with the sale of a manufactured home which is not attached to real property at the time of sale, the contractor is likely engaged in a mixed contract and the taxation would be based on the predominate nature of the work performed pursuant to the contract terms.
 - **Filling and fill dirt**
As provided in s. 212.06(15), F.S. and Rule 12A-1.051(13), F.A.C., the taxation of fill dirt is dependent upon the source and contractor's use of the

material. When a contractor obtains fill dirt from a location that is owned or leased by the contractor and uses the materials to fulfill a real property contract on property owned by another, the contractor is the ultimate consumer of the material and must remit use tax based on either the fair retail market value or the land cost plus cost of clearing, excavating, and loading material as the taxable basis. When a contractor does not own or lease land, but has agreed to purchase fill dirt for use and to excavate and remove the material, tax is due on the purchase price plus all cost of material plus the cost incurred by the contractor.

No tax is due if the contractor secures the material from land that he or she owns, or leases and the material will be used on the contractor's property.

Freight/delivery;

○ **Installation of the manufactured home;**

Charges related to the sale, delivery, and installation of the home, are part of the sales price of the factory-built home and must be taxed accordingly, regardless of whether such charges are separately stated on the customer's invoice.

○ **Well installation/Septic installation**

When the company installs septic tanks, drills wells, installs well pumps or makes other improvements to realty, it must pay tax to its suppliers on materials used, but need not charge the customer tax. A well drilling company must collect tax from its customers when it invoices specifically described and itemized materials at an agreed price.

○ **Electric pedestal;**

○ **Stairs;**

○ **Foundation surrounding (skirting);**

○ **Air Conditioning;**

○ **Hook-ups**

○ **Electrical;**

○ **Plumbing;**

○ **Appurtenances (garage/carport, screen room, storage shed);**

○ **Concrete or Pavers used for driveway/walkways, patio, apron/culvert;**

○ **Sod;**

○ **Landscaping, including plants, trees, and irrigation system;**

As previously cited in Rule 12A-1.051(17), F.A.C., contractors who are engaged in the above referenced activities are generally considered real property contractors. In this case, when these activities are performed in conjunction with the sale of a manufactured home which is not attached to real property at the time of sale, the contractor is engaged in a mixed contract and the taxation

would be based on the predominate nature of the work performed pursuant to the contract terms.

- **Post-construction, pre-sale cleaning costs.**

The referenced cleaning costs are not taxable under s. 212.05(1)(i)1.b., F.S., and Rule 12A-1.0091(1)(a), F.A.C., as the pre-sale and post-construction cleaning services are not rendered to maintain the clean and sanitary appearance and operating condition of nonresidential building interiors. However, if the services are part of a mixed contract the taxation would be based on the predominate nature of the work performed under contract.

QUESTION: How does the taxable status change for the aforementioned items if the manufactured home is considered to be real property with a qualifying “RP” decal?”

RESPONSE: If the manufactured home is considered to be real property with a qualifying “RP” decal, these types of activities would generally be considered real property improvements. However, as previously stated, in the case of mixed contracts, which include both real property work and tangible personal property, the taxability is dependent on the predominate nature of the work performed under the mixed contract.

QUESTION: Who is responsible for paying and remitting the sales and use taxes in these scenarios?

RESPONSE: Contractors, manufacturers, or dealers who sell and install items of tangible personal property must collect tax on the full selling price, including installation or other charges, even if the charges are separately stated. When selling a manufactured housing unit, a determination must be made as to whether the home will be sold as tangible personal property or real property. If the unit is installed on land owned by the selling dealer prior to being sold to the dealer’s customer, the transaction is considered the sale of real property and is not subject to Florida sales or use tax.

However, when the selling dealer purchases the home from the manufacturer and installs the home on the property owned by the purchaser, the dealer, as the real property contractor, is considered the end user of the material used in the installation of the home and is liable for use tax on the cost price of the material used to complete to contract. No tax is due from the customer.

If the manufacturer sells the home directly to a developer who in turn sells the home to the buyer, the manufacturer is relieved of the responsibility of collecting sales tax on the sale if the developer issues a valid resale certificate. If the home is resold as tangible personal property, the developer is responsible for charging and collecting

sales tax. If the developer attaches the home to real property and subsequently sells the home in conjunction with the land to a buyer, the home is considered real property, and the developer or contractor is liable for use tax on the cost price of material used in the installation of the home as an improvement to real property.

If the home buyer also owns the property upon which the home is installed and has filed Form DR-402 – requesting that the mobile home be assessed as real property, the transaction is a sale of real property - not subject to sales tax.

This response constitutes a TAA 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, 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 s. 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 TAA, 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)717-6701.

Sincerely,

Shundra McClean

Shundra McClean

Tax Law Specialist

Technical Assistance & Dispute Resolution

(850)717-6701

Record ID: 7000801638

cc:

[REDACTED]
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TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number:7000801638

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.