

SUMMARY

QUESTION:

Whether separately stated medical insurance charged as part of nonresidential cleaning services is subject to tax under Section 212.05(1)(i)1.b., F.S.

ANSWER: Separately stated medical insurance charged as part of nonresidential cleaning services is subject to tax under Section 212.05(1)(i)1.b., F.S. To allow Taxpayer to deduct the insurance premium paid would violate both the definition of “sales price” and “cost price”, which does not allow any deductions on account of the cost of labor or service costs.

June 17, 2010

XXX

Re: Subject: Technical Assistance Advisement (TAA) 10A-027
Sales and Use Tax – Nonresidential Cleaning
Sections 212.02, 212.05 and 212.08(7)(v), Florida Statutes (F.S.)
Rule 12A-1.0161, Florida Administrative Code (F.A.C.)
XXX (Taxpayer)
FEI #: XXX
Bus. Partner #: XXX

Dear XXX:

This is in response to your letter dated April 13, 2010, requesting this Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning nonresidential cleaning. An examination of your letter has established you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

Issue

Whether separately stated medical insurance charged as part of nonresidential cleaning services is subject to tax under Section 212.05(1)(i)1.b., F.S.

Facts

Taxpayer is a shopping mall in Florida that contracted with a contractor to provide professional janitorial and maintenance services. The contractor billed Taxpayer monthly for its cleaning services, and separately invoiced Taxpayer for medical insurance provided to its staff.

Taxpayer imposes a Code of Conduct to its janitorial vendors to ensure the vendors “respect fundamental human rights, to provide reasonable and healthy working conditions, and to treat their workforces fairly, with dignity and respect.” In order for the contractor to become

Taxpayer's janitorial vendors, the contractor must accept the general responsibilities and maintain the minimum standards set forth in the Code of Conduct. The Code of Conduct provides that the contractor must offer competitive compensation and the option of health care benefits to hourly janitorial staff assigned to Taxpayer's property.

Under the Code of Conduct, the cleaning contractor must provide their employees staffed at Taxpayer's property with the option of healthcare insurance at reasonable cost, and the benefit

plan and contribution terms must meet Taxpayer's standards for employee coverage and affordability. The Limited Medical Standards under the Code of Conduct provides that Taxpayer will reimburse the contractor 75% of the cost of each employee who elects acceptable coverage.

Requested Advisement

Taxpayer requests a determination whether or not the separately invoiced medical insurance is taxable as payments for nonresidential cleaning service.

Applicable Authority and Discussion

Section 212.05, F.S., provides that it is "the legislative intent that every person is exercising a taxable privilege who ... furnishes any of the things or services taxable under this chapter" Nonresidential cleaning is a taxable service, and the total sales price or cost price for the service is subject to sales tax. Section 212.05(1)(i)1.b., F.S., and Rule 12A-1.0161, F.A.C. "Sales price" is the total amount paid "without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever." Section 212.02(16), F.S. "Cost price" is similarly defined as the actual cost "without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever." Section 212.02(4), F.S.

According to the agreement, the contractor must provide optional health insurance to its employees for it to retain Taxpayer as a customer. By reimbursing the contractor 75% of the cost of each employee who elects acceptable coverage, Taxpayer decreases the contractor's cost of doing business and increases Taxpayer's cost price of the service. The cost price for the cleaning service is the monthly invoice amount for the cleaning services plus the medical insurance premium paid by Taxpayer; hence, the medical insurance premium paid by Taxpayer is subject to sales tax as part of the sales price of the cleaning service. To allow Taxpayer to deduct the insurance premium paid would violate both the definition of "sales price" and "cost price", which does not allow any deductions on account of the cost of labor or service costs.

Section 212.08(7)(v), F.S., exempts insurance services from sales tax. Hence, the insurance premium charged by the insurance company is not subject to sales tax. However, neither the cleaning contractor nor Taxpayer is engaged in the business of providing insurance services,

therefore, neither party qualifies for the exemption. Section 212.08(7)(v)4., F.S., further provides that this exemption does not apply to any service transaction taxable under Section 212.05(1)(i), F.S., such as the nonresidential cleaning service provided in this case.

Taxpayer cited Letter of Technical Advice (LTA) 07A-1432, issued on November, 29, 2007, to an unrelated taxpayer, in support of the view that the separately stated insurance premium is not subject to sales tax. However, as stated in the LTA, that letter is informal guidance that is the “opinion of the writer only and does not represent the official position of the Department.”

Conclusion

Separately stated medical insurance charged as part of nonresidential cleaning services is subject to tax under Section 212.05(1)(i)1.b., F.S.

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 that 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.

Sincerely,

Angel Sessions
Senior Tax Attorney
Technical Assistance and Dispute Resolution
(850) 922-4708

Record ID: 82133