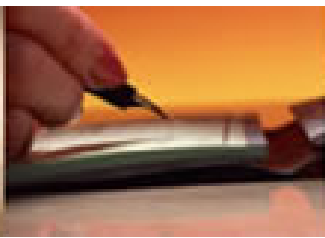


Florida Department of Revenue



Manufacturers Standard Industry Guide



PURPOSE

This guide provides an auditor with information on the subject industry. This information will assist an auditor in recognizing areas to test for compliance with Florida sales and use tax laws.

After reviewing this guide, an auditor will be better able to understand issues involving:

- Tax implications affecting the subject industry;
- Sales tax issues likely to surface relating to the subject industry; and
- Relevant statutes, rules, court cases and other technical documents

Helpful tax publications provided by the Department of Revenue available online (See hyperlinks):

General:

[Sales and Use Tax Guide for Business Owners](#)

[Audit Information](#)

[Florida Sales and Use Tax](#)

[Discretionary Sales Surtax](#)

[Sales and Use Tax on Tangible Personal Property Rentals](#)

[Sales and Use Tax on Vending Machines](#)

These reference materials and the technical documents cited herein have been provided as informational guidelines for performing tax audits and are intended to be used as internal management memoranda. They are not rules, orders, or policy statements of general applicability, and as such, do not represent the formal position of the Florida Department of Revenue. No representation is made regarding the Department's opinion of the precedential value of the court cases cited herein. They are provided for informational purposes only. Statutes, rules, court cases, or other technical documents subject to change are current as of the publication date of this document. Refer to the Tax Law Library for an updated listing of such documents. The Tax Law Library can be accessed through the Department of Revenue web site:

<http://www.myflorida.com/dor/>

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OVERVIEW OF METHODS OF OPERATION

The word “manufacturing” as used in this guide includes any activity engaged in for the purpose of processing, compounding or producing a new product from tangible personal property. Due to the breadth of this definition, there exists a great diversity of entities classified as manufacturers. While some types of manufacturers are obvious, (i.e., pharmaceutical, beverage, paper, and plastics companies), others are not. They include such entities as deli bakeries and meat departments within grocery stores, and photo processing labs in drug and discount stores.

Manufacturing activities are performed for various purposes including, but not limited to:

- The manufacture of a product for resale, either as a finished product or as a product that is incorporated into a final product;
- The manufacture of a product for the manufacturer’s own use in the manufacturing process;
- The fabrication of a product for use by the manufacturer to perform a contract to improve real property; and
- The manufacture of a product for research and development purposes; either for the design of a new product or for new uses of an existing product.

Despite the diversity within the manufacturing industry, distinct similarities exist between them. Manufacturers generally purchase raw materials in bulk for further refinement, they invest in industrial machinery and equipment as an ongoing element of operations, they invest in research and development activities, and they make large volume sales to customers within and outside our state.

ACCOUNTING SYSTEMS

General Overview

There is nothing simple about the accounting system of a manufacturing company. The auditor may encounter voluminous records that include account details identifying all expenses, or few records with almost no account details.

One of the most important factors in determining whether a taxpayer’s accounting system is reliable is evaluating the internal controls. Good internal controls are vital in being able to rely on the taxpayer’s accounting records and financial statements. A distinct separation of control and duty must exist to assure that the books and records are reliable. This information may be found in the reports of an external auditor.

To assist the auditor in understanding the accounting systems of manufacturers, the various parts of the manufacturing process that affect the accounting system are discussed as follows.

Raw Materials

The manufacturing process begins with raw materials, also called direct materials. Raw or direct materials are the integral parts of the finished goods and their costs include the freight expenses of getting the materials to the plant. These materials are usually specified on a list of materials or a blueprint. Examples of raw or direct materials are the trees that are made into lumber, or the lumber that is made into furniture frames. The same manufacturer may cover the furniture frames to make the furniture or may sell the frames to another manufacturer who makes the sofa or chair. Raw or direct materials may include the coal used to produce steam to generate electricity that is sold to the customers of a city utility department. Raw or direct materials may include the steam that is sold by the paper manufacturer to an electrical generating company. Raw or direct materials are as varied as the personalty being manufactured. Raw or direct materials usually do not include tacks, glue, or other minor materials. Because the tracking of such items is impractical, they are considered part of indirect manufacturing costs.

Labor

Once the raw or direct materials are purchased and received, something must be done to them to produce the final product. The costs associated with the labor obviously related and easily traceable to a specific product (machine operators, assemblers, printer operators, etc.) are considered direct labor costs. Payments made by the employer on behalf of employees, e.g., insurance, social security, unemployment taxes, etc., are also included as part of direct labor costs. All other labor costs (material handlers, janitors, typesetters, etc.) are not included in direct labor costs, but are a part of indirect manufacturing costs.

Indirect Costs

Indirect manufacturing costs consist of the remainder of all costs necessary to manufacture the personalty. These costs are also known as factory overhead, factory burden, manufacturing overhead, and manufacturing expenses. Indirect manufacturing costs are divided into two types — variable factory overhead and fixed overhead.

Overhead

Variable factory overhead consists of all other supplies and indirect labor needed to manufacture the product, which are identified with the final product. This includes all supplies, traceable but insignificant items, and all other factory labor except direct labor. Variable overhead is so named because it varies depending on the number of items being produced by the manufacturer. That is, the more products made, the more electricity used by the machinery; the more lumber produced, the more indirect labor needed for the tow-motor operator to move and stack it.

Fixed factory overhead consists of costs that are not expected to change in total within a current budget year, regardless of the fluctuations in the volume of activity. This includes rent, insurance, property taxes, supervisory salaries and benefits, and all administrative or non-factory expenses.

The foregoing discussion explains how a manufacturer accounts for the costs expended to manufacture the product offered. Armed with this information, the company controller applies standard costs and variances to measure the productivity of the manufacturer. Since the product manufactured has so many different costs associated with it and is the only tangible evidence of success, the controller must apply all of the principles of cost accounting to determine profitability.

Inventories

A manufacturer has two options for accounting for inventories: perpetual and periodic.

The *perpetual inventory method* requires a continuous record of changes in materials, work in progress, and finished goods. Using this method, measurements must be made on a day-to-day basis, not only of these three inventories, but also of the cumulative cost of goods sold. With a computerized system, records can be updated instantly as inventories change. Records help in the control and preparation of interim financial statements. Physical inventory counts are usually taken at least once a year to check the validity of the clerical records. As a general rule, the perpetual inventory method is used for purchases of raw or direct materials.

The *periodic inventory method* does not require a day-to-day record of inventory changes. Costs of materials used or costs of goods sold cannot be computed accurately until ending inventories, determined by physical count, are subtracted from the sum of the beginning inventory, purchases, and other purchasing costs. As a general rule, general operating purchases and administrative purchases are tracked using the periodic inventory method.

The use of these two different methods of accounting for inventories may cause problems for the auditor. Usually the taxpayer's chart of accounts will assist the auditor in understanding how purchases are accounted for.

Other Sales and Purchases

Other purchases that occur in the course of the taxpayer's business — including the purchase of fixed assets, the rental of equipment, and real property throughout the review period — may need to be considered. These purchases are accounted for both from a cost (managerial) basis as well as a financial basis.

From an accounting standpoint, sales and receivables are recorded in a manner beneficial to both the managerial accountant and the financial accountant. Sale invoices record not only the sale, including the selling price and any applicable sales tax, but also the costing for the item sold.

Like sales and receivables records, purchases and accounts payable records assist in allocating purchases to managerial and financial accounts. There are several methods that may be used to account for all purchases. Inventory purchases are kept separate from general purchases for costing purposes. General purchases are separated because some

are considered indirect materials and some are considered administrative costs. The company controller needs to know these various kinds of costs.

Fixed or capital assets are also accounted for separately from general purchases. These purchases are usually very large in dollar value and are infrequent in nature. The company controller usually keeps apprised of the efficiency of large pieces of the company's industrial equipment because the decision to replace or to repair can be the difference between a profit and a loss for the year.

REGISTRATION

New businesses in Florida are required to be licensed and registered by many city, county and state agencies. The Department of Revenue not only requires registration of businesses that collect sales tax, but it also determines how and when the taxes will be paid. Failure to collect or remit sales tax will result in a taxpayer owing the tax as well as penalty and interest. With these responsibilities comes an additional burden of keeping the required books and records.

Under [Section 212.18, F.A.C.](#), every person desiring to engage in or conduct business in this state as a dealer must register with the Department and obtain a separate certificate of registration for each "place of business" as that term is defined within [Rule 12A-1.060, F.A.C.](#)

A business that is required to register with the Department for the purpose of collecting and remitting sales and use tax may do so by filing a completed Application to Collect and/or Report Tax in Florida, Form DR-1. Alternatively, registration may be secured through the Department's Internet site and following the prompts for "E-Services." If Form DR-1 is filed, a processing fee of \$5.00 is required. No fee is required for online registration.

A business with two or more places of business may apply for authorization by the Department to file a consolidated tax return. When authorized to file a consolidated tax return, Form DR-7, the business is required to combine all of the registered location's sales tax activities on the consolidated return. The consolidated return is filed monthly together with the tax returns for each separate registered place of business.

GENERAL TAX CONSIDERATIONS

Under [Section 212.05, F.S.](#), every person is exercising a taxable privilege *who engages in the business of selling tangible personal property at retail* in this state or who stores for use or consumption in this state purchased items of tangible personal property. For the exercise of this privilege, tax is levied on each taxable transaction at the rate of 6 percent of the "sales price" as defined by [Section 212.02\(16\), F.S.](#) Therefore, unless a specific exemption applies, any sale or purchase of tangible personal property by a manufacturer in this state is subject to tax.

Even if the sale of tangible personal property made to a manufacturer in this state is not subject to the state sales tax, use tax will apply to the transaction unless a specific

exemption is provided by statute. The primary function of the use tax is to complement the sales tax and make taxation of tangible personal property uniform for all persons living or operating in Florida. Use tax is levied by [Section 212.05\(1\) \(b\), F.S.](#) at the rate of 6 percent of the cost price of any item of tangible personal property that is not for resale but is instead used, consumed, distributed, or stored for use or consumption in this state. For additional discussion of use tax and its application see [Rule 12A-1.091, F.A.C.](#)

As required by [Section 212.06, F.S.](#), any tax levied on a taxable transaction conducted by a manufacturer is due at the time of sale, moment of purchase, or moment of commingling with the general mass of property in this state, as applicable, and shall be collectible from all dealers as defined in [Section 212.06\(2\)\(a\), F.S.](#)

When considering the application of [Section 212.05 F.S.](#) to a manufacturer, several important statutory words and terms must be reviewed. They are “business,” “sale,” “retail sale,” and “cost price.” They are defined in [Section 212.02\(2\)](#), [Section 212.02\(15\)](#), [Section 212.02\(14\) \(a\)](#), and [Section 212.02\(4\), F.S.](#)

Surtaxes may be imposed by county governments under the authority of [Section 212.055, F.S.](#), as revenue sources for specific projects. These discretionary county surtaxes, if imposed, are also levied upon a manufacturer’s *taxable* transactions. However, if a manufacturer’s transaction is not subject to the state’s sales or use tax, it is not subject to a county surtax. County surtaxes include Charter County Transit System Surtax; Local Government Infrastructure Surtax; County Public Hospital Surtax; Small County Indigent Care Surtax; Small County Surtax; Indigent Care Surtax; and School Capital Outlay Surtax.

When determining which county surtax, if any, is applicable to a taxable transaction, the general rule under subparagraph [Section 212.054\(3\)\(a\)1., F.S.](#), provides that the surtax must be levied based on the surtax county where delivery of the item of tangible personal property sold or purchased will occur. Additionally, while surtaxes levied by a county may not exceed 2 ½ percent; surtax is also limited in that it does not apply to sales amounts above \$5,000 on any item of tangible personal property. To subject multiple items to a single \$5,000 surtax limitation, the items must be sold in a single sale, and they must be items that are either normally sold in bulk or items that comprise a working unit when assembled.

SALES

Sales for Resale

Manufacturers may produce products for resale that include finished products ready for sale by a purchaser (either a wholesaler or retailer to the end consumer) or they may produce products that are purchased by other manufacturers for incorporation into a final product. Sales of tangible personal property by a manufacturer for purposes of resale are exempt from sales tax, provided the transactions are conducted in strict compliance with [Section 212.07](#) and [Section 212.18, F.S.](#), and [Rule 12A-1.039, F.A.C.](#) If a manufacturer fails to conduct such transactions in compliance with the referenced authorities, he or she

will be held liable for payment of the tax that was erroneously exempted as well as the applicable penalties and interest.

A sale for resale must be documented at the time of sale, and such documentation must be retained in the manufacturer's records as required by [Section 212.13, F.S.](#) (See also *Anderson v. State, Department of Revenue*, 380 So.2d 1083 (Fla. 3rd DCA 1980)). As provided by [Rule 12A-1.039\(3\), F.A.C.](#), a manufacturer may choose one of three methods to document a sale for resale.

1. *Obtain a current copy of the purchaser's Annual Resale Certificate inclusive of the purchaser's signature or that of an authorized representative.* If this method is selected, each year a new Annual Resale Certificate must be obtained by the manufacturer, unless the sales are being made to purchasers who purchase on account from the manufacturer on a continual basis;
2. *Obtain a Transaction Resale Authorization Number at Point-of-Sale.* Valid for single transactions only, this method allows a manufacturer to obtain a resale authorization number by telephone for a purchaser that holds a valid resale certificate with the Department of Revenue; or
3. *Obtain a Vendor Resale Authorization Number.* Valid for the calendar year of issuance, it is a customer specific authorization number that will be valid for all sales for resale made to a particular customer. Under this method, vendor resale authorization numbers may be obtained by a manufacturer from the Department of Revenue electronically or by submitting a written request.

In the event a sale for resale does not meet the requirements of [Section 212.07, F.S.](#) and [Rule 12A-1.039, F.A.C.](#), a manufacturer or the purchaser can follow the provisions of [Section 212.07\(9\), F.S.](#) to apply for relief from the tax, penalty and interest that would otherwise apply. To assist taxpayers in understanding this provision and its conditions for relief, refer to [TIP 02A 01-09](#).

See also *HMY New Yacht Sales, Inc., v. Department of Revenue*, 676 So.2d 1385 (Fla. 1st DCA 1996) and the Circuit Court's summary judgment in *Lockheed Space Operation v. Department of Revenue*, Case No. 93-1554-CA-X (Fla. 18th Cir. Ct. 1998). It is this latter court's holding which precipitated an amendment to the definition of "retail sale" in [Section 212.02\(14\) \(a\), F.S.](#), as that term relates to certain transactions conducted by government contractors.

Sales to Contractors

Sales of tangible personal property by a manufacturer to a real property contractor are generally subject to state tax. While the sale of real property is not subject to sales or use tax, tangible personal property purchased by a contractor for conversion into real property is subject to tax. Taxation is appropriate where the contractor is considered the end user of the tangible personal property purchased for performance of such contracts. [Rule 12A-1.051, F.A.C.](#), discusses in detail sales to or by contractors as well as the types of contracts that they may use (See also [Section 212.06\(14\) F.S.](#)).

Tangible personal property sold to a contractor for conversion into a final product is subject to tax if the contractor operates a manufacturing plant where tangible personal property is manufactured for use in the performance of real property contracts. The applicable tax is based on the contractor's fabricated costs as outlined in [Rule 12A-1.043](#) and [Rule 12A-1.051, F.A.C.](#)

Exceptions to a contractor being charged tax on purchases of tangible personal property are (1) retail sale plus installation contracts, (2) purchases of qualifying machinery and equipment on behalf of a Department approved new or expanding business, and (3) purchases of overhead materials under a qualifying NASA/DOD contract.

Retail sale plus installation contracts are addressed in [Rule 12A-1.051\(3\) \(d\), F.A.C.](#), and are commonly referred to as "(3) (d)" contracts. Such contracts represent a specifically itemized sale of tangible personal property by a contractor and the contracts must strictly follow the guidelines established in [Rule 12A-1.051\(3\)\(d\), F.A.C.](#) As such, a sale of tangible personal property to contractors who meet the guidelines are tax exempt as a sale for resale. In Sears, Roebuck & Company v. Florida Department of Revenue, Case No. 92-1080 (Fla. 2nd Cir. Ct. 1994), the interpretation of class (3)(d) contracts was clarified.

Contractors may purchase tax exempt qualifying machinery and equipment from a manufacturer or retail dealer on behalf of a new or expanding business approved for tax exemption under [Section 212.08\(5\)\(b\), F.S.](#) If the qualifying business entity receives a tentative affirmative determination of the business's qualification for exemption by the Department the Department will issue a Temporary Tax Exemption permit allowing the entity to purchase qualifying item tax exempt. Under [Rule 12A-1.096\(6\) \(b\) 1. F.A.C.](#) this exemption permit may be extended by the qualifying business to its designated contractor or subcontractor. The authorized contractor may, likewise, extend the Temporary Tax Exemption permit to its vendor(s) for purchasing qualifying machinery and equipment tax exempt. If tax was paid on a qualifying purchase by the qualifying business entity's contractor a refund may be sought as provided for by [Rule 12A-1.096\(6\)\(c\)2, F.A.C.](#), and [Rule 12A-1.096\(6\)\(d\)\(1\), F.A.C.](#)

Under [Section 212.08\(17\), F.S.](#), qualifying overhead materials purchased by a contractor under contract with the National Aeronautics and Space Administration (NASA) or the Department of Defense (DOD) are exempt even though purchased for use or consumption by the contractor rather than for resale to the government.

See the "Exemption" section of this manual for further discussion of [NASA/DOD](#) contractors (See Lockheed Space Operation v. Department of Revenue, Case No. 93-1554-CA-X (Fla. 18th Cir. Ct. 1998).

Sales to Not-For-Profit, Governmental and Other Exempt Entities

Occasionally, a manufacturer will sell tangible personal property to a customer claiming tax exemption as a not-for-profit organization or governmental entity. The most common not-for-profit entities are those that fall under Section 501(c) (3), IRC, which include religious, educational and charitable institutions. [Section 212.08\(7\) \(p\), F.S.](#), provides a

general tax exemption for 501(c) (3) organizations, while [Sections 212.08\(7\) \(k\), \(l\), \(m\) \(n\) \(o\) and \(p\), F.S.](#), provide specific tax exemption for religious, educational and charitable institutions.

Governmental entities include the United States Government, a state, or any county, municipality or political subdivision of a state. Governmental entities are exempted from tax under the provisions of [Section 212.08\(6\), F.S.](#), and contractual work for these entities is referred to as a “public works contract.” Taxation of public works contracts is discussed in detail in [Rule 12A-1.094, F.A.C.](#)

As with any sale, the manufacturer must establish the exempt nature of the transaction when a purchaser claims a tax exemption as a not-for-profit organization or governmental entity (See [Rule 12A-1.038, F.A.C.](#)). Note however, the United States Government is not required to hold a Consumer’s Certificate of Exemption to make tax exempt purchases or rentals. For all other not-for profit organizations and governmental entities, the manufacturer must obtain from the purchaser a valid Consumer’s Certificate of Exemption (Form DR-14) issued by the Department. If the purchaser cannot provide a valid Consumer’s Certificate of Exemption at the time of purchase, similar to the process allowed for sales for resale, the manufacturer can get a Transaction Authorization Number or a Vendor Authorization Number by calling the Department’s nationwide toll-free verification system at: 1-877-357-3725 (See [Rule 12A-1.038\(3\)\(g\)1 and \(3\)\(h\)1., F.A.C.](#)).

A Consumer's Certificate of Exemption is valid from its issue date through its expiration date. *Any* sales made prior to the date of issue, or after the date of expiration are taxable. Purchases made for an exempt entity must be made with the exempt entity’s funds. If personal funds of the entity’s authorized representative are used, the transaction is subject to tax irrespective of the representative being reimbursed with entity funds. Lastly, only a Consumer’s Certificate of Exemption issued by the State of Florida can be accepted by a manufacturer as sufficient documentation to make a tax-exempt sale to such entities.

Occasional and Isolated Sales

A manufacturer may occasionally sell or transfer tangible personal property that is not within its normal course of business. An isolated sale or transaction occurs when the manufacturer distributes or transfers such tangible personal property in exchange for the surrender of a proportionate interest in an entity or conversely for purposes of obtaining a proportionate interest in an entity. Provided such transactions meet the requirements of [Rule 12A-1.037, F.A.C.](#), they are exempt from tax as isolated or occasional sales or transactions.

In order for a manufacturer’s sale to qualify as an exempt occasional sale, the tangible personal property being sold can not be an item manufactured by the manufacturer for sale or purchased for resale. Additionally, any applicable tax must have been paid and such sales cannot have occurred more than two times within a 12 month period. An exception to the latter requirement is provided for multiple sales that meet the restrictions for a “series of sales” as that term is defined by [Rule 12A-1.037\(3\) \(b\) 2.b., F.A.C.](#)

Exclusions to the isolated sales tax exemption include, *but are not limited to* (1) transactions which are not completed within 60 days from the date of the first distribution of assets by the manufacturer; (2) sales or distributions of the manufacturer's inventory; (3) sales of tangible personal property where the applicable tax has not been paid; and (4) sales conducted on behalf of the manufacturer by an auctioneer, agent, broker, factor, or any other person required to be registered and to collect tax on such sales.

Also excluded from exemption as either occasional or isolated sales are sales of aircrafts, boats, mobile homes, or motor vehicles in this state of a class or type required to be registered, licensed, titled, or documented in this state or by the United States Government.

Vending Machine Sales

A manufacturer may install vending machines at its premises to provide food, beverages or other tangible personal property to its employees and customers. The manufacturer may or may not be the owner of those vending machines. Likewise, the items in the vending machines may or may not be representative of the manufacturer's line of products.

Vending machine sales are taxed under the provisions of [Section 212.0515, F.S.](#), and are administered under [Rule 12A-1.044, F.A.C.](#) When determining the tax consequence to a manufacturer that has a vending machine on its premises, it is essential to identify the "operator" of the machine(s) as that term is defined in [Section 212.0515\(1\)\(b\), F.S.](#), since it is the operator who is responsible for remitting the tax applicable to the items being sold through the vending machine.

The vending machine operator is the person who has actual or constructive possession of the machine, maintains the inventory being sold from the machine and removes the monetary receipts generated by sales from the machine. [Rule 12A-1.044, F.A.C.](#) provides criteria that help determine if a person has constructive possession and control. They include: right of access to the machine; duty to repair; title to the machine; risk of loss from damages to the machine; and the party possessing the keys to the money box.

If, based on the criteria set out above, the owner of the machine has constructive possession and control, but the location owner has physical possession of the machine, then the operator shall be determined by who has the key to the money box and is responsible for removing the receipts. If both the owner of the machine and the location owner have the keys to the moneybox and are responsible for removing the receipts, then they shall designate in writing who shall be considered the operator. Absent any written designation, the owner of the machine shall be deemed to be the operator.

Pursuant to the provisions of [Section 212.05, F.S.](#), and [Section 212.06, F.S.](#), if a manufacturer purchases a vending machine either for use on its own premises, or for use on the premises of another entity's business location, tax is due from the manufacturer on the sale of the vending machine by a dealer. When a manufacturer places a machine on the premises of another entity, the tax due from the manufacturer will depend on the

agreement in place between the two parties. A manufacturer that places a machine on another entity's property with an agreement that the manufacturer will provide full service as operator of the machine, it must pay tax on any consideration given to the entity for placement of the machine on the entity's property. The tax is based on the manufacturer being granted a license to use real property as authorized by [Section 212.031, F.S.](#), and administered under [Rule 12A-1.070, F.A.C.](#) If the vending machine is placed on the entity's premises under a non-full service agreement, whereby the entity rents the machine from the manufacturer and the entity acts as the operator, tax is due from the entity and collectible by the manufacturer based on a rental of tangible personal property. [Section 212.05, F.S.](#), [Rule 12A-1.044\(5\) \(c\), F.A.C.](#), and [Rule 12A-1.071, F.A.C.](#)

The rate at which tax will be collected on vending machine sales and the manner in which the tax will be calculated is provided in [Section 212.0515\(2\), F.S.](#) The rates are applicable to all taxable items sold at a sales price of \$.10 or more. Exempt from tax are sales of drinking water in containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection or the Department of Health. Also exempt are sales, of ten cents or more, made through vending machines for ice cream in quart containers or larger, and milk in quarts or larger containers.

A partial exemption is provided for vending machines located in schools from kindergarten through twelfth grade. All food and drink sales from vending machines located in the lunchroom, dining room or cafeteria of schools with grades kindergarten through twelve are exempt. However, vending machines located at any other place in these schools and in institutions of higher learning do not receive this exemption.

Operators of vending machines are required to apply for and obtain registration with the Department for sales and use tax purposes. It is not required that a registration certificate be obtained for every machine but only that the operator obtain a separate Sales and Use Tax Certificates of Registration for each county in which such machines are located (See [Section 212.0515\(3\) \(a\), F.S.](#)).

Operators of food and/or beverage vending machines are required to place a notice on each of their machines operated in this state. The notice must include the operator's name, address, Federal Employer Identification number, (if not required to have an FEI number, the operator's Sales Tax Certificate of Registration number), and a notice to customer that the notice is required by Florida law and to report any machine without a notice (See [Section 212.0515\(3\)\(a\), F.S.](#)).

[Section 212.0515\(4\), F.S.](#), imposes a \$250 penalty on each vending machine operator who has not affixed the proper notice on the vending machine. Interest accrues on the penalty, from the date the operator places the machine into operation until the date the penalty is paid.

Leasing Agreements for Real and Tangible Personal Property

As a part of its ongoing business operations, a manufacturer may lease both real and tangible personal property to business associates and customers. The lease agreements entered into for lease or licensure to use real property are taxed under [Section 212.031\(1\)\(a\), F.S.](#), and administered by [Rule 12A-1.070, F.A.C.](#) Those agreements entered into for lease or licensures to use tangible personal property are taxed (See [Section 212.05, F.S.](#) and [Rule 12A-1.071, F.A.C.](#)).

Real Property

A manufacturer may enter into lease and licensure agreements for real property as the lessor for the following reasons: (1) there is excess unused floor space within the manufacturer's facility or adjoining buildings, (2) the manufacturer has entered into a joint venture with another manufacturer for the production of a product, or (3) the manufacturer owns vacant real property that is not utilized in day to day business operations.

Tax is due at the rate of 6% on the total rental; lease or license fee charged by the manufacturer for the right to use or occupy the real property and must be collected from the person paying the rental, lease or license fee to the manufacturer. When the rental or license fee of any such real property is paid by way of property, goods, wares, merchandise, services, property taxes, improvements or any other thing of value, the tax is due on the value of the total consideration given regardless of any relationship between the manufacturer as lessor and its lessee. However, unlike transactions involving tangible personal property where the tax is due at the time of the sale, the tax on rentals, leases and licenses of real property is due and payable at the time of *receipt* of the consideration (See [Section 212.031\(3\), F.S.](#)).

Rental and lease agreements are types of real property contracts that grant the tenants exclusive rights of usage and control. Offices, stores and buildings are examples of property that is normally rented or leased. The rental or lease agreement describes the boundaries and activities permitted and not permitted on the property. The space is often defined by the number of square feet on the property and stated as an amount per square foot.

License agreements, on the other hand, grant the tenant very limited use of real property. A license does not create an interest in real property. A carnival using a mall parking lot, a soda vendor that distributes sodas throughout a sports arena, or a cigarette vendor using space in a restaurant for his vending machine are examples of licenses to use real property. What's more, a license to use real property agreement usually permits the licensee to operate in a general area and only at times when the licensor either permits or requires the licensee's presence.

If a manufacturer has leased space in excess of its needs and decides to sublet the excess space to one or more persons, application of the correct tax as well as collection and remittance of the tax can be complex. For instance, if a manufacturer sublets some portion of the leased or licensed property, he may take credit on a pro-rata basis for the tax that he paid to his landlord on the space that he subleases. The manufacturer's

proration of the taxable and exempt portions of the total rental charge or license fee should be based on a reasonable allocation as determined from the lease or license and such other information as may be available. Additionally, if the manufacturer as a tenant sublets all of the leased premises or retains only an incidental portion, then the manufacturer may elect not to pay tax on the prime lease or license, provided that it [the manufacturer] or other person shall register as a dealer and collect and remit tax due on the sub-rentals and pay the tax due to the Department on the portion of the rental charges pertaining to any taxable space which he retains. If in these circumstances the manufacturer elects not to pay the tax to the landlord he should extend to the landlord a resale certificate.

When subletting, it is important that a manufacturer avoid any pyramiding of the tax. Pyramiding of the tax occurs when more than the prescribed tax is collected due to a series of transactions. Florida law provides that only one tax shall apply to each property and the tax shall neither be pyramided nor decreased (inverse pyramided) by a progression of transactions. Pyramiding of tax is forbidden (See [Section 212.031\(2\) \(b\)](#), [Section 212.081\(3\) \(b\)](#), and [Section 212.12\(12\), F.S.](#)).

Tangible Personal Property

Within the course of its business operations, a manufacturer may enter into lease agreements with its customers for the sale of products it manufactures. Such transactions generally occur when manufacturers manufacture big ticket items such as industrial machinery and equipment, automobiles, boats, and airplanes. The terms “lease,” “let,” or “rental,” as they relate to tangible personal property, are defined by [Section 212.02\(10\)\(g\), F.S.](#) A “sale” as defined in [Section 212.02\(15\)\(a\), F.S.](#), include licenses, leases, and rentals of tangible personal property.

When determining the application of tax to a lease of tangible personal property, an assessment must be made whether the lease agreement is actually a capital or operating lease. A capital lease, also known as a conditional-sale type lease, transfers substantially all the benefits, including depreciation, and risks inherent in the ownership of tangible personal property to the lessee. At the end of the lease term, ownership of the property transfers to the lessee or the lessee has the option to purchase the property for a nominal amount. In Florida, a purchase option is considered nominal if it does not exceed \$100 or 1 percent of the total contract price, whichever is the lesser amount. Leases not meeting the criteria of a conditional-sale type lease are operating leases.

A manufacturer that enters into a conditional-sale type lease agreement with a customer must treat the transaction as a sale of tangible personal property under a security agreement. As such, tax is due and payable at the moment the parties enter into the agreement or when the property comes to rest in this state if at a later date (See [Section 212.02\(16\), F.S.](#), [Section 212.05, F.S.](#), and [Section 212.06, F.S.](#)).

Under an operating lease agreement, tax is due from the lessee and collectible by the manufacturer as with a conditional-sale type lease, but the timing of when tax is due differs. With an operating lease, tax is due on each payment made by the lessee and it

applies to the “gross proceeds derived” from the lease for the tangible personal property. For further discussion see [Rule 12A-1.071\(1\)\(c\), F.A.C.](#)

A lessee who retains leased tangible personal property beyond the time stipulated may be required to pay tax on charges imposed by the lessor for retaining the property beyond the designated time. Such charges are taxable if they constitute part of the total consideration for the continued possession of tangible personal property if the lessor records them as rental income in its books and records. However, if such charges are specifically designated and itemized in the contract, charge ticket, sales slip, invoice, or other tangible evidence of the lease as a penalty or late fee, then such charges or fees are only incidental to the sale, and do not constitute part of the sales price; therefore, such charges are not subject to tax. This demarcation for taxation is found within [Rule 12A-1.071\(14\)\(a\), F.A.C.](#) and is consistent with the position taken by the court in [Department of Revenue v. B&L Concepts, Inc.](#), 612 So.2d 720 (Fla. 5th DCA 1993). In that case, the appellate court held if service charges or fees incidental to the sale or lease are imposed at the option of the vendor or lessor, those service charges or fees are a part of the "sales price" and are subject to the sales tax, but if such service charges or fees are separately itemized and applied at the sole option or election of the vendee or lessee, or can be avoided by decision or action on the part of the vendee or lessee alone, then those charges and fees are only incidental to the sale, are not part of the "sales price" and are not subject to sales tax.

The amount charged by a manufacturer to a lessee to cancel or terminate a lease agreement is subject to tax if the manufacturer records such charge as rental income in its books and records. If such charge is not recorded as rental income by the manufacturer, or it can be established with documentation the record is in error, then such charge is not considered a payment for the lease of the tangible personal property but instead a nontaxable payment to cancel or terminate the lease agreement (See [Rule 12A-1.071\(14\)\(b\), F.A.C.](#)).

If a manufacturer decides to assign its rights to receive lease payments due under an operating lease agreement with a customer, the type of assignment made by the manufacturer to the assignee will determine taxation of the assignment, if any, and the responsibility for collecting and remitting the tax due on the payments from the lessee. [Rule 12A-1.071\(47\), F.A.C.](#) discusses three types of assignments and the referenced issues of taxation.

Service Warranties

A manufacturer may sell a service warranty at the time it sells a product. A service warranty is defined as any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property, whether or not the contract provides for the furnishing of parts. Service warranties are taxed at the rate of 6 percent on the total consideration received by any person for issuing and delivering any service warranty under [Section 212.0506, F.S.](#) Note that warranties, guaranties, extended warranties, extended guaranties, and certain written promises are not subject to such tax. If a transaction involves both the issuance of

a service warranty and one of the identified contracts above, the consideration must be separately stated with respect to the taxable and nontaxable portions of the transaction per [Rule 12A-1.105, F.A.C.](#)

See also: [TAA 02A-045](#), [TAA 99A-001](#), [TAA 98A-038](#), [TAA 97A-065](#), [TAA 97A-059](#), [TAA 97A-049](#), [TAA 96A-025](#), [TAA 92A-074](#), [TIP 89A01-04](#).

Transportation Charges

The taxation of transportation charges is important to manufacturers. While this may include transportation charges on sales as well as on purchases, this section discusses taxation from the perspective of a sale made by a manufacturer.

Pursuant to [Rule 12A-1.045, F.A.C.](#), transportation charges include carrying, delivery, freight, handling, pickup, shipping, and other similar charges or fees. The method used by manufacturers to charge customers for transportation varies from dealer to dealer. Some manufacturers do not make a separate charge to their customers for delivering the goods they sell. Instead, they mark-up their product to cover the costs of the delivery, just as they mark up the price of products to cover all their costs (labor, rent, utilities, etc.) while also generating a profit. Like with other mark-ups, if the transportation charges are not separately stated on an invoice or bill of sale, but are included in the sales price of taxable tangible personal property, they are subject to tax.

Nonetheless, even if separately stated on an invoice or bill of sale, transportation charges will be subject to tax if they are imposed at the discretion of the manufacturer and the customer cannot elect to avoid the charge. The charges are considered a part of the sale and are therefore subject to tax based on the provisions of [Section 212.05, F.S.](#), and the definition for “sale price” under [Section 212.02\(16\), F.S.](#) Conversely, as discussed [Rule 12A-1.045, F.A.C.](#), if the manufacturer provides its customer with a choice of how the tangible personal property sold will be delivered and the transportation charge is separately stated, the transportation charge is not subject to sales tax. The referenced rule is consistent with the appellate court’s holding in [Department of Revenue v. B&L Concepts, Inc.](#), 612 So.2d 720 (Fla. 5th DCA 1993).

Another factor that influences whether transportation charges are taxable or not is the location where title to the tangible personal property passes (i.e. F.O.B. origin or F.O.B. destination). If the sale is designated F.O.B. origin, title passes at the point of origin (the manufacturer’s location). Since title passes at the point of origin, transportation services arranged by the manufacturer and rendered to the customer are not considered a part of the taxable selling price, provided the transportation charges are separately stated. If a sales agreement is inadequate to establish the point at which title passes to a buyer, it is presumed that title to the tangible personal property sold passes at the point of origin. In such instances, if separately stated, the transportation charges are not considered a part of the selling price of the property. Likewise, the transportation charges are not considered a part of the selling price and thus subject to tax if the purchaser has the option of designating whether the transportation will be F.O.B. origin or destination

For additional discussions on transportation charges see [TAA 02A-026](#), [TAA 01A-024](#), [TAA 00A-023](#), and [TAA 95A-041](#).

Drop Shipments

A purchaser may request that tangible personal property bought from a Florida manufacturer be shipped directly to the purchaser's customer, the end user. Such shipments are commonly known as "drop shipments" and application of sales and use tax will depend on the location of both the purchaser and the end user. If both the purchaser and the customer, the end user, are located outside the state, no tax is due. The sale to the purchaser constitutes a sale for export which is exempt as discussed in [Rule 12A-1.0015, F.A.C.](#) Delivery to the customer is exempt as a sale of tangible personal property for presumed use outside the state. A sale for export will also apply if the purchaser is located in state, commits the property to the exportation process at the time of sale, and the manufacturer arranges for the delivery of the tangible personal property to the customer. In addition, the exportation process must remain continuous and unbroken until the property is exported from Florida, and the manufacturer must maintain documentary records that also identify the delivery destination of the property (See [Rule 12A-1.0015\(2\), F.A.C.](#)).

For additional discussions on drop shipments see [TAA 01A-076](#), [TAA 00A-079](#), [TAA 00A-044](#), [TAA97A-036](#), and [TAA 85A-020](#).

On the other hand, if both the purchaser and the end user are located within Florida, tax is due unless another specific exemption applies. The initial sale by the manufacturer to the purchaser is taxable as a Florida sale, unless the purchaser is a registered dealer and is able to present a valid resale certificate to permit exemption of the otherwise applicable tax. In such cases, the purchasing dealer must collect and remit the tax on the sale of the tangible personal property to its customer, the end user, unless another exemption applies to the transaction.

If the purchaser is an unregistered dealer located outside the state, but its customer is located within Florida, under [Rule 12A-1.091\(10\), F.A.C.](#), as discussed in [TAA 94A-060](#), the manufacturer is required to collect sales tax from the out-of-state dealer, who, being unregistered, is unable to furnish a resale certificate.

Refunds, Credits and Bad Debts

Inherent in a manufacturer's business operations are the issues of credits, refunds, and bad debts. Manufacturers frequently remit taxes to the Department which subsequently requires a credit or refund back to the manufacturer. For instance, a previously completed taxable sales transaction may turn into a cancelled sale or it may be determined that tax was collected from the customer when none was due. In other instances, a manufacturer may extend credit to a customer who is later determined to be financially unsound. The manufacturer may choose to repossess the taxable tangible personal property previously sold. Under any of these conditions a refund or a credit may be obtained from the Department provided applicable provisions of [Section 215.26, F.S.](#), [Section 212.17, F.S.](#), [Rule 12A-1.012, F.A.C.](#), and [Rule 12A-1.014, F.A.C.](#) are met.

If the manufacturer decides to take a credit for tax remitted under any of the scenarios discussed, it must first obtain copies of all the documents relating to the transactions involved. Using the documents, the manufacturer can calculate a tax credit claim amount, which can be entered on the appropriate line of the manufacturer's applicable sales and use tax return. Note, however, that the credit claim amount cannot exceed the amount of tax due. Because the Department cannot process negative returns, if the credit is larger than the amount of tax due on one return, the manufacturer must request the credit over a period longer than one return.

[Section 215.26\(2\), F.S.](#) provides the general guidelines for receiving either a refund or a credit. This provision requires that the manufacturer file an application for refund (*Application for Refund – Sales and Use Tax, Form DR-26S*) within 3 years from the date the tax was paid or take a credit as discussed above. To support the refund or credit being claimed, the manufacturer must have adequate books and records as required by [Section 212.12](#) and [Section 212.13, F.S.](#), that reflects tax was charged, collected, and remitted to the Department. The manufacturer must also document that the tax was refunded or credited to the customer if the transaction concerns a cancelled sale or refund of sales tax charged in error. This requirement is codified in [Section 215.26\(1\), F.S.](#), which conditions the issuance of a refund on the claimant being the person who paid the taxes to the State, his or her heirs, personal representative, or assigns. Also see [Rule 12A-1.014\(4\), F.A.C.](#); other entities that are authorized to receive pay include personal representatives authorized under a duly executed *Power of Attorney, Form DR-835*, or customers who paid the tax to a manufacturer and obtained an Assignment of Rights.

However, other exceptions in [Section 215.26\(1\), F.S.](#) allow a manufacturer's customer to apply directly to the Department for a refund. They include, but are not limited to, taxpayers qualifying for a refund of tax paid on: (1) business property used in an enterprise zone ([Sections 212.08\(5\)\(g\),\(h\), F.S.](#)); (2) production machinery and equipment purchased by a new or expanding business ([Section 212.08\(5\)\(b\), F.S.](#)); (3) purchases for broadband technology ([Section 212.08\(5\)\(p\), F.S.](#)); and (4) purchases for a motion picture production ([Section 212.08\(5\)\(f\), F.S.](#)).

As indicated above, the statute of limitations, provided in [Section 215.26\(2\), F.S.](#), generally applies to a manufacturer's refund or credit claim. However, if a refund or credit is being claimed as a result of a bad debt or repossession, time constraints other than the statute of limitations defined within [Section 215.26\(2\), F.S.](#), will apply (See [Section 212.17, F.S.](#)).

If the issue is a bad debt, the manufacturer may take a credit or obtain a refund for any tax paid on the unpaid balance within 12 months following the month in which the bad debt has been charged off for federal income tax purposes. "Charged off for federal income tax purposes" means either the date the debt is written off the dealer's books or the end of the dealer's fiscal year. Therefore, a dealer is allowed to take a credit or obtain a refund for tax paid on an account written off as a bad debt beginning on the date the dealer deducts the bad debt account from its books through 12 months after the end of the

dealer's fiscal year. The date on which the dealer files a federal income tax return that includes the bad debt accounts is irrelevant and should not be used to determine the availability of a credit or refund. For further discussion and clarification of the time limits applicable to bad debts, [TIP 03A01-12](#) should be reviewed (See [Section 212.17\(3\), F.S.](#)).

With repossession, if a dealer has remitted sales tax on the full selling price of taxable tangible personal property sold under a retained title, conditional sale, or similar contract he must within 12 months following the month in which the property was repossessed make a request for a refund or credit. The requested refund or credit is limited to that portion of the tax that is applicable to the unpaid balance of the contract (See [Section 212.17\(2\), F.S.](#)).

If a manufacturer subsequently receives in whole or in part payment for an account that was charged off as a bad debt for which it received a credit or refund, tax is due on the amount paid and shall be included as part of the first return filed after such collection/payment. Likewise, if repossessed property is subsequently resold, the sale is again subject to tax. Additionally, a credit or refund based on bad debt or repossession may include only that portion of a sale which was subject to the tax initially. No credit or refund will be allowed for a bad debt or repossession involving sales which were exempt from tax or for any nontaxable charges included in the sale, (e.g., transportation charge, finance charges, exempt products or services, collection fees).

The method for calculating the amount of tax to be refunded or credited is the same for a bad debt and repossession. An example is provided below:

Example:

ABC sells furniture to XYZ and bills the following:

1 Sofa (Brown)	\$ 985.00
1 Easy Chair (Brown)	<u>195.00</u>
Taxable Amount	\$1,180.00
Sales tax @ 6%	70.80
Delivery	40.00
Finance Charges	<u>115.00</u>
Total	\$1,405.80

XYZ agrees to pay \$205.80 down and \$100.00 a month for 12 months. XYZ failed to make any of the monthly payments and ABC charges off the accounts receivable as uncollectible. ABC is entitled to the following credit or refund.

Calculate the percentage of the total transaction applicable to tax by dividing the tax charged by the total transaction amount, including the tax.

$$\$70.80 \div \$1,405.80 = .050363, \text{ ratio of tax to the total transaction}$$

Calculate the balance due on the sale at the time the bad debt is written off by subtracting the total payments made, from the transaction total.

$$\$1,405.80 - \$205.80 = \$1,200, \text{ balance due}$$

Calculate the tax credit or refund by multiplying the ratio of tax, expressed as a decimal, times the balance due.

$$.050363 \times \$1,200 = \$60.44, \text{ tax credit or refund due/allowed}$$

For additional discussions on bad debts see [Department of Revenue v. Bank of America, N.A.](#), 752 So.2d 637 (Fla App. 1st DCA 2000); [Attorney General Opinion\(AGO\) 66-055](#); [AGO 69-065](#); [TAA 01A-076](#); and [TIP 03A01-01](#).

PURCHASES

Fixed Assets

For purposes of day to day operations, manufacturers invest heavily in fixed assets by either leasing or purchasing those assets. Regardless of the method, tax is due on the transactions for the fixed assets unless a specific exemption applies (See Section 212.05, F.S.). For exemptions that may apply ([See Section III of this Guide, Manufacturing Exemptions](#)).

Items Fabricated for a Manufacturer's Own Use

A manufacturer may fabricate tangible personal property for its own use in the manufacturing process, including tools, dies, molds, patterns or other items used to produce the final product. Pursuant to [Section 212.06\(1\)\(b\), F.S.](#), the manufacturer is responsible for paying tax on the cost price of these items which are not sold to customers. If the manufacturer sells these items, as required by [Section 212.05, F.S.](#), sales tax must be collected on the selling price.

Fabricated costs include:

- Direct materials & related freight and handling,
- Direct labor cost including payroll burden, and
- Production service costs.

[Rule 12A-1.043, F.A.C.](#) discusses in detail fabrication costs and other costs related to the manufacturing process.

Items Consumed in the Manufacturing Process

In the course of manufacturing products for sale, manufacturers consume other items of tangible personal property that may or may not become an ingredient or component of the final product. Consumption of these items by the manufacturer will generally result in the manufacturer being liable for use tax as the end user of the tangible personal property

consumed. [Rule 12A-1.063, F.A.C.](#), discusses the tax consequences of items consumed in a manufacturing process and provides examples of tangible personal property often consumed in a manufacturing process that may or may not subject a manufacturer to use tax.

For additional discussions see [TAA 98A-099](#), [TAA 98A-099R](#), and [TAA 91A-039](#).

Packaging Materials, Pallets and Crates

When a manufacturer has a finished product ready for sale, the product is often required to be packaged and placed on pallets or within crates for shipment to a customer. [Section 212.02\(14\)\(c\), F.S.](#), states in pertinent part, "...'retail sales', 'sale at retail', 'use', 'storage', and 'consumption' *do not include materials, containers, labels, sacks, bags, or similar items intended to accompany a product sold to a customer without which delivery of the product would be impracticable because of the character of the contents and be used one time only for packaging tangible personal property for sale.* [Rule 12A-1.040, F.A.C.](#), describes in greater detail the various costs that will or will not be subject to tax.

For additional discussions see [TAA 99A-003](#) and [TAA 96A-058](#).

EXEMPTIONS

The Legislature has created various tax exemptions to encourage the development of manufacturing in the State of Florida. Discussed below are these exemptions, important points relating to each, and the requirements for obtaining and documenting each exemption.

Asphalt Manufactured for One's Own Use

[Section 212.06\(1\)\(c\), F.S.](#) and [Rule 12A-1.051\(12\), F.A.C.](#), grants asphalt manufacturers a partial tax exemption. Asphalt manufactured for a contractor's own use to improve real property is subject to sales tax at the rate of 6% on *specified* manufacturing costs (i.e. materials that become a component part or are an ingredient of the finished asphalt multiplied and costs of transportation and ingredients to the plant site) plus an indexed tax rate based on per ton of asphalt used. The indexed tax per ton represents all other costs associated with manufacture of the asphalt.

Important Points:

- The indexed tax rate is changed on July 1st of each year based on a producer price index calculated and published by the United States Department of Labor, Bureau of Statistics;
- The indexed tax rate is reduced by 40 percent for asphalt manufactured for use in any federal, state, or local government public works project;
- The Department is required to publish the new rate each year in time to permit timely accruals and payment of use tax by asphalt contractors. The selected means of publication is a Tax Information Publication;

- If sales tax is paid by an asphalt contractor to a dealer for the purchase of materials or transportation as discussed above, the costs of these items shall not be included in computing the total tax due; and
- The tax is due in the month the asphalt is manufactured by a contractor for his or her own use.

Energy Produced for a Manufacturer's Own Use

Under [Section 212.06\(1\)\(b\), F.S.](#), no sales or use tax is imposed upon any person that produces electrical power or energy, steam energy, or other energy for operation of machinery and equipment that will manufacture, process, compound, produce, fabricate or prepare for shipment tangible personal property for sale. Nor will tax apply if the energy produced is used in such operations for the purpose of operating pollution control equipment, maintenance equipment, or monitoring or control equipment.

Important Points:

- The energy must be used directly and exclusively at the location where it was produced unless it is transferred through facilities owned by the person that produced the subject energy.
- Electricity manufactured for use in areas outside the production process is subject to sales tax based on its cost price as articulated in [Section 212.02\(4\), F.S.](#)

How to Obtain Exemption:

No application or certificate of exemption is required. Taxpayer must merely maintain appropriate records to support production and usage of the energy produced.

Electricity or Steam Purchased for Manufacturing

[Section 212.08\(7\)\(ff\), F.S.](#), grants a partial to full tax exemption is granted for purchases of electricity or steam energy used by a manufacturer at a fixed location to manufacture, process, etc., or prepare for shipment items of tangible personal property for sale. Such charges are also exempt from tax when used to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment.

Important Points:

- Exemption is available only to those businesses classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry Group Number 212 (As contained in the 1987 Standard Industrial Classification Manual).
- Either 100% or 50% exemption available:
 - 100%, if 75% or more of the electricity or steam is used to operate qualifying machinery and equipment.
 - 50%, if less than 75%, but 50% or more of the electricity or steam is used to operate qualifying machinery and equipment.
 - No exemption, if less than 50% of the electricity or steam is used to operate qualifying machinery and equipment.

How to Obtain Exemption:

The exemption is obtained by extending a certificate to the local utility provider stating that the electricity or steam is purchased for the exempt purpose designated by statute and stating the claimed percentage.

Also see [TIP 00A01-14](#); [TIP 99A01-23](#); [TIP 98A01-11](#); [TIP 98A01-10](#); and [TIP 96A01-22](#).

Boiler Fuels

[Section 212.08\(7\)\(b\), F.S.](#), exempts from tax combustible fuels that are purchased for use at a fixed location in an industrial process to manufacture, process, etc., an item of tangible personal property for sale.

Important Points:

- Includes purchases of natural gas, residual oil, recycled oil, waste oil, solid waste material, coal, sulfur, wood, wood residues, and wood bark;
- Excludes distillate fuels, liquefied petroleum gases, and certain other fuels (See [Rule 12A-1.059\(2\) \(a\), F.A.C.](#) to determine which fuels do or do not qualify for the exemption); and
- Excludes boiler fuels used by a firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

How to Obtain Exemption:

The purchaser must issue a certificate of exemption to the seller stating that the fuel to be exempted is for the purpose designated by statute.

See also: [Declaratory Statement 84-02A](#), [TAA 02A-053](#), [TAA95A-013](#), and [TAA93A-041](#).

Certain Repair and Labor Charges

[Section 212.08\(7\)\(xx\), F.S.](#) exempts from tax labor charges, parts, and materials purchased to repair industrial machinery and equipment that is used to manufacture, process, etc., items of tangible personal property at a fixed location in this state or in preparation of such property for shipping.

Important Points:

- Parts and materials used in the repair must be incorporated (installed) into qualifying machinery and equipment;
- Exemption is available only to those businesses classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry Group Number 212.; and
- Exemption was phased in at increments of 25% per fiscal year beginning July 1, 1999. Full exemption on qualifying charges became available on July 1, 2002.

How to Obtain Exemption:

Purchaser may extend its self-accrual authority or issue a purchaser's certificate of exemption to the seller stating that the labor, parts, and/or materials purchased are for the exempt purpose designated by statute.

See also [TAA 04A-027](#) and [TAA 05A-053](#).

Research and Development Costs

[Section 212.052, F.S.](#), exempts from tax the cost price of tangible personal property actually incorporated or fabricated into a research or development end product. As defined by the term "cost price" under [Section 212.02\(4\), F.S.](#), costs that are eligible for the exemption are materials, labor or service costs, transportation charges, and any other expense identifiable as a cost of the item of tangible personal property incorporated or fabricated into the end product.

Important Points:

- Exemption is available to a company or an individual;
- Applies to research or development in a scientific field, the development or improvement of a new product, the development of new uses for an existing product, and/or the design of prototypes;
- Excludes ordinary testing, quality control inspections, market research, surveys, and research in non-technical areas such as literary, historical, or social sciences;
- Results of R&D must be commercially exploitable, but the sale of a resulting product is not required; and
- Tax will be due on items of real and tangible personal property that are *employed* in research and development activities but are not incorporated into the end product

How to Obtain Exemption

Pending promulgation of the required revisions to [Rule 12A-1.043, F.A.C.](#), persons eligible for exemption under Section 212.052, F.S., should complete the ***Suggested Format for Blanket Exemption Certificate Based on Property's Use, Form DR-97***, and extend it to the selling dealer of qualifying property for purposes of obtaining and documenting the exemption. Under the revisions to [Rule 12A-1.043, F.A.C.](#), a suggested purchaser's certificate of exemption for materials used in research or development will be incorporated with specific language for claiming and documenting the exemption. In the meantime, when completing Form DR-97, or using a similar format, "*other*" should be indicated, [Section 212.052, F.S.](#) cited, and the First DCA court case referenced.

A Taxpayer who seeks a tax refund for an item that qualifies for an exemption, should obtain the refund from the selling dealer pursuant to [Rule 12A-1.014\(4\), F.A.C.](#) For purposes of documenting the records of the selling dealer, Form DR-97 is still required to be completed. In the event that the selling dealer executes an Assignment of Rights to the purchaser for such refund claims, ***Form DR-97*** is not required; instead, a properly filed ***Application for Refund – Sales and Use Tax, Form DR-26S***, will suffice.

Semiconductor, Defense, and Space Technology

Facilities certified as engaging in semiconductor, defense, or space technology production and/or research and development can purchase or lease machinery and equipment for their use tax exempt under [Section 212.08\(5\)\(j\), F.S.](#). The Office of Tourism, Trade, and Economic Development (OTTED) issues the certifications. Unlike the provisions of [Section 212.052, F.S.](#), machinery and equipment employed in research and development activities for the herein specified industries will qualify for tax exemption.

Important Points:

- Full (100%) exemption of tax on machinery and equipment purchased or leased by a semiconductor facility;
- Building materials for clean rooms located in semiconductor facilities are also exempt;
- 25% exemption of tax on machinery and equipment purchased or leased by a defense or space technology facility; and
- Machinery and equipment purchased or leased for research and development activities must be used at least 50% of the time in qualifying research and development

How to Obtain Exemption:

Exemption is obtained pursuant to an annual application process conducted jointly by OTTED and Enterprise Florida, Inc. Following approval and certification, a temporary tax exemption permit is issued by the Department of Revenue.

Machinery and Equipment to Produce Electricity or Steam

[Section 212.08\(5\)\(c\), F.S.](#) exempts from tax the purchase or lease of machinery and equipment that are needed to produce steam or electrical energy and which are used at a fixed location. Such steam or electrical energy must be primarily used for manufacturing, producing, compounding, or processing for sale items of tangible personal property.

Important Points:

- Exemption is available to those facilities that burn boiler fuels other than residual oil;
- Residual oil is ASTM Grades 5 and 6 and Bunker C (thick, polluting oils);
- If a facility burns both residual and non-residual fuels, the exemption shall be prorated; and
- If 15% or less of all electrical or steam energy produced is from using residual oil, the full exemption applies

How to Obtain Exemption:

To receive the exemption, the purchaser must extend an affidavit to the vendor stating that the items purchased are for the exempt purpose designated by statute. Purchasers with self-accrual authority have to keep all the documentation necessary to prove the

exempt status of the purchases. If pro-ration is claimed, the exemption is obtained by filing an *Application for Refund, Form DR-26S*.

New and Expanding Businesses

Under [Section 212.08\(5\)\(b\), F.S.](#), machinery and equipment purchased or leased by a new or expanding business to manufacture, process, etc., an item of tangible personal property for sale at a fixed location in this state is exempt from tax. The exemption also includes new or expanding businesses engaged in spaceport activities and mining activities. Under the authority of [Section 212.08\(5\)\(b\)4., F.S.](#), [Rule 12A-1.096, F.A.C.](#) has been promulgated by the Department to administer the exemption. Please, also see recent law changes referred to in [TIP 06A01-06](#).

Important Points:

- Machinery and equipment must be at least 3-year depreciable property.
- For new businesses, a purchase agreement must be made for qualifying machinery and equipment prior to the start of productive operations and such purchases must be received within 12 months from the start of productive operations.
- Except for spaceport businesses, expanding businesses must show a minimum 10% increase in productive output. This is normally determined by comparing the 12 months preceding the expansion project to the 12 months following completion of the expansion project.
- Except for printers, expanding businesses must meet a calendar year \$50,000 tax threshold (Effective July 1, 2006 not required).
- Provides for a credit against severance tax for new or expanding business engaged in mining activities.
- Specifically excluded from the exemption are electric utility companies, communication companies, oil or gas operations, and those businesses subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

How to Obtain Exemption:

The exemption is obtained through an application process, using Form DR-1214, Application for Temporary Tax Exemption Permit. The business entity seeking the temporary tax exemption must file such application with the Department before receiving a permit or refund for the new or expanded business. A temporary tax exemption permit will be issued following application if the qualifying business has not completed its purchases of qualifying machinery and equipment. Once the purchases are complete the business entity must return the temporary tax exemption permit to the Department.

If a business fails to obtain a temporary tax exemption permit before completing its purchases, the business can receive a refund of tax paid only if it provides sufficient information to the Department that the machinery and equipment meets the requirements as articulated above.

See also: *R.R. Donnelley & Sons Co. v. Fuchs*, 670 So.2d 113 (Fla 1st DCA 1996) and *Royster Co. v. State, Department of Revenue*, 519 So.2d 46 (Fla 1st DCA 1988).

Pollution Control Machinery and Equipment

[Section 212.051, F.S.](#), exempts from tax pollution control machinery and equipment that are used when manufacturing, processing, etc., tangible personal property for sale at a fixed location. Privately owned or operated landfills and construction and demolition debris disposal facilities may also purchase tax free machinery and equipment used to abate, monitor or prevent pollution. To qualify, the items purchased must be used, installed, or constructed to meet a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection.

Important Points:

- Exemption available for manufacturing facilities applies to:
 - Facilities
 - Devices
 - Fixtures
 - Equipment
 - Machinery
 - Specialty chemicals (as defined by statute)
 - Bioaugmentation products (as defined by statute)
- Exemption available for privately owned or operated landfills and construction and demolition debris disposal facilities applies to:
 - Equipment
 - Machinery
 - Materials
- Excluded from the exemption are solid waste collection vehicles, compactors, graders, and other earth moving equipment.

How to Obtain Exemption:

The exemption is obtained by extending a purchaser's certificate of exemption to the vendor stating that the items purchased are for the exempt purpose designated by statute.

For additional discussions see following references:

[TAA 01A-069](#), [TAA 05A-033](#), [TAA 01A-058](#), [TAA 01A-010](#), [TAA 00A-031](#), [TAA 04A-036](#), [TIP 00A01-17](#), [TIP 98A01-28](#), and [TIP 98A01-27](#).

Resource Recovery Equipment

[Section 212.08\(7\)\(q\), F.S.](#), exempts from tax resource recovery equipment certified by the Department of Environmental Protection (DEP).

Important Points:

- Machinery and equipment must be owned and operated exclusively by or on behalf of a county or municipality;
- Purchaser must be registered with the Department as a Sales and Use Tax dealer to purchase such machinery and equipment tax exempt;
- If purchaser has paid tax on such machinery and equipment, purchaser may seek a

- refund; and
- Equipment must be certified as resource recovery equipment by DEP

How to Obtain Exemption:

Eligible taxpayers should contact the Environmental Administrator of Solid Waste in DEP, at 850-245-8744 for submittal of an Application for Preliminary Examination. Following issuance of preliminary certification by DEP, eligible taxpayers should present a purchaser's certificate of exemption to vendors that identify certified items to be purchased as qualifying resource recovery equipment. DEP will issue a final certification following inspection of the facility, including the subject resource recovery equipment.

For additional discussions see [TAA 90A-039](#)..

Solar Energy Systems

Solar energy systems and the components of such systems as certified by the Florida Solar Energy Center (FSEC) are exempt from tax under [Section 212.08\(7\) \(hh\), F.S.](#) The term "solar energy system" means the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incidental solar energy for water heating, space heating and cooling, or other applications that would otherwise require the use of a conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity.

Important Points:

- Sales tax exemption is available to individuals and commercial entities.
- Eligible systems must convert sunlight into energy for use as a power source for another system and thereby eliminate the need for a conventional source of energy.
- Items currently certified by FSEC as qualifying solar energy components include solar collectors, pumps and controls, photovoltaic power conditioning equipment including **photovoltaic-powered attic fan ventilation systems**, energy storage units, and accessories integral to a qualifying system.
- Specifically excluded by the FSEC are products in which the cost of the solar equipment can not be separated from the total cost of the product (e.g., patio lights, calculators, novelty items).

How to Obtain the Exemption:

Exemption is obtained with the issuance of a certified statement to the seller that the item purchased or leased is for exclusive use in a solar energy system.

See [TIP 05A01-05](#), [TIP 04A01-03](#), [TIP 00A01-27](#), and [TIP 97A01-02](#).

NASA/DOD Contractors

Qualifying overhead materials purchased under a contract with NASA or the Department of Defense are exempt from tax under [Section 212.08\(17\), F.S.](#), irrespective of whether they were purchased for use or consumption by the contractor rather than for resale to the government (See [TIP 99A01-21](#)).

Important Points:

- The exemption applies only to purchases made by a purchaser performing a “qualifying contract”.
 - The contract must be with NASA or the Department of Defense (or be a subcontract under a contract with NASA or the Department of Defense).
 - The contract must not be a real property contract, unless the purchases would be exempt under some other provision in Chapter 212, F.S.
- The exemption applies only to qualifying “overhead materials.”
 - The property must be tangible personal property, other than electricity.
 - The property must not be “qualifying property” (property that is charged as a direct cost item and considered to be purchased for resale under [Section 212.02\(14\)\(a\), F.S.](#)).
 - Title to the property must vest in the government under the contract.
 - Under the current federal guidelines, this exemption will generally apply to overhead materials purchased for use in cost reimbursement contracts with NASA or the Department of Defense but not entirely allocable to a single qualifying contract.
- To the extent the cost of the item is not allocated to qualifying contracts, the contractor must accrue and pay the appropriate use tax.

How to Obtain Exemption:

Eligible contractors may claim the exemption by providing the vendor with a copy of the contractor’s Direct Pay Permit or by issuing a purchaser’s certificate setting forth all the grounds of exemption as set forth in [TIP 99A01-21](#).

ENTERPRISE ZONE CREDITS, REFUNDS, AND EXEMPTIONS

Located throughout Florida are Enterprise Zones. Pursuant to [Chapter 290, F.S.](#), Enterprise Zones are designated areas within distressed rural and urban areas that have been targeted for economic revitalization. Businesses located or locating, within the boundaries of any Enterprise Zone are offered tax advantages and incentives by the State of Florida to encourage economic growth and investment in those areas. Additionally, the local government within an Enterprise Zone may also offer its own incentives. Administration of Florida’s Enterprise Zones lies with the Governor’s Office of Tourism, Trade, and Economic Development (OTTED) and marketing of the program is placed with Enterprise Florida. Additional information on Florida’s Enterprise Zones can be found at <http://www.floridaenterprisezone.com>.

Enterprise Zone Jobs Credit

[Section 212.096, F.S.](#), provides a credit to eligible businesses against sales and use tax remitted based on a percentage of the wages paid to new full-time employees by the eligible business that is located in a Florida enterprise zone is provided so long as the business has increased its total number of full-time jobs from the average of the previous 12 months.

Important Points:

The new employee must have been employed for at least 3 months and must be a resident of a Florida enterprise zone or is a participant in the welfare transition program. The employee must not have been previously employed full time within the preceding 12 months by the business claiming the Enterprise Zone Job credit.

- Leased employees may also be eligible new employees;
- Credit is allowed up to 24 consecutive months;
- Credit is limited to the amount due on each return. No refund or carry-forward is permitted;
- Amount of credit is 20 to 45% of the actual monthly wages paid, based on the type of enterprise zone and the percentage of full-time employees that are residents of a Florida enterprise zone; and
- Jobs credit against sales and use tax cannot be taken if the corporate income tax jobs credit is taken.

How to Obtain Credit:

Businesses eligible for the credit must obtain certification from an Enterprise Zone Coordinator. The certification for credit must then be filed with the Department within six (6) months after the new employee is hired, or seven (7) months after the employee is leased.

Building Materials Refund

[Section 212.08\(5\)\(g\), F.S.](#), authorizes the refund of sales tax paid on the purchase of building materials used to rehabilitate real property located in an enterprise zone.

Important Points:

- Eligible recipients may be: owner, lessee, lessor, nonprofit community-based organization, city, county, or other governmental organization;
- Amount of refund is subject to a minimum and maximum dollar amount;
- Maximum refund amount may be increased based on the percentage of permanent full-time employees that are residents of a Florida enterprise zone; and
- Only one refund is permitted per parcel of real property

How to Obtain Refund:

Eligible recipients must obtain certification from the Enterprise Zone Coordinator of the enterprise zone in which the building is located. The certification and an application for refund must then be filed with the Department within six (6) months after the property is deemed substantially complete or within 90 days after the property is first subject to assessment (which is January 1st of the year subsequent to completion of the project).

Business Property Refund

[Section 212.08\(5\)\(h\), F.S.](#), provides for a refund of sales tax paid on certain business property purchased for use by a business located in an enterprise zone.

Important Points:

- Eligible business property includes office and warehouse equipment, and some industrial machinery and equipment, with a minimum purchase price of \$5,000 per unit;
- Property must be used exclusively in an enterprise zone for at least 3 years;
- Refund is subject to a minimum and maximum dollar amount; and
- Maximum refund amount may be increased based on the percentage of permanent full-time employees that are residents of a Florida enterprise zone

How to Obtain Refund:

Eligible recipients must obtain certification from the Enterprise Zone Coordinator of the enterprise zone in which the business property is located. The certification and an application for refund must then be filed with the Department within six (6) months of when tax was imposed on the business property purchased. Refund claims filed outside the 6-month period will be denied.

Electrical Energy Exemption

[Section 212.08\(15\), F.S.](#), authorizes an exemption of between 50 - 100 percent of taxes assessed for electrical energy used by a business located in an enterprise zone, provided the governing municipality has enacted an ordinance to reduce the municipal utility tax for enterprise zone businesses.

Important Points:

- Exemption is available for up to five (5) years; and
- Percentage of exemption may be increased from 50% to 100%, based on the percentage of full-time employees that are residents of a Florida enterprise zone

How to Obtain Exemption:

Businesses eligible for the credit must obtain certification from an Enterprise Zone Coordinator in the enterprise zone where the business is located. The certification for credit must then be filed with the Department within 6 months after becoming an eligible business.

GLOSSARY OF TERMS

Batch (Lot):	Unit of production usually related in size to the capacity of the equipment used.
Break-Even Point:	This is the volume level where there is neither a profit nor a loss.
Budget:	A financial plan of the resources needed to carry out tasks and meet the financial goals.
By-Products:	Products that (1) have minor sales value as compared with the sales value of the major products(s) and (2) are not separately identifiable as individual products until their split -off point. Incidental material produced as a result of a manufacturing process. Usually used for materials of insignificant value.
Commitment:	An agreement to purchase in the future, usually related to specific prices, quantities, and delivery dates.
Consignment (In or out):	Goods, held by someone other than the owner, to be paid for at the time the goods are sold or used.
Demurrage:	Fee paid to the owner of transportation equipment (railroad cars, tank trucks, etc.) for the use of such equipment for storage purposes.
Direct Labor or Direct Labor Costs:	The cost of workers who transform the materials into a finished product at some stage of the production process.
Direct Materials Costs:	Acquisition costs of all material that are identified as part of the finished goods and that may be traced to the finished goods in an economically feasible manner.
Direct Materials or Direct Material Inventory:	Materials on hand and awaiting use in the production process.
Drop Shipment:	Delivery of goods directly to the customer of one's customer.
Effluent:	Waste discharges (usually liquid) resulting from the manufacturing process.
Factory Overhead:	All costs other than direct material costs and direct labor costs that are associated with the manufacturing process. Also called factory burden, indirect manufacturing costs, manufacturing expenses, and manufacturing overhead.
Fixed Costs:	The expenses that have to be borne whether any business is done or not. Costs that remain unchanged in total for a given time period despite wide changes in the related total activity or volume.
Full Cost:	The sum of the fixed and variable costs of manufacturing and selling a unit of product.
Full Manufacturing Costs:	The cost used to compute a product's inventory value under generally accepted accounting principles.
Indirect Costs:	Cost items that cannot be identified specifically with a single cost objective in an economically feasible manner.
Indirect Labor Costs:	All factory labor wages other than for direct labor.

- Indirect Manufacturing Costs:** All costs other than direct materials and direct labor that are associated with the manufacturing process. Also called factory burden, factory overhead, manufacturing expenses, and manufacturing overhead.
- Job Costing:** An accounting system that traces costs to individual units for output or specific contracts, batches of goods or jobs.
- Joint Costs:** Costs incurred in the production of two or more products simultaneously. Usually allocated arbitrarily.
- Just-In-Time Production (JIT Production):** System whereby each component of a production line is produced immediately **as needed by the next step in the production line.**
- Just-In-Time Purchasing (JIT Purchasing):** Involves the purchase of goods such that delivery immediately precedes demand or use. In the extreme, no inventories (goods for sale for a retailer; raw materials for a manufacturer) would be held with JIT purchasing.
- Liquid Position:** This is the standing of an entity as it relates to assets (cash and current accounts receivable) less current liabilities.
- Manufacturing Overhead:** All production costs except direct materials and direct labor.
- Margin of Safety:** Sales above the break-even point. These sales, divided by the total sales, give the percentage that sales can drop before losses start to occur.
- Mix (Batch, Lot) Order:** Production document directing the production of a batch or lot.
- Operating Charges or Expenses:** Those expenses required to keep the business running, e. g., rent, electricity, and heat. Expenses incurred in the course of the ordinary activities of an entity.
- Overhead:** Usually refers to manufacturing overhead but is an ambiguous term when unmodified.
- Prime Cost:** The sum of direct material and direct labor.
- Process Cost:** An accounting system that is used when identical units are produced through an ongoing series of uniform production steps. Costs are allocated by department and then allocated to units produced.
- Product Costs:** Those costs that can be attributed to products; costs that are part of inventory. For a manufacturer, they include direct materials, direct labor, and manufacturing overhead. The manufacturing overhead attributed to products differs under the variable costing and the full-absorption costing systems.
- Returnable (Capitalized) Containers:** Shipping containers (drums, tanks, pallets, etc.) that are returnable by the customer and which may be reused.
- Standard Cost System:** A system where predetermined cost standards are established for a part or product and the actual costs are measured against the standard.
- Tare:** The weight of a container of product. Net weight is determined by subtracting the container weight from the tare.

Variable Cost: These are costs that vary with an activity, such as sales or units produced.

Variable Cost System: A system in which the variable costs is separated from the fixed costs. Products are costed with variable costs only. Such a system is sometimes called a direct cost system.

Work in Progress or Work in Progress Inventory: Goods undergoing the production process but not yet fully completed. Costs include the three major manufacturing costs (direct materials, direct labor, and factory overhead).

Yield: The quantity of end product resulting from the manufacturing process.