

Sep 17, 1999

Re: Technical Assistance Advise ment (99A-050)
Miami-Dade County Lake Belt Mitigation Fee
Section 373.41492, F.S. (1999)

Dear :

This is in response to your letter of August 13, 1999,
requesting the issuance of a Technical Assistance Advise ment on
the mechanism by which the subject fee is to be calculated and
remitted by your clients, members of the XXX.

Background

Section 373.41492(2), F.S. (1999), as created by Chapter 99-298,
Laws of Florida, imposes a mitigation fee upon each ton of
limerock and sand extracted from the Miami-Dade County Lake Belt
Area (the "Area"), and provides in part:

..., effective October 1, 1999, a mitigation fee is imposed
on each ton of limerock and sand extracted by any person
who engages in the business of extracting limerock or sand
from within the Miami-Dade County Lake Belt Area.... The
mitigation fee is at the rate of 5 cents for each ton of
limerock and sand sold from within the properties where the
fee applies in raw, processed, or manufactured form,
including, but not limited to, sized aggregate, asphalt,
cement, concrete, and other limerock and concrete products.
Any limerock or sand that is used within the mine from
which the limerock or sand is extracted is exempt from the
fee. The amount of the mitigation fee imposed under this
section must be stated separately on the invoice provided
to the purchaser of the limerock or sand product from the
limerock or sand miner, or its subsidiary or affiliate, for
which the mitigation fee applies....

Taxpayer Position

Your letter provides in part:

The issue is the mechanism by which the fee is to be collected. Section 373.41492, Florida Statutes, fails to give any direction on the method for calculating the fee once the limerock or sand has been processed into a manufactured product. The XXX ("Taxpayers") which currently mine the Area, manufacture, process and sell over 1,000 separate mixed concrete products, over 200 concrete block products, and over 300 specialty block products which contain a percentage of sand and limerock. Allowing for eight source variations, there is the potential for approximately 8,000 mixed concrete, 1,600 concrete block and 2,400 specialty block fee calculations. Further, there is no single defined mix. Depending upon the cement type and the chemical consistency of the raw materials, which vary from deposit to deposit, it may be necessary to use varying amounts of aggregate, sand and cement to produce essentially the same concrete product. Additionally, portions of the raw materials can be substituted with other raw materials. For example, fly ash can be substituted for cement within most concrete mixes. Likewise, natural sand can be interchanged with manufactured sand, a situation very common in South Florida where natural sand is not readily and economically available.

The voluminous number of limestone products and multitude of limestone raw material sources makes any attempt to precisely measure the limerock and sand, and the applicable fee, in each processed product, unreasonable. Therefore, approval of the use of a simplified method of collecting the fee is requested. The Taxpayers are proposing to collect the fee prior to processing. In other words, the Taxpayers would propose to collect the fee at the initial transfer which would include both intra-company sales and outside sales. The fee collection would occur regardless of whether the initial intra-company "sale" is to an internal subdivision, or to a separate, independent, but affiliated company. This matter of collection eliminates the complications discussed above and provides a simple, straightforward approach which will facilitate auditing of the collection process.

Discussion and Conclusion

The Department is of the opinion that collecting and remitting the fee on the first transfer after extraction is acceptable, even in those cases where the first transfer is to an internal subdivision of the same company. Since the fee is based on the per ton weight of material extracted and sold, problems with intercompany pricing, and retail versus wholesale pricing, are not an issue. The miner/taxpayer would be required to create and retain invoices and/or other evidences of transfer and sale of the extracted material. As required by the statute, the fee is to be separately itemized. In cases where there are retail sales, with sales tax being collected, the taxable base would include the separately itemized mitigation fee.

If you have further questions with regard to this matter and wish to discuss them, you may contact me at (850) 922-4840.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S. which is binding on the department only under 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 and our request are public records under Chapter 119, F.S., which 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 the confidentiality, we request you provide the undersigned with an edited copy 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.

Sincerely,

Jonathan E. Swift
Tax Law Specialist
Technical Assistance and Dispute Resolution

Control No. 38633