

**Question(s):**

In its petition, the Taxpayer requests determinations with regard to the taxability of the following items for Florida sales tax purposes:

1. Individual components of its manufacturing facility that is currently under construction and may be subject to exemption under section 212.08(5)(b)1., F.S.
2. Charges for boiler fuels to be used in an industrial manufacturing, processing, compounding, or production process qualifying for exemption under section 212.08(7)(b), F.S.
3. Charges for electricity, to be used to power machinery and equipment used in manufacturing, qualifying for exemption under section 212.08(7)(ff), F.S.
4. Purchase of consumable supplies, such as graded steel balls, oil filters, filter bags, conveyor belts, and supply elevator buckets, qualifying for exemption under section 212.08(7)(xx), F.S.

**Answer(s) - Based on Facts Below:**

1) The Department has made the following determinations with regard to the Taxpayer's assertions of its treatment of the individual components of its new facility relative to the exemption provided by section 212.08(5)(b), F.S.:

<b>Group</b>	<b>Component</b>	<b>Sales Tax Treatment pursuant to s. 212.08(5)(b), F.S.</b>
A	Slag transport system & raw material silo	Qualifying Machinery and Equipment
B	Plant	Qualifying Machinery and Equipment
C	Slag Storage	Qualifying Machinery and

- |   |                                |   |
|---|--------------------------------|---|
|   | Silos                          | Equipment   |
| D | Pilings/Slab                   | Qualifying Machinery and Equipment                                  |
| E | Movable Equipment              | Qualifying Machinery and Equipment                                  |
| F | Oil Tank                       | Non-Qualifying Tangible Personal Property/Real Property Improvement |
| G | Workshop:                      |   |
|   | Building                       | Real Property Improvement   |
|   | Tools and Equipment            | Non-Qualifying Tangible Personal Property                           |
|   | Furniture                      | Non-Qualifying Tangible Personal Property                           |
| H | Control Building:              |   |
|   | Building                       | Real Property Improvement   |
|   | Monitoring Equipment           | Qualifying Machinery and Equipment                                  |
|   | Furniture                      | Non-Qualifying Tangible Personal Property                           |
| I | Office and Laboratory:         |   |
|   | Office and Laboratory Building | Real Property Improvement   |
|   | Furniture                      | Non-Qualifying Tangible Personal Property                           |
|   | Laboratory Testing Equipment   | Qualifying Machinery and Equipment                                  |
|   | Computers                      | Qualifying/Non-Qualifying Machinery and Equipment, dependent on use |
| J | Garage                         | Real Property Improvement   |
| K | Concrete and Asphalt Paving    | Real Property Improvement   |

- L Retention Pond      Real Property Improvement
- M Electrical Substation, Non-Qualifying Tangible  
Overhead Wiring and    Personal Property/  
Transformer              Real Property Improvement

2) The Department agrees with the Taxpayer's assertion that the purchase of natural gas to be used in the flash dryer will qualify for the exemption for boiler fuels as set forth in section 212.08(7)(b), F.S., provided such fuel is used exclusively in the manufacturing process as a combustible fuel. The Taxpayer's purchase of dyed diesel does not qualify for the boiler fuels exemption. The Taxpayer will owe a use tax on the total cost of the dyed diesel fuel consumed.

3) The Department agrees that since the Taxpayer is classified under SIC Industry Major Group Number 32, a qualifying industry as listed in the statute, and it is expected that greater than 95% of its electricity will be used by its qualifying machinery and equipment to manufacture, process compound, or produce for sale items of tangible personal property, 100% of the Taxpayer's electricity purchases will be exempt from sales tax under Section 212.08(7)(ff), F.S. The exemption can be obtained by extending a certificate to the local utility provider stating that electricity purchased is for the exempt purpose designated by statute and the claimed percentage.

4) The Department agrees that since the Taxpayer is classified under SIC Industry Major Group Number 32, a qualifying industry as listed in the statute, its purchases of parts and materials to be used in the repair and incorporated into qualifying industrial machinery and equipment qualify for the exemption provided in section 212.08(7)(xx), F.S.

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Re: Technical Assistance Advise ment 04A-027

Sales and Use Tax - Manufacturers' Exemptions

Sections 212.08 and 206.86, F.S.

Rules 12A-1.051, 12A-1.059, and 12A-1.096, F.A.C.

Petitioner: XXX. ("Taxpayer")

FEIN: XX

Dear :

This is a response to your petition dated December 8, 2003, for the Department's issuance of a Technical Assistance Advise ment ("TAA") concerning the above referenced party and matter. Your petition 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 under Chapter 12-11, F.A.C., and is issued to you under the authority of Section 213.22, F.S.

#### **Preliminary Facts**

XXX (hereinafter "Taxpayer"), a Delaware corporation and wholly owned subsidiary of XXX (Holdings) Ltd., a UK limited company, is in the process of establishing a new manufacturing facility at XXX. This facility will produce ground granulated blastfurnace slag (GGBS) for sale to the ready-mix concrete industry. GGBS is a material used to make highly durable concrete when used in combination with Portland cement.

Pursuant to Section 212.08(5)(b), F.S., the Taxpayer applied for, and was granted, a temporary tax exemption to purchase the machinery and equipment. The exemption was authorized under Temporary Tax Exemption Permit XXX for the period of November 7, 2002, through May 31, 2004.

The Taxpayer states that it is currently a lessee pursuant to a 40-year land lease at XXX. Construction of its manufacturing facility began in July, 2003, pursuant to a construction contract entered into with XXX, effective July 30, 2003 (the "Contract"). The work to be performed under the Contract includes initial preparation of the site and construction of a processing plant, related control and supply structures, and

other ancillary structures to be used for various administrative purposes. A complete copy of the contract was not provided. However, the Taxpayer provided a color-coded map of the entire facility ("Project Map"), attached as Exhibit A, along with details of the individual components of the construction, including the components' identification number on the Project Map and the depreciation treatment for federal tax purposes. On February 18, 2004, the Taxpayer provided six technical drawings of the "mill building" identified as Department 531 on the Project Map.

### **Requested Advisements**

In its petition, the Taxpayer requests determinations with regard to the taxability of the following items for Florida sales tax purposes:

1. Individual components of its manufacturing facility that is currently under construction and may be subject to exemption under section 212.08(5)(b)1, F.S.
2. Charges for boiler fuels to be used in an industrial manufacturing, processing, compounding, or production process qualifying for exemption under section 212.08(7)(b), F.S.
3. Charges for electricity, to be used to power machinery and equipment used in manufacturing, qualifying for exemption under section 212.08(7)(ff), F.S.
4. Purchases of consumable supplies, such as graded steel balls, oil filters, filter bags, conveyor belts, and supply elevator buckets, qualifying for exemption under section 212.08(7)(xx), F.S.

### **Facts - Issue I**

The Taxpayer has provided the following details of the individual components of its manufacturing facility currently under construction:

### Slag transport system (Group A)

Project Map code: 244

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

The slag transport system will include a loading bin into which raw materials will be loaded and introduced into the processing plant via connecting conveyors. The raw materials will be transferred from one of two 40,000 metric ton slag stock-piles (shown on the west side of the Project Map) to the slag transport system by a machine called a front-end loader. This front-end loader will carry the materials up a ramp in the slag transport system to a loading bin that will introduce the raw materials onto a conveyor belt for transfer to the raw material silo. The ramp will be constructed from standard concrete materials with guard rails to prevent the front-end loader from being driven off either side of the ramp.

### Raw material silo (Group A)

Project Map identification: Circular shape at southern end of mill building (531)

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

The conveyor belts in the slag transport system will transfer the raw materials into the raw material silo, which will then temporarily store those materials while it provides a consistent rate of feed into the plant's equipment.

### Plant (Group B)

Project Map codes: 531 (mill building), 741 (air

compressors), 761 (water cooling system)

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

The mill building will contain the machinery necessary for production of the finished products. It will be a "building" only in the sense that the machinery will be surrounded by a steel housing that is designed to provide physical support to the machinery during operation. The machinery will be physically attached to the housing on the bottom and around all sides.

Additional supplies of items such as grinding media (graded steel balls), which wear out during production, will be purchased before production begins to be used for future maintenance of the equipment.

Adjacent to the mill building will be air compressors and a water cooling system. The air compressors will provide compressed air necessary to power certain machinery in the mill building. The water cooling system will serve a "radiant" cooling system throughout the mill building primarily to keep both the equipment and the finished goods at the appropriate temperatures for optimum operation and protection.

Slag storage silos (Group C)

Project Map codes: 611, 612

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

Two silos will be erected for the purposes of storing and maintaining [Taxpayer's] processed goods[,] known as "slag"

cement[,] until they are removed via truck for delivery to customers. The silos will be equipped with an aerator which is required to constantly process the slag to keep it in saleable condition. Without the aerator, the slag would pack-set into a solid mass. Each silo will also be equipped with two loading ramps onto which delivery trucks will drive so that loading mechanisms can load finished product into delivery trucks. Each of these ramps, four in total, will contain scales to be used to measure the amount of product dispensed into each delivery truck.

#### Pilings/Slab (Group D)

Project Map code: Blue area

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

The raw material silo, plant, and slag storage silos will all be supported by concrete pilings to avoid differential settlement. These pilings are required to prevent movements which could render the equipment inoperable. To further guard against movement, the pilings under all parts of the plant will be connected by a slab to ensure that no parts move in relation to each other. Before the slab and pilings can be installed, the land underneath must be prepared by excavation and the use of fill material to ensure proper grading.

#### Movable equipment (Group E)

Project Map code: Not separately identified

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

At least two additional pieces of movable equipment, a



forklift and a Bobcat (a machine with a loading bucket on the front end), will be used throughout the facility in performing the Taxpayer's manufacturing operations. This equipment will be used to transport raw materials and work-in-process in and around the mill building as necessary.

Oil tank (Group F)

Project Map code: 721

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

The oil tank will hold diesel fuel solely for use in the front-end loader, the forklift, and the Bobcat.

Workshop (Group G)

Project Map Code: 911

<b>Item</b>	<b>IRS Asset Class</b>	<b>IRS Class Life</b>	<b>Depreciation Period</b>
Building real property	Nonresidential	39 years	39-yr MACRS
Tools and Equipment	32.3 Assets Used in the Manufacture of Other Stone and Clay Products	15 years	5-yr MACRS (IRC 168(e) (3)(B)(iv))
Furniture and Equipment	00.11, Office Furniture, Fixtures	10 years	7-yr MACRS

The workshop will contain tools and equipment such as lifting cranes, testing devices, and other small tools required to repair and maintain the plant and equipment used in the production of the finished product.

Control building (Group H)

Project Map Code: 952

<b>Item</b>	<b>IRS Asset Class</b>	<b>IRS Class</b>	<b>Depreciation</b>
	<b>Life</b>	<b>Period</b>	
Building	Nonresidential	39 years	39-yr MACRS
	real property		
Testing	32.3 Assets Used	15 years	5-yr MACRS
Equipment	in the Manufacture		
	of Other Stone and		(IRC 168(e))
	Clay Products		(3)(B)(iv))
Furniture	00.11, Office	10 years	7-yr MACRS
	Furniture, Fixtures, and Equipment		

The control building will house computer equipment that will monitor the performance of the mill building's equipment. This equipment will monitor items such as power demands, temperatures, vibrations, productivity, and overall performance.

Office and laboratory (Group I)  
Project Map code: 941

<b>Item</b>	<b>IRS Asset Class</b>	<b>IRS Class</b>	<b>Depreciation</b>
	<b>Life</b>	<b>Period</b>	
Building	Nonresidential	39 years	39-yr MACRS
	real property		
Computers	00.12,	6 years	5-yr MACRS
	Information Systems		(IRC 168(e))
			(3)(B)(iv))
Furniture	00.11, Office	10 years	7-yr MACRS
	Furniture, Fixtures, and Equipment		

The office will be used by the Taxpayer's employees for executive and administrative functions.

The laboratory will contain equipment designed to test the quality of goods being produced. Samples will be taken from different stages of production to be tested. Computers will be used for testing and furniture such as tables, desks, and chairs will be present for use by the

quality control staff.

#### Garage (Group J)

Project Map code: 914

IRS Asset Class: Nonresidential real property

IRS Class Life: 39 years; Depreciation Period: 39 year  
MACRS

The garage will be used to store the forklift and Bobcat in order to protect them from inclement weather.

#### Concrete & asphalt paving (Group K)

Project Map code: Pink and orange areas

IRS Asset Class: 00.3, Land Improvements

IRS Class Life: 20 years; Depreciation Period: 15 year  
MACRS

Concrete paving areas will be used by administrative staff (including small parking lot) and delivery trucks for pickup of finished goods. Asphalt paving areas will be used around the mill building by manufacturing personnel.

#### Retention pond (Group L)

Project Map code: Lower-right corner of map

IRS Asset Class: 00.3, Land Improvements

IRS Class Life: 20 years; Depreciation Period: 15 year  
MACRS

The retention pond will store storm water drained off the property. The water will be retained in the pond until it evaporates or is absorbed into the soil.

#### Electrical substation (Group M)

Project Map identification: approximately 100 yards west of the oil tank (721)

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

An electrical substation will be constructed under a separate contract directly with one of the subcontractors being used in the construction of the plant facility. Its primary purpose will be to transform the power delivered to the substation by XXX at 138,000 volts down to 5,000 volts, the voltage required in manufacturing. The substation will be constructed on a concrete slab for permanent attachment to the earth and will be surrounded by a gravel bed to ensure storm water dissipation.

While the substation's transformer will be on a concrete slab with no surrounding structure, the related meters and electrical relays must be protected from the elements in order to function properly. Therefore, a small structure will be erected solely for the purpose of housing these items.

Overhead cabling (Group M)

Project Map identification: between the electrical substation and transformer along XXX Road

IRS Asset Class 32.3, Assets Used in the Manufacture of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

Overhead electrical cabling will be installed between the electrical substation and the transformer station along XXX Road to deliver the 5,000 volts of electricity being delivered by the substation to both the transformer and the manufacturing plant.

Transformer station (Group M)

Project Map codes: 548

IRS Asset Class 32.3, Assets Used in the Manufacture  
of Other Stone and Clay Products

IRS Class Life: 15 years; Depreciation Period: 7 year  
MACRS

There is also a transformer which will convert the 5,000  
volt electricity to both 480-volt and 120-volt electricity  
to be used primarily to power other machinery and equipment  
in the mill building. This transformer will also deliver  
the power required by the other ancillary structures on the  
property.

#### **Requested Advisement - Issue I**

Taxpayer requests determinations with regard to the taxability  
of the individual components of its manufacturing facility  
currently under construction.

#### **Taxpayer's Position - Issue I**

The Taxpayer asserts the following treatment for the individual  
components of its facility as related to the new business  
exemption provided for in section 212.08(5)(b)1., F.S.:

##### Slag transport system and raw material silo (Group A)

The Taxpayer's production process begins when the raw  
materials are delivered to one of two slag storage  
piles, as shown on the Project Map, by truck from  
cargo ship loading docks operated by XXX which are  
located approximately 150 yards to the east of the  
Taxpayer's facility. The slag transport system  
principally provides a delivery function[,]  
introducing the raw materials into the processing  
plant. This system includes a front-end loader which  
will carry raw materials up a concrete ramp with guard  
rails into enclosed structure containing a conveyor  
system. The raw material silo will receive the  
materials in batches and provide a consistent flow of

those materials into the plant.

The Taxpayer asserts that the front-end loader is exempt under Rule 12A-1.096(9)(e), F.A.C., which states that industrial machinery and equipment which is an integral part of the production process, as well as in post production, such as a fork-lift, will qualify for the exemption. The Taxpayer asserts that the ramp, enclosing structure, conveyor system, and raw material silo are exempt under Rule 12A-1.096(9)(j), F.A.C., which provides that "conveyors or related equipment used to transport raw materials from the storage area located at the fixed location to the production line will qualify for the exemption." The external structures would be expected to be replaced when the machinery is replaced and, accordingly, [meet] the exception to the general rule that structures will not qualify as industrial machinery and equipment. The Taxpayer asserts that the raw material silo and the entire slag transport system including: the front-end loader, concrete ramp with guard rails, enclosing structure, and conveyor system meet the definition of industrial machinery and equipment as provided in s.212.08(5)(b)6[.]a, F.S.

#### Plant (Group B)

The entire process of actually converting raw materials into finished goods takes place within the plant. Included in the plant is the mill building, which contains the machinery to be used in processing. This machinery will be supported by a steel housing that is integral to the functions of the machinery. Without the housing, the various pieces of equipment could not be placed in the proper positions relative to each other. Since the machinery will be firmly attached to the steel housing, the housing would be expected to be replaced at the same time the machinery is replaced.

The plant also includes: air compressors which are necessary to operate the equipment; a water cooling

system necessary to keep the equipment, raw materials, and finished goods at optimum temperatures; and a flash dryer stack to dry the raw materials before processing. All of these components are integral to the operation of the plant, as discussed in the description of the plant's operation above. Section 212.08(b)6[.a, F.S.] states that heating and air conditioning systems are not industrial machinery and equipment unless their sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The Taxpayer asserts that both the flash dryer stack and the cooling system are installed solely to meet the requirements of the production process and, accordingly, the Taxpayer asserts that the entire plant, including these related items, meets the definition of industrial machinery and equipment.

The Taxpayer will also be purchasing, before the start of production, additional supplies of equipment parts that wear out during production, such as ball rollers to grind cement. The Taxpayer asserts that these items qualify for exemption under Rule 12A-1.096(9)(i), F.A.C., which states that parts and accessories for industrial machinery and equipment purchased for replacement, maintenance, or repair purposes do not qualify for this exemption unless purchased by a new business before production activities begin and delivery is made within 12 months from the start of production.

#### Slag storage silos (Group C)

Since the slag must be continuously processed through aeration integrated within the slag storage silos until the slag is transferred to delivery trucks, the Taxpayer asserts that its production process ends when the slag is transferred from the silos to the trucks. The Taxpayer asserts that the functions served by the silos fall within the post-production quality control

activities discussed in Rule 12A-1.096(1)(g), F.A.C. and Rule 12A-1.096(9)(d), F.A.C., since these activities are required by good manufacturing practices to maintain the slag. The Taxpayer also asserts that the concrete ramps and scales qualify as exempt machinery under Rule 12A-1.096(9)(p)[, F.A.C.,] which states that scales at the start of, or within, the production process that are necessary to weigh raw materials or ingredients, or finished goods at the time of packaging, will qualify for the exemption. In addition, the silos are not contained within external buildings or structural components that would not be expected to be replaced when the machinery is replaced. Accordingly, the Taxpayer asserts that the entire slag storage silos meet the definition of industrial machinery and equipment.

#### Pilings/slab (Group D)

The Taxpayer asserts that its concrete pilings, slab, and related excavation materials represent qualifying equipment under Rule 12A-1.096(9)(a)1[.], F.A.C., which states that special foundations required for the support of machinery and equipment will qualify for the exemption.

#### Movable equipment (Group E)

The Taxpayer asserts that the forklift and Bobcat represent qualifying equipment under Rule 12A-1.096(9)(e), F.A.C., which states that industrial machinery and equipment which is an integral part of the production process, as well as in post production, such as a fork-lift, will qualify for the exemption.

#### Oil tank (Group F)

The Taxpayer asserts that its oil tank qualifies for the exemption since its exclusive purpose is to store fuel for use by other qualifying industrial machinery and equipment.

#### Workshop (Group G)

Under Rule 12A-1.096(9)(n), F.A.C., tools required to



continuously keep qualified equipment in optimum condition are themselves qualified equipment, but equipment used for general repair and maintenance is not qualified equipment. The workshop will only contain equipment used for general maintenance, so no exemption is claimed for this equipment.

The workshop will be a separate free-standing structure and, as such, will be considered a real property improvement. Any furniture such as tables, desks, chairs, etc. that are installed in the workshop will be considered tangible personal property other than qualifying equipment.

#### Control building (Group H)

The Taxpayer asserts that the monitoring equipment to be installed in the control building represents qualifying equipment under Rule 12A-1.096(9)(g), F.A.C., which states that monitoring machinery and equipment that is an integral part of the production process qualifies for the exemption. The equipment in the control building is integral to the production process since it constantly monitors the performance of the machinery in the mill building.

The control building will be a separate free-standing structure and, as such, will be considered a real property improvement. Any furniture such as tables, desks, chairs, etc. that are installed in the workshop will be considered tangible personal property other than qualifying equipment.

#### Office and laboratory (Group I)

The office and laboratory will be considered real property improvements and all of their equipment (computers, etc.) and furniture will be considered tangible personal property other than qualifying equipment. It is expected that the office furniture, office equipment, and laboratory furniture will not qualify as industrial machinery and equipment.

The Taxpayer asserts that the testing equipment to be installed in the laboratory represents qualifying equipment under Rule 12A-1.096(9)(d), F.A.C., which states that preproduction, random, or postproduction quality control equipment shall qualify as industrial machinery and equipment if it is an integral part of the production process. The laboratory equipment is integral to the production process since it ensures the appropriate level of quality at various stages of the production process.

#### Garage (Group J)

The garage will be considered a real property improvement.

#### Concrete & asphalt paving (Group K)

Since the paving is not within the areas of the production process, it will be considered a real property improvement.

#### Retention pond (Group L)

The retention pond allows for proper drainage from the entire site, but it does not serve an integral function to the production process. Accordingly, it will be considered a real property improvement.

#### Electrical substation, overhead wiring, and transformer (Group M)

Florida law and rules only mention electrical hookups with respect to the sales tax exemption in Rule 12A-1.096(9)(a)2[.], F.A.C., which states that electrical wiring from the nearest power panel or disconnect box to the qualifying machinery and equipment qualifies for the exemption. In the Taxpayer's case, its electrical supply system, consisting of an electrical substation, overhead wiring, and a transformer, is being installed solely to meet the high electricity demands of its qualifying machinery and equipment. While the electrical output will serve, to an insubstantial degree, nonproductive areas such as the office, substantially all of the electrical output

from the substation will be used by the production process. Other areas of Florida sales tax law and rules disregard insignificant, nonqualifying usage of otherwise qualifying purchases when determining whether a purchase qualifies for the exemption. Examples of these areas include heating and air conditioning systems, (s. 212.08(5)(b)6.a., F.S.) computer equipment, (Rule 12A-1.096(9)(k), F.A.C.) and purchased electricity (s. 212.08(7)(ff), F.S.).

Applying the same reasoning, the Taxpayer asserts that the entire cost of the electrical substation, overhead wiring, transformer and all wiring from the transformer to the various pieces of qualifying equipment meet the definition of industrial machinery and equipment.

Electrical meters and relays will be installed inside small structures in order to prevent malfunction as a result of exposure to the elements. These structures will be installed solely for this purpose and would have no other useful purpose without the meters and relays. Since these buildings would be expected to be removed or replaced if the related meters or relays were removed or replaced, the Taxpayer asserts that they meet the exception under Section 212.08(5)(b)6[.a[.], F.S. to the general rule that structures will not qualify as industrial machinery and equipment.

In its submission of February 18, 2004, the Taxpayer provided further clarification of the mill building, stating that the design of the mill building is somewhat unique in that the process equipment must be attached to, and supported by, the steel frame to ensure that it is in the correct alignment and elevation required for production. Rather than simply providing an isolated weather-protective skin around the process equipment, the Taxpayer asserts that the structural steel is a vital and integral element in the manufacturing equipment. In the event of a failure of the equipment requiring its total replacement, the steel framing around the failed component would be damaged and in need of replacement when the equipment itself

is replaced. In the event the company was to discontinue use of the equipment, the entire structure would need to be replaced before the property could be used for any other purpose. This is due to the highly integrated structure of the equipment within the inner workings of the structure itself. Therefore, the Taxpayer concludes, the building does not have a useful life beyond that of the equipment contained within it. Accordingly, the surrounding structure should qualify for the exemption under Sec. 212.08(5)(b)6.a., F.S.

The Taxpayer provided that the grinding media consist of graded steel balls that are placed inside the mill's grinding equipment and tumbled with the unprocessed raw material in order to grind the material into slag to be incorporated in the final product.

### **Applicable Law and Discussion - Issue I**

Section 212.08(5)(b)1., F.S., provides the following, in pertinent part:

1. Industrial machinery and equipment purchased for ... use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

Rule 12A-1.096, F.A.C., interprets the statute and provides the following, in pertinent part:

\* \* \*

(1)(b) "Industrial machinery and equipment" means tangible personal property or other property with a depreciable life of 3 years or more that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. Buildings and their structural

components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment itself is replaced. Heating and air conditioning systems are not considered industrial machinery and equipment, unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees, or serves, to an insubstantial degree, non-production activities. For example, a dehumidifier installed for the sole purpose of conditioning air in a factory, where the manufacturing of electronic components requires a controlled-humidity environment, will be considered industrial machinery and equipment. (See subsection (9) of this rule.)

(c) "Integral to" means that the machinery and equipment provides a significant function within the production process, such that the production process could not be complete without that machinery and equipment.

\* \* \*

(g) "Production process" or "production line" means those industrial activities beginning when raw materials are delivered to the new or expanding business' fixed location and generally ending when the items of tangible personal property have been packaged for sale, or are in saleable form if packaging is not done. However, the production process may include quality control activities after the items have been packaged (or are in saleable form if packaging is normally not done), if such quality control activities are required by good manufacturing practices or mandated by state or federal government agencies....

\* \* \*

(9) Types of industrial machinery and equipment that will or will not qualify for the exemption.

(a) For the purpose of this exemption industrial machinery and equipment includes:

1. Special foundations required for the support of such qualifying machinery and equipment;
2. Electrical wiring from the nearest power panel or disconnect box to the qualifying machinery and equipment;  
and
3. Plumbing connections necessary to connect the machinery and equipment to the nearest water supply or drain line.

(b) The exemption for industrial machinery and equipment ends at that stage of the production process where the product produced is placed in a package (or is in saleable form if packaging is normally not done) to be sold to the wholesaler, retailer, or other purchaser. However, the production process may include quality control activities for perishable goods after the item of tangible personal property has been packaged (or is in saleable form if packaging is normally not done), if such quality control activities are required by good manufacturing practices mandated by state or federal government agencies.

(c) Quality control equipment installed within the production line and required to perform quality checks on each item, article, or batch produced before the item, article, or batch can be sold qualifies for the exemption.

(d) Preproduction, random, or postproduction quality control equipment shall qualify as industrial machinery and equipment, if it is an integral part of the production process.

(e) Industrial machinery and equipment which is an integral part of the production process, as well as in postproduction, such as a fork-lift, will qualify for the exemption. (f) Pollution control equipment, or sanitizing and sterilizing equipment that is an integral part of the production process qualifies for exemption.

(g) Monitoring machinery and equipment that is an integral part of the production process qualifies for exemption.

(h) Machinery and equipment used to remove waste materials away from industrial machinery and equipment, where the removal is required to maintain the operation of the production process, will qualify for exemption. For example, equipment used to remove wood chips and sawdust from around a qualified industrial wood lathe will qualify for exemption.

(i) Parts and accessories for industrial machinery and equipment purchased for replacement, maintenance, or repair purposes do not qualify for this exemption unless purchased by:

1. A new business before production or spaceport activities begin and delivery is made within 12 months from the start of production or spaceport activities; or

2. An expanding business before the completion of the expansion project.

3. Parts and accessories purchased for replacement, maintenance, or repair that have already received an exemption pursuant to s. 212.08(7)(zz), F.S., shall not be allowed an exemption for the same amount of tax pursuant to this paragraph.

(j) Conveyers or related equipment used to transport raw materials from the storage area located at the fixed location to the production line will qualify for exemption.

(k) Computers used to direct and control the functions of exempt industrial machinery and equipment will qualify for exemption, even though such computers may also have non-production related applications or uses.

(l) Machines used to control exempt industrial machinery and equipment through the reading or sensing of a tape or some other similar means will qualify for exemption.

(m) Masks, molds, jigs, or templates, where such property

is integral to the production process will qualify for exemption. The machinery and equipment that is integral to the creation or maintenance of those masks, molds, jigs, or templates will also qualify for exemption even though such machinery and equipment is not a direct part of the production process.

(n) Machinery and equipment used in the general repair or maintenance of the plant or production machinery and equipment, such as welders, gear-pullers, or bench grinders, does not qualify for the exemption. However, specialized machinery and equipment that is continuously required to keep production machinery and equipment calibrated or in optimum condition such as a sharpening machine in a sawmill, will qualify for the exemption.

(o) Machinery and equipment qualifying for a partial exemption from tax under s. 212.08(3), F.S., is not eligible for the exemption under s. 212.08(5)(b), F.S.

(p) Scales at the start of, or within, the production process that are necessary to weigh raw materials or ingredients, or finished goods at the time of packaging, will qualify for the exemption.

(q) Office equipment, such as telephones, copy machines, typewriters, or calculators, will not qualify for the exemption.

(r) Furniture items for office or production personnel will not qualify for the exemption.

(s) General or task lighting fixtures will not qualify for the exemption.

(t) Installation labor charges qualify for exemption. However, other installation costs, such as equipment rental or expendable supplies, which do not become a physical part of qualifying machinery and equipment, do not qualify for exemption.



Rule 12A-1.051(2), F.A.C., provides the following, in pertinent part:

\* \* \*

(d) "Improvement to real property" or "real property improvement" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

\* \* \*

(e)2. "Machinery or equipment" generally does not include junction boxes, switches, conduits, wiring, valves, pipes, and tubing incorporated into the electrical, cabling, plumbing, or other structural systems of fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment.

The Department makes the following determinations with regard to the Taxpayer's assertions of its treatment of the individual components of its new facility relative to the exemption provided by section 212.08(5)(b), F.S.:

Group A - Slag transport system and raw material silo:

Qualifying machinery and Equipment.

Pursuant to Rule 12A-1.096(9)(j), F.A.C, conveyors or related equipment used to transport raw materials from the storage area located at the fixed location to the production line will qualify for the exemption. The Taxpayer's Group A consists of a slag transport system and raw material silo. The slag transport system will consist of a front end loader, a loading bin, and a conveyor system. The front end loader will be used to transport raw materials from the facility's stock-piles to the loading bin that is accessed via a concrete ramp with guard rails. The loading bin will then introduce the raw materials to a conveyor belt that will then transport the materials to the raw material silo. The raw material silo will then be used as temporary storage for the raw material while at the same time it will provide a consistent rate of feed into the plant. To that end, the Taxpayer's Group A falls within the Department's interpretation as being a conveyor or related equipment that is

used to transport raw materials to the production line and, as such, is considered to be an integral part of the production process, as provided by Rule 12A-1.096(9)(e), F.A.C. Accordingly, Taxpayer's Group A is determined to be qualifying machinery and equipment pursuant to the exemption statute.

Group B - Plant: Qualifying machinery and equipment.

The Taxpayer's Group B - Plant consists of the mill building, air compressors, and water cooling systems. The Taxpayer describes the mill building to be a "building" only in the sense that the production machinery will be surrounded by a steel housing that is designed to provide physical support to the machinery during operation. It has been indicated that the machinery will be physically attached to the housing at its base and on all sides. The definition of industrial machinery and equipment as found in Rule 12A-1.096(1)(b), provides that buildings and their structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment itself is replaced. In reviewing the technical drawings provided by the Taxpayer, the symbiotic relationship between the structural components of the mill building and the manufacturing machinery and equipment is evident. It is clear that the mill building is designed around the manufacturing machinery and equipment in that the machinery and equipment must be attached to the building in such a way to ensure that it is in correct alignment and elevation required for production. It is apparent that the structural component of the mill building serves an integral part in the production process to the point that the building itself would not have a useful life beyond that of the equipment contained within it. It is further evident that if any component part of the production machinery and equipment were to be replaced, the corresponding structural element of the building would be required to be replaced as well. Accordingly, the Department agrees with the Taxpayer's assertion that the mill building represents qualifying industrial machinery and equipment as defined in the exemption statute.

The air compressors that will be adjacent to the mill building will qualify for the exemption if they are integral to the production process in that they are used to operate qualifying machinery and equipment. Inasmuch as the water cooling system is necessary to keep both the production machinery and equipment and the finished product at the appropriate temperatures for optimum operation and production, it will qualify as industrial machinery and equipment.

The taxpayer has also indicated that grinding media and other replacement parts, such as oil filters, filter bags, conveyor belts and supply elevator buckets that are needed to repair or maintain the machinery and equipment will be purchased prior to the start of production. The grinding media are graded steel balls that are placed into the Taxpayer's grinding equipment in order to grind the raw material into the finished product. It is apparent that without such media, the Taxpayer's facility would essentially be inoperable. To that end, the grinding media are considered integral to the production process, thereby qualifying as "parts or accessories" that may be purchased under the guidelines of the exemption statute prior to the start of production. It is important to note that parts and accessories for industrial machinery and equipment purchased for replacement, maintenance, or repair purposes do not qualify for this exemption unless they are purchased prior to the start of production and delivery occurs within 12 months from the start of production. Items that have already received an exemption under the provisions of section 212.08(7)(xx), F.S., are excluded as well.

Group C - Slag Storage Silos: Qualifying machinery and equipment.

Rule 12A-1.096(1)(g), F.A.C., provides that the production process generally ends when the items of tangible personal property are in saleable form. However, the production process may include quality control activities after the items are in saleable form if such quality control activities are required by good manufacturing practices. Rule 12A-1.096(9)(d), F.A.C., further provides that postproduction quality control equipment

shall qualify as industrial machinery and equipment, if it is an integral part of the production process. In the instant case, Taxpayer will be constructing two silos for the purposes of storing and maintaining its finished slag until the slag is removed via truck for delivery to its customers. The silos will be equipped with an aerator that will be required to constantly process the slag to keep it in saleable form. In light of these facts, it is apparent that the silos represent quality control equipment that is an integral part of the production process, thereby qualifying for the statutory exemption.

Pursuant to Rule 12A-1.096(9)(p), F.A.C, scales that are necessary to weigh finished goods at the time of packaging will qualify for the exemption. In this instance, each silo, as described above, will contain two loading ramps onto which delivery trucks will drive, so that the finished product may be loaded. The ramps will contain scales that will be used to measure the amount of product dispersed into each delivery truck. The product is not packaged. Therefore, the product is not considered to be a finished product in saleable form until the point at which it is dispersed into the delivery trucks. Even though the product is not packaged, the scales are at the point in the production process where packaging would occur if it was to be done.

Based on the above analysis, it is the Department's determination that the individual elements of the Taxpayer's Group C - Slag Storage Silos represent qualifying machinery and equipment.

Group D - Pilings/Slab: Qualifying machinery and equipment.

For the purpose of the exemption provided by section 212.08(5)(b), F.S., special foundations required for the support of qualifying machinery and equipment are considered to be industrial machinery and equipment pursuant to Rule 12A-1.096(9)(a)1., F.A.C. Since the pilings and interconnecting slab are necessary to support the raw material silo, plant, and the slag storage silos and to prevent movements of the production machinery and equipment that could render it inoperable, the Department agrees with the Taxpayer's assertion

that its Group D - Pilings/Slab represent qualifying machinery and equipment.

Group E - Movable Equipment: Qualifying machinery and equipment.

Inasmuch as it has been indicated that the Taxpayer will be utilizing at least two additional pieces of movable equipment, such as a forklift and a Bobcat (a small scale front end loader) throughout the facility to transport raw materials and work-in-process, the Department agrees with the Taxpayer's assertions that these items represent qualifying machinery and equipment provided they serve as an integral part of the production process at a fixed location.

Group F - Oil Tank: **Non-Qualifying.**

Pursuant to Rule 12A-1.096(9)(e), F.A.C., industrial machinery and equipment that is an integral part of the production process, as well as in post production, will qualify for the exemption. As defined by Rule 12A-1.096(1)(c), F.A.C., "integral to" means that the machinery and equipment provides a significant function within the production process, such that the production process could not be complete without that machinery and equipment. In State ex rel. Szabo Food Services, Inc. v. Dickinson, 286 So.2d 529 (Fla. 1973), the court held that exemptions to taxing statutes are special favors granted by the legislature and are to be strictly construed against the taxpayer. Further, in State Dept. of Revenue v. Anderson, 403 So.2d 397 (Fla. 1981), the court stated that the legislature, besides giving DOR rule making power and expressly requiring compliance with DOR's rules and regulations, has stated its intent that any exemptions granted be subject to the conditions pertaining to those exemptions. s. 212.21(2), Fla. Stat. In the instant case, even though the equipment for which it stores fuel may be exempt, the exemption does not extend to the oil tank, as it is not integral to the production process since the production process can be completed without it. Therefore, since the Taxpayer has not met the burden established by the statute, the Department disagrees with its assertion that the oil tank is qualifying equipment but, rather, it may represent tangible personal property or a real property improvement

depending on the method of affixation. Since the method of affixation has not been provided, the Department cannot distinguish whether the oil tank will remain an item of tangible personal property or if it will become an item of tangible personal property incorporated into a real property improvement upon installation.

Group G - Workshop:

Building: The Department agrees with the Taxpayer's assertion that the building is a real property improvement.

Tools and Equipment: The Department agrees with the Taxpayer's assertion that the tools and equipment represent non-qualifying tangible personal property.

Furniture: The Department agrees with the Taxpayer's assertion that the furniture represents non-qualifying tangible personal property.

Group H - Control Building:

Building: The Department agrees with the Taxpayer's assertion that the building is a real property improvement.

Monitoring Equipment: Inasmuch as the monitoring machinery and equipment will monitor the performance of the production machinery and equipment, such as power demands, temperatures, vibrations, productivity, and overall performance, the Department agrees that this equipment is integral to the production process and, therefore, represents qualifying machinery and equipment.

Furniture: The Department agrees with the Taxpayer's assertion that the furniture represents non-qualifying tangible personal property.

Group I - Office and Laboratory:

Office and Laboratory Building: The Department agrees with the Taxpayer's assertion that the building is a real property improvement.

Furniture: The Department agrees with the Taxpayer's

assertion that the furniture represents non-qualifying tangible personal property.

Laboratory Testing Equipment: Since the laboratory equipment will be used to test and ensure the quality of the goods from samples taken from various stages of the production process, the Department agrees with the Taxpayer's assertion that the laboratory equipment represents qualifying machinery and equipment.

Computers: If the computers are used in the preproduction, random, or postproduction quality control process, the computers will qualify for the exemption as provided in Rule 12A-1.096(9)(d), F.A.C. However, if the computers are used solely in an administrative function, such computers will be considered to be non-qualifying tangible personal property.

Group J - Garage: The Department agrees with the Taxpayer's assertion that the garage is a real property improvement.

Group K - Concrete and Asphalt Paving: The Department agrees with the Taxpayer's assertion that the concrete and asphalt paving constitute real property improvements.

Group L - Retention Pond: The Department agrees with the Taxpayer's assertion that the retention pond represents a real property improvement.

Group M - Electrical Substation, Overhead Wiring, and Transformer: **Non-Qualifying.**

The Department disagrees with the Taxpayer's assertion that the electrical substation, overhead wiring, and transformer represent qualifying industrial machinery and equipment pursuant to Rule 12A-1.096(9), F.A.C. In fact, the rule is quite unambiguous on this point and provides that only the electrical wiring from the nearest power panel or disconnect box to the qualifying machinery and equipment will qualify for the exemption. Rather than being overridden by the exemption statute, as the Taxpayer suggests, further clarity on this issue

is found in Rule 12A-1.051(2)(e)2., F.A.C., which provides that "machinery or equipment" generally does not include junction boxes, switches, conduits, wiring, valves, pipes, and tubing incorporated into the electrical, cabling, plumbing, or other structural systems of the fixed works, buildings, or other structures, whether or not such items are used solely or partially in connection with the operation of machinery and equipment. As stated above, the court in Szabo v. Dickinson, 286 So.2d 529, held that exemptions to taxing statutes are special favors granted by the legislature and are to be strictly construed against the taxpayer. Accordingly, since the rule stipulates that only the electrical wiring from the qualifying machinery and equipment to the nearest power panel or disconnect box will qualify for the exemption, the exemption cannot be extended beyond that point to the Taxpayer's electrical substation, overhead wiring, and transformer if such items do not represent the first disconnect point or nearest power panel from the qualifying machinery and equipment. This is so despite the fact that these items are being installed solely to meet the high electricity demands of the Taxpayer's qualifying machinery and equipment. Since, in all likelihood, these items are not the first point of disconnect from qualifying machinery and equipment, the Department has determined that the electrical substation, overhead wiring, and transformer are not considered to be industrial machinery and equipment, but rather improvements to real property subject to the provisions of Rule 12A-1.051, F.A.C. Buildings constructed to prevent exposure of the electrical meters and relays associated with the substation are similarly considered to be improvements to real property.

### **Conclusion - Issue I**

The Department has made the following determinations with regard to the Taxpayer's assertions of its treatment of the individual components of its new facility relative to the exemption provided by section 212.08(5)(b), F.S.:

Group	Component	Sales Tax Treatment pursuant to s. 212.08(5)(b), F.S.
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A	Slag transport system	Qualifying Machinery and
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- & raw material silo    Equipment
- B    Plant                    Qualifying Machinery and  
   Equipment
- C    Slag Storage Silos    Qualifying Machinery and  
   Equipment
- D    Pilings/Slab            Qualifying Machinery and  
   Equipment
- E    Movable Equipment    Qualifying Machinery and  
   Equipment
- F    Oil Tank                Non-Qualifying Tangible  
   Personal Property/Real  
   Property Improvement
- G    Workshop:  
      Building                Real Property Improvement  
      Tools and Equipment    Non-Qualifying Tangible  
   Personal Property  
      Furniture                Non-Qualifying Tangible  
   Personal Property
- H    Control Building:  
      Building                Real Property Improvement  
      Monitoring Equipment    Qualifying Machinery and  
   Equipment  
      Furniture                Non-Qualifying Tangible  
   Personal Property
- I    Office and Laboratory:  
      Office & Laboratory    Real Property Improvement  
      Bldg.  
      Furniture                Non-Qualifying Tangible  
   Personal Property  
      Laboratory Testing    Qualifying Machinery and  
      Equipment                Equipment  
      Computers                Qualifying/Non Qualifying  
   Machinery and Equipment  
   dependent on use
- J    Garage                    Real Property Improvement
- K    Concrete and Asphalt    Real Property Improvement  
      Paving
- L    Retention Pond         Real Property Improvement
- M    Electrical Substation,    Non-Qualifying Tangible

Overhead                      Personal property/  
Wiring, and Transformer    Real Property Improvement

### **Facts - Issue II**

The following describes the taxpayer's use of boiler fuels which will be used in its manufacturing process:

#### Boiler fuels (Group N)

The raw materials delivered into the plant must first be completely dried by a "flash dryer" (indicated at the southwest corner of the mill building). The Taxpayer will be purchasing natural gas to be used in this drying process, which is required as part of the production of the Taxpayer's products. There will be no other use of natural gas anywhere else in the Taxpayer's facility. In addition, the Taxpayer will be purchasing heavy diesel for use in its movable equipment.

In a conversation with the Taxpayer's representative on January 23, 2004, it was indicated that the Taxpayer will actually be purchasing ATSM Grade D-975 dyed diesel for use in its movable equipment, from a dealer that has elected to not collect the sales tax.

### **Requested Advise ment - Issue II**

Taxpayer requests determinations with regard to the taxability of charges for boiler fuels that are to be used in an industrial manufacturing, processing, compounding, or production process.

### **Taxpayer's Position - Issue II**

The Taxpayer asserts the following with regard to the use of boiler fuels at its facility:

#### Fuel Supply (Group N)

The Taxpayer asserts that its purchase of both natural gas and heavy diesel will qualify for exemption as boiler fuels

under Section 212.08(7)(b), F.S., which states that natural gas and residual oils, such as heavy diesel, used as a combustible fuel in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state are exempt from tax.

### **Applicable Law and Discussion - Issue II**

Section 212.08(7)(b), F.S., provides the following, in pertinent part:

(b) Boiler fuels.--When purchased for use as a combustible fuel, purchases of natural gas, residual oil, recycled oil, waste oil, solid waste material, coal, sulfur, wood, wood residues or wood bark used in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state are exempt from the taxes imposed by this chapter; however, such exemption shall not be allowed unless the purchaser signs a certificate stating that the fuel to be exempted is for the exclusive use designated herein....

Rule 12A-1.059(2), F.A.C., provides the following, in pertinent part:

(2)(a) "Boiler" fuels. When purchased as a combustible fuel, purchases of natural gas, residual oil, recycled oil, waste oil, solid waste material as defined in s. 403.703(13), F.S., coal, sulfur, wood, wood residues, or wood bark used in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state is exempt. For the purpose of this exemption, the term "residual oil" means ASTM Grades No. 5 and No. 6, heavy diesel, and bunker C. This exemption does not apply to any type of liquefied petroleum gases, naphtha, kerosene, or distillate fuel oil, such as diesel fuels, No. 1 and No. 2 heating oils, and No. 4 fuel oil. The term "fixed location" means being permanently affixed to one location or plant site, or any portable plant which may be set up for a period of not less than six months in a stationary manner so as to perform the same industrial

manufacturing, processing, compounding, or production process that could be performed at a permanent location or plant site. To be entitled to this exemption at the time of purchase, the purchaser must issue the seller a certificate stating that the combustible fuel is used in an industrial manufacturing, processing, compounding, or production process. The following is a suggested format of a certificate to be used for this purpose:

EXEMPTION CERTIFICATE  
BOILER FUELS USED TO PRODUCE TANGIBLE  
PERSONAL PROPERTY FOR SALE

\_\_\_\_\_, incorporated in the State of \_\_\_\_\_, its undersigned officer who is duly authorized, hereby certifies to \_\_\_\_\_ that purchases of natural gas, residual oil, recycled oil, waste oil, solid waste material as defined in s. 403.703(13), F.S., coal, sulfur, wood, wood residues, or wood bark under account number \_\_\_\_\_ will be exclusively used as a combustible fuel in the manufacturing, processing, compounding, or production of tangible personal property for sale. This industrial process is located at \_\_\_\_\_ in \_\_\_\_\_, Florida, County of \_\_\_\_\_. Further, it is certified that \_\_\_\_\_ is not subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. The purchase of the combustible fuel pursuant to this certification is exempt from tax, pursuant to s. 212.08(7)(b), F.S.  
Dated at \_\_\_\_\_, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
AUTHORIZED OFFICER OF COMPANY  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

(Emphasis Supplied)

Section 206.86, F.S., provides the following pertinent definitions:

(1) "Diesel fuel" means all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended

with diesel or any product place into the storage supply tank of a diesel-powered motor vehicle.

\* \* \*

(9) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service requirements for high sulfur diesel fuel or low sulfur diesel fuel....

Rule 12A-1.059(3)(a), F.A.C., provides the following:

(3)(a) Dyed diesel fuel used in a trade or business is subject to use tax. Every person who uses dyed diesel fuel in a trade or business is required to register as a dealer to remit use tax due on the total cost price of the fuel consumed, unless:

1. The diesel fuel is specifically exempt from sales tax;
- or
2. The dealer selling the diesel fuel has elected to collect sales and use tax on sales to persons who use or consume the diesel fuel in a trade or business.

The Department agrees with the Taxpayer's assertion that the purchase of natural gas to be used in the flash dryer will qualify for the exemption for boiler fuels as set forth in section 212.08(7)(b), F.S., provided such fuel is used exclusively in the manufacturing process as a combustible fuel. If the Taxpayer uses any portion of the fuel for any other purpose, such as hot water heating or generally heating the facility or offices, then none of the fuel purchase is exempt from tax. If the Taxpayer uses the fuel exclusively as a combustible fuel in the manufacturing process, then the Taxpayer may issue a copy of the suggested format of the exemption certificate found in Rule 12A-1.059(2)(a), F.A.C., to its vendor.

With regard to the Taxpayer's purchases of dyed diesel for its use in its movable equipment, such purchase does not qualify for the exemption for boiler fuels. Pursuant to Rule 12A-1.059(2), F.A.C., the exemption does not apply to distillate

fuel oil, such as diesel fuels. Since dyed-diesel fuel falls within the definition of diesel as a petroleum distillate as defined in sections 206.86(1), and (9), F.S., the purchase of such fuel is specifically excluded from the exemption. Inasmuch as it has been indicated that the Taxpayer will be purchasing the dyed-diesel from a dealer who has elected to not collect the sales tax, the Taxpayer will be required to remit a use tax due on the total cost of the fuel consumed.

### **Conclusion - Issue II**

The Department agrees with the Taxpayer's assertion that the purchase of natural gas to be used in the flash dryer will qualify for the exemption for boiler fuels as set forth in section 212.08(7)(b), F.S., provided such fuel is used exclusively in the manufacturing process as a combustible fuel. The Taxpayer's purchase of dyed diesel does not qualify for the boiler fuels exemption. The Taxpayer will owe a use tax on the total cost of the dyed diesel consumed.

### **Requested Advisement - Issue III**

The Taxpayer requests a determination as to the taxability of charges for electricity that is to be used to power machinery and equipment used in manufacturing qualifying for exemption under section 212.08(7)(ff), F.S.

### **Facts - Issue III**

The following describes the taxpayer's use of electricity which will be purchased for use in its manufacturing process:

#### Electricity (Group O)

The Taxpayer will also be purchasing electricity for delivery to the substation from Florida Power and Light. After being processed by the substation and the transformer, power will be delivered from the transformer to the plant and the other ancillary structures on the property. It is estimated that greater than 95% of the electrical current delivered to the facility will be utilized in the mill building

and silos.

### **Taxpayer's Position - Issue III**

The Taxpayer asserts the following with regard to the use of electricity at its facility:

#### Electricity supply (Group O)

The taxpayer asserts that its purchase of electricity will qualify for exemption under Section 212.08(7)(ff)1[.], F.S., which states that charges for electricity or steam used to operate machinery and equipment at a fixed location in Florida when such machinery and equipment is used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, are exempt from sales tax. This subparagraph further provides that if 75 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 100 percent of the charges for electricity or steam used at the fixed location are exempt. In addition, the Taxpayer is classified under SIC Industry Major Group Number 32, Manufacturers of stone, clay, glass and concrete products, which is one of the qualifying industries listed in Section 212.08(7)(ff)2[.], F.S. Since the Taxpayer is in a qualifying industry and expects that greater than 95% of its electricity will be used by its qualifying machinery and equipment, the Taxpayer asserts that 100% of its electricity purchases are exempt from sales tax under Section 212.08(7)(ff), F.S.

### **Applicable Law and Discussion - Issue III**

Section 212.08(7)(ff), F.S., provides the following, in pertinent part:

(ff) Certain electricity or steam uses.--

1. Subject to the provisions of subparagraph 4., charges

for electricity or steam used to operate machinery and equipment at a fixed location in this state when such machinery and equipment is used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations are exempt to the extent provided in this paragraph. If 75 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 100 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 75 percent but 50 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 50 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 50 percent of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, none of the charges for electricity or steam used at the fixed location are exempt.

2. This exemption applies only to industries classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry Group Number 212. As used in this paragraph, "SIC" means those classifications contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

3. Possession by a seller of a written certification by the purchaser, certifying the purchaser's entitlement to an exemption permitted by this subsection, relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

The Department agrees that since the Taxpayer is classified under SIC Industry Major Group Number 32, a qualifying industry



as listed in the statute, and it is expected that greater than 95% of its electricity will be used by its qualifying machinery and equipment to manufacture, process compound, or produce for sale items of tangible personal property, 100% of the Taxpayer's electricity purchases will be exempt from sales tax under Section 212.08(7)(ff), F.S.

In order to obtain the exemption, the Taxpayer should extend an exemption certificate, a sample of which is provided below, to its local utility provider certifying its entitlement to the exemption, thus relieving the provider from the responsibility of collecting the tax on the non-taxable amounts.

Sample Exemption Certificate:

**Purchases of Electricity or Steam  
Used to Manufacture Items for Sale**

**(Purchaser's Name)** certifies that the electricity or steam purchased on or after \_\_\_\_\_ under the following account number(s) \_\_\_\_\_ is exempt from sales tax, because such electricity or steam will be used at a fixed location to operate machinery and equipment that is used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations.

**(Purchaser's Name)** further certifies that: a) its four-digit SIC Industry Number is listed below, and this number is classified under SIC Industry Major Group Number 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, or, 39, or under Industry Group Number 212 as contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President; and b) 75% or more of the electricity or steam used at a fixed location is used to operate machinery and equipment as described above, and the location qualifies for the 100% exemption, or c) more than 50% but less than 75% of the electricity or steam used at a fixed location is used to operate

machinery and equipment as described above and the location qualifies for a 50% exemption.

SIC INDUSTRY NUMBER \_\_\_\_\_

Address of Exempt Location(s)	Utility or Steam Account Numbers	Amount of Exemption Claimed (Circle One)
_____	_____	100% / 50%
_____	_____	100% / 50%

The undersigned understands that if such purchases of electricity or steam do not qualify for exemption, the undersigned will be subject to sales and use tax, interest, and penalties. Purchaser further understands that when any person shall fraudulently, for the purpose of evading tax, issue to a vendor or to any agent of the state a certificate or statement in writing in which he or she claims exemption from the sales tax, such person, in addition to being liable for the payment of the tax plus a mandatory penalty of 200% of the tax shall be liable for fine and punishment provided by law for conviction of a misdemeanor of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

\_\_\_\_\_  
Purchaser's Name (Print or Type)      Date

\_\_\_\_\_  
Signature and Title      Florida Sales Tax Number

\_\_\_\_\_  
Federal Employer Identification      Telephone Number  
Number (FEI) or Social Security Number

**Conclusion - Issue III**

The Department agrees that since the Taxpayer is classified under SIC Industry Major Group Number 32, a qualifying industry as listed in the statute, and if, as expected, greater than 95%

of its electricity will be used by its qualifying machinery and equipment to manufacture, process compound, or produce for sale items of tangible personal property, 100% of the Taxpayer's electricity purchases will be exempt from sales tax under Section 212.08(7)(ff), F.S. The exemption can be obtained by extending a certificate to the local utility provider stating that electricity purchased is for the exempt purpose designated by statute and the claimed percentage.

#### **Requested Advisement - Issue IV**

The Taxpayer requests a determination as to the taxability of purchases of parts and accessories used to repair or maintain industrial machinery and equipment qualifying for exemption under section 212.08(7)(xx), F.S.

#### **Facts - Issue IV**

The Taxpayer will be purchasing grinding media and other replacement parts after the start of production, such as oil filters, filter bags, conveyor belts and supply elevator buckets that are needed to maintain the production machinery and equipment. The grinding media are graded steel balls that are placed into the Taxpayer's grinding equipment in order to grind the raw material into the finished product.

#### **Taxpayer's Position - Issue IV**

The Taxpayer asserts that its purchases of grinding media and other replacement parts, such as oil filters, filter bags, conveyor belts, and supply elevator buckets, qualify for exemption under section 212.08(7)(xx), F.S.

#### **Applicable Law and Discussion - Issue IV**

Section 212.08(7)(xx), provides the following, in pertinent part:

(xx) Certain repair and labor charges.-

1. Subject to the provisions of subparagraphs 2. and 3., there is exempt from the tax imposed by this chapter all

labor charges for the repair of, and parts and materials used in the repair of and incorporated into, industrial machinery and equipment which is used for the manufacture, processing, compounding, production, or preparation for shipping of items of tangible personal property at a fixed location within this state.

2. This exemption applies only to industries classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry Group Number 212. As used in this subparagraph, "SIC" means those classifications contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

The exemption provided in section 212.08(7)(xx), F.S., extends to "all labor charges for the repair of, and parts and materials used in the repair and incorporated into," qualified machinery and equipment. The statute does not define the term "repair." When a statute fails to define terms, they must be given their ordinary meaning. Rinker Materials Corp. v. City of North Miami, 286 So.2d 552 (Fla. 1973). Merriam-Webster's Collegiate Dictionary, Tenth Edition (1999) defines "repair" as "to restore by replacing a part or putting together what is torn or broken; to restore to a sound or healthy state" and defines "maintain" as "to keep in an existing state; preserve from failure or decline." In the context under consideration, both terms refer to taking action to keep existing machinery and equipment operating properly at existing levels. The exemption therefore applies regardless whether an engine belt is replaced when it is merely worn out or whether it is replaced after it snaps. In either case, there is an action that involves using labor and a replacement belt in order for the engine to perform in its intended manner. This interpretation is supported by Treas. Regs. section 1.162-4, which characterizes repairs as operations that "neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition...." The exemption extends to preventative maintenance as well as corrective repairs. Accordingly, the exemption will extend to the Taxpayer's

purchase of oil filters, filter bags, conveyor belts, and supply elevator buckets that are necessary to ensure that the production machinery and equipment is maintained in a sound operating condition.

Under the same reasoning, the exemption will also apply to the Taxpayer's purchase of the grinding media in that the exemption extends to any parts or materials incorporated into existing industrial machinery or equipment to ensure that the machinery and equipment remains in a sound operating condition. It is readily apparent that the grinding media are a critical component of the production process due to the fact that they are placed into the grinding machines to facilitate the grinding of the raw material into the finished product. Without such media, the taxpayer's grinding machines would be inoperable and the Taxpayer would not be able to produce a finished product.

It is important to note that not all expenses incurred in the course of exempt repair are exempt. The exemption is limited by its terms to charges for labor and parts that are incorporated into machinery and equipment. It does not apply to any other expenses incurred in the course of a repair. For example, if equipment is rented to use in making a repair, the rental charges are not exempted by section 212.08(7)(xx), F.S. Consumable items and tools that are used in the course of an exempt repair but are not incorporated into the machinery and equipment, such as rags, cleaning solutions, sandpaper, wrenches, hammers, and drills, are not exempt.

In order to obtain the exemption, the Taxpayer should extend an exemption certificate, a sample of which is provided below, to its vendor certifying its entitlement to the exemption, thus relieving the vendor from the responsibility of collecting the tax on the exempt amounts.

**SUGGESTED PURCHASER'S EXEMPTION CERTIFICATE  
REPAIRS TO QUALIFYING INDUSTRIAL MACHINERY AND EQUIPMENT**

\_\_\_\_\_ (Purchaser's Name) certifies that  
the labor charges and/or repair parts and materials billed  
on or after \_\_\_\_\_ (date) were used in the repair of

and incorporated into, industrial machinery and equipment on or after \_\_\_\_\_ (date), and that the industrial machinery and equipment were used for manufacturing, processing, compounding, production, or preparation for shipment of items of tangible personal property at a fixed location in Florida. Any labor charges, repair parts, or materials which are not eligible for the exemption will be so designated by the purchaser.

\_\_\_\_\_ (Purchaser's Name) further certifies that its four-digit SIC Industry Number is listed below, and this number is classified under SIC Industry Major Group Number 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, or 39, or Industry Group Number 212, as contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President. The undersigned understands that if such labor charges and/or repair parts and materials do not qualify for this exemption, the undersigned will be subject to sales and use tax, interest, and penalties. The undersigned further understands that when any person fraudulently, for the purpose of evading tax, issues to a vendor or to any agent of the state a certificate or statement in writing in which he or she claims exemption from the sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 200% of the tax, shall be liable for fine and punishment provided by law for conviction of a misdemeanor of the second degree, as provided in s. 775.082, s.775.083, or s. 775.084, Florida Statutes.

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Purchaser's Name (Print or Type)	Four-digit SIC Industry
Number	Number

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Signature and Title	Date	Florida Sales Tax
		Number

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Federal Employer Identification Telephone Number  
Number (F.E.I.) or Social Security Number

**Form to be retained in repairer's records.**

**DO NOT send to Department of Revenue.**

#### **Conclusion - Issue IV**

The Department agrees that since the Taxpayer is classified under SIC Industry Major Group Number 32, a qualifying industry as listed in the statute, its purchases of parts and materials to be used in the repair and incorporated into qualifying industrial machinery and equipment qualifies for the exemption provided in section 212.08(7)(xx), F.S.

#### **Closing Statement**

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, 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 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 15 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) 922-

4802.

Sincerely,

Christopher J. Whittier

Tax Law Specialist

Technical Assistance & Dispute Resolution

CJW\

Encl.: Exhibit A

Control No: 57953