



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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QUESTION: Do Taxpayer’s Research and Development (“R&D”) expenditures in relation to the Engineered Attractions qualify for exemption under s. 212.052, F.S.?

ANSWER: Yes, Taxpayer’s Research and Development (“R&D”) expenditures in relation to the Engineered Attractions, as described in the facts and which are in strict compliance with the provisions of s. 212.052, F.S., and Rule 12A-1.043(6), F.A.C., do qualify for exemption under s. 212.052, F.S.

July 3, 2024

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Via Email: [Redacted]

Subject: Technical Assistance Advisement 24A-009
Sections 212.02, 212.052, 212.06, and 212.08(18), Florida Statutes (F.S.)
Rule 12A-1.043, Florida Administrative Code (F.A.C.)

[Redacted] (“Taxpayer A”)

FEI#: [Redacted]

BP#: [Redacted]

[Redacted] (“Taxpayer B”)

FEI#: [Redacted]

BP#: [Redacted]

[Redacted] (“Taxpayer C”)

FEI#: [Redacted]

BP#: [Redacted]

[Redacted] (“Taxpayer D”)

FEI#: [Redacted]

BP#: [Redacted]

Collectively Referred to as “Taxpayer”

Dear [Redacted]:

This is in response to your letter dated [Redacted], requesting this Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to section 213.22, F.S., and Rule Chapter

12-11, F.A.C., concerning the matter referenced below. An examination of your letter has established that Taxpayer has complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

Requested Advise ment

Do Taxpayer’s Research and Development (“R&D”) expenditures in relation to the Engineered Attractions qualify for exemption under s. 212.052, F.S.?

Facts

The following facts were provided in Taxpayer’s TAA request and also in email correspondence with [REDACTED], on [REDACTED], and [REDACTED].

Taxpayer A is the consolidated parent company. Taxpayer B is the subsidiary consolidated parent of [REDACTED]. Taxpayer C is the operating company that files sales and use tax returns for the [REDACTED]. Taxpayer D is the operating company that files sales and use tax returns for the [REDACTED].

Taxpayer is a [REDACTED]. Taxpayer owns or licenses a portfolio of [REDACTED]. Taxpayer also has a [REDACTED].

The [REDACTED] require special knowledge and expertise to manufacture, design, and engineer (“Engineered Attractions”). Many of Taxpayer’s Engineered Attractions are [REDACTED]. Taxpayer’s attractions are often on [REDACTED] and may require significant amounts of design and research and development to produce.

For example, in [REDACTED], Taxpayer D [REDACTED] [REDACTED], a [REDACTED] in conjunction with [REDACTED]. [REDACTED], the [REDACTED] stands [REDACTED], introducing [REDACTED]. This dynamic [REDACTED] add a new [REDACTED], ensuring that no [REDACTED].

Similarly, in [REDACTED], Taxpayer C opened the [REDACTED], the [REDACTED]. This attraction features [REDACTED].

In [REDACTED], Taxpayer C will [REDACTED], [REDACTED]. This exhilarating [REDACTED] [REDACTED] will be the [REDACTED], enhancing the [REDACTED], integrated into an [REDACTED].

To produce Engineered Attractions, Taxpayer often engages with [REDACTED] companies (“Designers”), such as [REDACTED], to aid in the design, engineering, and fabrication of the attractions for installation and operation at Taxpayer’s [REDACTED]. These Designers have the requisite knowledge base and resources to design and manufacture an Engineered Attraction to the specifications required by Taxpayer. This is a critical requirement with respect to the new and cutting edge attractions that Taxpayer creates for [REDACTED]. Designers produce the Engineered Attractions at the specific direction and are subject to review and approval by Taxpayer. This results in Taxpayer incurring significant R & D expenditures for an Engineered Attraction.

Generally, the agreements between Taxpayer and each Designer provide that Designer will retain all copyrights and intellectual property rights to an Engineered Attraction. However, Taxpayer will have a “right to use” the design of Engineered Attraction (i.e., drawings, calculations, manuals, and software) for the installation, operation, maintenance, modification of, or other uses related to Engineered Attraction at Taxpayer’s [REDACTED]. The Engineered Attraction is [REDACTED].

Taxpayer’s Position

The design and development of Taxpayer’s Engineered Attractions requires considerable research in various scientific fields including, but not limited to, electronics, optics, acoustics, hydraulics, pneumatics, laser technology, and computer sciences. The focus of this research is to develop a [REDACTED], such as those described above, or to improve an [REDACTED].

Section 212.052, F.S., provides an exemption for the fabrication of tangible personal property that is used in R&D activities that have one of the following as its ultimate goal: (1) Basic research in a scientific field of endeavor; (2) Advancing knowledge or technology in a scientific or technical field of endeavor; (3) The development of a new product, whether or not the new product is offered for sale; (4) The improvement of an existing product, whether or not the improved product is offered for sale; (5) The development of new uses of an existing product, whether or not the new use is offered as a rationale to purchase the product; or (6) The design and development of prototypes, whether or not a resulting product is offered for sale.

For the purposes of this exemption, the term “product” is broadly defined to include any item, device, technique, prototype, invention, or process which is, was, or may be commercially exploitable.

The tax exemption applies to the “cost” of such tangible personal property that is fabricated during the course of qualifying R&D activities. The term “cost” means “cost price” as defined in s. 212.02(4), F.S.: “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.”

The Department has previously determined that R&D activities dedicated to the development and production of [REDACTED] can qualify for the exemption provided in s. 212.052, F.S. For example, in Florida Technical Assistance Advisement (“TAA”) No. 95A-015 (04/21/1995) and Florida TAA No. 89A-001 (04/03/1989), the Department determined that a taxpayer qualified for this R&D exemption for costs incurred in the design, fabrication, delivery, and installation of new attractions at the [REDACTED] [REDACTED].

As explained in these TAAs, even though the R&D was not always performed directly by the taxpayer, the taxpayer retained ownership of the attractions and the intellectual property rights resulting from the R&D activities to develop the attractions. Furthermore, all R&D activity by the designers was conducted at the specific direction, review, and approval of the taxpayer. Consequently, the Department determined the costs which were identified as amounts paid to the third parties for the research and design of the new attractions was attributable to tax-exempt R&D costs incurred in connection with the development of new products, and was not part of the cost price of the fabrication of taxable tangible personal property.

In the same manner, Taxpayer incurs R&D costs in the development and design of new Engineered Attractions at its [REDACTED]. In cases where the R&D activities are performed by Designers, Taxpayer retains a right to use the design of the Engineered Attraction at [REDACTED] [REDACTED], inclusive of the intellectual property developed during the attraction design and production.

Taxpayer has reviewed its [REDACTED] and determined that its Engineered Attractions at its various [REDACTED] contain significant R&D costs and expenditures. Taxpayer has calculated that an average of [REDACTED]% of the total amount paid to Designers for the design, fabrication, and installation of Engineered Attractions represents the portion of costs directly attributable to such R&D efforts. Given the material nature of these R&D costs, Taxpayer respectfully requests that the Department confirm Taxpayer’s understanding with regard to the appropriate interpretation and application of Florida’s R&D exemption for sales tax purposes.

Applicable Authority and Discussion

As to Taxpayer’s contention regarding previously issued TAAs, it is important to note that a TAA has no precedential value except to the taxpayer who requests the advisement and then for the specific transaction addressed in the TAA. Moreover, such an advisement is not an order or rule or policy of general applicability. *See* s. 213.22(1), F.S.

Section 212.02(4), F.S., defines the term, “cost price,” as “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.”

Section 212.052(1) and (2), F.S., provide as follows:

(1) For the purposes of the exemption provided in this section:

(a) The term “research or development” means research which has one of the following as its ultimate goal:

1. Basic research in a scientific field of endeavor.
2. Advancing knowledge or technology in a scientific or technical field of endeavor.
3. The development of a new product, whether or not the new product is offered for sale.
4. The improvement of an existing product, whether or not the improved product is offered for sale.
5. The development of new uses of an existing product, whether or not the new use is offered as a rationale to purchase the product.
6. The design and development of prototypes, whether or not a resulting product is offered for sale.

The term 'research or development' does not include ordinary testing or inspection of materials or products used for quality control, market research, efficiency surveys, consumer surveys, advertising and promotions, management studies, or research in connection with literary, historical, social science, psychological, or other similar nontechnical activities.

(b) The term “costs” means cost price as defined in s. 212.02(4).

(c) The term “product” means any item, device, technique, prototype, invention, or process which is, was, or may be commercially exploitable.

(2) Notwithstanding any provision of this chapter to the contrary, any person, including an affiliated group as defined in s. 1504 of the Internal Revenue Code of 1954 , as amended, who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for such taxpayer's own use directly and solely in research or development shall not be subject to the tax imposed by this chapter upon the cost of the product so manufactured, produced, compounded, processed, or fabricated.

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

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 material used, labor or service costs, or transportation charges, notwithstanding the provisions of s. 212.02 defining “cost price. . . .”

Rule 12A-1.043(6), F.A.C., provides in part:

(a) Tangible personal property manufactured, produced, compounded, processed, or fabricated for use directly and solely in research or development and machinery and equipment used predominately for research or development purposes are exempt when the research or development has one of the following as its ultimate goal:

1. Basic research or the advancement of knowledge or technology in a scientific or technical field of endeavor.
2. The development of a new product, the improvement of an existing product, or the development of new uses of an existing product, whether or not the product is offered for sale.
3. The design and development of prototypes, whether or not a resulting product is offered for sale.

(b) For the purpose of this subsection:

3. “Product” means any item, device, technique, prototype, invention, or process, which is, was, or may become, commercially exploitable.

(c) Research or development does not include ordinary testing or inspection of materials or products used for quality control, market research, efficiency surveys, consumer surveys, advertising and promotions, management studies, or research in connection with literature, history, social science, psychology, or other similar nontechnical activities. . . .

Section 212.052, F.S., and Rule 12A-1.043(6)(a), F.A.C., provide that tangible personal property¹ manufactured, produced, compounded, processed, or fabricated for use directly and solely in research or development, and machinery and equipment² used predominantly³ for research or development purposes are exempt when the research or development has one of the following as its ultimate goal:

1. Basic research or the advancement of knowledge or technology in a scientific or technical field of endeavor.
2. The development of a new product, the improvement of an existing product, or the development of new uses of an existing product, whether or not the product is offered for sale.

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 “Machinery and equipment” includes, but is not limited to, molds, dies, machine tooling, and other appurtenances or accessories for machinery and equipment, testing and measuring equipment, test beds, and computers and software. Such machinery and equipment may be purchased, leased, or self-fabricated. If self-fabricated, the machinery and equipment includes the materials and labor for the design, fabrication, and assembly of such items. See Rule 12A-1.043(6)(b)1., F.A.C.

³ “Predominantly” means at least 50 percent of the time. See Rule 12A-1.043(6)(b)2., F.A.C.

3. The design and development of prototypes, whether or not a resulting product is offered for sale.

Materials and labor may be purchased tax-exempt when the purchaser extends an exemption certificate to the vendor or supplier certifying that the materials and labor will be used directly and solely for research or development purposes, as provided in s. 212.052, F.S. Rule 12A-1.043(6)(d)2., F.A.C. provides a suggested format for an exemption certificate.

Additionally, machinery and equipment, including materials and labor used in the self-fabrication of machinery and equipment, may be purchased or leased tax-exempt when the purchaser extends an affidavit to the vendor or supplier stating that the item(s) will be used predominantly for research or development purposes, as provided in s. 212.08(18), F.S. Rule 12A-1.043(6)(e)2., F.A.C. provides a suggested format for an exemption certificate.

Conclusion

Yes, Taxpayer's Research and Development ("R&D") expenditures in relation to the Engineered Attractions, as described in the facts and which are in strict compliance with the provisions of s. 212.052, F.S., and Rule 12A-1.043(6), F.A.C., qualify for exemption under s. 212.052, F.S.

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)717-6363.

Sincerely,

Leigh L. Ceci

Leigh L. Ceci, MAcc
Tax Law Specialist
Technical Assistance & Dispute Resolution
(850)717-6363

cc: [REDACTED]
[REDACTED]
[REDACTED]

Record ID: 7001137095

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: 7001137095

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.