



Executive Director
Marshall Stranburg

QUESTION: WHETHER TAXPAYER IS REQUIRED TO CHARGE SALES TAX TO ITS CUSTOMERS FOR HOOD CLEANING SERVICES.

ANSWER: THE CHARGE FOR HOOD CLEANING SERVICES IS NOT SUBJECT TO TAX.

September 5, 2014

RE: Technical Assistance Advise ment 14A-020
Sales and Use Tax
Taxability of Hood Cleaning Services
Section: 212.05(1)(i)l.a., Florida Statutes (F.S.)
Rules: 12A-1.0091 and 12A-1.051, Florida Administrative Code (F.A.C.)
XXX (herein "Taxpayer")
XXX

Dear XXX:

This letter is in response to your request dated March 12, 2014, for issuance of a Technical Assistance Advise ment ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of exhaust hood cleaning services. 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 in the business of cleaning and repairing nonresidential kitchen hood exhaust systems. This procedure includes cleaning the exhaust fan, grease hood filters, the hood, and associated duct work. There are no other areas cleaned or any other type of cleaning activity performed under the agreement between Taxpayer and its customer. When needed, Taxpayer will also make repairs or modifications to the hood system during a cleaning service.

Taxpayer's cleaning, repair and modification of an exhaust hood system is in compliance with the specifications of the National Fire Protection Association (NFPA) Standard 96 code. This is a standard that is developed for proper ventilation control and fire protection in commercial cooking environments.

Requested Advise ment

Whether Taxpayer is required to charge sales tax to its customers for hood cleaning services.

Applicable Law and Discussion

Section 212.05(1)(i), F.S., and Rule 12A-1.0091(1)(a), F.A.C, provide that nonresidential cleaning services are subject to sales tax. Nonresidential cleaning services are those services (not involving repair) rendered to maintain the clean and sanitary appearance and operating condition of a nonresidential building. Repairs made to real property are not covered under cleaning services. They are addressed in Rule 12A-1.051, F.A.C.

The exact language in s. 212.05(1)(i), F.S., that imposes sales tax on nonresidential cleaning services, is as follows:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who . . . furnishes any of the things or services taxable under this chapter . . .

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

* * *

(i)1 . At the rate of 6 percent on charges for all:

* * *

b. Nonresidential cleaning . . . and nonresidential pest control services (NAICS National Numbers 561710 and 561720).

2. As used in this paragraph, "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

* * *

The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. Nonresidential cleaning services that are subject to tax are classified under NAICS Number 561720. See also Rule 12A-1.0091, F.A.C.

Under current law, the imposition of tax on certain services is now based on the NAICS codes. The use of NAICS codes resulted from the 2009 Legislature's enactment of Chapter 2009-51, Laws of Florida, which became effective on July 1, 2009. This enactment changed the imposition of tax, previously based on Standard Industrial Classification (SIC) codes¹, to be based on the "NAICS" numbers. Impacted by this law change was the tax treatment of nonresidential exhaust hood cleaning services.

Prior to the 2009 law change, Industry Group No. 734, classified as "Services to Dwellings and Other Buildings," was deemed to contain services taxable under Chapter 212, F.S. Section 212.05(1)(i)2., F.S., previously stated that it was the intention of the Legislature to tax services of a type listed in SIC Industry Group No. 734. Within SIC Group No. 734 was chimney cleaning services.

Prior to revision of administrative Rule 12A-1.0091(1)(a), F.A.C, in January 2011, it was stated that chimney cleaning services were taxable as a nonresidential cleaning services. Hood cleaning services were not mentioned in the rule nor was there a specific classification within the SIC codes for this type

¹ SIC codes were previously the statistical classification standard underlying all establishment-based Federal economic statistics classified by industry, and the 1987 edition of the "Standard Industrial Classification Manual" was the prescribed Industry Group Classification source to determine whether certain services were taxable.

of service. However, based on the Department's research of the SIC codes, prior Department rulings held that hood cleaning services were considered akin to chimney cleaning services; thus, it was determined that hood cleaning services were also subject to sales tax under s. 212.05(1)(i)2., F.S.

Under rule promulgation, "chimney cleaning services" was removed from the list of taxable services in the rule. Such services were no longer included in the list of taxable services under the 2009 law enacting the use of NAICS codes; specifically NAICS Number 561720 applicable to nonresidential cleaning services. With revision of the rule, the Department reviewed the appropriate NAICS codes, and did not find a specific classification for "hood cleaning." The Department did find NAICS code 561790, for "duct cleaning services" and "ventilation duct cleaning services," which are categorized as "Other Services to Buildings and Dwellings." These services are similar to hood cleaning services. Since NAICS code 561790 is not listed as a taxable code under Florida law, it is now determined that exhaust hood cleaning services should also be interpreted as not being subject to sales tax.

Further, if an exhaust hood requires any type of repair, inclusive of maintenance or modification, the repair is also not subject to tax. The exhaust hood is considered real property and repairs to real property are not subject to tax. Therefore, any repairs made to the hood during cleaning will be treated as a real property improvement. Under Rule 12A-1.051, F.A.C., the real property contractor is the ultimate consumer of repairs made to real property. Therefore, the real property contractor is required to pay sales and use tax on its purchases of materials, supplies, parts, and any other taxable items used in the repair. The contractor should not charge the customer sales tax.

Conclusion

Taxpayer's charges to customers for cleaning and repairing nonresidential kitchen exhaust hood systems are not subject to sales tax.

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.

Sincerely,
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