



Florida Department of Revenue
Technical Assistance and Dispute Resolution

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Executive Director

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QUESTION: How should the taxpayers source the income from different types of services they provide?

ANSWER: The taxpayers should source the income from different types of services they provide to the location to which the deliverables from those services are forwarded, sent, delivered, or provided, on a market basis.

July 2, 2021

XXX
XXX
XXX
XXX

Re: Technical Assistance Advisement 21C1-005
Apportionment
Section 220.15, F.S.
Rule 12C-1.0155, F.A.C.
XXX ("the parent")
FEIN: XXX
XXX ("Company A")
FEIN: XXX
XXX ("Company B")
FEIN: XXX
XXX ("Company C")
FEIN: XXX

Dear XXX:

This is in response to your request dated XXX, for a Technical Assistance Advisement ("TAA") pursuant to s. 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the apportionment of income derived from providing services, for purposes of Florida corporate income tax. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

ISSUE

How to properly source income derived from services, in computing the Florida sales factor.

FACTS SUPPLIED BY TAXPAYER

Based on the information provided in the TAA request, the headquarters of the parent company is located XXX. The primary offices of two of its subsidiaries, Company A and Company C, are located XXX, while the primary office of a third subsidiary, Company B, is located XXX. The subsidiaries presently file separate Florida corporate income tax returns. The affiliated group files a consolidated federal corporate income tax return.

Company A sells XXX and XXX services to XXX customers who pay a fee for those services.

Company B sells XXX and XXX services to XXX to XXX or XXX for a fee, allowing them to XXX for XXX.

Company C sells XXX to XXX and XXX for a fee, that allows them to XXX for customers XXX, and services to XXX customers.

LAW

Section 220.15(5)(a), F.S., states:

- (5) The sales factor is a fraction the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.
 - (a) As used in this subsection, the term "sales" means all gross receipts of the taxpayer except interest, dividends, rents, royalties, and gross receipts from the sale, exchange, maturity, redemption, or other disposition of securities. However:
 1. Rental income is included in the term if a significant portion of the taxpayer's business consists of leasing or renting real or tangible personal property; and
 2. Royalty income is included in the term if a significant portion of the taxpayer's business consists of dealing in or with the production, exploration, or development of minerals.

Rule 12C-1.0155, F.A.C., states:

- (1) For the purposes of the sales factor, the term "sales" means all gross receipts received by the taxpayer from transactions and activities in the regular course of its trade or business.

* * *

- (h) Sales of services. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, the performance of equipment service contracts, or research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

* * *

(2) Florida sales. The numerator of the sales factor includes gross receipts attributed to Florida which were derived by the taxpayer from transactions and activities in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incident to such gross receipts shall be included, regardless of the place where the account records are maintained or the location of the contract or other evidence of indebtedness.

* * *

(I) Other Sales in Florida. Gross receipts from other sales shall be attributed to Florida if the income producing activity which gave rise to the receipts is performed wholly within Florida. Also, gross receipts shall be attributed to Florida if the income producing activity is performed within and without Florida but the greater proportion of the income producing activity is performed in Florida, based on costs of performance. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits. Where independent contractors are used to complete a contract, the term "income producing activity" will include amounts paid to the independent contractors.

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ANALYSIS

Subsection 220.15(5), F.S., defines the sales factor as a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period. Rule 12C-1.0155, F.A.C., describes how the receipts from different types of sales activities are computed, and then provides information on the computation of the Florida portion of those receipts. Rule 12C-1.0155(2), F.A.C., provides that the numerator of the sales factor includes gross receipts attributed to Florida which were derived by a taxpayer from transactions and activities in the regular course of its trade or business.

As noted in the TAA request, the income from the services provided by Companies A, B, and C, meets the definition of "sales," provided by section 220.15(5)(a), F.S., and should be included in the computation of the Florida sales factor. As is further noted in the TAA request, Companies A, B, and C, do not meet the definition of providing "personal services." Additionally, the types of services they provide are not consistent with those addressed in s. 220.15(5)(c), F.S., nor do the entities appear to meet the definition of "financial organization," provided by s. 220.15(6), F.S.

However, Rule 12C-1.0155(1)(h), F.A.C., which addresses "Sales of Services," states that income received for providing services includes the gross receipts from the performance of such services and, to the

extent that those services are forwarded, sent, delivered, or provided, to a location in Florida for the customer, Rule 12C-1.0155(2), F.A.C., directs that the income is to be sourced to Florida and included in the numerator of the sales factor.

The apportionment factor provides a measure of a taxpayer's business activity in the states in which it does business and serves as a means of attributing income to the states from which the income was derived. Florida is frequently referred to as a "market state" because its sales apportionment is based on where the sales transaction takes place rather than where contracts are approved, where data is processed or stored, where payment is made, or where the customer's headquarters is located.

Pursuant to Rule 12C-1.0155(2)(l), F.A.C., sales are attributed to Florida if the income producing activity which gave rise to the receipt is performed wholly within Florida. "Income producing activity" is defined in Rule 12C-1.0155(2)(l), F.A.C., as "the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits."

However, as the income of Companies A, B, and C, is clearly derived from the sale of services, the provisions of Rule 12C-1.0155(1)(h), F.A.C., which addresses "Sales of Services," and Rule 12C-1.0155(2), F.A.C., which directs that such income is to be sourced to Florida and included in the numerator of the sales factor when the services are rendered to customers located in Florida, or the deliverables from those services are forwarded, sent, delivered, or provided, to a location in Florida for the customer, are on point and would be more appropriately applied to the income in question than Rule 12C-1.0155(2)(l), F.A.C., which addresses "Other Sales in Florida."

Accordingly, the income Company A receives from the sale of XXX and XXX services to XXX customers, who pay a fee for those services, should be included in the denominator of the Florida sales factor. To the extent that the deliverables from those services are forwarded, sent, delivered, or provided, to a location in Florida for the customer, the income should also be included in the numerator of the Florida sales factor.

The income Company B receives from the sale of XXX and XXX services to supplement XXX to XXX or XXX, who pay a fee for those services, should be included in the denominator of the Florida sales factor. To the extent that the deliverables from those services are forwarded, sent, delivered, or provided, to a location in Florida for the XXX or XXX to which the XXX is sold, the income should also be included in the numerator of the Florida sales factor.

The income Company C receives from the sale of XXX to XXX and XXX that pay a fee for that service, should be included in the denominator of the Florida sales factor. To the extent that the deliverables from those services are forwarded, sent, delivered, or provided, to a location in Florida for the XXX and XXX to which the XXX is sold, the income should also be included in the numerator of the Florida sales factor.

CONCLUSION

Company A, Company B, and Company C, should apportion their service income to Florida on a market basis, as directed by section 220.15, F.S., and Rule 12C-1.0155, F.A.C.

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 documents are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure. In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

Suzanne C. Paul

Suzanne C. Paul
Tax Law Specialist
Technical Assistance and Dispute Resolution

cc: XXX
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