



**QUESTION:**

Does the contract between Taxpayer and Contractor involve taxable housekeeping services and not exempt temporary staffing or employment services?

**ANSWER:**

The contract between Taxpayer and Contractor involves taxable housekeeping services.

May 29, 2020

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

RE: Technical Assistance Advisement – 20A-009  
Sales and Use Tax  
Taxability of Cleaning Services Performed by Cleaning and Staffing Contractor  
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(8), 12A-1.0161(5), Florida Administrative Code (F.A.C.)

Dear Mr. XXXXXXX:

This letter is in response to your request dated January 9, 2019, 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 provided to a resort hotel. 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.

**STATEMENT OF FACTS**

Taxpayer is a Delaware company and is incorporated in the State of Florida. Its business involves providing sleeping accommodations to transient guests at a resort hotel XXXXXXXXXXXXXXXX. To provide housekeeping services XXXXXXXX, Taxpayer entered into a contractual agreement with XXXXXXXXXXXXXXXX (hereinafter “Contractor”). Taxpayer believes the contract it has with Contractor achieves its intent to purchase temporary employee or staffing services to

supplement its workforce. Taxpayer does not believe the contract with Contractor involves services (e.g., nonresidential cleaning services) subject to sales tax.

To provide evidence for its assertions, Taxpayer submitted the written contract between Taxpayer and Contractor. Pertinent excerpts from the contract read as follows:

#### **Recitals**

- A. [Taxpayer] . . . owns the [Hotel];
- B. Given the seasonality of the Florida hospitality industry, fluctuating business levels, and the efficiencies typically yielded from the use of trained outsourced services, it is not uncommon for hotels and resorts to engage staffing companies such as contractor to provide the services of skilled hospitality labor on an as-requested basis;
- C. [Taxpayer] desires to engage Contractor to assign employees, on an as-requested basis, to provide those services described in XXXXXXXXXXXX attached hereto (the "Services"); and
- D. Contractor has employees that are experienced in providing the Services and desires to supply those employees to perform the Services for the Owner on the terms as set forth herein.

#### **Agreement**

\* \* \*

##### **1. Term**

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##### **2. The Services**

The Contractor shall, throughout the term of this Agreement, provide the Services outlined in XXXXXXXXXXXX attached hereto.

Contractor acknowledges, understands and agrees that the Hotel is a first class luxury hotel providing the highest level of service to its guests, and therefore, Contractor agrees that it, and each person performing any of the Services on its behalf, shall at all times conduct their operations and provide the Services in a manner conforming with the image and quality of service, cleanliness and professional standards of [Taxpayer] and shall comply with the Rules for Contractors attached as XXXXXXXXXXXX.

In addition to the foregoing, Contractor represents and warrants that it will comply with the following requirements:

\* \* \*

- Contractor will ensure each of its employees is adequately trained, skilled, and experienced to ensure they will properly perform the Services in a first-class manner;

### **3. Relationship Between Parties**

... It is expressly agreed that neither Contractor nor any employee of Contractor is or shall be deemed an employee of [Taxpayer] for any purpose whatsoever, but instead Contractor is and shall be deemed an independent contractor. It is expressly agreed that Contractor will select and designate all personnel to perform all the Services required under this Agreement... [Taxpayer] may, from time to time, make available certain facilities and amenities (e.g., employee parking lot, dining area and staff meals, and access/security cards) for use by Contractor and Contractor's employees. ...

[Taxpayer] is interested only in the results of the Contractor's Services. Subject to the rules and standards set forth herein, Contractor shall have sole responsibility and discretion for determining the manner, method, details and means of performing under this Agreement. ...

### **4. Invoicing and Contractor Fees**

- a. Contractor will invoice [Taxpayer] on a weekly basis for the Services performed.  
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### **20. Assignment and Subcontracting**

... Similarly, the Contractor shall not subcontract any of the Services provided pursuant to this Agreement without [Taxpayer's] prior written approval. ...

\* \* \*

The following excerpts taken from "Appendix A" attached to the contractual agreement read as follows:

## APPENDIX "A"

1. Contractor shall assign its employees ("Assigned Employees") to perform the Services outlined below at the Hotel, upon request by [Taxpayer].
2. Upon Contractor's request, [Taxpayer] will allow Contractor to install one or more time clocks at the Hotel to permit Contractor to better track and manage the hours worked by its Assigned Employees for invoicing purposes and so that Contractor may ensure the prompt and accurate processing of withholdings and payroll for its Assigned Employees. Contractor shall be responsible for the cost, maintenance and functionality of these time clocks.

\* \* \*

4. . . .

Contractor has agreed to provide reduced rates to [Taxpayer] in exchange for [Taxpayer] providing at no charge to Contractor or Contractor's employees, a shift meal for the Assigned Employees in the Hotel's employee dining room, as well as parking in the Hotel's parking facility along with roundtrip transportation from parking facility to the Hotel. . . .

5. . . .

The structure of the Hotel's Housekeeping Department shall be dictated by [Taxpayer] and may be modified in [Taxpayer's] discretion from time-to-time. [Taxpayer] anticipates it will require the Services of one or more Supervisors, Housemen, Public Area Attendants, Turndown Attendants and Guest Room Attendants (as identified in the pricing charge below).

Contractor will designate one or more liaisons between it and [Taxpayer] to ensure the [Taxpayer's] quality standards and concerns are addressed and the Hotel's needs are met. At [Taxpayer's] discretion the liaison may be invited to attend and/or present at portions of the Hotel's Housekeeping Department meetings for the purpose of receiving important information of all upcoming Hotel events, business levels, arrival and departures, service initiatives and the execution of any Hotel initiatives relative to Housekeeping.

Contractor Supervisors: While Contractor may, upon request by [Taxpayer], supply the Services of a "Supervisor," such position is not vested with managerial authority over any of [Taxpayer's] employees nor the operations of the Hotel or its departments in any manner whatsoever. Instead, the full extent of authority of any of Contractor's Supervisors, while at the Hotel, is limited to assisting and guiding other Assigned

Employees' performance of the Services pursuant to and in compliance with this Agreement and the standards imposed by [Taxpayer] (acting through [Taxpayer's] Director of Housekeeping and other [Taxpayer's] managers). Among other tasks, the Supervisor position will attend to the following:

- Serving as a lead to ensure the day-to-day performance by the Assigned Employees, and acting as a liaison between [Taxpayer's] managers and the Assigned Employees as needed;
- Upon request by [Taxpayer's] employees, assist with the resolution of any Guest Request to ensure Guest's satisfactions;
- Implement any applicable portion of [Taxpayer's] training programs to ensure the Assigned Employees are adequately trained on how best to perform the Services and meet the Hotel's luxury standards;
- Upon request by [Taxpayer's] employees, assist with the daily housekeeping inspection processes;
- Implement [Taxpayer's] coaching and counseling processes for the Assigned Employees; and
- Educating the Assigned Employees about [Taxpayer's] culture and the expectations and standards in place at the Hotel.

\* \* \*

#### REQUESTED ADVISEMENT

Taxpayer ask whether housekeeping services performed by Contractor's employees are subject to sales tax.

#### 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 in 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.

Rule 12A-1.0091(l)(a), F.A.C., provides the following illustrative examples of taxable services:

1. Acoustical tile cleaning services;
2. Building cleaning services, interior;
3. Custodial services;
4. Deodorant servicing of restrooms;
5. Disinfecting services;
6. Floor waxing services;

7. Housekeeping (cleaning services);
8. Janitorial services;
9. Maid services;
10. Maintenance of buildings (except repairs);
11. Office cleaning services;
12. Restroom cleaning services;
13. Service station cleaning and degreasing services;
14. Venetian blind cleaning;
15. Washroom sanitation service; and
16. Window cleaning (interior or exterior).

The NAICS Industry Code No. 561320 provides the following description for Temporary Help Services:

This industry comprises establishments primarily engaged in supplying workers to client's businesses for limited periods of time to supplement the working force of the client. The individuals provided are employees of the temporary help service establishment. However, **these establishments do not provide supervision of their** employees at the client's work sites. [emphasis supplied]

Section 212.05(1)(i)4., F.S., requires a separate identification of taxable services from nontaxable services, and other items that are not taxable, if the seller or service provider intends to avoid collecting and remitting sales or use tax on the nontaxable portion of the total invoice amount.

### ANALYSIS

Charges for nonresidential cleaning services are subject to sales tax. Typically, cleaning service providers supply the labor and personnel, supplies, and the supervision or management over the activities that are being performed when providing this service.

Charges for staffing services are not subject to sales tax. The NAICS code number 561320, entitled, Temporary Help Services is not included under the taxable NAICS codes. However, temporary help service providers do not provide direct supervision of the employees at the client's work site(s). Therefore, nontaxable staffing services are those services provided as temporary or continued help provided to another business on a contract or fee basis, and does not include direct supervision or management of a service taxable under s. 212.05(1)(i), F.S.

Here, the fact that Taxpayer agrees to pay Contractor for the Services based on an hourly rate may suggest Contractor is providing staffing or employee services. However, the method of payment is not a dispositive factor for determining whether temporary help services are deemed the nature of the services rendered. The primary factor for this determination is whether management or supervision is provided.

The language in the contract between Taxpayer and Contractor suggests management and supervision are included under the agreement for housekeeping services. As demonstrated in the above excerpts from the contract, Contractor agrees to assign supervisors to manage the Services performed by the assigned employees. Clause 1. of Appendix "A" states Contractor assigns its employees to perform specific services at the Hotel. Clause 2. of Appendix "A" gives the Contractor authorization to install one or more "time clocks" at the Hotel to "better track and manage the hours worked by its employees. Under Clause 3.a. and 3.b. of Appendix "A" there are provisions given to instances where an Assigned Employee may under "Contractor's direct supervision and control at the time." Under Clause 4. of Appendix "A" provisions are given to provide meals to Contractor's employees. Under Clause 5 of Appendix "A" Contractor is permitted to assign a supervisor and one or more liaisons to manage the Services. This Clause also stipulates Contractor's assigned supervisors provide assistance and guidance to Contractor's assigned employees. This includes ensuring Taxpayer's quality standards and concerns are met through daily performances by Contractor's assigned employees. Contractor's supervisors also assist with daily housekeeping inspections processes, as well as training, coaching and counseling processes for the assigned employees.

#### CONCLUSION

Housekeeping services performed by Contractor's employees are 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,

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

JDF3/  
Control #: 169141