SEGA Chairman’s Message

Where the Rubber Meets the Road

My how time flies as I sit and ponder the subject and content of this message. It is one that is not foreign to anyone of us as business owners and/or managers in this evolution we call the glass business. Today, more than ever, we are challenged by what I call the ABC’s of running a glass shop operation, whether it be an auto glass, residential, retail or a commercial glazing operation. Every one of these divisions has new challenges. What are these so called ABC’s you may be wondering by now?

Well, let’s start with pricing or estimating, depending on if it is auto glass or retail for pricing and estimating for residential and commercial glazing. On the auto glass end, we have to decide if we want to accept the latest offer and acceptance discounts dangled in front of us by State Farm or other insurance companies and networks or decide how hard we want to go after the cash business of the non–insured. Switching to the flat glass side of things, we now have to be prepared to estimate projects not once or twice but sometimes four or five times from documents that reflect a lot less detail and information on them when compared to bid documents of year’s past. Then once we are fortunate to be low bidder, we are immediately required to lock down material prices to prevent even more price increases as cost numbers continue to flow down from the manufacturers with additional material cost increases.

Sometime shortly after learning you are the chosen one, you receive that thing in the mail called a Subcontract Agreement; and for a second, you have the warm fuzzes until you start reading the Subcontract document. You read the payment terms which says you will only get paid when the owner pays the general contractor on his pay application. Or, one that says you agree to indemnify the general contractor, owner, architect and any of their agents regardless if it is the fault of someone else. Reading contracts is not fun folks, but reading one and making an addendum to address killer clauses in a contract can be the only difference in you surviving and not surviving in today’s world of commercial glazing. If you do not feel confident to read and write your own addendums, find a good and confident contract attorney and let him review your subcontract and write your addendum. I can promise you it will be the most economical money you ever spent.

After you have worked the changes and conditions of your subcontract out with the general contractor, then your project manager can begin in earnest with the required submittals and samples required to gain all approvals and production of product can then commence once all approvals are in hand. Once products are fabricated and assembled, the installation of product can commence in the field.

I learned a long time ago in this business, you are only as good as the guys you have in the field to install and erect the systems. They can make you or break you. With a projected need of some 7,000 new glaziers by the year 2022 here in the United States, we as an industry are going to be severely challenged in obtaining this level of people. This is where the rubber meets the road!

Until Next Time!

Woody Watters
SEGA Chairman
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Please submit your news releases, articles and comments
for this publication to the SEGA office, attention: Julie,
231 West Bay Avenue, Longwood, FL 32750–4125.
Advertising Space is also available. Please call the SEGA
office at (407) 831–7342 for current rates and information.

SOUTHEAST GLASS ASSOCIATION
CALENDAR OF EVENTS
2014

September
11........................Design & Building Industry Mixer,
Ember in Orlando, FL
9–11..............................GlassBuild America,
Las Vegas Convention Center in Las Vegas, NV
10–12........CILB Board of Director’s and Committee
Meetings, The Omphoy Ocean Resort,
Palm Beach

October
8–10........CILB Board of Director’s and Committee
Meetings, Embassy Suites Tampa/USF, Tampa
TBA............Glass & Glazing Specialty License Exam

November
12....................SEGA Board of Director’s Meeting
Conference, Call
12–14........CILB Board of Director’s and Committee
Meetings, Embassy Suites Orlando – North,
Altamonte Springs
Beware . . . All Tax Exempt Purchases are not the Same
By R. Bruce Kershner

The Southeast Glass Association (SEGA) recently contacted the Department of Revenue (DOR) concerning exemptions from Florida’s sales tax on the purchase of construction materials using an unconventional method on certain projects. We contacted DOR and have received advice from DOR in the form of a Letter of Technical Advice (LTA) (please see letter on pages 11, 12, 13 and 14 in this issue).

The following information is being provided to you for your information and is based on the LTA, as well as applicable statutes and Florida Administrative Code (F.A.C.). The information is being provided to SEGA members to assist them with Florida’s complicated tax rules.

Let’s start with the basics. The general rule is that under Florida law, real property contractors and subcontractors are the ultimate consumers of materials they use in the performance of a real property construction contract and owe sales or use tax on their purchases of those items. Taking even a further step back, most real property improvement property begins as tangible personal property. All of the items such as the cement, wood, nails, etc. are tangible. It is not until the cement is poured and the wood/bricks are erected does the tangible property become real property. Therefore, whether it is the contractor, subcontractor, or end-consumer, the last person to touch or own the property in its tangible state owes the sales or use tax.

However, there are exceptions to the rule. Florida law allows the state or federal government to buy the goods and services sales tax-free on a public works project if the government purchases the taxable item directly from the vendor and certain procedures are followed. This direct purchase by the government is referred to in the industry as an owner-direct purchase (ODP). To be entitled to purchase materials tax exempt for a public works project, a government entity is required to issue a Certificate of Entitlement to each vendor and the government entity’s contractor to affirm that the tangible personal property purchased from that vendor will go into or become a part of a public work. Most SEGA members are probably familiar with this program.

Recently, a SEGA member discovered other entities which may be entitled to goods and services sales tax-free. The Navy Federal Credit Union, the world’s largest credit union, is building new facilities in Pensacola. The credit union is neither financed nor owned by the government; however, they were seeking to purchase goods and services sales tax-free. SEGA inquired of DOR if the Navy Federal Credit Union is not financed or owned by the government is there another exemption under Chapter 212 that would allow them to purchase materials directly and not pay sales tax?

We were surprised to learn that federally chartered credit unions are exempt from state and local tax under the statutes of the United States. Both state and federally chartered credit unions qualify for what is known as a Consumer’s Certificate of Exemption, which allows tax-exempt purchases of tangible personal property used in carrying on exempt entities’ nonprofit activities including construction material. The exemption cannot be used by any other entity and payment for the tangible personal property must be made with the exempt entity’s funds (direct payment between owner and Vendor). See Rule 12A-1.038, F.A.C., s. 213.12(2), F.S., and Form DR-5, Application for Consumer’s Certificate of Exemption.

Since this is not an exempt governmental entity engaged in a public works contract, Rule 12A-1.094, F.A.C., and its various requirements is not applicable. Further examination of s. 213.12, F.S., finds that banks and trust companies also qualify for exemption from state and local tax.

To summarize, a credit union holding a Consumer Certificate’s of Exemption can purchase tangible personal property exempt from tax if the provisions of Rule 12A-1.038, F.A.C., are satisfied. Documentation should be maintained to show that the tangible personal property was purchased by (sold to) the exempt entity, such as:

- Copies of purchase orders, invoices and receipts issued directly to the credit union vendor and proof that payment was made with credit union funds.
- Documentation that the credit union took title and possession of all materials it purchased before they were incorporated into real property.
- Documentation that the credit union assumes all
risk of loss on all materials purchased, and the credit union bears the cost of all insurance on all materials purchased.

A contractor may be hired to install the materials purchased by the credit union from a third party without incurring a liability for the sales tax on such materials. However, the contractor would owe tax on any tangible personal property it fabricates (Fabrication Tax) or supplies (purchases) and installs.

This article is based on a Department of Revenue (DOR) Letter of Technical Advice received in the SEGA office in response to facts and circumstances provided to DOR of a specific situation, and it does not constitute the official position of the DOR. Rather, this letter represents the opinion of the writer only. The information is being provided to SEGA members to assist them with Florida’s complicated tax rules and should not be considered a legal opinion. SEGA encourages you to consult with your attorney and/or CPA.

When Not To Pay a Local Business Tax
By R. Bruce Kershner

A Local Business tax is a miscellaneous tax imposed by local governments in Florida. Payment of the Local Business Tax allows you the right to do business in that county or municipality and is paid annually with the fiscal year beginning October 1 through September 30. This is a tax, not a license or competency card. Many contractors throughout the state may be unwittingly paying for a local business tax when they don’t have to. The following will give you a history of the tax as well as exemptions from taxation for certain businesses.

Chapter 205, Florida Statute, provides that the governing body of a county may levy, by appropriate resolution or ordinance, a business tax for the privilege of engaging in or managing any business, profession or occupation within its jurisdiction. Most counties and municipalities in Florida elected to collect Local Business Taxes (formerly known as Occupational License) when the state turned it over to local governments in 1972. In 2006, the Florida legislature renamed the Local Occupational License Tax to Local Business Tax (Chapter Law 2006–152). The change was made because the legislature found the reference to an occupational license was confusing to consumers and was not the correct characterization of the tax. It further found that unscrupulous persons presented a local occupational license to consumers as proof of competency to perform various repairs and service. Consumers were being victimized by these representations. By changing the name of the tax issued by local governments, the legislature believed it would go a long way in eliminating some fraudulent misrepresentation of this tax.

In 1992, s. 205.065, F.S., was created which provided that the local jurisdictions could not charge businesses regulated under the Department of Business and Professional Regulation (DBPR) a local business tax simply because the business was performing work in that jurisdiction. Instead, the ability to charge a local business tax was to be conditioned on having a place of business located within that jurisdiction. This means that a glass and glazing contractor, for instance, located in Orange County, could not be charged a business tax by Seminole County simply because the contractor performs work in that jurisdiction. In 1999, the Florida legislature further amended that section of law (Chapter Law 99–254) to provide that a contractor who has been subjected to an unlawful levy of a business tax may challenge the local government’s actions. If the contractor prevails, they are entitled to recover his or her reasonable attorney’s fees.

In conclusions, be sure you’re not paying local governments a local business tax that they are not entitled to under Florida law. Don’t be coerced by local governments that demand you pay before you play . . . know the law.

Below is a copy of s. 205.065, F.S., for your reference.

205.065 Exemption; nonresident persons regulated by the Department of Business and Professional Regulation.—If any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation has paid a business tax for the current year to the county or municipality in the state where the person’s permanent business location or branch office is maintained, no other local governing authority may levy a business tax, or any registration or regulatory fee equivalent to the business tax, on the person for performing work or services on a temporary or transitory basis in another municipality or county. Work or services performed in a place other than the county or municipality where the permanent business
In Memory of  
Richard Charles  
"Dick" Petrie  

December 11, 1945 - July 30, 2014

We are deeply saddened to inform you that Richard “Dick” Charles Petrie, 68, of Longwood, Florida, passed away on Wednesday, July 30, 2014. He was born December 11, 1945 in Fort Wayne, Indiana and moved to Central Florida 32 years ago from Indiana. Dick was a Contract Manager for Architectural Glass Services for 20 years, and he was a Veteran of the U.S. Marine Corps.

Through his employment with Architectural Glass Services, Dick served on the Southeast Glass Association (SEGA) Board of Directors from 2010 to 2013. He served as Secretary/Treasurer in 2010, Vice Chairman in 2011, and President in 2012 and 2013. While serving on the SEGA Board, Dick also served on the Executive Committee from 2010–2013; Budget Committee from 2010–2013; Legislative Committee from 2009–2013; Programs/Events from 2009–2013 of which he was Co–Chair in 2009 and Chair in 2012 and 2013; Membership from 2010–2013 of which he was chair all of those years; Regional Meetings Committee from 2009–2010; and Golf Tournaments Committee from 2012–2013.

Mr. Petrie is survived by his loving wife, Diane Petrie of Longwood, Florida; children, Matthew Petrie, Michael Petrie and Brandi Jaber; 3 grandchildren.

Our thoughts and prayers are with the Petrie family and friends.

To send flowers or a memorial gift to the family of Mr. Richard Charles Petrie, please visit the Loomis Funeral Home Sympathy Store or go to http://www.loomisfuneralhomes.com/tishow/obituaries/Richard-Petrie/#!/Obituary.
location or branch office is maintained may not be construed as creating a separate business location or branch office of that person for the purposes of this chapter. Any properly licensed contractor asserting an exemption under this section who is unlawfully required by the local governing authority to pay a business tax, or any registration or regulatory fee equivalent to a business tax, has standing to challenge the propriety of the local government’s actions, and the prevailing party in such a challenge is entitled to recover a reasonable attorney’s fee.

History.—s. 32, ch. 92–203; s. 11, ch. 94–18; s. 1484, ch. 95–147; s. 6, ch. 99–254; s. 18, ch. 2006–152.

CDC Report on OSHA’s Review of Heat–Related Enforcement Cases Highlights Need for Acclimatization to Prevent Worker Deaths
The Centers for Disease Control and Prevention issued a report on the Occupational Safety and Health Administration’s review of 20 heat–related enforcement cases from 2012 to 2013. OSHA’s analysis, described in the CDC’s Morbidity and Mortality Weekly Report, suggests that the primary risk factor for heat fatalities is the lack of acclimatization programs.

Of the 13 enforcement cases that involved worker fatalities, nine of the deaths occurred in the first three days of working on the job, four of them occurring on the worker’s first day. In all 20 cases, heat illness prevention programs were found to be incomplete or absent, and no provision was made for acclimatizing new workers to the heat. Acclimatization is a critical part of preventing heat illnesses and fatalities, and workers should gradually build up workloads and exposure to heat by taking frequent breaks for water and rest in shade or air conditioning.

OSHA’s national Campaign to Prevent Heat Illness in Workers, now in its fourth year, raises awareness among workers and employers about the risks for heat–related illness or death and provides tools to help prevent them. The agency’s review found that the core elements of its campaign, “Water. Rest. Shade.,” remain critical components of a comprehensive heat illness prevention program that can help save workers’ lives. It is also recommended that employers have prevention programs that include oversight, hazard identification, a formal acclimatization program, modified work schedules as necessary, training, monitoring for signs and symptoms and emergency planning to prevent heat–related fatalities.

OSHA has a free application for mobile devices that enables workers and supervisors to monitor the heat index at their work sites. The app displays a risk level for workers based on the heat index, as well as reminders about protective measures that should be taken at that risk level. Since its 2011 launch, approximately 160,000 users have downloaded the app. For more information and resources in English and Spanish see www.osha.gov/heat.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

OSHA Extends Comment Period on Proposed Rule to Improve Tracking of Workplace Injury and Illnesses
The Occupational Safety and Health Administration announced it will extend the comment period on
the proposed rule to improve tracking of workplace injuries and illnesses to October 14, 2014. The proposal, published on November 8, 2013, would amend the agency’s recordkeeping regulation to add requirements for the electronic submission of injury and illness information that employers are already required to keep.

During the public meeting held on the proposal, many participants expressed concern that the proposal may create motivation for employers to under-record injuries and illnesses, since each covered establishment’s injury and illness data would become publicly available on OSHA’s website. Participants also expressed concern that the proposal would lead to an increase in the number of employers who adopt practices that discourage employees from reporting recordable injuries and illnesses. OSHA is concerned that the accuracy of the data collected under the new proposal could be compromised if employers adopt these practices.

“OSHA wants to make sure that employers, employees and the public have access to the most accurate data about injuries and illnesses in their workplaces so that they can take the most appropriate steps to protect worker safety and health,” said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels.

Therefore, OSHA is soliciting comments on whether to amend the proposed rule to:

1. require that employers inform their employees of their right to report injuries and illnesses;
2. more clearly communicate the requirement that any injury and illness reporting requirements established by the employer be reasonable and not unduly burdensome; and
3. provide OSHA an additional remedy to prohibit employers from taking adverse action against employees for reporting injuries and illnesses.

Individuals interested in submitting comments may do so electronically at http://www.regulations.gov, the federal e-Rulemaking Portal. Comments may also be submitted via mail or facsimile. See the Federal Register notice for details.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

OSHA, Federal Motor Carrier Safety Administration, Sign Agreement Strengthening Protections for Workers from Coercion, Retaliation

The U.S. Department of Labor’s Occupational Safety and Health Administration and the U.S. Department of Transportation’s Federal Motor Carrier Safety Administration have signed a memorandum of understanding to strengthen the coordination and cooperation between the agencies regarding the anti-retaliation provision of the Surface Transportation Assistance Act. The memorandum allows for the exchange of safety, coercion and retaliation allegations, when received by one agency, that fall under the authority of the other.

The STAA protects drivers and other individuals working for commercial motor carriers from retaliation for reporting or engaging in activities related to certain commercial motor vehicle safety, health or security conditions.

“Commercial vehicle drivers who report injuries, hazards and illegal work practices should not fear retaliation for speaking out about unsafe work conditions,” said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. “Through this agreement, we are sending a clear message that silencing workers who try to do the right thing is unacceptable for workers and also unsafe for the public.”

“This strengthened partnership with OSHA extends our inter-agency collaboration specifically to include
the sharing of reports of alleged coercion —- companies forcing or intimidating truck or bus drivers to violate federal safety regulations,” said FMCSA Administrator Anne S. Ferro. “Pressuring drivers to stay behind the wheel beyond their hours-of-service limits, or to disregard other federal safety rules, seriously jeopardizes the safety of every traveler on our highways and roads. Commercial truck and bus companies that knowingly endanger the motoring public, or retaliate against whistleblowing employees, will be prosecuted to the fullest extent of the law.”

OSHA and FMCSA each play a specialized role in protecting the safety of commercial drivers and of the motoring public. OSHA investigates employee complaints of retaliation by commercial truck and bus companies. FMCSA is responsible for regulating both industries and —- along with its state law enforcement partners —- ensuring company and driver compliance with federal safety regulations, including driver on-duty and driving time limits to prevent fatigue, commercial driver’s licenses rules, medical qualifications, drug and alcohol testing, hazardous materials safety standards and others.

In the last nine years, OSHA has processed more than 2,800 cases under STAA. Recently, OSHA ordered an Iowa waste removal company to reinstate a driver and pay the employee more than $123,000 in compensation after the company terminated the driver for raising safety concerns over company routes that violated Department of Transportation regulations, potentially causing serious injury to the worker, co-workers or the public. Read the press release on that case for more information.

Under the MOU, FMCSA will refer employees who complain of retaliation to OSHA, and OSHA will provide FMCSA with copies of complaints filed and findings issued under STAA. The agencies will report to each other annually on information shared during the previous year. The MOU also provides that FMCSA will process OSHA requests for information from various FMCSA databases.

OSHA enforces the whistleblower provisions of the Occupational Safety and Health Act and 21 other statutes protecting employees who report violations of various workplace, commercial motor vehicle, airline, nuclear, pipeline, environmental, railroad, public transportation, maritime, consumer product, motor vehicle safety, health care reform, corporate securities, food safety and consumer financial reform regulations. Additional information is available at whistleblowers.gov.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA’s role is to ensure these conditions for America’s working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

The public, commercial drivers, motor carriers and other industry members may file a safety, service or discrimination complaint against a household goods moving company, bus or truck company, including hazardous materials hauler or a cargo tank facility, by calling toll free 1-888-DOT-SAFT (1–888–368–7238) from 9:00 a.m. to 7:00 p.m., Monday through Friday, Eastern Time. Complaints may also be submitted through FMCSA’s National Consumer Complaint website at http://nccdb.fmcsa.dot.gov.

FMCSA was established as a separate administration within the U.S. Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999. Its primary mission is to reduce crashes, injuries and fatalities involving large trucks and buses. For more information on FMCSA’s safety programs and activities, visit www.fmcsa.dot.gov.

CILB Update
ADVERTISING: Signs to Social Media, License Numbers Required!
Advertising is important to Florida contractors and can make the difference between a great business year and just making ends meet. Florida contractors have many new ways of promoting their businesses with the increased use of internet websites and the advent of social media technologies. As advertising evolves, it is important for Florida contractors to remember that their license number must be included in all offers of service, bids, business proposals, contracts or advertisements, regardless of the medium. Pursuant to Rule 61G4-12.011, F.A.C., advertisements include any electronic media including Internet sites. So please remember to include your license number on your websites, social media pages and other advertisements.

If you have any questions regarding advertising
requirements please review the Construction Industry Licensing Board’s FAQs or you may contact the Department’s Customer Contact Center at (850) 487–1395.

**Not a Member of SEGA?**

Are you receiving the Glass Facts but are not a member of SEGA? Need help with the glass and glazing licensing process? Join SEGA today for as low as $225 per year. Pay full year dues now for 2015, and get the rest of 2014 free.

To take advantage of this pricing today and join the southeast’s premier glass and glazing trade association, please click here for a SEGA Membership Application or contact the association office at (407) 831–7342 and request a membership application.

**Division of Workers’ Compensation Offers Free Classes**

The Florida Department of Financial Services, Division of Workers’ Compensation, is offering free classes regarding Florida’s workers’ compensation laws and workplace safety to business owners, licensed contractors and employers.

Workers’ compensation topics covered include:

- Review of Key Statutory Definitions
- Contractor Responsibilities
- Exemptions
- Insurance Coverage Requirements
- Enforcement Provisions

Workplace safety topics presented by OSHA (U.S. Dept. of Labor, Occupational Safety and Health Administration) include:

- Direct and Indirect Costs
- Inspections
- Florida Fatalities

The following is a list of dates and times for future sessions.

**August 26, 2014**
Gainesville
9:00 a.m. – 12:00 noon
State of Florida Alachua Regional Service Center
14101 Northwest Highway 441, Conference Room 115
Alachua, FL 32615

**September 5, 2014**
Fort Lauderdale
9:00 a.m. – 12:00 noon
1400 West Commercial Boulevard, Suite 195
Fort Lauderdale, FL 33309

**September 10, 2014**
2:00 p.m. – 3:00 p.m. EST
Workers’ Compensation
WEB Based class

**September 11, 2014**
2:00 p.m. – 3:00 p.m. EST
Workplace Safety
WEB Based class

**September 16, 2014**
Orlando
9:00 a.m. – 12:00 noon
State Office Building
Hurston Complex
400 West Robinson Street, North Tower, Conference Room N–101
Orlando, FL 32801

**October 7, 2014**
Miami
9:00 a.m. – 12:00 noon
State of Florida Rhode Building
401 N.W. 2nd Avenue, South Tower, Room S–123
Miami, FL 33128

**October 8, 2014**
2:00 p.m. – 3:00 p.m. EST
Workers’ Compensation
WEB Based class

**October 9, 2014**
2:00 p.m. – 3:00 p.m. EST
Workplace Safety
WEB Based class
The Division of Workers’ Compensation is an authorized provider (Provider Number: 0004354) for continuing education purposes through the CILB. Course Number: 0010118 – one hour satisfies the workers’ compensation requirement and Course Number: 0010630 – one hour satisfies the workplace safety requirement.

Advanced registration is required. The form is available on the Division’s website at www.myfloridacfo.com/WC. For additional information, e-mail bocseminars@MyFloridaCFO.com, or call (813) 221–6518.
August 25, 2014

R. Bruce Kershner, President
R. Bruce Kershner Company
231 West Bay Avenue
Longwood, FL 32750-4125

Re: Letter of Technical Advice – LTA 14A-789
Sales and Use Tax-Construction Material Purchases
Statute: Section 212.08, F.S.
Rules: 12A-1.038, 12A-1.043, 12A-1.051, 12A-1.094, F.A.C.

Dear Mr. Kershner:

Pursuant to Rule 12-11.003, F.A.C., taxpayers may seek informal written technical advice from the Department of Revenue. This advice is issued in the form of a Letter of Technical Advice (LTA). This LTA is being issued in response to your written request for informal guidance of June 4, 2014, concerning the purchase of construction materials. Please note that this LTA constitutes the opinion of the writer only and does not represent the official position of the Department.

**Stated Facts and Requested Advisement**

Your email of May 28, 2014, states in pertinent part:

One of my clients in Pensacola is a subcontractor on the new Navy Federal Credit Union offices (main offices in Merrifield, VA). The General contractor has incorporated into the contract a requirement for the subcontractor to participate in the Owner’s Direct Purchase (ODP) program so that the owner, Navy Federal Credit Union, may achieve sales tax savings. I have attached a copy of Section E of the contract with item 16 highlighted. I have also attached a copy of a document regarding Chain of Custody. It’s my understanding that ODP programs are designed to allow government entities to buy goods and services tax-free when the government entity makes payment directly to the vendor. It does not appear to me that the Navy Federal Credit Union would fit that description. Could you review the attached and provide me with comments whether Navy Federal Credit Union would qualify under the ODP exemption... if not is there any sales tax exemption that would apply to them[?].

Child Support Enforcement – Ann Coffin, Director
General Tax Administration – Maria Johnson, Director
Property Tax Oversight – James McAdams, Director
Information Services – Carlin Kutlukohn, Director

www.myflorida.com/dor
Tallahassee, Florida 32399-0100
In a follow up e-mail of June 4, 2014, you state:

...I have additional information on the Navy Federal Credit Union project in Pensacola that I wanted to share with you and hopefully you can provide some guidance that I can share with my client who is a subcontractor on the project. First, I want to say that we fully understand that any materials the subcontractor purchases and incorporates into the building [are] taxable, whether the project is a public works project pursuant to 12A-1.094 F.A.C. or a privately funded project. Further, we understand when and only when the owner is a governmental entity and purchases the material directly pursuant to 12A-1.094 can the owner utilize the Owner Direct Purchase (ODP) program.

With that said, my client has shared a copy of 12A-1.094 F.A.C. with the general contractor. He questioned whether Section E, Item 16 of the contract was applicable for this project. He received a response from the general contractor that this project is not financed or owned by the government, and as they understand it, is not classified as “Publics Works” contract. Here’s the dilemma, the owner, Navy Federal Credit Union, intends on direct purchase of certain materials that the subcontractor will need to complete his work. The general contractor has indicated to the subcontractor that they will provide a Chain of Custody form (see attached) which they believe is the solution to the subcontractor’s concerns. Bottom line, my client, the subcontractor, does not want to be held liable for any tax, penalty, and interest if Navy Federal Credit Union does not meet the criteria.

**Here’s the question**, if Navy Federal Credit Union is not financed or owned by the government is there another exemption under Chapter 212 that would allow them to purchase materials directly and not pay sales tax? We have not been able to determine if they are a 501(c)(3) nonprofit entity. I understand that those nonprofits receive a certificate from DOR which then must be presented to the merchant when making purchases. (Emphasis added.)

**Discussion and Response**

You ask if there is an exemption that would allow the Navy Federal Credit to purchase tangible personal property exempt from sales tax. Federally chartered credit unions are exempt from state and local tax under the statutes of the United States. Both state and federally chartered credit unions qualify for a consumer’s certificate of exemption, which allows tax-exempt purchases of tangible personal property used in carrying on exempt entities’ nonprofit activities. The exemption cannot be used by another entity and payment for the tangible personal property must be made with the exempt entity’s funds. See Rule 12A-1.038, F.A.C., s. 213.12(2), F.S., and Form DR-5, Application for Consumer’s Certificate of Exemption.

With regard to real property contracts, Rule 12A-1.051, F.A.C. specifically indicates that contractors and subcontractors are the ultimate consumers of all materials and supplies used to complete real property contracts and owe sales and/or use tax on these materials and supplies.
They are not deemed to be selling the tangible personal property that they install and which become a part of realty. Additionally, subsection (15) of Rule 12A-1.051, F.A.C., provides that contractors who perform lump sum, cost-plus, guaranteed price, or time and materials contracts for nongovernmental entities that are exempt from sales taxes are taxable on materials the contractor purchases for use in performing those contracts. Such contractors are not permitted to use the consumer's certificate of exemption issued to the exempt entity in order to purchase materials for the contract exempt from taxes. The entity's exempt status is not relevant, because it applies only to sales of tangible personal property to the entity, not to the contractor. The contractor, not the exempt entity, is the taxable consumer of the materials the contractor purchases to use in performing that contract. The fact that an exempt entity will bear the economic burden of the taxes paid by the contractor in the form of a higher contract price does not change the contractor's tax liabilities.

To answer your question, a credit union holding a consumer certificate’s of exemption can purchase tangible personal property exempt from tax if the provisions of Rule 12A-1.038, F.A.C., are satisfied. Documentation should be maintained to show that the tangible personal property was purchased by (sold to) the exempt entity, such as:

- Copies of purchase orders, invoices, and receipts issued directly to the credit union vendor and proof that payment was made with credit union funds.

- Documentation that the credit union took title and possession of all materials it purchased before they were incorporated into real property.

- Documentation that the credit union assumes all risk of loss on all materials purchased and the credit union bears the cost of all insurance on all materials purchased.

A contractor may be hired to install the materials purchased by the credit union from a third party without incurring a liability for the sales tax on such materials. However, the contractor would owe tax on any tangible personal property it fabricates or supplies and installs.

As noted in the first paragraph of this letter, this LTA is being issued in response to the disclosed facts and circumstances of your specific situation, and it does not constitute the official position of the Department. Rather, this letter represents the opinion of the writer only. If you wish an official binding statement, you may file a written request for a Technical Assistance Advisement. Rule Chapter 12-11, F.A.C., outlines the procedure to follow in making this request. This rule chapter of the Florida Administrative Code can be found at http://www.myflorida.com/dor/law/. Any request for a Technical Assistance Advisement should be sent to Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida, 32314-7443.
If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-6361.

Sincerely,

Michael T. Cavanaugh
Tax Law Specialist
Technical Assistance & Dispute Resolution

Record ID: 170854
DESIGN & BUILDING
INDUSTRY MIXER

LET'S MIX BUSINESS WITH PLEASURE!

We are gathering over 40 design and building industry associations' members for an after-hours social designed for networking. Over 300 people are expected to attend this free cooperative event!

PLEASE JOIN US!
WHEN: SEPTEMBER 11, 2014
TIME: 5:30 – 7:30 P.M.
WHERE:
EMBER, 42 W. CENTRAL BLVD.
ORLANDO, FL 32801

• AGC of Greater Florida, Inc.
• American Institute of Architects-Orlando Chapter
• American Society of Civil Engineers
• American Society of Heating, Refrigerating and Air-Conditioning Engineers
• American Society of Professional Estimators
• Associated Builders and Contractors, Central Florida Chapter
• Building Owners and Management Association
• Central Florida Association of Commercial Realtors
• Central Florida Chapter, National Electrical Contractors Association
• Central Florida Chapter Society for Marketing Professional Services
• Central Florida Chapter of the Surveying and Mapping Society
• CMAA Florida Chapter
• Commercial Real Estate Women
• Congress for the New Urbanism – Orlando
• Construction Specifications Institute
• The Construction Underground
• Design-Build Institute of America Florida Region
• Downtown Orlando Partnership
• EAF-Employers Association Forum
• Florida Association of Electrical Contractors
• Florida Chapter American Society of Landscape Architects
• Florida Concrete and Products Association
• Florida Crane Owners Council
• Florida Fire Sprinkler Association
• Florida Planning & Zoning Association
• Florida Restaurant and Lodging Association
• Florida Solar Energy Industries Association
• The Florida Swimming Pool Association
• Florida Wall & Ceiling Contractors Association
• Greater Orlando Builders Association
• Legal Marketing Association Southeastern Chapter
• Manufacturers Association of Central Florida
• Metro Orlando Economic Development Commission
• NAIOP
• National Association of Women Business Owners
• National Association of Women in Construction, Greater Orlando Chapter
• Orlando Metro Section Florida Chapter of the American Planning Association
• Professional Construction Estimators Association of America – Orlando Chapter
• Society for Design Administration
• Southeast Glass Association
• Themed Entertainment Association
• The Underground Contractors Association of Mid-Florida
• Underground Utility Contractors of Florida
• Urban Land Institute Central Florida
• US Green Building Council, Central Florida Chapter

Please bring non-perishable food items for Second Harvest Food Bank

Free drink ticket to the first 100 people to bring an item for Second Harvest Food Bank