

**SUMMARY**

**QUESTION:** Taxpayer will be constructing an electricity and steam generating facility that will be fueled by natural gas. The issue is whether the equipment and systems as enumerated in an exhibit provided by the Taxpayer constitute machinery and equipment necessary in the production of electrical or steam energy and, therefore, qualify for exemption from Florida sales and use tax pursuant to Section 212.08(5)(c), Florida Statutes?

**ANSWER - Based on Facts Below:** Those items that are consistent with the findings of the JEA/FPL Declaratory Statement and prior technical assistance advisements as issued by the Department will qualify for exemption, provided the proper affidavit procedures are followed.

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Jul 06, 2000

Re: Technical Assistance Advise ment 00A-039  
Sales and Use Tax  
Construction of Electrical Energy Generating Facility  
Section 212.08(5)(c), F.S.

Dear :

This is in response to your request for a Technical Assistance Advise ment regarding the construction of an electrical energy generating facility by XXX (hereinafter "Taxpayer").

Based on your letter and our telephone conversations of June 19, 2000, the following is understood. Taxpayer will be constructing an electrical energy generating facility (hereinafter "Facility") near the current site of the XXX (hereinafter "City") generating facility. Taxpayer will sell electricity in the electrical grid to various other electrical energy suppliers. Further, Taxpayer will be selling steam to

City for its use in the production of electrical energy. The Facility will use natural gas as its only fuel source. "Exhibit A" of your letter indicates the major components that will be constructed at the Facility.

### **RELEVANT AUTHORITY**

The following passages from the Florida Statutes (F.S.) are pertinent to your request for a Technical Assistance Advisement.

Section 212.08(5)(c), F.S. (1999), provides:

(c) Machinery and equipment used in production of electrical or steam energy.-

1. The purchase of machinery and equipment for use at a fixed location which machinery and equipment are necessary in the production of electrical or steam energy resulting from the burning of boiler fuels other than residual oil is exempt from the tax imposed by this chapter. Such electrical or steam energy must be primarily for use in manufacturing, processing, compounding, or producing for sale items of tangible personal property in this state. Use of a de minimis amount of residual fuel to facilitate the burning of nonresidual fuel shall not reduce the exemption otherwise available under this paragraph.

2. In facilities where machinery and equipment are necessary to burn both residual and nonresidual fuels, the exemption shall be prorated. Such proration shall be based upon the production of electrical or steam energy from nonresidual fuels as a percentage of electrical or steam energy from all fuels. Purchasers claiming a partial exemption shall obtain such exemption by refund of taxes paid, or as otherwise provided in the department's rules.

3. The department may adopt rules that provide for implementation of this exemption. Purchasers of machinery and equipment qualifying for the exemption provided in this paragraph shall furnish the department with an affidavit stating that the item or items to be exempted are for the

use designated herein. Any person furnishing a false affidavit to the vendor for the purpose of evading payment of any tax imposed under this chapter shall be subject to the penalty set forth in s. 212.085 and as otherwise provided by law. Purchasers with self-accrual authority shall maintain all documentation necessary to prove the exempt status of purchases.

## **DETERMINATION**

### **Exemption of Facility**

The exemption provided under Section 212.08(5)(c), F.S., is applicable to those facilities that produce electrical or steam energy from the burning of fuels other than residual oil. The natural gas to be burned at the facility is not a residual oil fuel. The exemption further requires that such electrical or steam energy must be primarily used in manufacturing, processing, compounding, or producing tangible personal property for sale. The electrical energy or steam sold to other energy suppliers are forms of tangible personal property produced for sale. Accordingly, since the Facility does not burn residual oil, and electrical energy and steam are produced for sale, the Facility qualifies for exemption. Further, since residual oil is not a fuel source in this case, Taxpayer is not obligated under the provisions of subparagraph 2. of the exemption statute to pay tax on the purchases of machinery and equipment and seek a subsequent refund of the exempt portion. Taxpayer's purchases of qualifying machinery and equipment will be exempt at the time of the purchase transaction.

### **Qualifying Purchases**

The scope of Section 212.08(5)(c), F.S., was reviewed by the First District Court of Appeal of Florida in Jacksonville Electric Authority v. Department of Revenue, 486 So.2d 1350 (Fla. 1st DCA 1986). That case involved the taxable status of certain machinery and equipment purchased by the Jacksonville Electric Authority to be used in the burning of coal to produce electrical energy.

The District Court of Appeal determined that it was the legislative intent, based on the tape recorded proceedings of the Florida Senate Committee on Ways and Means, to embrace the "integrated plant theory" as a basis for interpreting the exemption for machinery and equipment provided in Section 212.08(5)(c), F.S. Under the "integrated plant theory," machinery and equipment used in the process of generating electrical energy, regardless of the fact that such machinery and equipment was not intrinsically necessary to generate electrical energy or the sole purpose of such machinery and equipment was to make the plant function more practically, would be considered a component part of the manufacturing process. Therefore, the machinery and equipment used in the process of generating electrical energy, but not distribution, would qualify for the exemption provided in Section 212.08(5)(c), F.S.

The Department implemented the court's instructions by amending "Exhibit B" of the JEA/FPL Declaratory Statement. "Exhibit B" now serves as a guide for the Department when embracing the "Integrated Plant Theory." Therefore, based on "Exhibit B" of the JEA/FPL Declaratory Statement and prior Technical Assistance Advisements issued by the Department, which interpret that exhibit, the Department now finds the following major components of the Facility as listed in your "Exhibit A," with the exception of those specifically listed as being taxable, fully qualify for exemption:

1. Subsurface Improvements Related to Exempt Equipment (Subsurface improvements related to non-exempt equipment are taxable.)
2. Waste Water treatment - Above Grade
3. Waste Water treatment - Below Grade
4. Water Pretreatment System
5. Sanitary Sewage System (This system is taxable.)
6. Yard Fire Protection System
7. Service Water System
8. Waste Water Treatment System
9. Above Ground Racks/Below Ground Trenches (Above ground racks and below ground trenches related to non-exempt equipment are taxable.)
10. Acoustic Walls (Taxable. The acoustic walls are

understood to be 14 foot high and constructed of concrete block. Since the Facility is located next to a residential area, the installation of the acoustic walls is being mandated by City to buffer the sound of the combustion turbines. The acoustic walls are not machinery and equipment. Further, although they are used in pollution (noise) control, they are not a part of the electrical generation "system" as considered by the Court in JEA/FPL. Further, the acoustic walls are not being constructed pursuant to a law implemented by, or a condition of a permit issued by, the Florida Department of Environmental Protection. Accordingly, no exemption is available pursuant to either ss. 212.08(5)(c) or 212.051, F.S.

11. Control Room (It is understood that the control room is a trailer-like facility that is effectively plugged-in to the overall system to control its operations. This is not a real property improvement and it fully qualifies for exemption.)

12. Plant Water Service Equipment

13. Fire Protection Equipment - Lube Oil Purification Area

14. Instrumentation and Controls

15. Steam Turbine Generator Set Steel

16. Heat Recovery Steam Generator Steel

17. Heat Recovery Steam Generator Pressure Parts

18. Heat Recovery Steam Generator Ductwork

19. Thermocouples

20. Heat Recovery Steam Generator Instruments -

Miscellaneous

21. Chemical Cleaning Piping

22. Plant Instrumentation

23. Feed Water System

24. Main Steam System

25. Extraction Steam System

26. Auxiliary Steam System

27. Condensate System

28. Cooling Water System

29. Demineralized Water System

30. Seal Steam System

31. Desuperheater Spray System

32. Lube Oil System

33. Closed Cooling Water System

34. Condensers and Auxiliaries

35. Circulating Water System

36. Natural Gas System (It is the Department's position that the exemption begins at the point where the fuel source is received at the facility. In the case of facilities fueled by natural gas, the fuel is received and the exemption is considered to begin at the gas metering station.)

37. Fuel Oil System (The Facility was originally intended to be a dual fuel facility burning natural gas as the primary fuel and No. 2 distillate as a secondary fuel. In the event that Taxpayer should change its plans and install the fuel oil system, such system will qualify for exemption.)

38. Cooling Tower

39. Auxiliary Power Transformers

40. Step Up Transformers (It is important to understand that the exemption pursuant to s. 212.08(5)(c), F.S., is for machinery and equipment necessary in the production of electricity. The exemption does not extend to machinery and equipment necessary in the distribution of electricity. It is the Department's understanding that distributable power, or power that can be placed on the grid, occurs after the first step-up transformer. Accordingly, the first step-up transformer qualifies for exemption as necessary in the production of electricity. However, any step-up transformers serving to further distribute power do not qualify for exemption.)

41. Battery Equipment

42. Inverter

43. Underground Conduit and Ducts

44. Metallic Conduit

45. Non-Metallic [Conduit]

46. Cable Tray System

47. Busses

48. Power Cable (Cable from the first transformer that provides power back into the plant to exempt equipment would be exempt. All other cable to non-exempt equipment would be taxable.)

49. Control and Instrument Cable

50. Control Boards, Switchgear & Motor Control Centers

51. Grounding for All Exempt Equipment

52. Combustion Turbine Generator Set

53. Steam Turbine Generator Set

The benefit of the exemption inures to the Taxpayer, to the Taxpayer's contractor, and to the contractor's subcontractors. The exemption is implemented by extending an affidavit to the machinery and equipment or materials vendor at the time of the purchase transaction. At no time when extending an affidavit for the exemption provided in Section 212.08(5)(c), F.S., should anyone include another business entity's Certificate of Registration number (sales tax number), Consumer's Certificate of Exemption number, or Direct Pay Certificate number. Each of those numbers may only be used by the business entity to which it was assigned.

Procedurally, an affidavit must be given by the Taxpayer to the contractor. The contractor, in turn, would then issue its own affidavit to its subcontractors along with a copy of the affidavit provided by the Taxpayer. This process continues from subcontractors to sub-subcontractors until the actual purchase order is issued to the vendor or supplier for the qualifying machinery and equipment or materials.

The affidavit may be a separate document attached to purchase orders or it may be incorporated within the purchase order itself. If the affidavit is incorporated within the purchase order, a statement that would have the same effect as the statement regarding a false affidavit, as provided in the sample affidavit, must be incorporated within the purchase order. Further, it is the position of the Department that the affidavit must be notarized regardless of whether the affidavit is incorporated within the purchase order or is an independent affidavit attached to the purchase order. The following is a suggested format for the affidavit.

### **AFFIDAVIT**

**STATE OF FLORIDA**

**COUNTY OF \_\_\_\_\_.**

On this day, personally appeared the undersigned who, being first duly sworn, deposes and says:

That all machinery and equipment purchased from \_\_\_\_\_ will be incorporated into and/or become a component part of the \_\_\_\_\_ located in \_\_\_\_\_, Florida, County of \_\_\_\_\_. Further, that said machinery and equipment is necessary for the production of electric or steam energy resulting from the burning of boiler fuels other than residual oil and is exempt from the tax imposed by Chapter 212, Florida Statutes, Sales and Use Tax Act, pursuant to Section 212.08(5)(c), Florida Statutes.

I understand any person furnishing a false affidavit to a vendor for the purpose of evading payment of any tax imposed under Chapter 212, Florida Statutes, shall be subject to the penalty set forth in Section 212.085, Florida Statutes, and as otherwise provided by law.

\_\_\_\_\_  
Purchaser's Name                      Signature

Sworn to and  
subscribed before me  
this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20 \_\_\_\_\_.  
Notary Public

(Seal)  
\_\_\_\_\_  
My Commission Expires

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

You are further advised that this response, your request and related documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of Section 213.22, F.S. Your name, address, and any other details which might lead to identification of the taxpayer must be deleted before disclosure. In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

Jeffery L. Soff  
Tax Law Specialist  
Technical Assistance and  
Dispute Resolution

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