Sales Tax Savings for Public Works Projects

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Chapter 212.08(6) of the Florida Statutes (F.S.) states that sales made to the United States Government; a state; or any county, municipality, or political subdivision of a state are exempt from sales tax when the governmental entity makes payment directly to the dealer.

This exemption does not allow contractors employed by governmental agencies to purchase equipment or materials in order to incorporate them into public works projects. Such purchases are deemed taxable because the contractor is the ultimate consumer.

The criteria used by the Florida Department of Revenue to determine if a transaction fits this description, and is therefore exempt from sales tax, can be found in Rule 12A-1.094 of the Florida Administrative Code (F.A.C.). Those criteria are:

- **Direct purchase order** – The governmental entity must issue its purchase order directly to the vendor supplying the materials the contractor will use and provide the vendor with a copy of the entity’s Florida Consumer’s Certification of Exemption.
- **Direct invoice** – The vendor’s invoice must be issued to the governmental entity, rather than to the contractor.
- **Direct payment** – The governmental entity must make payment directly to the vendor from public funds.
- **Passage of title** – The governmental entity must take title to the tangible personal property from the vendor at the time of purchase or delivery.
- **Assumption of risk of loss** – Assumption of the risk of damage or loss by the governmental entity at the time of purchase is a paramount consideration. A governmental entity will be deemed to have assumed the risk of loss if the entity bears the economic burden of obtaining insurance covering damage or loss, or if the entity directly enjoys the economic benefit of the proceeds of such insurance.

There are various ways that governmental agencies can implement sales tax savings programs. Here are two examples:

- **Pre-purchase** – Equipment or materials may be purchased directly by the governmental agency before bidding the installation contract. This method provides a schedule benefit for long-lead items because they can be purchased while permitting and design activities are being completed. A potential drawback is that the agency will assume additional risk for the pre-purchased items, such as proper and timely delivery, compliance with performance specifications, and overall integration of the items within the project.
- **Purchase post-bid with contractor’s requisition** – For this method, the installation contract would include all equipment and materials required to complete the project. The governmental agency may elect to directly purchase some of the equipment and materials. The contractor would be responsible for selecting suppliers, negotiating terms, coordinating delivery, preparing requisitions, and installing and integrating the equipment and materials into the project. The contractor’s requisitions would be used by the agency to prepare and issue purchase orders directly to suppliers. Agency risks for timely delivery, performance, and integration into the project are decreased with this method because of the higher level of contractor control. Purchase orders and invoices must be processed quickly to maintain the project schedule, and additional agency staff may be required to process paperwork.

When developing a sales tax savings program, a governmental agency can request a Technical Assistance Advisement (TAA) from the Florida Department of Revenue, as described in Chapter 213.22, F.S., and Rule 12-11.003, F.A.C. The TAA outlines the position of the department on whether or not a proposed sales tax savings program would provide for tax-exempt purchases.

The written request for a TAA must contain a complete statement of all relevant facts regarding the proposed transaction, copies of relevant documents including contracts and agreements, and a discussion of the relevant portions of the documents. A TAA is binding on the department only under the facts and circumstances specific to a particular request, and is an important tool available to governmental agencies to ensure the success of a new sales tax savings program.