



QUESTION: As a registered sales tax dealer, Taxpayer is asking whether it can extend its resale certificate to purchase hand soaps, toilet paper, paper towels, trash can liners, disposable toilet seat covers, and feminine hygiene products, tax exempt for purposes of resale to its customers as separate (taxable) transactions from the sale of taxable cleaning services.

ANSWER: Where Taxpayer can clearly demonstrate that hand soaps, toilet paper, paper towels, trash can liners, disposable toilet seat covers, and feminine hygiene products are being sold to the customer as a separate line item transaction, from the charges for cleaning services, Taxpayer will be allowed to purchase these products tax exempt as a sale of tangible personal property for resale.

January 28, 2019

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RE: Technical Assistance Advisement 19A-004
XXXX "Taxpayer")
XXXX
Sales and Use Tax
Taxability of Products Used to Provide Cleaning Services.
Sections: 212.02(14)(a), (15),(16),(20), 212.05(1)(a)1.a, and 212.05(1)(i), Florida
Statutes (F.S.)
Rules: 12A-1.0091(1)(a), (8), and 12A-1.0161(5), Florida Administrative Code (F.A.C.)

Dear Sir:

This letter is in response to your request dated May 9, 2014, for issuance of a Technical Assistance Advisement ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of cleaning services that include sales of tangible personal property. An examination of your request has established you complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

FACTS

Taxpayer is a Florida corporation which is in the business of providing taxable cleaning services to commercial establishments and state and local governments in the State of Florida. Taxpayer contracts with the owners, landlords, or managers (each a "customer") of commercial and

government buildings to provide cleaning services. Taxpayer charges a flat contract rate, calculated on a per square foot basis for its cleaning services. The rate will vary, depending upon the amount and type of cleaning services to be provided and whether the Taxpayer will supply the customer with certain items of tangible personal property in addition to providing the cleaning services. Customers have the option to purchase these items of tangible personal property from Taxpayer or another vendor.

The items of tangible personal property for which Taxpayer claims a customer may elect to buy from Taxpayer include items that can be identified as (1) those placed in designated receptacles for use by the customer, and (2) those directly used by Taxpayer in the specific performance of cleaning services. The items that are placed in receptacles by Taxpayer include hand soaps, toilet paper, paper towels, trash can liners, disposable toilet seat covers, and feminine hygiene products (hereafter "XXXX A"). The other items consumed by Taxpayer are exclusively used by Taxpayer in the specific performance of providing cleaning services, which include, but are not limited to, chemicals, polishes, and cleaning solutions (hereafter "XXXX B"). Taxpayer applies these products to various surfaces (i.e., floors, walls, counters, restroom stalls, fixtures, etc.) for cleaning and polishing purposes per Taxpayer's contract with the customer to provide cleaning services.

Taxpayer asserts it pays tax to its vendor for all items purchased which are drop shipped directly to a customer's building. The items are then stored in the customer's cleaning closet(s) for exclusive use in the building. Depending on the customer's purchasing choice to include or exclude a purchase from Taxpayer of the XXXX A or XXXX B products, Taxpayer will use one of the following three methodologies to charge the customer:

1. Cleaning Services and resale items are separated into two-line items and each line item is calculated by a square foot rate in the same invoice.
2. Cleaning Services and resale items are combined into single calculation based on a square footage rate in the same invoice.
3. Cleaning Services and resale items are billed in two (2) separate invoices. Cleaning services are billed based on a calculated square footage rate. Resale items are itemized in a separate invoice based on a specified sales price.

Taxpayer asserts that it also charges and collects sales and use tax for all cleaning services and all items it considers to be resale items. In addition, Taxpayer states that it maintains a record of the quantities and the cost of the resale items that are sold/provided to each customer on a monthly basis.

Taxpayer asserts it is not questioning the taxability of its purchases of cleaning equipment and tools used in its cleaning business, which are items not included in XXXX A or XXXX B, such as mops, vacuum cleaners, brooms, rags, dust and scrubbing brushes, etc. Taxpayer states it recognizes and agrees that it is the ultimate consumer of these items.

REQUESTED ADVISEMENT

As a registered sales tax dealer, Taxpayer is asking whether it can extend its resale certificate to purchase tax exempt both the XXXX A products and the XXXX B products for purposes of resale to its customers as separate (taxable) transactions from the sale of taxable cleaning services.

APPLICABLE LAW AND DISCUSSION

Section 212.05(1)(i)l.b., F.S., and Rule 12A-1.0091(1)(a), F.A.C., provide that nonresidential cleaning services as enumerated in NAICS National Number 561720 of the North American Industry Classification System, published 2007, are subject to tax. Nonresidential cleaning services are those services rendered to maintain the clean and sanitary appearance and operating condition of nonresidential building interiors. NAICS National Number 561720, janitorial services, includes cleaning offices, shopping centers, and restrooms.

Section 212.05(1)(i)4., F.S., requires a separate identification of sales of taxable services from nontaxable services and other items that are not taxable, only if the seller or service provider intends to avoid collecting and remitting sales or use tax on some portion of the total invoice amount. Here, Taxpayer desires to structure its transactions where there is a separate charge for the sale of taxable cleaning services from the charge for taxable sales of tangible personal property.

Taxpayer is of the opinion that the items of tangible personal property identified in both XXXX A and B, are eligible for tax treatment as retail sales of tangible personal property and are distinguishable from its sale of nonresidential cleaning services. As a retail sale, Taxpayer would be eligible to purchase products from both XXXX A and B from its vendor tax exempt through usage of its dealer's resale certificate. To differentiate the two distinct taxing privileges and derive the tax treatment requested, Taxpayer asserts the customer can freely elect to acquire its cleaning services with or without a purchase from product XXXX A or B. Taxpayer charges its Customer more if the Customer decides to purchase products from either XXXX as opposed to a lesser charge if the Customer elected not to make a purchase from the product groups. Further, Taxpayer specifically asserts sales of product from XXXX B should be treated as retail sales since they are also drop shipped directly to a specific customer and stored in that customer's closets for exclusive use in their building.

Taxpayer's position clearly questions the application of Rules 12A-1.0161(5), and 12A-1.0091(8), F.A.C., which designates the cleaning service provider (i.e., Taxpayer) as the ultimate consumer of items of tangible personal property purchased for use in connection with the performance of cleaning services.

The items described as XXXX A are not directly depleted and consumed by Taxpayer in the performance of its specific duties under its contractual obligation to provide taxable cleaning services. Thus, it is conceivable that Taxpayer is reselling these items to its customer. Taxpayer may resale products described as XXXX A because these products are placed in a designated receptacle for use by the customer. Likewise, since these products are not exclusive used by Taxpayer and depleted solely by Taxpayer in the performance of its specific duties under the

contract (i.e., cleaning service), it is also reasonable for these products to be resold to the customer.

Where Taxpayer separately states on the invoice or billing document a charge for Group A products, Taxpayer is demonstrating that these products are being sold to the customer. Taxpayer may purchase these items exempt as a sale or purchase for resale. This entails showing both the line item description and price of the products sold, separate from the charge for cleaning services. In these instances, Taxpayer may extend its resale certificate to its vendors (thus not being subject to tax) when purchasing XXXX A products.

In those instances where Taxpayer does not separately state the charge for XXXX A products on the customer's invoice or billing document, Taxpayer is liable for "use" tax on these purchases at the time of purchase. Taxpayer is not demonstrating that a "sale" has occurred. In these instances, Taxpayer is not making a separate sale of tangible personal property and Taxpayer is deemed the ultimate consumer of the (XXXX A) products.

Unlike the products described as XXXX A, Taxpayer is not reselling its products described as Group B and is the ultimate consumer of these products as conditioned by Rule 12A-1.0161(5). F.A.C. Taxpayer directly and exclusively use these products to wipe, polish, and clean the areas in the building; such as floors, walls, counters, restroom stalls, fixtures, and any other areas included under its contractual obligation to provide cleaning services. Taxpayer cannot claim that it is reselling products described as XXXX B given that Taxpayer unequivocally and undeniably is the end-user of these products.

CONCLUSION

Where Taxpayer can clearly demonstrate that XXXX A products are being sold to the customer as a separate line item transaction from the charges for cleaning services, Taxpayer will be allowed to purchase these products tax exempt as a sale of tangible personal property for resale.

However, Taxpayer must pay sales tax, or accrue and remit use tax on the purchase price paid for XXXX B products regardless of which billing method is used. Taxpayer is the ultimate consumer of these products which are exclusively and directly used by Taxpayer in the performance of a cleaning service.

This response constitutes a Technical Assistance Advisement under Section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in Section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of Section 213.22, F.S. Confidential information must be deleted before public disclosure. In

an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the Taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at 850-717-6729.

Sincerely,

Joseph D. Franklin III

Joseph D. Franklin III
Tax Law Specialist
Technical Assistance and Dispute Resolution

JDF3/
Control #: 169141