FLORIDA
DEPARTMENT OF REVENUE
Executive Director
Marshall Stranburg

QUESTION: Is Taxpayer required to be registered as a dealer?

ANSWER: Yes. Upon review of the documents provided, it is clear that Taxpayer is an independent contractor and not an agent of Related Company. As an independent contractor, Taxpayer operates as a real property improvement contractor performing improvements to real property, as well as providing the necessary items of furniture and furnishings, tangible personal property, that went into the projects. Based upon this determination, Taxpayer should be registered as a dealer with the Department. Since Taxpayer is the ultimate consumer of the supplies and materials used in the performance of a real property contract, and is also engaged in purchasing tangible personal property for resale, the appropriate use tax should be remitted to the Department by Taxpayer on the cost of the supplies and materials used in the performance of the contract. In addition, Taxpayer should collect and remit the appropriate sales tax on the tangible personal property, including the cost of labor involved in the installation of the tangible personal property, sold to Related Company. Taxpayer may not look to Related Company to determine and remit the sales and use tax on its behalf.

August 23, 2013

Re: Technical Assistance Advisement – TAA 13A-018
Sales and Use Tax – Registration
Sections: 212.02 and 212.05, Florida Statutes (F.S.)
Rule: 12A-1.051, Florida Administrative Code (F.A.C.)
Petitioners: XXX ("Taxpayer")
XXX ("Parent Company")
XXX ("Related Company")

Dear XXX:

This letter is a response to your petition dated XXX, for the Department's issuance of a Technical Assistance Advisement ("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, Florida Administrative Code. This response to your request constitutes a TAA and is issued to you under the authority of Section 213.22, F.S.

Issue

Whether Taxpayer is required to be registered as a dealer.

Facts

Taxpayer was audited pursuant to Chapter 212, F.S., for the period XXX, through XXX. Taxpayer protested the assessment, arguing that it was not liable for the tax because it acted solely as an agent and was therefore not required to register as a dealer. A Notice of Decision ("NOD") was issued on XXX, finding that Taxpayer was required to register as a dealer because it operated as a contractor. Taxpayer then sought a reconsideration of the NOD and a Notice of Reconsideration ("NOR") was issued on XXX, upholding the finding that Taxpayer was required to register. A Closing Agreement compromising the assessed penalty was offered with the NOR and accepted by Taxpayer. The terms of the Closing Agreement required Taxpayer to request this TAA concerning the issue.

The current petition sets forth the following information:

A. [Taxpayer] and its Relationship with [Parent Company, Related Company], and the Related XXX Entities

1. [Taxpayer] is a XXX limited liability company with its principal place of business located [outside Florida. Taxpayer] registered to do business with the State of Florida on or about XXX. In its application, [Taxpayer] advised that it had been organized on or about XXX. . . .

2. [Taxpayer] is a wholly owned subsidiary of [Parent Company], a foreign corporation . . . . [Parent Company's] principal place of business is also located [outside Florida].

3. [Taxpayer] functions as the contract administrator exclusively for those XXX owned or operated by [Parent Company. Taxpayer] limits its services to XXX operated by [Parent Company. Taxpayer] does not offer its services to other XXX developers or to the public at large.

4. Each XXX served by [Taxpayer] is operated by [Parent Company], through [Related Company. Parent Company] owns or operated XXX (XXX) XXX within the State of Florida. [Related Company] manages the daily operations of each XXX.

5. . . . [Parent Company's] operations are interrelated with the operations of [Taxpayer] and [Related Company]. They share the same principle place of business. They also share ownership, management, human resources functions, and accounting functions.

6. Despite the name, [Taxpayer] is not a licensed general contractor in Florida, and it does not provide general contracting services. All permitting and real property construction is performed by independent contractors who supply their own equipment and labor.

Rather, [Taxpayer] is a construction manager charged with the overall responsibility for site renovation and improvements relating solely to [Related Company] operated XXX.

B. [Taxpayer's] Business Model

7. In a typical renovation project for a Florida operated XXX, the XXX will contract with [Taxpayer] for construction management services, namely to serve as a contract administrator for the renovation work, to hire, manage and advise all third party providers, and to purchase those materials needed on the project. For example, for the audit period resulting in the Closing Agreement executed between [Taxpayer] and DOR, three XXX owned and/or operated by [Parent Company] were renovated: [three Related XXX Entities]. Copies of the respective construction management agreements establishing [Taxpayer's] duties are attached . . . . These contracts are identical and representative of the types of agreements typically executed between [Taxpayer] and each XXX.

8. At all times, [Taxpayer] functions solely as the agent for the XXX. It does not purchase any materials, supplies or tangible personal property for resale or for its own use. All materials are ordered on behalf of the XXX consistent with the needs of each renovation project. They are provided to the XXX at cost, without mark-up. Moreover, since the XXX owns the materials, they are delivered directly to the property under renovation. [Taxpayer] never takes either title or possession of the materials, supplies or tangible personal property.

9. Each contract management agreement contains an addendum. Each addendum provides in the fourth "whereas" clause that: "[the XXX entity] desires to engage [Taxpayer] to perform Work on [the XXX entity's] behalf as Agent for [the XXX entity] and entered into the agreement."

10. Paragraph 3 of the addendum provides as follows:

> [Taxpayer] shall, for purposes of administrative efficiency and for purposes of accurately monitoring purchases and engagements of other Work-related professionals ("Third Parties"), purchase materials and goods, engage Third Parties and otherwise incur costs and expenses on behalf of [the XXX entity] ("Costs and Expenses") and shall maintain clear records of such Costs and Expenses made on [the XXX entity] as [the XXX entity's] agent for Property and Work.

11. Paragraph 4 of the addendum further provides:

> [The XXX entity] agrees that [Taxpayer's] purchase of goods and materials and [Taxpayer's] engagement of Third Parties is strictly on behalf of, for the benefit of and as agent for [the XXX entity] and not on behalf of or for the benefit of [Taxpayer], and that [the XXX entity] shall remain liable for any and all Costs and Expenses incurred by

[Taxpayer] for [XXX entity's] behalf for Work at Property. For purposes herein, Costs and Expenses shall include, without limitation except as set forth in the Agreement, the costs and expenses for all goods, materials, labor, expert fees, Third Parties, sales and use taxes, permits and registrations and the like.

12. [Taxpayer's] role in connection with each renovation project is to ensure both that the XXX entities that owned the project actually received the materials, supplies, tangible personal property, and services promised by third party vendors and contractors and; that the renovation services provided by the independent contractors complied with the application plans and specifications[.]

13. The nature and extent of each renovation project, including the selection of third party vendors, is controlled by the XXX.

14. The third party vendors who provide the materials, supplies, tangible personal property, and services for the XXX entities' renovation projects are paid in one of three ways:

    (1) invoices are directed to and paid by [Taxpayer] with funds advanced by the individual XXX entities from segregated bank accounts;

    (2) invoices are directed to the individual XXX and paid directly by the XXX; or

    (3) invoices are directed to [Taxpayer] then forwarded by [Taxpayer] to the individual XXX entities for direct payment to the vendor.

15. Many of the vendor invoices are issued with appropriate Florida sales tax included. Such invoices are paid in full, together with the stated sales tax either by [Taxpayer], using the monies deposited for such purpose by the individual XXX entities, or directly by the XXX entities.

16. When the vendor invoices did not include sales tax, the XXX pay the use tax on such materials, supplies, tangible personal property, and services directly to DOR.

Taxpayer's Argument

Taxpayer acknowledges that dealers who are engaged in taxable activities must register as dealers and states that taxable activities include the sale of tangible personal property and certain enumerated services. However, Taxpayer argues that it should not be required to register as a dealer because it does not sell tangible personal property or provide taxable services. Taxpayer argues that its sole function is to provide a nontaxable service to Related Company, specifically that of an agent providing construction management services. Taxpayer states that the NOD and NOR previously issued failed to analyze its agency role in relation to Related Company and that the Notices summarily concluded that it was required to register as a dealer pursuant to Rule 12A-1.051, F.A.C. Taxpayer argues that it is not engaged in any of the activities contemplated or delineated in that rule; that it is not a "contractor" as defined by the rule; that it is not the end

user of any of the material purchased; that it did not perform any real property improvements because it did not contract to perform any improvements to land; and that it did not furnish any tangible personal property to Related Company. Taxpayer cites Technical Assistance Advisements (individually a "TAA") 05A-011 and 09A-045[1] in support of its argument.

Law and Discussion

Two questions must be answered in determining whether Taxpayer is required to register as a dealer. First, is Taxpayer an agent of Related Company? Second, if Taxpayer is not an agent of Related Company, is Taxpayer's contract with Related Company a real property improvement contract or a contract for the provision of tangible personal property?

Is Taxpayer an agent of Related Company?

Whether someone is an agent of another is not determined by statute, but has instead been addressed by the courts on a case-by-case basis. The courts have looked at a variety of factors to determine whether a relationship between parties was one of agency or independent contractor.

In *Cantor v. Cochran,* 184 So.2d 173 (Fla.1966), the Florida Supreme Court approved the factors set out in *Restatement (Second) of Agency,* § 220 (1958) for making this determination. Those factors include:

- the extent of control that, by the agreement, the master exercises over the details of the work;
- whether or not the one employed is engaged in a distinct occupation or business;
- the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- the skill required in the particular occupation;
- whether the employer or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;
- the length of time for which the person is employed;
- the method of payment, whether by the time or by the job;
- whether or not the work is a part of the regular business of the employer;
- whether or not the parties believe they are creating the relation of master and servant;
- whether the principal is or is not in business.

The *Cantor* Court found that the individual in question was an employee [*i.e.,* agent] and not an independent contractor because 1) the employer had the power to set work hours, approve time off work and to fire the individual without cause; 2) the individual was not engaged in a business

[1] The issue addressed in TAA 09A-045 involved whether the contract between a utility company and a management company created a taxable license to use real property. Taxpayer cites a statement made in the TAA to the effect that "[a] management agreement is typically in the nature of an employment contract, under which the [m]anager would be considered as in the nature of an agent or employee…." However, Taxpayer also states that the contractual intent of the parties governs. Therefore, the proper focus of this TAA should be on the specific facts at

separate and distinct from that of the employer; 3) the individual needed no special knowledge, training, or skills to perform work; 4) tools to perform the work were provided by the employer; 5) the individual worked for the employer for seven years; 6) the work was part of the regular business of the employer; and 7) the employer was in business and the individual's work was in furtherance of that business.[2]

The relationship of Taxpayer and Related Company is governed by a written contract. This contract is titled "Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, and where the Basis of Payment is the Cost of the Work plus a Fee and there is no Guarantee of Cost" (hereafter referred to as the "Standard Agreement"). This contract is document number A131 CMc - 2003, promulgated by the American Institute of Architects and the Associated General Contractors of America. Document number A201 – 1997, "General Conditions of the Contract for Construction," (hereafter referred to as the "General Conditions") is incorporated by reference under Section 1.2 of the Standard Agreement.[3] Section 1.2 of the Standard Agreement specifically provides that the term "contractor" as used in the General Conditions shall mean the construction manager. The contract is between "Owner" (Related Company) and "Construction Manager" (Taxpayer).[4]

Article 2 of the Standard Agreement sets out Taxpayer's responsibilities relevant to the preconstruction phase, including evaluation of Related Company's program, budget, and schedule requirements; consultation with Related Company and the architect; preparation of a project schedule; preparation of cost estimates; and the like. Taxpayer's responsibilities relevant to the construction phase are detailed in Article 3 of the General Conditions, and include supervision and direction of the construction; purchase and payment of labor, materials, equipment, tools, and other facilities and services necessary for completion of the work; and securing and paying for building and other permits. Payment from Related Company to Taxpayer is addressed in Article 7 of the Standard Agreement and is to be made in progress payments. Neither the Standard Agreement nor the General Conditions contain any provision related to third-party invoices being submitted to and paid directly by Related Company. Taxpayer is responsible for the purchase and maintenance of both workers' compensation and employers' liability insurance and commercial general liability insurance, including coverage for explosion, collapse, and underground hazards. Neither party can terminate the contract except for cause, as provided in General Conditions Article 14.

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issue and not a general statement as to what is "typical." Since the facts of the 2009 TAA are so far removed from those found here, the holding of the 2009 TAA can have no bearing here.

[2] The *Cantor* case has been cited and discussed dozens of times by other Florida courts. However, no case involved facts substantially similar to those herein. Therefore, in the interests of brevity, the Department declines to cite and analyze those cases here.

[3] Taxpayer did not provide a copy of the General Conditions. All references to specific provisions are based on a sample copy obtained from the American Institute of Architect's website.

[4] Taxpayer provided a copy of a document titled "Addendum to Agreement by and between Owner and Manager," which specifically states that "Manager is engaged by Owner as Agent for Owner to provide professional services of management of Work as defined and set forth in Agreement." However, section 9.2.2 of the Standard Agreement provides that the Agreement and other documents incorporated by reference represent the entire agreement, and may only be amended by a written instrument signed by both parties. The addendum is not mentioned in the Standard Agreement and is not signed by either party; therefore, it cannot be considered as part of the contract.

Applying the Cantor factors to the present facts, we find the following:

1. Related Company has limited control over the details of the work, especially on a day-to-day basis. Taxpayer, not Related Company, sets the work hours and is responsible for work schedules of subcontractors and other hired labor. Related Company cannot fire Taxpayer without cause.
2. Taxpayer's business (building construction and renovation) is separate and distinct from Related Company's business (XXX operations).
3. Building construction and renovation is not normally done under the control and supervision of the ultimate owner. Building construction and renovation requires special knowledge, training and skills, as evidenced by the various building codes and regulation of the industry by the state and local officials.
4. Related Company has no responsibility to provide any tools, material, or equipment needed for the work.
5. Taxpayer is employed only until the specific job was finished and is paid by the job, not by time.
6. The construction and renovation of the XXX is not part of the normal Related Company's regular business, that of operating a XXX.

Taken as a whole, the facts support a finding that relationship of Taxpayer to Related Company is that of an independent contractor and not that of an agent.

Taxpayer states that TAA 05A-011, issued February 9, 2005, is squarely on point with the facts here. First, it must be pointed out that a TAA has no precedential value except to the taxpayer to whom the TAA was issued and only for the specific transaction addressed. Second, Taxpayer's statement that the 2005 TAA is squarely on point is not supported by the facts. In the 2005 TAA, the taxpayer procured goods and services, such as landscaping services, washroom supplies, and elevator maintenance services, under a property management service contract with the property owner. The goods and services were provided by third-party vendors directly to the property and were never held in the taxpayer's inventory. The taxpayer did not take title or possession of the goods. Upon approval of the invoices by the owner, the owner would deposit money into a segregated bank account from which the taxpayer could make payment. The taxpayer had no liability for the goods or services in the event of nonpayment by the property owner. The TAA held that the taxpayer was an agent of the property owner, and that there was no resale from the taxpayer to the owner because the goods were sold directly to and paid by the owner.

The facts in the 2005 TAA are fundamentally different from the facts at issue. Section 3.4 of the General Conditions provides that Taxpayer will purchase and pay for all material necessary for the job. Under section 9.6, Related Company has no liability to vendors for any materials purchased by Taxpayer. Related Company is only required to make progress payments to Taxpayer, which include a variety of costs incurred by Taxpayer, including labor costs, subcontractor costs, machinery and equipment, and travel and expense costs, in addition to

material costs. Neither the Standard Agreement nor the General Conditions contain any provision related to third-party invoices being submitted to and paid directly by Related Company. Unlike the 2005 TAA, the materials purchased from third-party vendors can only be seen as being purchased by Taxpayer for use by Taxpayer or for resale to Related Company.

If Taxpayer is not an agent, did Taxpayer sell tangible personal property to Related Company?

Section 212.05, F.S., imposes tax on several privileges, including the privilege of selling tangible personal property at retail in this state and the privilege of furnishing any of the services taxable under Chapter 212. It is undisputed that Taxpayer is not engaged in the provision of any of the taxable services enumerated in section 212.05, F.S. Since we have already determined that Taxpayer is an independent contractor and not an agent of Related Company, the only remaining issue is whether Taxpayer engages in the sale of tangible personal property to Related Company.

Section 212.06(14), F.S., defines the terms “real property,” “fixtures,” and “improvements to real property” as follows:

> (a) "Real property" means the land and improvements thereto and fixtures and is synonymous with the terms "realty" and "real estate."
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> (b) "Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property, or industrial machinery or equipment. For purposes of this paragraph, industrial machinery or equipment is not limited to machinery and equipment used to manufacture, process, compound, or produce tangible personal property. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.
>
> (c) "Improvements to real property" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

Rule 12A-1.051, F.A.C., titled *Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property*, provides further information concerning real property improvements. Rule 12A-1.051, F.A.C., provides, in pertinent part:

> (1) Scope of the rule. This rule governs the taxability of the purchase, sale, or use of tangible personal property by contractors and subcontractors who purchase, acquire, or manufacture materials and supplies for use in the performance of real property contracts other than public works contracts performed for governmental entities, which are governed by the provisions of Rule 12A-1.094, F.A.C. If a real property project involves multiple subcontractors, each subcontractor is responsible for paying, accruing, collecting, and remitting tax on his subcontract in accordance with this rule.

> (2) Definitions. For purposes of this rule, the following terms have the following meanings:
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> * * *
>
> (h)1. "Real property contract" means an agreement, oral or written, whether on a lump sum, time and materials, cost plus, guaranteed price, or any other basis, to:
>
> a. Erect, construct, alter, repair, or maintain any building, other structure, road, project, development, or other real property improvement.
>
> ***
>
> c. Furnish and install tangible personal property that becomes a part of or is directly wired or plumbed into the central heating system, central air conditioning system, electrical system, plumbing system, or other structural system that requires installation of wires, ducts, conduits, pipes, vents, or similar components that are embedded in or securely affixed to the land or a structure thereon.
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> *** * ***

There can be no dispute that a XXX is a building affixed to land and is therefore properly classified as real property. The question then becomes whether Taxpayer's contract with Related Company constitutes a "real property contract" as defined in the rule or whether it is a contract for nontaxable services.

As set out above, Taxpayer has responsibilities during both the preconstruction and construction phases, including such items as evaluation of Related Company's program, budget, and schedule requirements; consultation with Related Company and the architect; preparation of a project schedule; preparation of cost estimates; supervision and direction of the construction; purchase and payment of labor, materials, equipment, tools, and other facilities and services necessary for completion of the work; and securing and paying for building and other permits. These activities fall squarely within the types of activities included within the definition of a "real property contract" in Rule 12A-1.051(2)(h), F.A.C. The fact that Taxpayer may not be a licensed contractor under Florida law is immaterial to this conclusion.[5] Taxpayer's argument that it is engaged solely in the provision of nontaxable services is not supported by the evidence. Accordingly, the provisions of Rule 12A-1.051, F.A.C., related to the potential taxability of the contract apply.

Rule 12A-1.051(3), F.A.C., states that the taxability of a real property contract is determined by the pricing agreement. Subsection (4) of the rule provides that contractors engaged in lump sum contracts, cost plus or fixed fee contracts, upset or guaranteed price contracts, or time and

[5] Contrary to Taxpayer's assertion, the term "contractor" is not defined under Chapter 212, F.S., or within Rule 12A-1.051, and neither the statutes nor rules given any indication that licensure is a condition precedent to taxability. However, even if we accept that licensure should be a factor in making our determination, it must be noted that Taxpayer is licensed as a contractor in the state of Rhode Island.

materials contracts are the ultimate consumers of materials and supplies used in performance of the contract and must pay tax on their costs of those materials and supplies. Contractors performing these types of contracts do not resell the tangible personal property used to the real property owner but instead use the property themselves to provide the completed real property improvement. Such contractors should pay tax to their suppliers on all purchases. They should also pay tax on all materials they fabricate for their own use in performing such contracts, as discussed in subsection (10) of the rule. They should charge no tax to their customers, regardless of whether they itemize charges for materials and labor in their proposals or invoices, because they are not engaged in selling tangible personal property. Such contractors should not register as dealers unless they are required to remit tax on the fabricated cost of items they fabricate to use in performing contracts.

However, contractors may also enter into "mixed contracts" which are contracts that include both real property work and the sale of tangible personal property. Rule 12A-1.051(8), F.A.C., provides regulatory guidance on mixed contracts. A mixed contract is not the same as a retail sale plus installation contract described in paragraph (3)(d) of this rule. Paragraph (3)(d) deals with a real property contract in which the contractor separately itemizes and prices all the materials that will be incorporated as part of the real property. A mixed contract is one that involves a real property improvement, maintenance, or repair and also involves providing tangible personal property that remains tangible personal property and does not become part of the real property. In the case of a mixed contract, taxability depends upon the predominant nature of the work performed under the contract and upon the contract terms, or if the contract clearly allocates the contract price between the various elements of the contract, then the taxability is in accordance with the allocation.

The contracts provided by Taxpayer include itemized budgets. These reveal that costs of real property improvements, such as carpentry contractor, custom cabinet, interior paints, mechanical contractor, plumbing contractor, electrical contractor, ceiling mounted lighting, wood base and shoe molding, elastomeric membrane roofing, modified bituminous pavement, drywall contractor, packaged air conditioners, etc., were paid by Related Company to Taxpayer for the work performed on the XXX property project. In addition, payments were made to Taxpayer for the purchase of tangible personal property, such as art work, floor lamps, night stands, bed linen, coffee pot, hangers, pillows, etc. These items remain tangible personal property and must be viewed as being resold to Related Company. Since the contracts provide for both real property work and the sale of tangible personal property, the contracts are mixed contracts and should be taxed in accordance with the allocation. Taxpayer should either pay tax to its suppliers or accrue tax on any materials that become improvements to real property upon installation. For any furniture and other items that remain tangible personal property, Taxpayer must collect tax from the Related Company on the sales price of these items. Because Taxpayer is engaged in the sale of tangible personal property on which sales tax must be collected and remitted, Taxpayer must register as a dealer.

Finally, Taxpayer cannot disregard statutory requirements for registration and remittance of sales and use tax by contractually obligating another party to assume these responsibilities. It is a

business operating in Florida and making sales of tangible personal property. It cannot avoid its requirement to register as a dealer and to collect and remit the tax due on the sale of that property by transferring the responsibility for remittance of the tax to the end user.

Conclusion

Upon review of the documents provided, it is clear that Taxpayer is an independent contractor and not an agent of Related Company. As an independent contractor, Taxpayer operates as a real property improvement contractor performing improvements to real property, as well as providing the necessary items of furniture and furnishings, tangible personal property, that went into the projects. Based upon this determination, Taxpayer should be registered as a dealer with the Department. Since Taxpayer is the ultimate consumer of the supplies and materials used in the performance of a real property contract, and is also engaged in purchasing tangible personal property for resale, the appropriate use tax should be remitted to the Department by Taxpayer on the cost of the supplies and materials used in the performance of the contract. In addition, Taxpayer should collect and remit the appropriate sales tax on the tangible personal property, including the cost of labor involved in the installation of the tangible personal property, sold to Related Company. Taxpayer may not look to Related Company to determine and remit the sales and use tax on its behalf.

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 upon 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 from that which is 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 10 days of the date of this letter.

Sincerely,

Sara D. Faulkenberry
Senior Tax Specialist
Technical Assistance and Dispute Resolution

Control # 138259