

## SUMMARY

### **QUESTION 1:**

Are Taxpayer's Standard customer billing invoices for services rendered during the Pilot and post-pilot periods subject to sales tax or communications services tax?

### **ANSWER – Based on the Facts Below:**

Communications Services Tax:

Taxpayer's services are not subject to tax pursuant to Chapter 202, F.S. Taxpayer is providing an information service that is delivered via a telephonic connection or connections over the Internet.

Sales and Use Tax:

Sales of electronically delivered information are not subject to sales tax. During the pilot period, the Taxpayer provides terminal equipment to customers. However, the terminal equipment remains the property of the Taxpayer and must be returned at the end of the pilot period.

During the post-pilot period, customers are required to provide their own terminal equipment. Charges during the post-pilot period are exclusively for sale of electronically delivered information, and not subject to tax.

### **QUESTION 2:**

Should the Taxpayer pay sales tax on purchases of terminal equipment used by its customers during the pilot period?

### **ANSWER – Based on the Facts Below:**

Yes. Rule 12A-1.062(6)(a), F.A.C., provides that dealers of information services are "considered the ultimate consumers of the tangible personal property . . . used in providing information services and are required to pay tax on the acquisition of tangible personal property used in providing such service."

### **QUESTION 3:**

Should the Taxpayer collect tax on the portion of the total invoice charge related to Equipment located in Florida for Taxpayer's Non-Standard invoice billings to [Customer A] under the current agreement?

### **ANSWER – Based on the Facts Below:**

Yes. The supporting schedules for the invoices to Customer A provide that the charges for the terminals are separately stated from the monthly service fees. Thus, the Taxpayer is leasing equipment for the limited purpose of processing Taxpayer's information services. Transactions that involve renting or leasing of tangible personal property, where the customer possesses or

uses the tangible personal property of the Taxpayer for a consideration, are subject to sales tax. In the transactions regarding Customer A, the leasing of the equipment is separately stated from the charges for the Taxpayer's information services. Therefore, only the lease of the equipment is subject to sales tax as provided in Rule 12A-1.062, F.A.C.

September 23, 2009

XXX

Re: Subject: Technical Assistance Advisement (TAA) 09A-049  
Sales and Use Tax – Electronic Information Services  
Sections 202.11, 202.12, 212.02, and 212.05, Florida Statutes (F.S.)  
Rules 12A-1.032, 12A-1.062, and 12A-1.071, Florida Administrative Code (F.A.C.)  
The XXX (Taxpayer)  
FEI #XXX

Dear XXX:

This is in response to your letter dated May 13, 2009, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of electronic information services offered by your client. An examination of your letter has established you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request of a TAA.

### **Facts**

Your letter dated May 13, 2009, provides the following in part:

[Taxpayer] is a Delaware corporation that is commercially domiciled in California. [Taxpayer] also maintains a remote sales office in Florida. [Taxpayer] offers its retailer business customers ("Retailers") electronic information services including, without limitation, services related to (i) authorizing merchandise returns (XXX), (ii) fraudulent receipt identification and (iii) the issuance of discount coupons (XXX), collectively referred to as "services".

The services are comprised primarily of [Taxpayer] processing customer information on purchase and return history using [Taxpayer]'s proprietary software and analytics to

generate resulting information to assist the Retailer in managing its merchandise return transactions and coupon programs. The services are offered via access to a server located

in California that performs the information processing and electronically authorizes merchandise returns or issues coupons based on information in return transactions and consumer transaction histories. For example, [Taxpayer]'s signature product, XXX, utilizes an ASP model to provide return and exchange authorization services that are initiated by either a VeriFone or similar type platform on a Retailer's POS System. To

initiate a transaction, a user of [Taxpayer]'s service swipes a driver's license or state ID card through these devices, and similar to a credit card or check verification, the data is transmitted to [Taxpayer]'s host server for an approval for return or exchange authorization. [Taxpayer] detects fraud through utilization of deterministic rules and statistical models.

. . . [Taxpayer]'s proprietary software and the database of consumer return histories reside in [Taxpayer]'s servers in California. These servers continuously provide the services to the Retailers, with the return authorization service enabling the Retailers to authorize returns before completing each return transaction, thus reducing losses due to return fraud, and the coupon issuance service enabling the Retailers to issue more effective coupon offers to its customers. . . .

In providing this service, Retailers access the system in one of two ways. For some customers, [Taxpayer] provides countertop terminals (i.e., VeriFones) the Retailer uses to enter information that describes each return transaction and through which the Retailer electronically receives the resulting information of each return authorization, coupon issuance, or both. In this case, [Taxpayer] does not make a separate charge to the Retailer for usage of the terminals. Rather, the terminals remain the property of [Taxpayer] and at the termination of the contract all equipment must be returned to [Taxpayer]. Because [Taxpayer] uses the terminals in the provision of its services, [Taxpayer] pays sales or use tax on its purchase of the terminals and has not issued its vendors resale certificates. Alternatively, a Retailer may access the service directly from its own point of sale system. In either case, Retailers access the service via dial-up phone calls over the public phone system, via connections over the Internet (through the retailer's ISP), or via connections over dedicated lines. Other than the countertop terminal, [Taxpayer] does not provide its customers with any other equipment or communication services for use by the Retailer, either in the Retailer's stores or its headquarters locations, to access [Taxpayer]'s information services.

In addition to accessing [Taxpayer]'s services, [Taxpayer] stores certain customer information that is made available to each specific retail customer on a website provided by [Taxpayer]. The servers that provide the website reside in [Taxpayer]'s data center in California and Retailers access and retrieve that information via the world-wide web. [Taxpayer] also provides periodic emailed reports of the Retailers' information back to the Retailers via the public internet. [Taxpayer] provides no equipment or communication services to the retailers for either type of reporting access.

The contracts entered into by [Taxpayer] with each Retailer are structured as a Services and License Agreement (“Agreement”) with an order form whereby [Taxpayer] agrees to provide the Retailer with the services. Because [Taxpayer] uses proprietary software and analytics to offer its information services, the Agreement grants the Retailer a non-sublicensable and nontransferable license to “access and use” [Taxpayer]’s software solely on authorized return terminals at Retailer authorized locations. . . .

The term of the Agreement is clearly delineated and does not cease upon the occurrence of a specific event or achievement of a specific goal. The Retailer usually enters into a 90-day pilot Agreement with [Taxpayer] that allows the Retailer to receive [Taxpayer]’s services for a service fee that is typically billed monthly. At the end of the pilot term, the Retailer is obligated to return the equipment to [Taxpayer] and the Retailer will be responsible for providing its own equipment for services provided beyond the pilot period. To that end, the Retailers will generally purchase needed equipment from third-party vendors or use its existing POS systems.

The structure of the service fee varies depending on the service. . . . The fee for each type of electronic information service is shown as a separate line item on [Taxpayer]’s invoice (e.g., authorizing merchandise returns, fraudulent receipt identification, and the issuance of discount coupons under a discount coupon program), and the charge for equipment, if any, is included in the service fee under Standard customer billings.

To date, [Taxpayer] has not billed or collected the communication services tax or sales or use tax from its transactions with Florida customers.

\* \* \*

[Taxpayer]’s Non-Standard Billing Invoices with [Customer A] . . .

As previously noted, we have also enclosed two Non-Standard customer billing invoices to [Customer A] . . . and the supporting Amendment to the Services and Licenses

Agreement for your review. These invoices are classified as Non-Standard because [Customer A] is the only customer where [Taxpayer] is providing the Equipment to its customer in the post-pilot period.

. . . [Taxpayer] is currently leasing the Return Terminals to [Customer A] for a fee of thirty dollars (\$30.00) per terminal per month despite the fact this charge is not separately stated on the invoice itself, but only on the supporting schedules attached to each invoice. However, [Taxpayer] and [Customer A] are renegotiating the contract and it is anticipated that [Customer A] will purchase its own equipment and [Taxpayer] will simply provide information services to [Customer A] in the near future.

\* \* \*

Along with your request, you provided the following “standard documents” used by [Taxpayer] for review:

- **Exhibit 1:** Service and License Agreement;
- **Exhibit 2:** Order Form for XXX with supporting exhibits;
- **Exhibit 3:** Order Form for XXX with supporting exhibits;
- **Exhibit 4:** Standard customer billing invoices for services rendered during the Pilot period and post-pilot period; and
- **Exhibit 5:** Non-Standard customer billing invoices to [Customer A] . . . with the supporting *Amendment One to the Services and License Agreement*.

The XXX (XXX) and XXX (XXX) Order Forms provide similar statements regarding License to Grant and Return Terminals as follows:

**3. License Grant**

a. License to XXX. Subject to the terms and conditions of this Order Form and the Agreement, [Taxpayer] hereby grants to Client, during the Term, a non-sublicensable, non-transferable and non-exclusive license to access and use: (a) the XXX Client Software solely on authorized Return Terminals at authorized Client Locations within the United States; and (b) the XXX pursuant to the XXX Requirements . . . .

\* \* \*

**4. Return Terminals.**

a. Supply of Return Terminals. During the Pilot Period, [Taxpayer] will provide the Return Terminals as described in Exhibit A. Following the end of the Pilot Period, Client will be responsible for providing its own Return Terminals. . . .

\* \* \*

Exhibit A of the XXX Order Form provides the following in part:

. . . **III.) Roll-Out**.

. . . b. [Taxpayer] will implement XXX to authorize issuance of Coupons and to collect data on the redemption of those Coupons. To accomplish this, [Taxpayer] will supply the following:

1. Server Hardware

- A. [Taxpayer] will run XXX on [Taxpayer]'s servers housed in [Taxpayer]'s data center.
2. Implementation. [Taxpayer] will provide:
  - A. Server and terminal software to collect data, authorize coupons, and communicate results to the store.
  - B. Training for the operation of XXX
    - i. One session of four (4) hours for the Pilot Period
    - ii. Additional two (2) sessions of eight (8) hours each during the Initial Term at [Taxpayer]'s offices.
  - C. Accounts for Client associates and manager to access the system for coupon authorization, administration, and reporting
3. Transaction Services: For each return entered into XXX, [Taxpayer] will:
  - A. Record consumer and transaction information
  - B. Execute a coupon authorization model for each transaction
  - C. Make transaction data available to the client in web and batch reports.
4. Report Services: [Taxpayer] will provide reports on [Taxpayer]'s web site.  
...
5. Support Services. [Taxpayer] will provide
  - A. During the Pilot Period only, replacement of any non-operational Return Terminals within two (2) business days at Client's request. After the Pilot Period, this provision becomes the responsibility of Client.
6. The Implementation of XXX carries fees associated with the operations of the Return Terminals. The Client is responsible for the cost of any network connection fees, phone line installation, monthly phone charges, paper and power sources required to operate XXX, as well as the cost of any terminals or scanning devices that might be required.
7. Other Responsibilities of the Client
  - A. Telecomm installation, configuration, charges, power for terminals and scanners.
  - B. Internal training materials for Client's employees, training videos, etc.
  - C. POS software integration costs for any internal or third party integration.
8. Point of Sale ("POS") Implementation

After the Pilot Period, [Taxpayer] shall provide support to Client, at Client's request, for integration of XXX with Client's POS system. . . .

\* \* \*

Exhibit A of the XXX Order Form provides the following in part:

. . . [Taxpayer] will implement the XXX to collect data and authorize merchandise returns. To accomplish this, [Taxpayer] will deliver the following:

1. Hardware
  - a. Terminals and Scanners
    - i. During the Pilot Period only, [Taxpayer] will provide \_\_\_ terminals and \_\_\_ scanners to Client Locations, up to the maximum number of stores participating in the Pilot Period.
  - b. Server Hardware
    - i. [Taxpayer] will run the XXX on [Taxpayer]'s servers housed in the Company's data center.

\* \* \*

5. Support Services. [Taxpayer] will provide
  - a. A client call service seven (7) days per week from 6AM to 9PM Pacific Standard Time
  - b. A consumer call service, via a 1-800 number, five days per week from 8AM to 5PM Pacific Standard Time
  - c. During the Pilot Period only, replacement of any non-operational Return Terminals within two (2) business days at Client's request. After the Pilot Period, this provision becomes the responsibility of Client.
  - d. Weekly reports on the number of consumer calls, RARs sent, and disputes in progress, commencing with deployment of the authorization model.

The Implementation of the XXX carries fees associated with the operations of the Return Terminals. The Client is responsible for the cost of any network connection fees, phone line installation, monthly phone charges, and power sources required to operate the XXX, as well as the cost of any 2-D bar code scanning devices. Additionally, the Client is responsible for purchases of Return Terminals and scanning devices for all Client Locations after the Pilot Period.

#### Other Responsibilities of the Client

- a. Telecomm installation, configuration, charges, power for terminals and scanners

b. Internal training materials for Client's employees

\* \* \*

Review of the Standard customer billing invoices for services rendered during the Pilot period and post-pilot period provide Taxpayer does not make a separate charge for the usage of the terminals supplied by Taxpayer.

\* \* \*

The Non-Standard customer billing invoices to [Customer A] provide the following:

Invoice 20011750 represents a single charge of \$33,705 for Verify-1 Services with the following description: "*Monthly Service Fee for the month of April 2009.*"

Invoice 20011694 represents a single charge of \$33,495 for Verify-1 Services with the following description: "*Monthly Service Fee & Equipment Fee for Verifones and eSeeks for the month of January 09.*"

\* \* \*

The attached supporting schedules for the Non-Standard customer billing invoices provide the charges for terminals supplied by Taxpayer to Customer A are separately stated from the monthly service fees.

\* \* \*

Amendment One to the Services and License Agreement between Taxpayer and Customer A provides the following in part:

11) c) Terminal Fees. Client shall pay [Taxpayer] thirty dollars (\$30.00) per terminal per month for [Taxpayer]'s Return Terminals are leased by Client.

\* \* \*

**Requested Advisement**

You request an advisement that provides the following:

1. In regards to [Taxpayer]'s Standard customer billing invoices for services rendered during the Pilot and post-pilot periods, none of the stated services offered by [Taxpayer] are subject to tax pursuant to either Chapter 202, F.S., or Chapter 212, F.S.
2. During the Pilot period, [Taxpayer] is the consumer of the terminals and any other equipment incidentally used in the provision of its nontaxable information services for which no separate charge is made to its customers. Accordingly, [Taxpayer] should pay sales or use tax to its vendors on the



purchase of this equipment.

3. With respect to [Taxpayer]'s Non-Standard invoice billings to [Customer A] under the current agreement, [Taxpayer] should collect tax on the portion of the total invoice charge related to Equipment located in Florida (as reflected in the supporting schedules attached to each invoice) consistent with Rule 12A-1.062(6)(b), but the separately stated charge (on the supporting invoice schedule) for furnishing its information services by way of electronic transmission will continue to be nontaxable under Chapter 212.

When the contract with [Customer A] is renegotiated, none of the information services provided by [Taxpayer] will be subject to tax pursuant to either Chapter 202, F.S., or Chapter 212, F.S.

\* \* \*

## **Communications Services Tax:**

### **Applicable Authority and Discussion**

Section 202.11, F.S., provides in part:

As used in this chapter:

\* \* \*

(2) "Communications services" means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term does not include:

(a) Information services.

\* \* \*

(6) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing, web-hosting service, and end-user 900 number service. The term does not include any video, audio, or other programming service that uses point-to-multipoint distribution by which programming is delivered, transmitted, or broadcast by any means, including any interaction that may be necessary for selecting and using the service, regardless of whether the programming is delivered, transmitted, or broadcast over facilities owned or operated by the seller or another, or whether denominated as cable service or as basic, extended, premium, pay-per-view, digital, music, or two-way cable service.

\* \* \*

Section 202.12, F.S., provides every person who engages in the business of selling telecommunications services at retail in the state of Florida is exercising a taxable privilege. Section 202.11(2), F.S., defines “communications services” to mean “. . . the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of protocol used for such transmission or conveyance. . . .” However, section 202.11(2)(a), F.S., excludes “information services” from the definition of “communications services.” Section 202.11(6), F.S. defines “information service” to mean “. . . the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including but not limited to, electric publishing, web-hosting service, and end-user 900 number service. . . .”

The services offered by [Taxpayer] are not subject to the communications services tax of Chapter 202, F.S., because it is an “information service” excluded from the definition of taxable “communications services.” According to your letter and the documentation provided, [Taxpayer] provides electronic information services to its customers via access to [Taxpayer]’s server that performs the information processing. The Agreements specify that the customer is responsible for all electricity and communications services necessary to facilitate [Taxpayer]’s delivery of its information service. Thus, [Taxpayer] is providing an information service that is delivered via a telephonic connection or connections over the Internet. The telephone and Internet access connections are provided by a third party and not from [Taxpayer]. Accordingly, the services offered by [Taxpayer] are not subject to communications services tax.

### **Sales and Use Tax:**

#### **Applicable Authority and Discussion**

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

(10)(g) “Lease,” “let,” or “rental” also means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title of such property, except as expressly provided to the contrary herein. . . .

\* \* \*

(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 . . . .

\* \* \*

Section 212.05, F.S., provides in 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, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

\* \* \*

Rule 12A-1.062, F.A.C., provides in part:

(1) The sale of information services involving the furnishing of printed, mimeographed, multigraphed matter, or matter duplicating written or printed matter, other than professional services and services of employees, agents or other persons acting in a representative or fiduciary capacity, are taxable.

\* \* \*

(3)(a) “Information services” means and includes the services of collecting, compiling or analyzing information of any kind of nature, or furnishing reports thereof to other persons. The charge for furnishing information services, such as newsletters, tax guides, research publications, and other written reports of compiled information, which are not produced for and provided exclusively to a single customer, is taxable.

\* \* \*

(5) The charge for furnishing information by way of electronic images which appear on the subscriber’s video display screen does not constitute a sale of tangible personal property nor does it constitute the sale of a taxable information service.

(6)(a) Providers of information services are considered the ultimate consumers of tangible personal property, such as display terminals, central processing units, and other equipment that is used in providing information services and are required to pay tax on the acquisition of tangible personal property used in providing such service.

(b) When providers of information services make a separate charge to subscribers for the use, rental, lease, or license to use tangible personal property the charge is subject to tax.

\* \* \*

Rule 12A-1.032(2), F.A.C, provides:

The sale to a consumer of a computer and its related components is taxable when delivered to a customer in this state. The rental of a computer and its related components, including terminal equipment (hardware) which is physically located in this state, is taxable.

Rule 12A-1.071, F.A.C., provides in part:

(1)(b) Transfer of possession with respect to an operating lease means one of the following attributes of tangible personal property ownership has been transferred:

1. Custody or possession of the property, actual or constructive;
2. The right to custody or possession of the property; or,
3. The right to use and control or direct the use of the property.

\* \* \*

### Services

Chapter 212, F.S., only imposes a tax on specifically identified services. Sales of electronically delivered information have not been designated in Chapter 212, F.S., as being subject to tax. In addition, a charge solely for electronically transmitted information is not subject to tax, pursuant to Chapter 212, F.S., as there has been no exchange of tangible personal property. See Department of Revenue v. Quotron Systems, Inc., 615 So.2d 774, 778 (Fla. 3<sup>rd</sup> DCA 1993), where the court held that electronic images that appear on video display screens are not “tangible personal property” as defined in Section 212.02 (19), F.S., and that transmission of such images is not a “sale.” See also Rule 12A-1.062(5), F.A.C., which provides that information furnished by way of electronic images, which appear on the subscriber’s video display screen, are not subject to sales tax.

Here, the Taxpayer provides the services of collecting, compiling, and analyzing “customer information on purchase and return history using [Taxpayer]’s proprietary software and analytics to generate resulting information to assist the Retailer in managing its merchandise return transactions and coupon programs.” The resulting information is delivered to the retailer in an electronic format. Therefore, charges for these services are not subject to sales tax.

### Tangible Personal Property

A “sale” of tangible personal property includes the lease or rental of tangible personal property. Section 212.02(15), F.S. Any person who leases or rents taxable tangible personal property in this State is exercising a taxable privilege. Section 212.05, F.S. “Lease,” “let,” and “rental” are defined in section 212.02(10)(g), F.S., to include those transactions in which the owner of

tangible personal property transfers possession or use of this property to another, for consideration, without the transfer of title.

Generally, the charge for services associated with the rental of tangible personal property becomes taxable as part of the sale price of the rented property. See section 212.02(16), F.S. However, as noted above, Rule 12A-1.062(5), F.A.C., provides that sales of electronically delivered information are not subject to tax. The rule further provides when “. . . providers of information services make a separate charge to subscribers for the use, rental, lease, or license to use tangible personal property the charge is subject to tax.” Therefore, when a dealer of electronically delivered information services bills for equipment separately, only the equipment is subject to tax.

### **Conclusion**

#### **Requested Advisement:**

1. In regards to [Taxpayer’s] Standard customer billing invoices for services rendered during the Pilot and post-pilot periods, none of the stated services offered by [Taxpayer] are subject to tax pursuant to either Chapter 202, F.S., or Chapter 212, F.S.

Response:

#### **Chapter 202, F.S.**

Based on the information provided, Taxpayer’s services are not subject to tax pursuant to Chapter 202, F.S. Taxpayer is providing an information service that is delivered via a telephonic connection or connections over the Internet. The telephone and Internet access connections are provided by a third party and not from Taxpayer. Accordingly, the services offered by Taxpayer are not subject to communications services tax.

#### **Chapter 212, F.S.**

As provided, sales of electronically delivered information are not subject to sales tax. In the post-pilot period, Retailers are required to provide their own terminal equipment (or use an existing point of sale system) with which to receive the Taxpayer’s services. It is clear that charges for the Taxpayer’s services in the post-Pilot period involve only the sale of electronically delivered information, and are therefore not subject to tax under Section 212, F.S.

During the 90-day Pilot period, the Taxpayer does provide terminal equipment to Retailers. The terminal equipment is provided in connection with and in furtherance of the services provided by the Taxpayer (e.g, to introduce the Taxpayer’s services to Retailers). The terminal equipment remains the property of the Taxpayer and must be returned to the Taxpayer at the end of the period. In direct contrast to the Non-Standard invoice billings discussed below, Retailers are not charged for rental of the terminal equipment during the Pilot period. On the facts presented, it is

determined that there is no “sale” (in this case, a lease or rental) of the terminal equipment by the Taxpayer during the Pilot period. Accordingly, no tax is imposed upon the charge by the Taxpayer to Retailers during the Pilot period.

\* \* \*

Requested Advisement:

2. During the Pilot period, [Taxpayer] is the consumer of the terminals and any other equipment incidentally used in the provision of its nontaxable information services for which no separate charge is made to its customers. Accordingly, [Taxpayer] should pay sales or use tax to its vendors on the purchase of this equipment.

Response:

Rule 12A-1.062(6)(a), F.A.C., provides that dealers of information services are “considered the ultimate consumers of the tangible personal property . . . used in providing information services

and are required to pay tax on the acquisition of tangible personal property used in providing such service.” Therefore, in the case of “Standard” customer billings during the Pilot period, the

Taxpayer should pay sales tax to its vendors, or accrue use tax, on the purchase of the equipment used to provide the information service.

\* \* \*

Requested Advisement:

3. With respect to [Taxpayer]’s Non-Standard invoice billings to [Customer A] under the current agreement, [Taxpayer] should collect tax on the portion of the total invoice charge related to Equipment located in Florida (as reflected in the supporting schedules attached to each invoice) consistent with Rule 12A-1.062(6)(b), but the separately stated charge (on the supporting invoice schedule) for furnishing its information services by way of electronic transmission will continue to be nontaxable under Chapter 212.

Alternatively, the single charge of \$33,705 on Invoice 20011750 for Verify-1 Services with the following description: “*Monthly Service Fee for the month of April 2009*” will be wholly nontaxable since the Equipment charge is not separately stated on the invoice (as opposed to the supporting invoice schedule), while the single charge of \$33,495 for Verify-1 Services on Invoice 20011694 will be wholly taxable (on the proportionate number of stores located in Florida) since the invoice (as opposed to the supporting invoice schedule) provides a single line item description for “*Services and Equipment.*”

When the contract with [Customer A] is renegotiated, none of the information services provided by [Taxpayer] will be subject to tax pursuant to either Chapter 202, F.S., or Chapter 212, F.S.

Response:

Amendment One to the Services and License Agreement between Taxpayer and Customer A, provides that the terminals will be rented at \$30 per terminal per month. The supporting schedules for the invoices to Customer A provide that the charges for the terminals are separately stated from the monthly service fees. Thus, the Taxpayer is leasing equipment for the limited purpose of processing Taxpayer's information services.

As provided, transactions that involve renting or leasing of tangible personal property, where the customer possesses or uses the tangible personal property of the Taxpayer for a consideration, are subject to sales tax. In the transactions regarding Customer A, the leasing of the equipment is separately stated from the charges for the Taxpayer's information services. Therefore, only the

lease of the equipment is subject to sales tax as provided in Rule 12A-1.062, F.A.C.

Further, based on the information provided, when the contract with Customer A is renegotiated, Customer A will own and provide all of the equipment necessary to facilitate the use of Taxpayer's information services. Therefore, the electronically delivered information provided by Taxpayer will not be subject to tax pursuant to either Chapter 202, F.S., or Chapter 212, F.S.

This response constitutes a Technical Assistance Advisement under section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than that expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material, and this response,

deleting names, addresses, and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Brinton Hevey  
Tax Law Specialist  
Technical Assistance and Dispute Resolution  
850/488-7157

Record ID: 64622