

Caution: This advisement has not been amended to reflect changes made by Chapter 2006-57, Laws of Florida or the opinion of the First District Court of Appeal in Department of Revenue vs. Lockheed Martin Corporation, 905 So.2d 1017 (Fla. 1st DCA 2005).

Refer to TAA 89A-001S and TAA 89A-001SS

Feb 03, 1989

RE: TAA #89(A)-001

Taxation of Research and Development

Dear Sirs:

This is in response to your recent request for a Technical Assistance Advisement on the applicability of s. 212.052, F.S. to the design, fabrication and installation of certain personal property essential to the performance of your trade or business.

FACTS

XXX ("Taxpayer"), XXX is engaged in the development, construction and operation of XXX ("Project") on its real estate located in XXX. The nature of the Project requires the manufacture of certain tangible personal property ("Special Property") which requires a significant amount of expenditures in the nature of research and development ("R&D").

Special Property is XXX produced by third parties ("Providers") at the specific direction and subject to review and approval of the taxpayer. Further it is always considered the property of the taxpayer.

Taxpayer has estimated that at least 40% of the total amount paid to Providers for the design, fabrication and installation of Special Property represents the portion attributable to the R&D efforts. This average percentage was determined by calculating the R&D included in the design, fabrication and installation stages of six representative contracts, based on engineering schedules, contract specifications, flow charts, representations made by Providers,

and Taxpayers previous experience.

TAXPAYER REQUESTED RULING

Taxpayer requests the issuance of a Technical Assistance Advisement concluding that the labor, services and other nontaxable expenditures capitalized as part of the total cost of the Project, performed or incurred by Taxpayer or on its behalf, are not subject to the Florida sales or use tax. Taxpayer also requests that when payment is made to Providers, an amount equal to 40% of the total paid should be deemed R&D and exempt under the provisions of Section 212.052 of the Florida Statutes.

To assist in the Department's response to the request, taxpayer furnished to the Department copies of the contracts for the design and development of the Special Property to be utilized at taxpayer's Florida site.

Additionally, taxpayer provided a study of a number of its projects indicating that costs of developing each project ranged between 30% and 60% of each account in the chart of accounts provided to the Department as a part of the documents it was asked to consider.

STATUTORY PROVISIONS

Section 212.052, provides, inter alia:

Research or development costs; exemptions.- (1) For the purposes of the exemption provided in this section:

(a) "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 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 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...or other similar nontechnical activities.

(b) The term "costs" means cost price as defined in s. 212.02(5).

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

Rule 12A-1.043, F.A.C. promulgated by the Department provides in pertinent part:

(3)(a) Research or development labor shall not be taxable when the research or development has one of the following as its ultimate goal:

1. Basic research or advance knowledge of 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 rule:

1. "Product" means any item, device, technique, prototype, invention or process, which is, was, or may be, commercially exploitable.
2. The term "cost" means cost price as defined in Section 212.02(5), F.S.

DISCUSSION

The design and development of Taxpayer's Special Property 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 that research is to develop a new product or

improve an existing product featuring the latest state-of-the-art technology, which will be used in Taxpayer's trade or business.

After analyzing the components of Taxpayer's labor, services and other nontaxable expenditures which will be capitalized as part of the cost of the Project the Department has concluded that they will be incurred in connection with the development of new products and should not be subject to Florida sales or use tax.

In addition, the total taxable cost of the Special Property should not include the portion attributable to R&D exempt under Florida law. Although the R&D may be performed directly by the Providers and not by the Taxpayer, the contracts stipulate that Taxpayer will be the owner of the R&D and it will retain all the intellectual property rights derived therefrom.

After considering all of the data submitted by the Taxpayer, visiting Taxpayer's premises where some of R&D is performed, and reviewing the computations of the R&D included in the total cost of the contracts, we conclude that in order to apply the intent of the Florida law in a convenient and administratively efficient manner, a portion of the cost paid to all Providers of Special Property should be deemed R&D and therefore not part of "cost" as defined in s. 212.02(5), F.S. This portion has been calculated to be an effective 40% of all the amounts paid to the Providers for the design, fabrication delivery and installation of Special Property.

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

You are further advised that this response and your request are public records under Chapter 199, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details which might lead to identification of the taxpayer must be deleted by the department before disclosure. In an effort to protect confidential information, we request you to notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

William D. Townsend
General Counsel

WDT/jl