

**State of Florida
Department of Revenue****Sales and Use Tax****1994-1990 Technical Assistance Advisements**

Title: Machinery and equipment used to produce energy.

Jan 04, 1990

RE: TAA 90A-001
Sales Tax Application of the Exemption Provided by Section
212.08(5)(c), F.S.

Dear :

This is response to your letter of October 26, 1989, in which you request, on behalf of your client, XXX (hereinafter "XXX"), the issuance of a Technical Assistance Advisement on the exemption from sales and use tax provided in Section 212.08(5)(c), F.S., for the facts and circumstances described below.

FACTS

"Statement of Facts"

"['XXX'] (the 'Company') is a XXX corporation which owns a nuclear power plant. At such nuclear plant, steam energy resulting from a chain reaction of nuclear fuel is used to produce electricity. Section 212.08(5)(c)1 Florida Statutes states that the purchase of machinery and equipment for use at a fixed location, which equipment and machinery are necessary in the production of electric or steam energy resulting from the burning of boiler fuels, is exempt from the Florida Sales and Use Tax. In addition, the steam energy must be primarily for use in producing for sale items of tangible personal property in the State of Florida.

"Question

"Whether machinery and equipment purchased by the Company for production of electric energy at its nuclear power plant is exempt from sales and use tax pursuant to Section 212.08(5)(c), Florida Statutes.

"Taxpayer's Proposed Answer

"Machinery and equipment which is purchased and used for production of electric energy as part of the integrated operations of the nuclear power plant qualifies for the

exemption of s. 212.08(5)(c), F.S.

"Taxpayer's Position

"Taxpayer maintains that the otherwise qualifying machinery and equipment used in the production of energy at its nuclear power plant is exempt from sales and use tax pursuant to Section 212.08(5)(c), Florida Statutes. The Department has previously issued a technical assistance advisement #83 (A)-027 finding that machinery and equipment purchased for use at a fixed nuclear power plant location that is necessary in the production of steam and electric energy is exempt from sales tax. A copy of the technical assistance advisement is attached for your reference.

"The company maintains that it enjoys the exemption established by Section 212.08(5)(c), Florida Statutes. The purchases are exempt because of the following reasons:

"1. Purchased for use at a fixed location. The purchase of machinery and equipment is made for use at a fixed location.

"2. Machinery and Equipment Necessary for Production of Steam Energy. The machinery and equipment purchased is necessary for the production of steam energy.

"3. Burning of Boiler Fuels. The basic difference between a nuclear power plant and any other steam electric plant is the source of heat used to produce the steam which turns a turbine which produces the electricity. In a nuclear plant a reactor is the 'boiler' which would be used in a conventional power plant; and the 'boiler' has fuel rods containing uranium pellets which serve as the fuel that is 'burned' to heat the water that creates the steam. The steam energy resulting from the consumption of such nuclear fuel in a reactor is encompassed within the statutory exemption provided by Section 212.08(5)(c), Florida Statutes, and is considered steam energy resulting from the burning of boiler fuel.'

"4. Primary Use. The steam energy produced at the nuclear power plant is primarily used in producing items of tangible personal property for sale in the state of Florida. Section 212.02([12]), Florida Statutes, defines tangible personal property to include electrical power or energy and as such tangible personal property is sold in the state of Florida.

APPLICABLE STATUTES

The statutory authority for the specific exemption in question is Section 212.08(5)(c), F.S., which is quoted below:

"(c) Machinery and equipment used in production of electrical or steam energy. - The purchase of machinery and equipment for use at a fixed location which equipment and machinery 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. However, the exemption provided for in this paragraph shall not be allowed unless the purchaser signs an affidavit stating that the item or items to be exempted are for the exclusive 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." (Emphasis Supplied)

Section 212.02(20), F.S., provides in pertinent part:

"'Tangible personal property' means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy,..." (Emphasis Supplied)

XXX COURT CASE

As you are aware, 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. App. 1 Dist. 1986). The case involved the taxable status of certain machinery and equipment purchased by the XXX to be used in the burning of coal to produce electrical energy. The machinery and equipment fell into three categories: (1) coal handling equipment; (2) equipment required by state and federal law; and (3) electrostatic precipitators. The XXX argued that the machinery and equipment was exempt pursuant to Section 212.08(5)(c), F.S. The Department contended that the machinery and equipment was not intrinsically necessary to make electricity and the only purpose of such machinery and equipment was to make the plant function more practically. Because of these facts, it was the Department's position that the machinery and equipment did not qualify for the exemption provided in Section 212.08(5)(c), F.S.

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 would qualify for the exemption provided in Section 212.08(5)(c), F.S.

The Court construed Section 212.08(5)(c), F.S., to include pollution control equipment as "necessary in the production of steam or electrical energy", notwithstanding that a plant could theoretically produce electrical or steam energy without the legally mandated pollution control equipment. The Court stated:

"No matter how theoretical the physics of producing steam or electrical energy, in reality, no equipment or machinery in Florida is going to produce electricity without the mandated pollution control equipment."

DETERMINATION

When determining whether machinery and equipment qualifies for the exemption provided in Section 212.08(5)(c), F.S., the Department of Revenue is guided by the Jacksonville Electric Authority v. Department of Revenue, 486 So.2d 1350 (Fla. App. 1 Dist.1986), court case which instructed the Department to embrace the "Integrated Plant Theory." The Department implemented the court's instructions by amending "Exhibit B" of the XXX Declaratory Statement. "Exhibit B" now serves as a guide for the Department when embracing the "Integrated Plant Theory." A photocopy of "Exhibit B" is enclosed for your information and convenience. Therefore, pursuant to Section 212.08(5)(c), F.S., quoted above, machinery and equipment purchased for use at a fixed nuclear power plant location where such machinery and equipment is necessary in the production of steam energy would be exempt from Florida Sales and Use Tax, provided that the steam energy is primarily for use in manufacturing or producing tangible personal property (electrical power or energy) for sale in the State of Florida.

There is no correlation between the exemptions provided in Section 212.08(5)(c), F.S., on 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, and the exemption provided in Section 212.08(7)(b), F.S., on the purchase of "boiler" fuels including residual oil used in an industrial manufacturing, processing, compounding or production process at a fixed location in this state. Residual oil, while a "boiler" fuel as provided in Section 212.08(7)(b), F.S., is specifically excluded in establishing the exemption on the purchase of machinery and equipment necessary in the production of electrical or steam energy as provided in Section 212.08(5)(c), F.S.

In summary, pursuant to Section 212.08(5)(c), F.S., machinery and equipment purchased for use at the "Company's" nuclear power plant facility where such machinery and equipment is necessary in the production of steam energy is exempt from Florida Sales and use tax, provided that the steam energy is primarily for use in manufacturing or producing tangible personal property (electrical power or energy) for sale in the State of Florida. Thereby, the Department concurs with the "Taxpayer's Proposed Answer" to the extent that the "Company" complies with the proviso stated in the previous sentence.

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 and your 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. 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 the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or the response.

Sincerely,

Rick Johnson
Technical Assistant

RJ/rj
Enclosure

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