



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

QUESTION: Whether the solar facility systems are deemed to be tangible personal property or real property improvements.

ANSWER: Based on the information provided, the sale and installation of solar facility systems constitutes a real property improvement.

October 31, 2023

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Technical Assistance Advisement – TAA #: 23A-019
[REDACTED] (“Taxpayer”)
Sales and Use Tax – Real property improvement
Sections 212.02, 212.05, 212.06, Florida Statutes (F.S.)
Rule 12A-1.051, Florida Administrative Code (F.A.C.)
BP #: [REDACTED]

Dear [REDACTED],

This is in response to your letter dated [REDACTED], requesting this Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C, Florida Administrative Code, regarding the matter discussed below. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

REQUESTED ADVISEMENT

Whether the solar facility systems are deemed to be tangible personal property or real property improvements.

FACTS

Taxpayer is an [REDACTED] electric utility. Taxpayer is in the process of offering an optional Solar Power Facilities Pilot Rider program to its nonresidential customers in all territory served by Taxpayer.

Pursuant to the Tariff, customers can voluntarily choose to have Taxpayer install and maintain solar structures, such as solar “trees” and solar canopies on the customer’s property. Below is a table outlining the various structures:

Structure	Method of Attachment	Direct Wiring	Intend to be Permanent	Customized Installation	Permits and Licensing	Remain if Property Sold
Solar Zone	Bolted in place to poured concrete slab. Inverter/battery is partially buried underground. Solar racking with solar panel mounting hardware. Will require Hurricane straps	No	No	Yes	No	Yes
Solar Shelter	Bolted in place to poured concrete slab, solar racking with solar panel mounting hardware. Will require Hurricane straps	No	Yes	Yes	Yes	Yes
Solar Tree	Concrete foundation, steel column bolted to foundation, solar racking with solar panel mounting hardware.	Yes	Yes	Yes	Yes	Yes
Solar Canopy	Concrete foundation, steel columns bolted to foundation, solar racking with solar panel mounting hardware.	Yes	Yes	Yes	Yes	Yes

Structure	Method of Attachment	Direct Wiring	Intend to be Permanent	Customized Installation	Permits and Licensing	Remain if Property Sold
Small Ground Mount	Direct bury, ground screw posts, or concrete foundation with posts, solar racking with solar panel mounting hardware.	Yes	Yes	Yes	Yes	Yes

For nonresidential customers that have executed an Interconnection Agreement with Taxpayer, the customer will be separately charged for any electricity used exceeding the generation supplied by the solar systems in accordance with Taxpayer’s normal billing practices. Any excess electricity generated by the solar equipment will be credited to the customer’s energy consumption for the next billing cycle (“net metering”), consistent with the Department’s TAA 09A-014. All electricity charges will be separately itemized, billed, and taxed based on the nonresidential customer’s electrical tariff.

The use of the solar systems will be controlled by the Solar Power Facilities Service Agreement (“Agreement”). Customer will pay a monthly service payment beginning on the Commercial Operation Date of the solar facilities. The installed equipment may include solar trees, solar canopies, and related equipment such as lighting and batteries. Batteries may be installed with the solar facilities in order to allow power to be used even if solar cells stop generating electricity. The lighting referenced in Agreement is incorporated into the structural supports of the solar trees and canopies and is not provided to the customer for general illumination purposes.

The term of Agreement will continue for 10 years. All equipment will be installed and maintained by licensed contractors separately hired by Taxpayer. Each contractor will be compensated based on the specific job. All the equipment either installed or later repaired is traditionally treated as real property being installed by classic real property contractors and electrical contractors. The solar facilities installed must be secured to the real property in compliance with the local building codes, including wind and storm loading requirements.

These solar facilities may or may not be interconnected to Taxpayer’s power grid. If the solar facilities are not interconnected to the power grid, then power outlets physically located on the solar tree or canopy will supply power from the solar panels and any installed batteries.

The monthly service payments are equal to the amount of capital costs of the solar systems installed, plus expenses recovered on a levelized basis over the term of the service. In the event the customer defaults on payments and terminates Agreement early for the customer’s convenience, the customer shall pay a Termination Fee equal to: 1) any outstanding monthly service payments prior to the effective date of termination, plus 2) any maintenance costs expended by Taxpayer prior to the effective date of termination, plus 3) the unrecovered capital costs of the solar facilities less any

salvage value of the removed equipment, plus 4) any removal costs, minus 5) any security amounts recovered by Taxpayer. If Taxpayer and customer mutually agree to terminate Agreement, customer must choose to either: 1) purchase the solar facilities upon payment of a transfer price mutually agreeable to both parties, or 2) request that Taxpayer remove the solar facilities and pay no Termination Fee. Regardless, Taxpayer has the right, but not the obligation, to access and remove all solar facilities, at its sole discretion. Title to the solar facilities that Taxpayer elects not to remove shall transfer to customer upon written notice.

Upon fulfillment of the 10-year term of Agreement or upon full payment of the Termination Fee by the customer, the current business model is for the customer to elect one of the following:

- 1) renew Agreement, subject to modifications to be agreed to by the parties;
- 2) request the Taxpayer remove the equipment; or
- 3) purchase the equipment upon payment of a transfer fee that is mutually agreeable to both parties, which will most likely be a nominal cost to transfer the title.

All the equipment either installed or later repaired is traditionally treated as real property being installed by classic real property contractors and electrical contractors. Here, the contractors see a one-time job to either initially install or repair the solar system. If hired by any individual or business, those individual contractor service calls would always be considered real property contracts. Upon full payment of the Early Termination Fee, the customer will take title to the equipment at no additional charge.

For the duration of Agreement, all solar structures will be owned by Taxpayer. Taxpayer will also be responsible for operation and maintenance during the term of Agreement. Taxpayer will book these service fees as rentals, not sales, for accounting and general ledger purposes. However, Taxpayer's business model is to leave the equipment installed at the customer's premise at the expiration of Agreement term for no additional costs to the customer.

LAW AND DISCUSSION

Section 212.05, F.S. provides that anyone involved in the business of selling tangible personal property¹ at retail is engaged in a taxable privilege, and tax is due on each taxable transaction or incident. The tax is calculated on the "sales price"² of the item(s) sold. In order to determine whether the tax rules relating to tangible personal property or those relating to real property³ apply to this instant case, it is necessary to determine whether the installation of the property at issue, namely the solar facility systems, is considered a fixture or retains the characteristics of tangible personal property.

¹ 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. See s. 212.02(19), F.S.

² Sales price means the total amount paid for tangible personal property, including any services that are a part of the sale.... See s. 212.02(16), F.S.

³ Real property means the surface land, improvements thereto, and fixtures, and is synonymous with "realty" and "real estate." See s. 212.02(10)(h), F.S.

Section 212.05(1), F.S., provides that sales and repairs of tangible personal property are taxable. However, the charge for a real property improvement or repair is not taxable.

Section 212.06(14), F.S., provides guidance in determining whether a person is making improvements to real property by providing the following relevant definition, which states in part:

(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. . . .

In order 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 the item is attached. A retained title provision in a sales contract or in an agreement that is designated as a lease but is in substance a conditional sales contract is not determinative of whether the item involved is or is not a fixture. See Rule 12A-1.051(2)(c)2., F.A.C.

Rule 12A-1.051(2)(c)3., F.A.C. provides the following relevant factors that determine whether a particular item is a fixture: a) The method of attachment. Items that are screwed or bolted in place are likely to be classified as fixtures; b) Intent of the property holder in having the item attached. If the property holder intends that the item will remain in place for an extended or indefinite period of time, that item is more likely to be a fixture; c) Real property law. If an interest in an item arises upon acquiring title to the land or building, the item is more likely to be considered a fixture; d) Customization. If items are custom designed or custom assembled to be attached in a particular space, they are more likely to be classified as fixtures; e) Permits and licensing. If installation requires a construction permit or licensing of the contractor under statutes or regulations governing the building trades, the item is more likely to be regarded as a fixture; f) Legal agreements. The terms of any purchase agreement or other legal document pertaining specifically to an item may be relevant in determining whether that item is a fixture of real property.

As for the guidelines in Rule 12A-1.051(2)(c)3., F.A.C, the solar facility systems are annexed into real property and installed by licensed real property contractors; Taxpayer intends that the solar facility systems will remain in place for an extended or indefinite period of time.

Therefore, the solar facility systems would be considered fixtures for purposes of determining that the tax rules relating to real property would apply to this instant case.

CONCLUSION

Based on the information provided, the sale and installation of solar facility systems constitutes a real property improvement.

This response constitutes a TAA 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, 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 TAA, 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 ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6839.

Sincerely,

Xiaoxi Miao

Xiaoxi Miao
Tax Law Specialist
Technical Assistance & Dispute Resolution
(850)717-6839

Record ID: 7001018868

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7001018868

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.