



- QUESTIONS:**
- 1.) Would Taxpayer's utilization of estimated delivery timelines on purchase orders satisfy the single sale requirements, for the \$5,000 discretionary sales surtax cap, under 12A-15.004, F.A.C. when the entire transaction is governed by a single purchase order and individual invoices are issued with each delivery?
 - 2.) Is there a maximum allowed timeframe for product delivery to occur under Rule 12A-15.004, F.A.C., when the timeline of the construction project is [REDACTED] long?

- ANSWERS:**
- 1.) In the case of the example Purchase Orders provided the \$5,000 discretionary sales surtax limitation does apply. In these Purchase Orders delivery timelines and a completion date are provided. Purchase Orders containing identical terms would comply with the single sale requirement of s. 212.054(2)(b), F.S. In addition, the sale of quantities of each distinct item separately stated and described in the Purchase Order constitutes a "bulk sale" and are subject to the \$5,000.00 limitation provided in s. 212.054(2)(b), F.S.
 - 2.) No. There is no specific time limitation for product delivery provided in s. 212.054(2)(b), F.S., or Rule 12A-15.004(3)(a), F.A.C.

November 26, 2024

[REDACTED]

Re: Technical Assistance Advisement – TAA #: 12A-016
[REDACTED] ("Taxpayer")
Sales and Use Tax – Discretionary Sales Surtax Limitation
Sections 212.054(2)(b)1., 212.055 Florida Statutes - (F.S.)
Rule 12A-15.004, Florida Administrative Code - (F.A.C.)
FEI# [REDACTED]
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 ADVISEMENTS

You are seeking clarification on the following questions:

1. Would Taxpayer’s utilization of estimated delivery timelines on purchase orders satisfy the single sale requirements, for the \$5,000 discretionary sales surtax cap, under 12A-15.004, F.A.C. when the entire transaction is governed by a single purchase order and individual invoices are issued with each delivery?

2. Is there a maximum allowed timeframe for product delivery to occur under Rule 12A-5.004, F.A.C., when timeline construction project is two or three years long?

FACTS

Taxpayer is a [REDACTED] sales and use tax dealer. Taxpayer has been in [REDACTED] [REDACTED] [REDACTED]. To fulfill various [REDACTED] [REDACTED].

Given the [REDACTED] that Taxpayer serves, purchase orders (“PO”) received from customers typically include substantial quantities of specific types of [REDACTED]. After a purchase contract is executed by both parties and the customer has finalized what materials are required, they submit a PO for the project. Fulfillment of the single PO will often be made through multiple deliveries to the customer. Separate invoices are issued to the customer for each delivery. In most instances, the fulfillment of one PO requires approximately [REDACTED] deliveries over a [REDACTED] but can extend to [REDACTED] occasionally. Taxpayer’s products are commonly utilized in the [REDACTED], and the delivery dates are usually based on the estimated timing of when customers will need the products for [REDACTED]. The delivery date may be absent on the PO when the [REDACTED]. In that scenario, the PO typically states, “all deliveries need to be completed per the contract schedule” or “all deliveries to be completed by [Date].” If the PO has specified delivery dates, Taxpayer will always confirm the shipments and delivery timing with the customer before shipping. Customers may request that shipments be postponed due to [REDACTED]. Therefore, Taxpayer typically lists estimated delivery timeline(s) rather than fixed dates on POs. If there is a prolonged delay on a [REDACTED] which results in surpassing the initially estimated delivery timeline, Taxpayer may reprice the entire order and a new PO is issued by the customer with updated timeline(s).

Taxpayer provided two sample Purchase Orders each involving the sale of multiple items of tangible personal property with multiple delivery dates. Each Purchase Order provides for the sale and delivery of specific quantities of various distinct items of [REDACTED], as well as quantities of related [REDACTED] items. The items are separately stated according to description, [REDACTED], price, and

item total price. In these two sample Purchase Orders, the quantity of each individual item purchased ranges from under [REDACTED].

Both Purchase Orders provide for a need for twenty-five percent (25%) during four (4) designated and consecutive months. They also provide for a “[d]ate the material is first needed on the project” and “[d]ate the material is last needed on the project” – listing specific dates. The Purchase Orders also provide for penalties when shipping delay is caused by the purchaser.

LAW AND DISCUSSION

Under s. 212.054(2)(a), F.S., the basic principle in applying discretionary surtaxes is that they piggyback the state sales and use tax. If a transaction is subject to sales tax and occurs at a location where surtax is imposed, the surtax also applies. The surtax is imposed on all transactions that are subject to sales tax, and it is not limited to sales of tangible personal property. Section 212.054(2)(b), F.S., limits application of that principle when there is a sale of an item of tangible personal property for over \$5,000. The surtax in that case applies only to the first \$5,000 of the sales amount. Subparagraph (b)1. of the statute then sets out very specific circumstances in which more than one item can be aggregated for purposes of application of the surtax. That sub-paragraph provides in pertinent part:

... For purposes of administering the \$5,000 limitation on an item of tangible personal property:

- a. If two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items that, when assembled, comprise a working unit or part of a working unit, such items must be considered a single item for purposes of the \$5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental...

The statute requires application of the \$5,000 limitation on an item-by-item basis, except for very specific circumstances when multiple items will be viewed as a single item. In order for the exception to apply, two tests must be satisfied. There must be a single sale in which one purchaser buys all the items at the same time, with a purchase order or other documentary evidence that there has been such a single transaction. Second, multiple items reflected on that documentation will be aggregated for purposes of applying the \$5,000 limitation only if they meet one of four conditions provided in Rule 12A-15.004(3)(b), F.A.C., for being “sold in bulk” or for comprising a “working unit” or “part of a working unit.” They must be items normally sold or bought in bulk; items normally sold as a set; items used by the purchaser as an integrated unit; or they must be parts that have no utility except to be assembled together into a working unit or a part of a working unit.

Single Sale Test

Items that meet the bulk sale/working unit standard cannot be aggregated if they are not purchased in a single sale. The single sale requirement addresses the character of the transaction itself, whether there has been one discrete transaction to which the limitation can be applied or multiple sales that are separately subject to the limitation. Meeting this requirement is a matter of documenting that there was

one buyer, and one seller, and that the agreement to buy and sell occurred at the same time as to all of the items involved.

The relevant provision for guidance with the single sale requirement is Rule 12A-15.004(3)(a), F.A.C. Rule 12A-15.004(3)(a)2.b., F.A.C., provides that if delivery of all items does not occur at the same time, the purchase order must provide for a specific time period within which delivery of the tangible personal property will be made to the purchaser. Otherwise, each delivery or each invoice will be considered to be a single sale.

An example is provided in Rule 12A-15.004(3)(a)4.a., F.A.C., in which a developer is purchasing 250 refrigerators from an appliance distributor. The purchase order specifically provides that delivery will be in 10 loads of 25 refrigerators, with invoicing to follow each delivery and final delivery to occur no later than 10 months after the contract is signed. In this example, the 250 refrigerators would be considered purchased in a single sale because the purchase agreement clearly specified the quantity to be purchased and the time period in which delivery would occur.

The sales made under the provided Purchase Orders appear to qualify to be treated as a “single sale” under the provisions of Rule 12A-15.004(3)(a), F.A.C. However, the Taxpayer indicates that there are sales when the dates are absent from the Purchase Order, and that the Purchase order states that “all deliveries need to be completed per the contract schedule” or “all deliveries to be completed by [Date].” These sales - examples of which were not provided - do not appear to meet the requirements for being a “single sale.”

Rule 12A-15.004(3)(a), F.A.C., does **not** state that all the items on a qualifying purchase order will be aggregated, only that they will be treated as sold in a single sale. This provision of the rule is not concerned with what types of items can be aggregated and viewed as a single item and does not address that issue.

Bulk Sale/Working Unit Test

Items cannot be aggregated solely because they are purchased in a single sale. The bulk sale/working unit test must also be met. This requirement addresses the character of the items purchased. Items may be viewed as being sold as a single item only if they are items that meet one of four conditions provided in Rule 12A-15.004(3)(b):

1. The items are multiple quantities of a **single item** that the dealer normally sells in multiple quantities in the normal course of the dealer’s business or that the purchaser normally buys in multiple quantities in the normal course of the purchaser’s business;
2. The items are normally sold as a set or a unit and the utility of each for its intended purposes is dependent on the set being complete;
3. The items are normally sold in single sale by the seller to the purchaser for use in the normal business practice of the purchaser as an integrated unit; or
4. The items are component parts that have no utility unless assembled with each other to form a working unit or part of a working unit.

(Emphasis Added).

On the facts presented Taxpayer's sales clearly do not qualify as being sold as a "set or unit," an "integrated unit," or as a "working unit or part of a working unit." However, Taxpayer's sales do qualify as sales or purchases of "multiple quantities of a single item" normally sold or bought in the normal course of the seller's or purchaser's business – a "bulk sale." The category of items usually sold in bulk encompasses multiple quantities of items ordinarily sold in such quantities rather than one at a time. A bulk sale is a sale of multiple quantities of a single item the seller normally sells in bulk, or the purchaser normally purchases in bulk. A bulk sale is simply multiple quantities of a single item. A single item would generally be identified as items with the same model number, part number, etc.

Accordingly in this instance, each individually described item sold in the Purchase Orders is subject to the \$5,000.00 limitation of the application of discretionary surtax. For example, the Purchase Order connected to Bid number 2747.2 contains 43 individual and distinct items – the total sale (as the Purchase Order qualifies as a "single sale") of 25 of these items qualify for the \$5,000.00 limitation.

The relevant provision for guidance in application of the bulk sale/working unit standard is Rule 12A-15.004(3)(b), F.A.C., which provides that where two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items which, when assembled, comprise a working unit or part of a working unit, such items shall be considered a single item for purposes of the \$5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental.

CONCLUSIONS

I will restate your questions and follow with the Department's responses, which are based on the above "Law & Discussion," which is based on provisions from the Florida Statutes and the Florida Administrative Code.

1. Would Taxpayer's utilization of estimated delivery timelines on purchase orders satisfy the single sale requirements, for the \$5,000 discretionary sales surtax cap, under 12A-15.004, F.A.C. when the entire transaction is governed by a single purchase order and individual invoices are issued with each delivery?

Response: In the case of the example Purchase Orders provided the \$5,000 discretionary sales surtax limitation does apply. In these Purchase Orders delivery timelines and a completion date are provided. Purchase Orders containing identical terms would comply with the single sale requirement of s. 212.054(2)(b), F.S. In addition, the sale of quantities of each distinct item separately stated and described in the Purchase Order constitutes a "bulk sale" and are subject to the \$5,000.00 limitation provided in s. 212.054(2)(b), F.S.

2. Is there a maximum allowed timeframe for product delivery to occur under Rule 12A-5.004, F.A.C., when the timeline of the construction project is [REDACTED] long?

Response: No. There is no specific time limitation for product delivery provided in s. 212.054(2)(b), F.S., or Rule 12A-15.004(3)(a), F.A.C.

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)717-7759.

Sincerely,



Alesia Pride
Tax Law Specialist
Office of Technical Assistance

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Record ID: 7001232153

Office of Technical Assistance Satisfaction Survey

The Florida Department of Revenue invites you to complete the online Office of Technical Assistance 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 Office of Technical Assistance. 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: 7001232153

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.