QUESTION 1: IS THE CLEANING OF NONRESIDENTIAL KITCHEN HOOD EXAUST SYSTEMS SUBJECT TO FLORIDA SALES AND USE TAX?

ANSWER: NO, CLEANING OF NONRESIDENTIAL KITCHEN HOOD EXAUST SYSTEMS WERE DETERMINED TO BE EQUIVALENT TO “DUCT CLEANING SERVICES” AND “VENTILATION DUCT CLEANING SERVICES,” WHICH HAVE AN NAICS CODE THAT IS NOT LISTED AS A TAXABLE CLEANING SERVICE.

QUESTION 2: IS THE REPAIR OF NONRESIDENTIAL KITCHEN HOOD EXAUST SYSTEMS SUBJECT TO FLORIDA SALES AND USE TAX?

ANSWER: NO, NONRESIDENTIAL KITCHEN HOODS EXAUST SYSTEMS, SUCH AS THOSE DESCRIBED BELOW, ARE REAL PROPERTY. REPAIRS TO REAL PROPERTY ARE NOT SUBJECT TO SALES TAX.

QUESTION 3: WOULD INSPECTION ONLY OF NONRESIDENTIAL KITCHEN HOOD EXAUST SYSTEMS BE SUBJECT TO FLORIDA SALES AND USE TAX?

ANSWER: NO, CHARGES SOLELY FOR HOOD INSPECTION ARE NOT SUBJECT TO SALES TAX.

QUESTION 4: IS THE FIRE SUPPRESSION SYSTEM CONSIDERED REAL PROPERTY, TANGIBLE PERSONAL PROPERTY, OR A BURGLAR/FIRE ALARM COVERED UNDER RULE 12A-1.0092, F.A.C.?

ANSWER: REAL PROPERTY; THE FIRE SUPPRESSION SYSTEM IS ATTACHED TO THE BUILDING IN SUCH A WAY THAT IT BECOMES PART OF THE REAL PROPERTY.

QUESTION 5: WOULD AN INSPECTION ONLY OF A FIRE SUPPRESSION SYSTEM THAT WAS PURELY LABOR, WITH ABSOLUTELY NO TANGIBLE PROPERTY TRANSFERRED BE EXEMPT?

ANSWER: THE INSPECTION OF THE FIRE SUPPRESSION SYSTEM ALONE IS NOT SUBJECT TO SALES AND USE TAX.

QUESTION: IF THERE ARE PARTS REPLACED ON THE FIRE SUPPRESSION SYSTEM, IS THE ENTIRE INVOICE TAXABLE, PARTS ONLY TAXABLE, OR NOT TAXABLE AT ALL?
ANSWER: THE REPLACEMENT OF PARTS ON THE FIRE SUPPRESSION SYSTEM IS NOT TAXABLE.

September 16, 2015

RE: Technical Assistance Advisement – TAA 15A-009
Sales and Use Tax
Sections: 212.05 and 212.06, Florida Statutes (F.S.)

Dear XXXXX:

This letter is in response to your request dated XXXXX, 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 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

From Taxpayer’s request for technical assistance and subsequent email the facts are understood to be as follows:

Kitchen Hoods
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.

Fire Suppression System
Taxpayer’s business also includes the inspection and repair of fire suppression systems for protecting restaurant cooking appliances, hoods, and ducts. The system suppresses fires by spraying the plenum area, the filters, cooking surfaces, and exhaust duct system with a liquid fire suppressant.

Taxpayer has provided a diagram of an installed system. The diagram shows the liquid suppressant storage and release mechanism as mounted to the wall. The diagram also shows the piping, to deliver the fire suppressant, as running through the hood. Taxpayer has noted some systems may include accessories, including alarms and warning lights.
The fire alarm, fire suppression system, and hood are separate systems, typically serviced by separate technicians. The fire suppression system technician will check the dry contacts and, if an alarm is present, will verify the alarm panel received the signal. Alarm technicians are usually required to be licensed and “…do not have any responsibility to verify the proper operation or installation of the kitchen suppression system.”

Taxpayer has additionally provided a copy of a scope of work and a few sample invoices. The scope of work shown on the invoices does not contain any information pertaining to the inspection or repair of the fire alarm system. Taxpayer further advised that its contracts do not elaborate on the services it provides to its customers. However, Taxpayer did attach an agreement that explains the scope of the work it provides as it pertains to hood cleaning services.

**Requested Advisement**

1. Is the cleaning of nonresidential kitchen hood exhaust systems subject to Florida sales and use tax?

2. Is the repair of nonresidential kitchen hood exhaust systems subject to Florida sales and use tax?

3. Would inspection only of nonresidential kitchen hood exhaust systems be subject to Florida sales and use tax?

4. Is the fire suppression system considered real property, tangible personal property, or a burglar/fire alarm covered under Rule 12A-1.0092?

5. Would an inspection only of a fire suppression system that was purely labor with absolutely no tangible personal property transferred be exempt?

6. If there are parts replaced on the fire suppression system, is the entire invoice taxable, parts only taxable, or not taxable at all?

**Applicable Law**

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 … for all:

* * *

b. Nonresidential cleaning NAICS Number 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 to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. As noted above, nonresidential cleaning services that are subject to tax are classified under NAICS Number 561720. See also Rule 12A-1.0091, F.A.C.

"Real property" is defined in section 212.06(14)(a), F.S., as "the land and improvements thereto and fixtures ...." "Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty….” See section 212.06(14)(b). Rule 12A-1.051(3), F.A.C., provides the criteria for determining whether an item is a fixture. "Improvements to real property" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property. See section 212.06(14)(c).

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.

Section 212.05, F.S., provides detective, burglar protection, and other protective services NAICS numbers 561511, 561612, 561613, and 561521, are subject to sales tax. Additionally, Rule 12A-1.0092(2), F.A.C, provides that burglar or fire alarm or other security system devices monitoring and maintenance services are taxable. The monitoring or maintenance of alarm or security systems is a taxable service whether such systems are considered to be tangible personal property or a part of real property. The term “maintenance” includes “any inspection of an alarm or security system to confirm its proper working order.” The rule also states, in relevant part, that tax applies to “… services … rendered to minimize or prevent loss or damage to life, limb, or property and are of a kind typically performed by security or alarm system companies, or are those investigative services which are rendered to obtain evidence or other information … of a kind typically performed by detective or investigative agencies.”
Discussion & Conclusion

1. Taxability of Hood cleaning services.

Under Florida law, the imposition of tax on certain services is now based on the North American Industry Classification System (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, from Standard Industrial Classification (SIC) codes, to “NAICS” numbers. The use of NAICS numbers subsequently affected 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 of service. However, based on the Department’s research of the SIC codes and prior Department rulings, hood cleaning services were considered akin to chimney cleaning services; thus, it was determined that hood cleaning services were also subject to sales and use 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 is 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.

As noted above, NAICS code 561790 is not listed as a taxable code under Florida law; therefore, exhaust hood cleaning services should also be interpreted as not being subject to sales tax as a taxable cleaning service.

2. Taxability of hood repair services.

Exhaust hoods are physically attached to the building, which are part of the real property, and the hood is a necessary part of the building for its use in a commercial kitchen. Additionally, these hoods are part of a system that is expected to remain with the structure indefinitely. Therefore,
the hoods meet the qualifications as a fixture under section 212.06(14)(b), F.S., and any repairs made to the hood will be treated as a real property improvement. Real property improvement contracts, inclusive of maintenance or modification, are not subject to tax. Therefore, the hood repair service is not subject to sales tax. However, Taxpayer should pay tax on the materials and equipment it purchases for use in such contracts.

3. Taxability of inspection only.

Pure service transactions, such as hood inspections, that do not involve the sale of tangible personal property are not subject to tax under Florida law, unless specifically authorized in Chapter 212, F.S. Hood inspections alone do not fit within the enumerated taxable services in Chapter 212, F.S.; therefore, charges exclusively for hood inspections are not subject to sales and use tax.

4. Whether the fire suppression system is real property, tangible personal property, or a burglar/fire alarm system?

As noted above, the monitoring or maintenance of alarm systems is a taxable service whether such systems are considered to be tangible personal property or a part of real property. While the fire suppression system is designed to minimize loss of life, limb, or property, it is not the kind of service usually rendered by a security or alarm service. Instead, the system is similar to a sprinkler system. From the description provided, the fire suppression system is attached to the wall, and the pipes run in such a manner that the suppression system becomes part of the real property. Therefore, the fire suppression system is real property.

5. Whether the inspection of the fire suppression system with no tangible personal property being transferred is taxable?

As noted in the response to question 4, the fire suppression system is not an alarm under Rule 12A-1.0092(2), F.A.C, and is instead part of real property. Therefore, the inspection of the fire suppression system alone is not subject to sales and use tax.

However, as noted in the facts, when a fire alarm system is present the fire suppression technician will check that the alarm panel receives the signal from the dry contacts. The inspection and/or repair of a fire alarm system, including fire alarm components of the sprinkler system, and any other part of the fire alarm system would be included under NAICS National Number 561621. This includes the inspection or repair of any part of the fire alarm system. When the technician checks that the alarm panel receives the signal from the contacts is an inspection of a component part of the alarm system, which is subject to sales tax under Rule 12A-1.0092(2), F.A.C, as the maintenance of an alarm system. Therefore, the inspection is subject to sales tax when the technician checks that the alarm receives a signal from the contacts.

6. Whether replacing parts on the fire suppression system makes the entire invoice, parts of the invoice, or none of the invoice taxable?
As noted above, the fire suppression system is a real property fixture. The replacement of parts, of the fire suppression system alone, is the repair and maintenance of real property. Therefore, a transaction exclusively for the replacing of parts of a fire suppression system would remain a real property contract and would not be subject to sales tax. However, the Taxpayer is required to pay sales tax on its purchase of the parts and materials used.

However, where Taxpayer’s invoices involve the sale of both taxable and nontaxable services, the charges for the taxable portion of the transaction must be separately stated from the charges for the nontaxable portion, otherwise the entire invoice is subject to sales tax. See Rule 12A-1.0092(3)(a), F.A.C.

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,

Timothy Surface  
Senior Attorney  
Technical Assistance and Dispute Resolution  
(850) 717-7312  
TAA 194176