

## SUMMARY

**QUESTION:** Whether the separately stated charges to residential and non-residential cleaning customers for specified services and combinations of services are subject to sales tax.

**ANSWER: - Based on Facts Below** The answers provided assume that all carpets are installed with tacks, glue, or other permanent means, and are intended to serve as the finished floor, the following responses were provided. The answers provided further assume whatever is left behind of the deodorizer (or sanitizer) is both minimal and unintentional, and of brief duration. The answers apply to both residential and non-residential customers unless noted otherwise.

A. Carpet Cleaning. The charge to the customer for cleaning services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.

B. Carpet Cleaning and Carpet Stain Protection. The charges to the customer for cleaning and stain protection services are not subject to tax, regardless of whether the charges for the two services are separately stated. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform these services.

C. Carpet Deodorizing. The charge made to the customer for deodorizing (or sanitizing) is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.

D. Furniture Cleaning. The cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies purchased and used by the Taxpayer to perform the service are taxable to the Taxpayer when purchased as overhead items.

E. Furniture Cleaning and Stain Protection. The charges made to the customer for both services are subject to tax, regardless of whether such charges are separately stated. Purchase of the protectant is not taxable to the Taxpayer when purchased. Materials and supplies used in performing the services but which do not become incorporated or attached to the furniture are taxable to the Taxpayer when purchased as overhead items.

F. Furniture Deodorizing. The charge made to the customer for deodorizing (or sanitizing) is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies

purchased and used by the Taxpayer to perform the service are taxable to the Taxpayer when purchased as overhead items.

G. Carpet Cleaning and Furniture Cleaning. The charge to the customer for carpet cleaning services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning service. The furniture cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies purchased and used by the Taxpayer to perform the furniture cleaning service are taxable to the Taxpayer when purchased as overhead items.

H. Carpet Cleaning, Carpet Stain Protection, and Furniture Cleaning. The charges to the customer for carpet cleaning and stain protection services are not subject to tax, because they are separately stated from the tangible personal property elements of the contract. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning and stain protection services. The furniture cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies purchased and used by the Taxpayer to perform

the furniture cleaning service are taxable to the Taxpayer when purchased as overhead items.

I. Carpet Cleaning, Furniture Cleaning, and Furniture Stain Protection. The charge to the customer for carpet cleaning services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning service. The charges made to the customer for both furniture cleaning and furniture stain protection services are subject to tax, regardless of whether such charges are separately stated. Purchase of the protectant is not taxable to the Taxpayer when purchased. Materials and supplies used in performing the furniture cleaning and furniture stain protection services but which do not become incorporated or attached to the furniture are taxable to the Taxpayer when purchased as overhead items.

J. Carpet Cleaning, Carpet Stain Protection, Furniture Cleaning and Furniture Stain Protection. The charges to the customer for carpet cleaning and carpet stain protection services are not subject to tax, regardless of whether the charges for the two services are separately stated. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning and carpet stain protection services. The charges made to the customer for both furniture cleaning and furniture stain protection services are subject to tax,

regardless of whether such charges are separately stated. Purchase of the protectant is not taxable to the Taxpayer when purchased. Materials and supplies used in performing the furniture cleaning and furniture stain protection services but which do not become incorporated or attached to the furniture are taxable to the Taxpayer when purchased as overhead items.

K. Ceramic Tile Floor and Grout Cleaning. Residential customers - see response A., above. Nonresidential customers - The charge to a customer for ceramic tile floor and grout cleaning is subject to tax pursuant to Section 212.05(1)(i)1.b., F.S. Purchases of materials and supplies by the Taxpayer and used in performance of this service is taxable to the Taxpayer when purchased.

L. Ceramic Tile Floor Cleaning and Grout Stain Protection. Residential customers - See response B., above. Nonresidential customers - The charge to a customer for ceramic tile floor and grout cleaning is subject to tax pursuant to Section 212.05(1)(i)1.b., F.S. The Taxpayer should not charge tax to its customer for the stain protection service. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the stain protection service.

M. Air Conditioning and Heating System Cleaning. See response A., above.

N. Water Restoration Services. The charge to the customer for water restoration services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.

O. Sale and Installation of Wall-to-Wall Carpeting. The Taxpayer should not charge the customer tax for the sale and installation of the carpeting, regardless of whether charges for material and labor are separately stated. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.

\*\*\*\*\*

Mar 02, 2004

Re: Technical Assistance Advisement 04A-014

Sales and Use Tax

Taxability of Various Cleaning Services

Sections 212.02, 212.05, 212.054, 212.055, 212.06, 212.07, 212.08 and 212.21, F.S.

Rules 12A-1.006, 12A-1.0091, 12A-1.016 and 12A-1.051, F.A.C.

Taxpayer Identification Number: XX

Dear:

This is a response to your letter of September 23, 2003, requesting a Technical Assistance Advisement (TAA) regarding the above-referenced matter. The request was made on behalf of the above taxpayer and taxpayer's franchisees located and operating in the State of Florida (the taxpayer and its franchisees collectively will be referred to herein as the "Taxpayer"). This response to your request constitutes a TAA under Chapter 12-11, F.A.C., and is issued to you under the authority of Section 213.22, F.S.

#### **Facts**

The Taxpayer provides a variety of cleaning services to the public. The Taxpayer's primary line of business, however, is the provision of carpet cleaning services to residential homeowners. Your request states that substantially all of the carpets cleaned by the Taxpayer are installed with tacks, glue, or by some other permanent means, and serve as the finished floor. Occasionally, the homeowner will request additional services, such as carpet stain protection treatment, furniture cleaning, furniture stain protection treatment, ceramic tile floor covering and grout cleaning, ceramic tile floor covering grout stain protection treatment, carpet and furniture deodorizing, and air conditioning and heating system cleaning. In addition, the Taxpayer sometimes performs water restoration services to alleviate the destructive consequences of flooding. Finally, the Taxpayer occasionally sells and installs wall-to-wall carpeting

to homeowners. The Taxpayer's various services are described as follows:

Carpet Cleaning. The Taxpayer applies a liquid solution consisting of a mixture of powdered detergent (phosphate based or phosphate free) and water to the carpet, and then extracts the solution from the carpet. The powdered detergent is specially manufactured for the Taxpayer.

Furniture Cleaning. When cloth upholstered furniture is cleaned, the Taxpayer uses the same process and liquid solution it uses to clean carpets. The sole difference is that the liquid solution is extracted from the furniture with a smaller hand-held suction tool. When the Taxpayer cleans leather furniture, however, it uses an anionic detergent to clean the leather and keep the leather soft. The leather cleaning process leaves no film or protectant on the furniture.

Deodorizing. When deodorizing a carpet, the Taxpayer applies a liquid-based deodorizer to destroy or contain the odor-causing material. Occasionally, the Taxpayer will use a liquid sanitizer to help alleviate the odor. Both the liquid deodorizer and the liquid sanitizer are allowed to dry naturally. The Taxpayer uses the same materials and procedures for deodorizing cloth upholstered furniture.

Stain Protection. The Taxpayer generally uses either 3M ScotchGard or DuPont Teflon Advanced Protectant when applying a



stain protectant to carpet. The protectant is designed to assist in the removal of dry soil by adhering to the fibers of the carpet. The protectant also provides some water repellency; however, it is not a permanent film or coating on the carpet. Protectant must be reapplied periodically because it gradually disintegrates due to carpet traffic, carpet vacuuming, and cleaning. Taxpayer uses the same protectants and procedure for applying stain protection treatments to cloth upholstered furniture.

Ceramic Tile Flooring and Grout. When the Taxpayer cleans ceramic tile floor coverings, it generally pressure washes the ceramic tile and the accompanying grout between the tiles. When the grout is exceptionally dirty, the Taxpayer applies a mildly acidic pre-spray to help assist in the cleaning. The pre-spray is then pressure washed away. Occasionally, a homeowner will request that the Taxpayer apply a stain protection treatment to the grout. The Taxpayer applies either a clear or colored acrylic based sealant similar in consistency to durable house paint. The sealant is designed to provide repellency to preclude liquids and other materials from staining the grout.

Air Conditioning and Heating Systems. The Taxpayer occasionally cleans air conditioning and heating systems. To clean the system's ducts, the Taxpayer creates access holes in the main unit, blocks the return and supply registers, brushes the duct line, injects air, and then vacuums the dirt and debris in the ductwork into a filter system. The Taxpayer uses no products

(i.e., detergent or other applications) in the ordinary cleaning process. Occasionally, however, a duct system is defective due to porous holes in the duct line. In such cases, the Taxpayer identifies the location of the porous areas and applies a sealant type coating; not to protect the duct from stains but to ensure the integrity of the duct system.

Water Restoration. The Taxpayer first removes any standing water by vacuuming the water with its carpet cleaning equipment. The Taxpayer then positions high-powered dehumidifiers and high-powered air movers to operate within the water-soaked area. The dehumidifiers remove moisture within the soaked carpets, furniture and walls. The air movers keep the air circulating so the dehumidifiers can operate more effectively. The entire process is monitored to ensure that the moisture content in the walls and carpet is reduced to pre-flood levels. Occasionally, the Taxpayer will also apply a sanitizing disinfectant in the form of a quaternary ammonia compound to kill the actively vegetating yeast, mold and other harmful organisms, and reduce the likelihood of infestation. The quaternary ammonia compound is a liquid solution which is sprayed directly on the contaminated area. It does not kill the microscopic organisms' spores, and it is not a permanent treatment. Once it is applied and destroys the active vegetation, it rapidly dissolves.

Carpet Sales and Installation. Sometimes, when a carpet cannot be cleaned or restored to a customer's satisfaction, the Taxpayer will furnish and install wall-to-wall carpeting. The

customer selects the carpeting from samples provided by the Taxpayer. The Taxpayer then brings the carpet to the customer's premises along with the necessary tack strips, glue guns, and other installation materials, cuts the carpet to measurement, and installs the carpet. The carpet is permanently affixed and serves as the finished floor.

The Taxpayer pays Florida Sales Tax on the carpeting it purchases. The Taxpayer also pays Florida Sales Tax on all cleaning supplies, protectants, sealants, and deodorizers used in providing its services.

The Taxpayer generally knows which services have been requested prior to entering the customer's premises. It is rare for a customer to ask for stain protection treatment without having the Taxpayer clean the carpet or furniture first. Similarly, it is rare for a customer to request that ceramic tile floor grout be sealed without having the Taxpayer clean the ceramic tile floor covering and accompanying grout first. Customers are billed a line item charge for each service the Taxpayer provides.

Carpet cleaning and repairing, furniture cleaning, and upholstery cleaning services are classified within SIC code number 7217. "SIC" refers to the classifications contained in the Standard Industrial Classification Manual, 1987, published by the Office of Management and Budget, Executive Office of the President (the Manual). Building cleaning and maintenance

services, such as window cleaning, janitorial service, floor waxing, and office cleaning are classified within SIC code number 7349. Building cleaning and maintenance services are contained within SIC Industry Group Number 734, Services to Dwellings and Other Buildings, together with Disinfecting and Pest Control Services, SIC code number 7342.

Although your request focused primarily on services provided to residential customers, you have subsequently requested that the Department's response separately address services provided to commercial customers. Except where expressly stated to the contrary, it shall be assumed that all carpets subject to the Taxpayers services are installed with tacks, glue, or other permanent means, and are intended to serve as the finished floor.

#### **Requested Advisement**

Based on the facts provided, Taxpayer has requested the following rulings:

A. Florida Sales Tax is not due when the Taxpayer provides carpet cleaning services, and no other services, to customers;

B. Florida Sales Tax is not due when the Taxpayer provides carpet cleaning and carpet stain protection services, and no other services, to customers;

C. Florida Sales Tax is not due when the Taxpayer provides carpet deodorizing services, and no other services, to customers;

D. Florida Sales Tax is not due when the Taxpayer provides furniture cleaning services, and no other services, to customers;

E. Florida Sales Tax may be due when the Taxpayer provides furniture cleaning and furniture stain protection services, and no other services, to customers, but only on the amount of the furniture stain protection services;

F. Florida Sales Tax is due when the Taxpayer provides furniture deodorizing services, and no other services, to customers;

G. Florida Sales Tax is not due when the Taxpayer provides carpet cleaning and furniture cleaning services, and no other services, to customers;

H. Florida Sales Tax is not due when the Taxpayer provides carpet cleaning, carpet stain protection, and furniture cleaning services, and no other services, to customers;

I. Florida Sales Tax may or may not be due when the Taxpayer provides carpet cleaning, furniture cleaning, and furniture stain protection services to customers, and no other services, because the transaction should be taxed as a "mixed contract;"

J. Florida Sales Tax may or may not be due when the Taxpayer provides carpet cleaning, carpet stain protection, furniture cleaning and furniture stain protection services to customers, and no other services, because the transaction should be taxed as a "mixed contract;"

K. Florida Sales Tax is not due when the Taxpayer provides ceramic tile floor and grout cleaning services, and no other services, to customers;

L. Florida Sales Tax is not due when the Taxpayer provides ceramic tile floor cleaning and grout stain protection services, and no other services, to customers;

M. Florida Sales Tax is not due when the Taxpayer provides air conditioning and heating system cleaning services, and no other services, to customers;

N. Florida Sales Tax is not due when the Taxpayer provides water restoration services, and no other services, to customers; and,

O. Florida Sales Tax is not due when the Taxpayer sells and installs wall-to-wall carpeting, and no other services, to customers.

**Applicable Law**

Section 212.05, F.S., provides in pertinent part:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state....

(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:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

\* \* \*

(b) At the rate of 6 percent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state;...

\* \* \*

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

\* \* \*

b. Nonresidential cleaning and nonresidential pest control services (SIC Industry Group Number 734).

2. As used in this paragraph, "SIC" means those

classifications contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

\* \* \*

Section 212.02, F.S., provides in pertinent part:

\* \* \*

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

\* \* \*

(10)(h) "Real property" means the surface land, improvements thereto, and fixtures, and is synonymous with "realty" and "real estate."

\* \* \*

(14)(a) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and includes all such transactions that may be made in lieu of retail sales or sales at retail....

\* \* \*

(15) "Sale" means and includes:

(a) Any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or



otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

\* \* \*

(16) "Sales price" means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, 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. "Sales price" also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property....

\* \* \*

(19) "Tangible personal property" means... personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses.... (emphasis supplied)

\* \* \*

Section 212.06, F.S., provides in pertinent part:

(1)(a) The aforesaid tax at the rate of 6 percent of the retail sales price as of the moment of sale, 6 percent of the cost price as of the moment of purchase, or 6 percent of the cost price as of the moment of commingling with the general mass of property in this state, as the case may be, shall be collectible from all dealers as herein defined on

the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of tangible personal property or services taxable under this chapter....

\* \* \*

(14) For the purpose of determining whether a person is improving real property, the term:

(a) "Real property" means the land and improvements thereto and fixtures and is synonymous with the terms "realty" and "real estate."

(b) "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....

(c) "Improvements to real property" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property. (emphasis supplied)

\* \* \*

Section 212.07(1)(a), F.S., provides:

The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer. (emphasis supplied)

Section 212.055, F.S., authorizes the imposition of discretionary surtaxes by local governments. The tax levied pursuant to Section 212.055, F.S., applies to all transactions occurring in the local jurisdiction that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by chapter 212, F.S. Section 212.054(2)(a), F.S. However, this surtax may only be applied to the first \$5,000 of the transaction for an item of tangible personal property. Section 212.054(1)(b), F.S. A transaction is deemed to have occurred in a county imposing the surtax when the sale includes an item of tangible personal property, a service, or tangible personal property representing a service, and delivery takes place within the county. Section 212.054(3)(a)1., F.S.

Rule 12A-1.006, F.A.C., addresses charges made by dealers who adjust, apply, alter, install, maintain, remodel, or repair tangible personal property and provides in pertinent part:

(1)(a) Where parts are furnished by the repairer, the entire charge the repairer makes to a customer for adjusting, applying, installing, maintaining, remodeling, or repairing tangible personal property is taxable, except as otherwise provided in paragraph (b) of this subsection.

\* \* \*

(c) Materials which are actually incorporated into and become a part of the tangible personal property repaired,

remodeled, or maintained, such as welding rods, solder, body solder, or other surfacing materials, paint, thinner, bolts, nuts, etc., are not taxable when purchased by the repairer. Materials and supplies used by the repairer in making such repairs, etc., but which do not become a part of the property repaired are taxable to the repairer as overhead items. For example: Tools, sandpaper, steel wool, flux, detergents, and the like are not incorporated into the repair or remodeling job and are taxable.

\* \* \*

(3) The provisions of this rule do not apply to contracts covering a combination of work on both real and personal property. Such contracts are governed by the provisions of Rule 12A-1.051, F.A.C.

(4) Except as otherwise provided in paragraph (b) of subsection (1), charges for repairs of tangible personal property which require labor or service only are taxable unless the repairer (dealer) can establish by evidence in the dealer's records that the dealer furnished no tangible personal property which was incorporated into or attached to the repaired item. It is immaterial that the cost of the material furnished is insignificant when compared to the cost of the labor involved. For maintenance contracts covering tangible personal property, refer to Rule 12A-1.105, F.A.C.

\* \* \*

(7) ... (b) The charge for refinishing, restoring, or

upholstering furniture is taxable.

\* \* \*

(16)(a) The charge for a plain wash job, in which only detergent or water softener is added to the water, is exempt. The purchase of detergents or water softeners for use in the performance of the wash job is taxable to the dealer.

(b) The entire charge for a wash job, in which wax, silicones, or any other substance is added that forms a protective film or coating, is taxable. The purchase of materials such as wax, silicones, and the like, which form a protective film or coating, is exempt to the dealer. The dealer shall extend a resale certificate to his supplier in lieu of paying tax.

(c) The purchase of machinery and equipment, parts and accessories, soaps, brushes, or other supplies for operation of a car wash facility is taxable to the dealer.

(d) Dealers who operate car wash facilities which provide both taxable and exempt wash jobs must maintain documentation to distinguish the taxable status of each transaction. In all instances where a dealer is unable to differentiate and document the taxable status of each transaction, it is presumed that all wash jobs performed at such facility are taxable. (emphasis supplied)

\* \* \*

Rule 12A-1.0091, F.A.C., provides in pertinent part:

(1)(a) Nonresidential cleaning services are subject to 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, but they do not include cleaning services provided for tangible personal property. Examples of such nonresidential cleaning services subject to tax are:

1. Acoustical tile cleaning services;
2. Building cleaning services, interior;
3. Chimney cleaning services;
4. Custodians of schools on a contract or fee basis;
5. Deodorant servicing of restrooms;
6. Disinfecting services;
7. Floor waxing services;
8. Housekeeping (cleaning services) on a contract or fee basis;
9. Janitorial services on a contract or fee basis;
10. Lighting maintenance services (bulb replacement and cleaning);
11. Maid services on a contract or fee basis;
12. Maintenance of buildings (except repairs);
13. Office cleaning services;
14. Restroom cleaning services;

15. Service station cleaning and degreasing services;
16. Venetian blind cleaning;
17. Washroom sanitation service; and
18. Window cleaning (interior or exterior).

(b) Residential cleaning services are not taxable....

\* \* \*

(5) Cleaning service providers are considered the ultimate users or consumers of the tangible personal property sold to them and used in connection with their service and are required to pay the tax imposed upon such sales of tangible personal property to their dealers.

Rule 12A-1.016(3), F.A.C., addresses sales and installation charges and provides in pertinent part:

(3)(a) The total consideration received for labor or services used in installing tangible personal property which is sold and does not become a part of realty, is taxable even though such charge may be separately stated.

\* \* \*

(b) Contractors and manufacturers who furnish and install the following items are considered to be retail dealers and are required to charge sales tax on the full price, including installation and any other charges:

1. Carpets, except those that become real property (See Rule 12A-1.051, F.A.C.); (emphasis supplied)

\* \* \*

Rule 12A-1.051, F.A.C., addresses sales made to or by  
contractors who repair, alter, improve and construct real  
property, and provides in pertinent part:

(1) Scope of the rule. This rule governs the taxability of the purchase, sale, or use of tangible personal property by contractors and subcontractors who purchase, acquire, or manufacture materials and supplies for use in the performance of real property contracts other than public works contracts....

(2) Definitions. For purposes of this rule, the following terms have the following meanings:

\* \* \*

(c)1. "Fixture" means an item that is an accessory to a building, other structure, or to land, that retains its separate identity upon installation, but that is permanently attached to the realty....

\* \* \*

3. The determination whether an item is a fixture depends upon review of all the facts and circumstances of each situation. Among the relevant factors that determine whether a particular item is a fixture are the following:

a. The method of attachment....

b. Intent of the property holder in having the item



attached....

c. Real property law....

d. Customization....

f. ... The foregoing list of factors relevant to determining whether an item is a fixture is intended to be illustrative only. Additional factors may exist in any particular case, and the weight to be given to the factors will also vary in each case.

(d) "Improvement to real property" or "real property improvement" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

\* \* \*

(h)1. "Real property contract" means an agreement, oral or written, whether on a lump sum, time and materials, cost plus, guaranteed price, or any other basis, to:

a. Erect, construct, alter, repair, or maintain any building, other structure, road, project, development, or other real property improvement;

\* \* \*

c. Furnish and install tangible personal property that becomes a part of or is directly wired or plumbed into the central heating system, central air conditioning system, electrical system, plumbing system, or other structural

system that requires installation of wires, ducts, conduits, pipes, vents, or similar components that are embedded in or securely affixed to the land or a structure thereon.

2. The term "real property contract" does not include:

\* \* \*

b. A contract to furnish tangible personal property that will be installed or affixed in such a way as to become a fixture or improvement to real property if the person furnishing the property has not also contracted to affix or install it.

3. A contract is a real property contract if described in subparagraph 1. above, whether or not such agreement also involves providing property or services that would not be considered improvements to real property. See subsection (8) of this rule for discussion of such contracts.

\* \* \*

(4) General rule of taxability of real property contractors. Contractors are the ultimate consumers of materials and supplies they use to perform real property contracts and must pay tax on their costs of those materials and supplies, unless the contractor has entered a retail sale plus installation contract. Contractors performing only contracts described in paragraphs (3)(a), (b), (c), or (e) do not resell the tangible personal property used to the real property owner but instead use

the property themselves to provide the completed real property improvement. Such contractors should pay tax to their suppliers on all purchases. They should also pay tax on all materials they fabricate for their own use in performing such contracts, as discussed in subsection (10). They should charge no tax to their customers, regardless of whether they itemize charges for materials and labor in their proposals or invoices, because they are not engaged in selling tangible personal property. Such contractors should not register as dealers unless they are required to remit tax on the fabricated cost of items they fabricate to use in performing contracts.

\* \* \*

(6) Sales of tangible personal property. Contractors, manufacturers, or dealers who sell and install items of tangible personal property, including those enumerated in Rule 12A-1.016, F.A.C., must collect tax on the full selling price, including any installation or other charges, even though such charges may be separately stated. The items listed in Rule 12A-1.016, F.A.C., are tangible personal property even after installation, and their sale with installation is not classified as a real property contract. Contractors, manufacturers, or dealers who sell property over-the-counter without performing installation services must collect tax on the full sales price of such items, even though those items will become improvements to real property upon installation by the purchaser. At the point at which they are sold in over-the-counter

transactions, those items are tangible personal property.

\* \* \*

(8) Mixed contracts. A real property contract may also include materials and labor that are not real property improvements. A contract that includes both real property work and tangible personal property is referred to in this subsection as a mixed contract. A mixed contract is not the same as a contract described in paragraph (3)(d) of this rule. Paragraph (3)(d) deals with a real property contract in which the contractor separately itemizes and prices all the materials that will be incorporated as part of the real property. A mixed contract is one that involves a real property improvement, maintenance, or repair and also involves providing tangible personal property that remains tangible personal property and does not become part of the real property. In the case of a mixed contract, taxability depends upon the predominant nature of the work performed under the contract and upon the contract terms.

(a) If the predominant nature of a mixed contract is a contract for real property improvements, taxability will be determined as if the contract were entirely for real property....

(b) If the predominant nature of a mixed contract is a contract for tangible personal property, taxability of the contract will be determined as if the contract were entirely for tangible personal property....

(c) The determination of the predominant nature of a contract will depend upon the facts and circumstances of each case. Consideration will be given to the description of the project and the responsibilities of the contractor as set forth in the contract. Consideration will also be given to the relative cost of performance of the real property and tangible personal property components of the contract.

(d) If a mixed contract clearly allocates the contract price among the various elements of the contract, and such allocation is bona fide and reasonable in terms of the costs of materials and nature of the work to be performed, taxation will be in accordance with the allocation....

\* \* \*

(17) Specific activities classified as real property contracts. Contractors who are engaged in the following activities are generally considered to be real property contractors, although any particular job may be determined not to involve an improvement to real property:

\* \* \*

(g) Carpeting installed with tacks, glue, or other permanent means and serving as the finished floor;

\* \* \*

(p) Flooring;

\* \* \*

(s) Heating, ventilating, and air conditioning system work;

\* \* \*

(ee) Sheet metal/ductwork;

\* \* \*

(nn) Tile work;

\* \* \*

The determination whether any particular job involves a contract for an improvement to real property will be based on the criteria set forth in paragraphs (c), (d), (e), (g), (h), (i), and (j) of subsection (2).

(18) Specific activities not classified as real property contracts. The sale, installation, maintenance, or repair of the following items is not considered to be a real property contract.

(a) Area rugs and carpets;

\* \* \*

(g) Furniture; (emphasis supplied)

\* \* \*

The word "maintain" is defined in part as "to keep in an existing state; preserve or retain," as well as "to keep in a condition of good repair or efficiency." American Heritage Dictionary (4th ed. 2000).

### **Analysis and Discussion**

## RESIDENTIAL SERVICES

### I. Nonresidential Cleaning Services, Section 212.05(1)(i)1.b., F.S.

As correctly noted in your request for advisement, Section 212.05(1)(i)1.b., F.S., does not apply to the services provided by the Taxpayer to residential customers. Section 212.05(1)(i)1.b., F.S., which became effective September 1, 1992, provides that charges for "[n]onresidential cleaning... services (SIC Industry Group Number 734)" are taxable. "SIC" refers to the classifications contained in the Manual. Section 212.05(1)(i)2., F.S. Thus, the express terms of the statute indicate that cleaning services provided to residential customers are not subject to tax under Section 212.05(1)(i)1.b., F.S. See also Rule 12A-1.0091(1)(b), F.A.C. (expressly providing that residential cleaning services are not taxable).

### II. Sale of Tangible Personal Property, Section 212.05(1)(a)1.a., F.S.

The Taxpayer's services when provided to residential customers are taxable under Chapter 212, F.S., if they involve a taxable sale of tangible personal property. Section 212.05, F.S., indicates that a person(FOOTNOTE #1) engaging in the business of selling tangible personal property at retail in Florida is exercising a taxable privilege. For the exercise of that privilege, a tax is imposed upon each taxable retail sale of

tangible personal property at the rate of six percent (6%) of the sales price of each item, plus any applicable local discretionary surtax. Section 212.05(1)(a), F.S.; Section 212.054(2)(a), F.S. The statement of legislative intent contained in Section 212.21(2), F.S., indicates that "every sale, admission, use, storage, consumption, or rental" is intended to be taxed unless specifically exempted by Chapter 212, F.S.

For the purposes of Chapter 212, F.S., a "sale" includes "[a]ny transfer of title or possession, or both, ... in any manner or by any means whatsoever, of tangible personal property for a consideration." Section 212.02(15)(a), F.S. However, not every "sale" is subject to tax. It is, rather, the charge made for a "retail sale" that is subject to tax pursuant to Section 212.05(1)(a)1.a., F.S. A "retail sale" is a sale of tangible personal property or services taxable under Chapter 212, F.S., "to a consumer or to any person for any purpose other than for resale." Section 212.02(14)(a), F.S. "Tangible personal property" is "personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses." Section 212.02(19), F.S. The taxable "sales price" is the "total amount paid" for an item, and includes "services that are part of the sale" Section 212.02(16), F.S. "Sales price" also includes "the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property." Id. Thus, the entire charge for a transaction requiring both labor and



materials to "alter, remodel, maintain, adjust, or repair tangible personal property" is subject to tax. The definitions contained in Section 212.02, F.S., thus define what constitutes a "sale" broadly, and indicate that a number of personal service transactions, when tangible personal property is also transferred, are included within the scope of Chapter 212, F.S.

Generally, professional or personal services are not taxable under Chapter 212, F.S., except as expressly provided therein. Professional or personal service transactions that involve sales as "inconsequential elements," and for which no separate charges are made, are specifically exempt from the tax imposed by Chapter 212, F.S. Section 212.08(7)(v)1., F.S. Even if no separate charge was made, the "sales" of tangible personal property at issue do not constitute "inconsequential elements" of the transactions.

The tax levied pursuant to Chapter 212, F.S., is imposed at the level of the purchaser or ultimate consumer/user of tangible personal property. See Sections 212.02(14)(a) and 212.07(1)(a), F.S.; see also Section 212.06, F.S. Real property contractors are generally considered to be the ultimate consumers or users of the tangible personal property they purchase to perform a real property contract. See Rule 12A-1.051(4), F.A.C.; Kings Bay Yacht and Country Club, Inc. v. Green, 173 So. 2d 509 (Fla. 1st DCA 1965). Thus, a distinction is made between contracts relating to real property and contracts relating to tangible personal property.

Rule 12A-1.006, F.A.C., contains the Department's interpretation of the provisions of Chapter 212, F.S., with regard to charges made by dealers who "Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property." Rule 12A-1.051, F.A.C., contains the Department's interpretation of the provisions of Chapter 212, F.S., with regard to "Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property."

A. Contracts Solely For the Repair, Maintenance, Etc. of Real Property

Rule 12A-1.051, F.A.C., governs the taxability of the purchase, sale, or use of tangible personal property by contractors and subcontractors who purchase, acquire, or manufacture materials for use in performance of real property contracts (other than public works contracts). Rule 12A-1.051(1), F.A.C. Rule 12A-1.051, F.A.C., applies to sales to or by contractors who repair, alter, improve and construct real property. The stated general rule for real property contractors is that they should not charge tax to their customers, regardless of whether or not they itemize charges for materials or labor, because they are not engaged in the activity of selling tangible personal property. Rule 12A-1.051(4), F.A.C. (FOOTNOTE #2) Real property contractors are considered the ultimate consumers of the materials and supplies they use to perform real property contracts and must pay tax on the costs of those materials and

supplies. Id. A real property contract that includes property or services that are not considered improvements to real property (mixed contracts) are governed by Rule 12A-1.051(8), F.A.C., and will be discussed in a separate section.

Contractors engaged in the activity of installing carpeting with tacks, glue, or by another permanent means to serve as the finished floor are generally considered to be real property contractors. Rule 12A-1.051(17)(g), F.A.C. Contractors engaged in flooring or tile work are also generally considered to be real property contractors. Rule 12A-1.051(17)(p) and (nn), F.A.C. Contractors engaged in heating, ventilating, and air conditioning work and sheet metal/ductwork are similarly considered to be real property contractors. Rule 12A-1.051(17)(s) and (ee), F.A.C. The sale and installation by the same person of carpeting attached with tacks, glue, or other permanent means and serving as the finished floor is considered a real property contract. See Rules 12A-1.051(2)(h)2.b., (17)(g), and (18)(a), F.A.C. The sale, installation, maintenance, or repair of area rugs and carpets or furniture is not considered the performance of a real property contract. Rule 12A-1.051(18)(a) and (g), F.A.C.

"Real property" is defined for the purposes of Chapter 212, F.S., as land, improvements to land, and fixtures. Sections 212.02(10)(h) and 212.06(14)(a), F.S.; Rule 12A-1.051(2)(g), F.A.C. A "fixture" is an accessory to a building, structure, or land that retains its separate identity upon installation, but

is permanently attached to the realty. Section 212.06(14)(b), F.S.; Rule 12A-1.051(2)(c)1., F.A.C. You submit in your request that carpeting installed with tacks, glue or other permanent means and serving as the finished floor, and ceramic tile flooring should be classified as "fixtures" and therefore constitute "real property." We agree. Central air conditioning and heating systems, including the accompanying duct systems, are also fixtures and thus "real property" pursuant to Section 212.02(10)(h), F.S., and Rule 12A-1.051(2)(g), F.A.C.

A "real property contract" is an agreement to "[e]rect, construct, alter, repair, or maintain any building, structure, road, project, development, or other real property improvement." Rule 12A-1.051(2)(h)1.a., F.A.C. "Real property improvement" is defined to include "the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property." Section 212.06(14)(c), F.S.; Rule 12A-1.051(2)(d), F.A.C. As you pointed out in your request, the terms "alter," "improve," "repair," and "maintain", as used in Rule 12A-1.051(2)(d) and (h)1.a., F.A.C. are not defined in Chapter 212, F.S., or in Rule 12A-1.051, F.A.C. As you correctly note, absent a statutory definition, words are given their plain and ordinary meaning as found in the dictionary. See Suddath Van Lines, Inc. v. Department of Environmental Protection, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

You submit in your request that carpet cleaning (with and without stain protection or deodorizer treatment), ceramic tile

floor and grout cleaning (with and without grout stain protection treatment), water restoration, and air conditioning and heating systems cleaning (with and without application of sealant to duct line holes) services have the effect of "altering," "improving," "repairing," or "maintaining" the carpet, ceramic tile floor and grout, and air conditioning and heating systems. The Department does not concur that these services "alter," "improve," or "repair" the property. However, the Department does concur that these services "maintain" the carpet, ceramic tile floor and grout, and air conditioning and heating systems.

The American Heritage Dictionary (4th ed.) Defines the term "maintain" in part as "to keep in an existing state; preserve or retain," as well as "to keep in a condition of good repair or efficiency."

You submit that cleaning the carpet "maintains" the carpet because it helps preserve its appearance and keeps the carpet in a condition of good repair. Similarly, you submit that applying stain protectant to a carpet "maintains" the carpet because it has the effect of helping to preserve it in a stain-free state as well as keeping it in good repair. For analogous reasons, you also submit that ceramic tile floor and grout cleaning, grout stain protection, air conditioning and heating system cleaning (with or without application of sealant to duct line holes), and water restoration services "maintain" the ceramic tile floor and grout, air conditioning and heating system, and

carpet. We agree that carpet cleaning, carpet stain protection, ceramic tile floor and grout cleaning, grout stain protection, air conditioning and heating system cleaning (with or without application of sealant to duct line holes), and water restoration services serve to "maintain" real property pursuant to Rule 12A-1.051, F.A.C.

Carpet cleaning (with and without stain protection or deodorizer treatment), ceramic tile floor and grout cleaning (with and without grout stain protection treatment), water restoration, and air conditioning and heating systems cleaning (with and without application of sealant to duct line holes) services have the effect of "maintaining," the carpet, ceramic tile floor and grout, and air conditioning and heating systems. These services therefore constitute a "real property improvement" pursuant to Rule 12A-1.051(2)(d), F.A.C., and a "real property contract" pursuant to Rule 12A-1.051(2)(h)1.a., F.A.C. As stated above, the sale and installation by the same person of carpeting attached with tacks, glue, or other permanent means and serving as the finished floor is considered a real property contract. See Rules 12A-1.051(2)(h)2.b., (17)(g), and (18)(a), F.A.C. Accordingly, the following services for which you requested advisement, individually or in any combination with each other, constitute the performance of a real property contract and are subject to the general rule contained in Rule 12A-1.051(4), F.A.C.:

Carpet cleaning, stain protection, and

deodorizing/sanitizing services;

Ceramic tile floor and grout cleaning and grout stain protection services;

Air conditioning and heating system cleaning services (with or without application of sealant to duct line holes);

Water restoration services (FOOTNOTE #3); and

Sale and installation of wall-to-wall carpeting.

The Taxpayer, pursuant to rule 12A-1.051(4), F.A.C., should pay tax to its suppliers on all purchases of materials and supplies used to perform these services. In addition, the Taxpayer should not charge tax to its customers, regardless of whether charges for materials and labor are separately stated, or whether the charges for any combination of the above services are separately stated. Id.

B. Contracts Solely For the Repair, Maintenance, Etc. of Tangible Personal Property

Section 212.02(19), F.S., states that "tangible personal property" is "personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses." Clearly, cloth upholstered furniture constitutes tangible personal property, as do area rugs or carpets. See

Rule 12A-1.051(18)(a) and (g), F.A.C. Although not expressly stated in your request, it is assumed that the Taxpayer provides cleaning, stain protectant, and deodorizing services to area rugs or area carpets if requested.

A "sale" for the purposes of Chapter 212, F.S., involves the "transfer of title or possession, or both," of tangible personal property - "property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses" - "in any manner or by any means whatsoever... for a consideration."

Sections 212.02(15)(a) and (19), F.S. The Taxpayer offers the following described services, for which it makes a separately stated charge:

Stain Protection. The protectant applied by Taxpayer to cloth upholstered furniture and area rugs or carpets adheres to the fibers of the property. The protectant provides protection from stains, aids in the removal of dried dirt or substances, and provides some water repellency. The protectant is not permanent, rather, it gradually disintegrates due to use and cleaning.

Deodorizer or Sanitizer. Taxpayer uses a liquid based deodorizer to destroy or contain odor causing material in upholstered furniture and area rugs or carpets, and occasionally a liquid sanitizer to help alleviate the odor. Both are allowed to dry naturally. It is assumed, for the purpose of this advisement, that whatever is left behind of the deodorizer and sanitizer



when dry is both minimal and unintentional, and of brief duration. (FOOTNOTE #4) Therefore, the application of deodorizer or sanitizer will not be considered, in this instance, to involve the transfer of tangible personal property to the customer.

With regard to stain protection, the Taxpayer transfers tangible personal property - the protectant - to the customer for a separately stated charge. Although not permanent, the protectant is intended to and in fact does adhere to the customer's property for more than a transitory period of time. Thus, there is a "transfer... in any manner or by any means whatsoever" of "title and possession... of tangible personal property for a consideration," that constitutes a taxable "retail sale." Section 212.02(14)(a) and (15)(a), F.S.

Section 212.02(16), F.S., provides that the taxable "sales price" of tangible personal property is the "total amount paid" for an item, and includes "services that are part of the sale." The taxable "sales price" expressly includes "the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property." Id. Thus, the entire charge for a transaction requiring both labor and materials to "alter, remodel, maintain, adjust, or repair tangible personal property" is subject to tax. Under the same reasoning adopted above regarding real property contracts, the Department submits that cleaning, stain protection, and deodorizing upholstered furniture constitutes

"maintaining" the furniture. Rule 12A-1.006, F.A.C., implements the provisions of Chapter 212, F.S., and governs the taxability of charges made by dealers who adjust, apply, alter, install, maintain, remodel, or repair tangible personal property. Rule 12A-1.006, F.A.C., clearly applies to the Taxpayer's services relating to upholstered furniture and area rugs or carpets.

Rule 12A-1.006(1)(a), F.A.C., provides that when parts are furnished by repairer, the "entire charge the repairer makes to a customer for adjusting, applying, installing, maintaining, remodeling, or repairing tangible personal property is taxable." Materials that are incorporated into and become a part of the tangible personal property repaired, remodeled, or maintained are not taxable to the dealer when purchased. Rule 12A-1.006(1)(c), F.A.C. Materials and supplies used but which do not become part of the tangible personal property are taxable when purchased as overhead items. Rule 12A-1.006(1)(c), F.A.C. Charges for repairs requiring labor or service only are taxable unless the repairer can establish by its own records that the repairer did not furnish any tangible personal property which was incorporated into or attached to the repaired item. Rule 12A-1.006(4), F.A.C. Contracts covering a combination of work on both real and personal property (mixed contracts) are governed by the provisions of Rule 12A-1.051, F.A.C., and will be discussed separately, below. Rule 12A-1.006(3), F.A.C.

Rule 12A-1.006(16), F.A.C., provides an example of the application of the rules stated in Rule 12A-1.006(1), F.A.C.,

using a factual situation closely analogous to the stain protection services provided by the taxpayer - car washes. The charge for a plain wash job, in which only detergent or water softener is added to the water, is exempt. The purchase of detergents or water softeners for use in the performance of the wash job is taxable to the dealer. Rule 12A-1.006(16)(a), F.A.C. However, the entire charge for a wash job, in which wax, silicones, or any other substance are added that forms a protective film or coating, is taxable. The purchase of materials which form the protective film or coating is exempt to the dealer. Rule 12A-1.006(16)(b), F.A.C. The purchase of machinery and equipment, parts and accessories, soaps, brushes, or other supplies for operation of the car wash facility is taxable to the dealer. Rule 12A-1.006(16)(c), F.A.C. Dealers providing both taxable and exempt wash jobs are required to maintain documentation to distinguish between taxable and nontaxable transactions, otherwise it is presumed that all wash jobs are taxable. Rule 12A-1.006(16)(d), F.A.C.

1. Services Including the Application of Stain Protectant, Deodorizer, or Sanitizer

The Taxpayer's position is that when, for instance, furniture cleaning and furniture stain protection services are provided - tax should only be charged to the customer for the separately stated charge for stain protection. The Taxpayer states, with regard to the charges for cleaning and the application of protectant, that these services are mutually exclusive: the

Taxpayer does not require a customer to have its furniture cleaned prior to applying the stain protectant; and, the Taxpayer separately itemizes the charges for such services when they are performed for a customer. Therefore, the Taxpayer should only charge tax to the customer on the provision of the stain protectant service, and not on the cleaning services.

However, Section 212.02(16), F.S., indicates that the entire charge for a transaction requiring both labor and materials to alter, remodel, maintain, adjust, or repair tangible personal property is subject to tax. Rule 12A-1.006(1)(a) and (16)(b), F.A.C., indicate that when the Taxpayer applies protectant, the entire charge made for both cleaning and application of tangible personal property is subject to tax pursuant to Chapter 212, F.S. In addition, cleaning service and the service of applying protectant to the same article of tangible personal property are complementary, rather than mutually exclusive services. In most instances, the benefit or advantage of applying the protectant would be completely lost if the property was not cleaned immediately prior to application.

Accordingly, the charges the Taxpayer makes to customers for the following services are taxable in their entirety pursuant to Section 212.05(1)(a)1.a., F.S.:

Furniture (FOOTNOTE #5) stain protection services;

Furniture cleaning and stain protection services; and

Furniture cleaning, stain protection, and  
deodorizing/sanitizing services.

The purchase of the protectant by the Taxpayer is therefore not taxable to the Taxpayer at the time of purchase. Rule 12A-1.006(1)(c), F.A.C. Materials and supplies used by the Taxpayer which do not become part of the tangible personal property are taxable when purchased as overhead items. Rule 12A-1.006(1)(c), F.A.C.

## 2. Cleaning Services Only

Rule 12A-1.006(4), F.A.C., provides that charges for repairs requiring only labor or service are taxable unless the Taxpayer can establish by its own records that it did not furnish any tangible personal property which was incorporated into or attached to the repaired item. Accordingly, the following service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished that became incorporated into or attached to the item serviced:

Furniture (FOOTNOTE #6) cleaning;

Furniture deodorizing/sanitizing services; and

Furniture cleaning and deodorizing/sanitizing services.

Materials and supplies used by the Taxpayer but not becoming part of the tangible personal property serviced are taxable to the Taxpayer when purchased as overhead items. Rule 12A-1.006(1)(c), F.A.C.

(With any combination of the services in A., above, with those here in B.2., the Taxpayer should not charge tax to its customers. Instead, the Taxpayer should pay tax to its suppliers on all its purchases. Rules 12A-1.006(1)(c) and 12A-1.051(4), F.A.C.)

#### C. Mixed Contracts

Contracts covering a combination of work on both real and personal property are "mixed contracts," and are governed by the provisions of Rule 12A-1.051, F.A.C. See Rules 12A-1.006(3) and 12A-1.051(8), F.A.C. A "mixed contract" involves a real property improvement, maintenance, or repair as well as the provision of tangible personal property that remains tangible personal property and does not become part of the real property. Rule 12A-1.051(8), F.A.C. The taxability of a mixed contract depends on the predominant nature of the work performed and upon the contract terms. Rule 12A-1.051(8), F.A.C. If the predominant nature of a mixed contract is a contract for real property improvements, the contract is treated as if the entire contract was solely regarding real property. Rule 12A-1.051(8)(a), F.A.C. If the predominant nature of a mixed contract is a contract for tangible personal property, the

contract is treated as if it entirely involved tangible personal property. Rule 12A-1.051(8)(b), F.A.C. The determination of the predominant nature of the contract depends upon the facts and circumstances of each individual case. See Rule 12A-1.051(8)(c), F.A.C.

The Taxpayer's position is that the taxability of mixed contracts depends upon the predominant nature of the contract. However, Rule 12A-1.051(8)(d), F.A.C., provides in pertinent part:

If a mixed contract clearly allocates the contract price among the various elements of the contract, and such allocation is bona fide and reasonable in terms of the costs of materials and nature of the work to be performed, taxation will be in accordance with the allocation....  
(emphasis supplied)

Here, the Taxpayer separately itemizes the charges for each service it performs - thereby allocating the contract price among the elements of the contract. Further, the various services are available individually or in combination with other services - it is assumed, therefore, that the price allocated by the Taxpayer is reasonable in terms of the cost of materials and nature of the work performed. Thus, the contract between the Taxpayer and the customer provides a reasonable and clear allocation of the total contract price among the elements of the contract, and should be taxed according to this allocation.

Rule 12A-1.051(8)(d), F.A.C. The components of the Taxpayer's mixed contracts relating to real property and those relating to tangible personal property are therefore viewed as distinct from each other, with each distinct component being subject to tax as discussed in Sections A. and B., above:

Services relating to the repair, maintenance, etc. of real property are subject to tax as discussed in A., above; and

Services relating to the repair, maintenance, etc. of tangible personal property are taxable as discussed in B. above.

Example: In item J. you requested advice regarding the taxability of a contract involving carpet cleaning, carpet stain protection, furniture cleaning, and furniture stain protection.

(1) The separately stated charges to the customer for carpet cleaning and carpet stain protection are not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases. See the discussion in A., above, and Rule 12A-1.051(4), F.A.C.

(2) The separately stated charges to the customer for furniture cleaning and furniture stain protection are subject to tax under Section 212.05(1)(a)1.a., F.S. The purchase of the protectant is not taxable to the Taxpayer



when purchased. Materials and supplies used by the Taxpayer which do not become a part of the furniture are taxable to the Taxpayer when purchased as overhead items. See the discussion in B.1., above and Rule 12A-1.006(1)(c), F.A.C.

Example: In item H. you requested advice regarding the taxability of a contract involving carpet cleaning and stain protection and furniture cleaning.

(1) The separately stated charges to the customer for carpet cleaning and carpet stain protection are not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases. See the discussion in A., above, and Rule 12A-1.051(4), F.A.C.

(2) The separately stated charge to the customer for furniture cleaning is not subject to tax if the Taxpayer maintains records that no tangible personal property was furnished that became incorporated into or attached to the furniture. Materials and supplies used by the Taxpayer but not becoming part of the furniture are taxable to the Taxpayer when purchased as overhead items. See the discussion in B.2., above, and Rule 12A-1.006(1)(c) and (4), F.A.C.

Alternatively, the Taxpayer submits that the services offered are mutually exclusive and separately itemized, so that only the charge for the application of stain protectant to tangible

personal property should be subject to tax. As discussed in Section B.1., above, the charge for any accompanying cleaning services with regard to these applications is also part of the taxable "sales price."

#### Response

Based on the discussion and analysis, above, the following responses are offered to the Taxpayer's specific requests for advisement:

A. Carpet Cleaning. The charge to the customer for cleaning services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service. See II.A. of the Analysis and Discussion, above.

B. Carpet Cleaning and Carpet Stain Protection. The charges to the customer for cleaning and stain protection services are not subject to tax, regardless of whether the charges for the two services are separately stated. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform these services. See II.A. of the Analysis and Discussion, above.

C. Carpet Deodorizing. The charge to the customer for deodorizing (or sanitizing) is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials

and supplies used to perform this service. See II.A. of the Analysis and Discussion, above.

D. Furniture Cleaning. (FOOTNOTE #7) The cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies purchased and used by the Taxpayer to perform the service are taxable to the Taxpayer when purchased as overhead items. See II.B.2. of the Analysis and Discussion, above.

E. Furniture Cleaning and Stain Protection. The charges made to the customer for both services are subject to tax, regardless of whether such charges are separately stated. Purchase of the protectant is not taxable to the Taxpayer when purchased. Materials and supplies used in performing the services but which do not become incorporated or attached to the furniture are taxable to the Taxpayer when purchased as overhead items. See II.B.1. of the Analysis and Discussion, above.

F. Furniture Deodorizing. The charge made to the customer for deodorizing (or sanitizing) is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies purchased and used by the Taxpayer to perform the service are taxable to the Taxpayer when purchased as overhead items. See II.B.1. of the Analysis and Discussion, above.

G. Carpet cleaning and Furniture Cleaning. The charge to the customer for carpet cleaning services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning service. The furniture cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies purchased and used by the Taxpayer to perform the furniture cleaning service are taxable to the Taxpayer when purchased as overhead items. See II.C. of the Analysis and Discussion, above, as well as responses A. and D., above.

H. Carpet Cleaning, Carpet Stain Protection, and Furniture cleaning. The charges to the customer for carpet cleaning and stain protection services are not subject to tax, because they are separately stated from the tangible personal property elements of the contract. (FOOTNOTE #8) The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning and stain protection services. The furniture cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. Materials and supplies purchased and used by the Taxpayer to perform the furniture cleaning service are taxable to the Taxpayer when purchased as overhead items. See II.C. of the Analysis and Discussion, above, as well as responses B. and

D., above.

I. Carpet Cleaning, Furniture Cleaning, and Furniture Stain Protection. The charge to the customer for carpet cleaning services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning service. The charges made to the customer for both furniture cleaning and furniture stain protection services are subject to tax, regardless of whether such charges are separately stated. Purchase of the protectant is not taxable to the Taxpayer when purchased. Materials and supplies used in performing the furniture cleaning and furniture stain protection services but which do not become incorporated or attached to the furniture are taxable to the Taxpayer when purchased as overhead items. See II.C. of the Analysis and Discussion, above, as well as responses A. and E., above.

J. Carpet Cleaning, Carpet Stain Protection, Furniture Cleaning and Furniture Stain Protection. The charges to the customer for carpet cleaning and carpet stain protection services are not subject to tax, regardless of whether the charges for the two services are separately stated. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning and carpet stain protection services. The charges made to the customer for both furniture cleaning and furniture stain protection services are subject to tax, regardless of whether such charges are separately stated. Purchase of the protectant

is not taxable to the Taxpayer when purchased. Materials and supplies used in performing the furniture cleaning and furniture stain protection services but which do not become incorporated or attached to the furniture are taxable to the Taxpayer when purchased as overhead items. See II.C. of the Analysis and Discussion, above, as well as responses B. and E., above.

K. Ceramic Tile Floor and Grout Cleaning. See response A., above.

L. Ceramic Tile Floor Cleaning and Grout Stain Protection. See response B., above.

M. Air Conditioning and Heating System Cleaning. See response A., above.

N. Water Restoration Services. The charge to the customer for water restoration services is not subject to tax. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service. See II.A. of the Analysis and Discussion, above.

O. Sale and Installation of Wall-to-Wall Carpeting. The Taxpayer should not charge the customer tax for the sale and installation of the carpeting, regardless of whether charges for material and labor are separately stated. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service. See II.A. of the

Analysis and Discussion, above.

### **NONRESIDENTIAL SERVICES**

The Taxpayer has also requested that the Department address the taxability of the services addressed above, when such services are provided to nonresidential customers.

#### Carpet and Furniture Cleaning

As stated above, Section 212.05(1)(i)1.b., F.S., which became effective September 1, 1992, provides that charges for nonresidential cleaning services (SIC Industry Group Number 734) are taxable at the rate of six percent (6%). A local discretionary tax may also apply. See Section 212.054(2)(a), F.S. Rule 12A-1.0091, F.A.C., which became effective May 13, 1993, governs the taxability of cleaning services. The original version of the rule included as taxable cleaning services nonresidential "carpet cleaning on customer's premises" and nonresidential "furniture and upholstery cleaning on customer's premises." Rule 12A-1.0091(1)(a)3. and 9., F.A.C. (1993). However, carpet cleaning on a customers' premises, furniture cleaning on a customers' premises, and upholstery cleaning on a customers' premises are services classified within SIC code number 7217, Industry Group Number 721. Accordingly, the provisions of Rule 12A-1.0091, F.A.C., regarding nonresidential carpet, furniture, and upholstery cleaning on a customer's premises were removed effective July 1, 1999. [Rule 12A-

1.0091(1)(a), F.A.C., also provides that taxable cleaning services do not include cleaning services provided for tangible personal property.]

Therefore, Section 212.05(1)(i)1.b., F.S., does not apply to the Taxpayer's cleaning services when applied to carpet or upholstered furniture and provided to a nonresidential customer. The taxability of those services is as discussed in section II., regarding residential services, above.

#### Air Conditioning and Heating Systems

The taxpayer also cleans air conditioning and heating systems. Occasionally, a duct system has porous holes in the duct line. The taxpayer applies a sealant type coating to such holes to ensure the integrity of the duct system. SIC code number 7349 and Rule 12A-1.0091(1)(a), F.A.C., generally apply to cleaning services to the interior of a building. The nearest comparable service to air conditioning and heating system cleaning contained in Industry Group Number 734, SIC code number 7349, is chimney cleaning service. See also Rule 12A-1.0091(1)(a)3., F.A.C. Furnace and chimney cleaning services are also contained in SIC code number 7699, and services contained in SIC code number 7699 are not taxable under Section 212.05(1)(i)1.b., F.S. Additionally, SIC code number 7349 and Rule 12A-1.0091(1)(a), F.A.C., are susceptible to an interpretation that excludes the Taxpayer's services regarding air conditioning and heating systems from the services that are subject to tax.



It is well settled under Florida law that taxing statutes are to be strictly construed in favor of the taxpayer, and that this is particularly true when a taxing statute is susceptible to two meanings - one imposing the tax and one providing relief from taxation. See Department of Revenue v. Brookwood Associates, 324 So.2d 184, 187 (Fla. 1st DCA 1975), cert. denied, 366 So. 2d 600 (Fla. 1976). Because air conditioning and heating system cleaning may be interpreted as falling both within and outside the scope of Section 212.05(1)(i)1.b., F.S., the statute should be interpreted as not taxing such services. Therefore, Section 212.05(1)(i)1.b., F.S., does not apply to the Taxpayer's cleaning services when applied to air conditioning and heating systems and provided to a nonresidential customer. The taxability of those services is as discussed in section II., regarding residential services, above.

#### Ceramic Tile Flooring and Grout

Rule 12A-1.0091(1)(a), F.A.C., describes nonresidential cleaning services as "services (not involving repair) rendered to maintain the clean and sanitary appearance and operating condition of a nonresidential building." Rule 12A-1.0091(1)(a), F.A.C., continues by providing a laundry list of examples of the types of services that are subject to tax. This list mirrors the services listed under SIC code number 7349. As mentioned above, SIC code number 7349 and Rule 12A-1.0091(1)(a), F.A.C., generally applies to cleaning services rendered to the interior

of a building. The Taxpayer's cleaning services when applied to a nonresidential customer's ceramic tile flooring and grout clearly is "rendered to maintain the clean and sanitary appearance and operating condition" of the interior of the customer's premises, and constitutes the cleaning or maintenance of such premises. Therefore, the charge to a nonresidential customer for cleaning ceramic tile flooring and grout is subject to tax under Section 212.05(1)(i)1.b., F.S., plus any applicable local discretionary surtax. Cleaning service providers are considered the ultimate users or consumers of the tangible personal property they purchase and use in connection with their service, and are required pay the tax imposed on such sales to their dealers. Rule 12A-1.0091(5), F.A.C.

It is noted that the taxable amount under Section 212.05(1)(i)1.b., F.S., does not include the separately stated charge for stain protection service to the ceramic tile flooring and grout. In contrast to Section 212.05(1)(a), F.S., which levies a tax on the taxable "sales price" (as defined by Section 212.02(16), F.S.), Section 212.05(1)1.b., F.S., levies a tax only upon the "charge" to the customer for "nonresidential cleaning" services. The separately stated charge for grout stain protection does not involve a charge for cleaning. Rather, as discussed above under II.A regarding residential services, the application of stain protection serves to "maintain" the grout by keeping it in a state of good repair and stain free.

## Response

The responses provided with regard to the services provided to residential customers, above, are changed when provided to nonresidential customers only as follows:

K. Ceramic Tile Floor and Grout Cleaning. The charge to a customer for ceramic tile floor and grout cleaning is subject to tax pursuant to Section 212.05(1)(i)1.b., F.S. Purchases of materials and supplies by the Taxpayer and used in performance of this service is taxable to the Taxpayer when purchased. Rule 12A-1.0091(5), F.A.C.

L. Ceramic Tile Floor Cleaning and Grout Stain Protection. The charge to a customer for ceramic tile floor and grout cleaning is as discussed in response K., immediately above. The Taxpayer should not charge tax to its customer for the stain protection service. The Taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the stain protection service. See II.A. of the Analysis and Discussion regarding residential services, above.

## Conclusion

This response constitutes a Technical Assistance Advisement under s. 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 s. 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 s. 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) 922-4710.

Sincerely,

Thomas K. Butscher

Senior Attorney

Technical Assistance & Dispute Resolution

TKB\

Control # 56988

---

FOOTNOTE #1 -As defined in Section 212.02(12), F.S.

FOOTNOTE #2 - Retail sale plus installation contracts, described in Rule 12A-1.051(3)(d), F.A.C., are treated differently. See Rule 12A-1.-51(5), F.A.C. The Taxpayers contracts as described do not constitute retail sale plus installation contracts.

FOOTNOTE #3 -The facts indicate that the Taxpayer's water restoration services may sometimes involve furniture. In the ordinary case, it would seem that water restoration that also involves services to furniture should be treated as a real property contract pursuant to Rule 12A-1.051(8)(a), F.A.C., because the predominant nature of the contract will be for the improvement of real property. See the discussion of "mixed contracts" in C., below. It is noted that under circumstances where the predominant nature of the contract is one regarding tangible personal property, pursuant to Rule 12A-1.051(8)(b), F.A.C., the result is essentially the same as when the predominant nature of the contract is the improvement of real property. See the discussion in II.B.2., below.

FOOTNOTE #4 - If the intention is to leave deodorizer or sanitizer behind and the deodorizer or sanitizer is to remain

and take effect for more than a transitory period - the application would, instead, be treated identically to stain protection, as discussed below.

FOOTNOTE #5 - Although not included in your request, "area rugs and carpets" may be substituted for "furniture" everywhere in this list because they are considered tangible personal property. See Rule 12A-1.051(18)(a), F.A.C.

FOOTNOTE #6 - "Area rugs and carpets" may be substituted for "furniture" everywhere in this list because they are considered tangible personal property. See Rule 12A-1.051(18)(a), F.A.C.

FOOTNOTE #7 - Although not included in your request, "area rugs and carpets" may be substituted for "furniture" in these responses, because area rugs and carpets are considered tangible personal property. See Rule 12A-1.051(18)(a), F.A.C.

FOOTNOTE #8 - As long as the real property and tangible personal property elements of the contract are separately stated from each other, the allocation between the two elements will be respected. The Taxpayer could, for example, aggregate multiple real property elements together into a single separately stated charge and multiple tangible personal property elements into another single separately stated charge, and Rule 12A-1.051(8)(d), F.A.C., would still apply.