SUMMARY

QUESTION: The taxpayer is solely in the business of providing cellular communications services. In carrying out its administrative, operational, and sales functions, taxpayer purchases local and long distance telephone services from other providers and uses these services in its business of providing cellular communications services. Taxpayer uses these services at its retail stores, kiosks, service centers, administrative offices, call centers, warehouses, switching locations, and cell sites. Is taxpayer's internal use of communications services used in connection with its business of providing communications services subject to communications services tax?

PURCHASE OF COMMUNICATIONS SERVICES FOR RESALE: Communications services purchased by taxpayer that are used for the transmission, relay, and routing of calls made by its customers are not taxable because those services are integrated into the communications services sold by taxpayer. These services are purchased for resale. Therefore, the taxability of these services does not depend on whether they are used "in connection with" taxpayer's business of providing communications services. Communications services purchased for use at cell sites and switching locations are not taxable for this reason.

DEALER'S INTERNAL USE OF COMMUNICATIONS SERVICES: Communications services used by taxpayer in its business of providing communications services are not subject to tax because those services were used in activities associated with or related to the provision of cellular services. Taxpayer's use of communications services at its retail stores, kiosks, service centers, administrative offices, call centers, and warehouses are not subject to communications services tax because the activities at these locations are carried on "in connection with" the provision of cellular communications services.

SPECIAL NOTE: This advisement does not address a situation where a single taxpayer carries on a communications

services business and some other business and purchases communications services that are used in connection with both of those business activities.

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Sep 05, 2003

Re: Technical Assistance Advisement 03A19-001
Communications Services Tax
Dealer's Internal Use of Communications Services
Sections: 202.11(3), (4), (12), (14)(b)6., 202.12, 202.16(2), and 202.19, F.S.
Section: 203.012(3) and (5), F.S. (1997)
Sections: 212.03(1) and 212.031(1)(a)9., F.S.

Dear :

This is a response to your two letters dated July 29, 2002, and November 22, 2002. You have requested a Technical Assistance Advisement for several clients regarding the exclusion from communication services tax of a dealer's purchase of communications services that it uses in its business of providing communications services. The specific statutory reference is section 202.11(14)(b)6., F.S. Your letters have been carefully examined, and the Department finds them to be in compliance with the requisite criteria set forth in Rule Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

Your clients (hereinafter jointly referred to as "Taxpayers") are:

XXX

Stated Facts

Your letters dated July 29, 2002, and November 22, 2002, and our conferences held on November 13, 2002, and September 4, 2003, disclose the following facts. Taxpayers are engaged in the business of providing retail cellular communications services to customers located in Florida and other states. These services are subject to the communications services tax.

Taxpayers are registered as dealers for communications services tax purposes, and they collect and remit the state and local communications services tax on the cellular services sold to their customers. In carrying out their administrative, operational and sales functions, Taxpayers purchase local and long distance communications services from other providers. The services are purchased and used for various administrative functions at retail stores, service centers, call centers, warehouses, switching locations and cell sites. A brief explanation of each facility at which Taxpayers use purchased communications services is as follows:

Call Center [XXX Locations]:

Taxpayers operate call centers that are functionally identical to call centers operated by many other types of businesses. A call center is a place where calls are answered and originate between Taxpayers and their customers. Call centers assist customers with requests for new service activation and help with product features and services. Call centers usually have many stations for call center agents that communicate with customers. Call centers use telephone systems that usually include automatic call distribution (ACD) systems and computer telephone integration (CTI) systems. ACD systems route the incoming calls to a customer service representative (CSR). CTI systems link the telephone calls to the accounting databases to allow the CSR to see the account history. Call centers purchase interstate and intrastate telecommunication services to support customer service, sales, and other inquiries from customers.

Cell Site [XXX Locations]:

Cell sites provide the link between the wireless system and the wireless unit. The area served by a cell site is called a "cell." The cell site consists of an antenna tower, transmission radios, and radio controllers. Interstate and intrastate telecommunication services are purchased to transmit cellular calls from the cell site to switching stations or mobile telephone switching offices.

Mobile Telephone Switching Office [XXX Locations]:

A mobile telephone switching office (MTSO) houses field monitoring and relay stations for switching calls between the cellular and the wire-based central office. Newton's Telecom Dictionary, 19th Edition, describes an MTSO as a "sophisticated computer that monitors all cellular calls, keeps track of the location of the cellular equipped vehicles traveling in the system, arranges handoffs, keeps track of billing information, etc."

Kiosk [XXX Locations]:

Taxpayers operate Kiosks that are functionally identical to Kiosks operated by many other types of businesses. Kiosks offer products and services in high traffic areas, such as airports, supermarkets, and shopping malls. Taxpayers purchase local and interstate telecommunication services for Kiosk cash register and credit card approval authorizations.

Microcell [XXX Locations]:

A microcell is a mini cell site with radio coverage area that has a radius of between 200 feet and 1,000 feet. Interstate and intrastate telecommunication services are purchased to transmit cellular calls to switching stations/MTSOs.

Office [XXX Locations]:

Interstate and intrastate telecommunication services are purchased for administrative offices that provide sales and marketing, finance, engineering, information technology, network operations, and other support services.

Retail Locations [XXX Locations]:

Taxpayers operate retail locations that are functionally identical to retail locations operated by many other types of businesses. Interstate and intrastate telecommunication services are purchased for retail locations that sell products and services and provide customer support.

Service Center [XXX Locations]:

Service Centers repair cellular telephones. Interstate and intrastate telecommunication services are purchased for administrative and customer service usage.

SWITCH [XXX Location]:

This location controls the call routing of a cellular system. Computers monitor all cellular calls, track the location of cellular-equipped vehicles, arrange handoffs, and track billing information. Interstate and intrastate telecommunication services are purchased to receive and transmit cellular call activity.

Warehouse [XXX Locations]:

Taxpayers operate warehouses that are functionally identical to warehouses operated by many other types of businesses. Interstate and intrastate telecommunication services are purchased for warehouse locations that store and furnish equipment to network facilities.

Taxpayer's Position

It is your position that Taxpayers' purchases of communications services for internal use are not subject to communications services tax pursuant to the provision in subparagraph 202.11(14)(b)6., F.S., which provides that the sales price of communications services does not include charges for a dealer's "internal use of communications services in connection with its business of providing communications services."

You note that the term "sales price" refers to the price charged by dealers making sales of communications services. Therefore, the exclusions from the tax base, referenced in paragraph 202.11(14)(b), F.S., refer to exclusions for certain charges made by dealers. In the case of subparagraph 202.11(14)(b)6., the exclusion is for a dealer's "internal use of communications services in connection with its business of providing communications services." You assert that this language is intended to create an exclusion from communications services tax of a dealer's charges to another dealer for communications services that will be used internally by the purchasing dealer.

You note that another possible interpretation of s. 202.11(14)(b)6., F.S., would be that the sales price does not include a selling dealer's separately stated charges for its own costs for internally used communications services. You also point out, however, that s. 202.11(14), F.S., provides that "[t]he sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the dealer,...." You assert that this provision states that separately itemized expenses of a selling dealer are not excluded from the tax base, which makes the alternative interpretation of the "internal use" exclusion untenable. In addition, you question how a selling dealer would calculate and itemize, on a customer's bill or invoice, its costs for internally used communications services. You suggest that, given the complexity of the issue and the number of different alternatives for allocating the expense, the Legislature would have made some reference to the language if it truly intended the exclusion to have this meaning.

In conclusion, you note that the only business conducted by Taxpayers in Florida is that of providing retail cellular telecommunications services, which includes the sale of cellular telephones. As a result, all Taxpayers' activities in Florida are part of their business of providing communications services and, therefore, all communications services purchased for use at their facilities qualify for exclusion from communications services tax pursuant to s. 202.11(14)(b)6., F.S.

Applicable Authority and Discussion

Imposition of Communications Services Taxes

Section 202.12, F.S., imposes state communications services tax on retail sales of communications services that originate and terminate in Florida or that either originate or terminate in Florida and are charged to a service address in Florida. That section also provides that gross receipts taxes on communications services will be administered under Chapter 202, F.S. The applicable tax rates are applied to "the sales price of the communications service...." Section 202.19, F.S., contains similar provisions imposing local communications services taxes on the sales price of retail sales of communications services in Florida. These provisions involve two concepts that are relevant to the communications services purchased by Taxpayers. The first is the limitation of tax to retail sales, and the second is the establishment of "sales price" as the tax base.

Purchases for Resale

Although your request does not address the issue, some of the communications services purchased by Taxpayers are not taxable regardless of whether they would be within the scope of the internal use provision of the definition of "sales price." Communications services taxes are imposed only on retail sales. Section 202.11(12), F.S., defines that term to include a sale of communications services for "any purpose other than for resale or for use as a component part of or for integration into communications services to be resold in the ordinary course of business." Any sale for resale must comply with s. 202.16(2), F.S., and the rules adopted thereunder, which require registration as a dealer and the issuance of a Communications Services Tax Annual Resale Certificate (form DR-700015) in lieu of paying communications services tax to the dealer's providers. Taxpayers are registered dealers of communications services and may present a copy of their Communications Services Tax Annual Resale Certificate to providers in lieu of paying tax on bills for communications services purchased exclusively for resale.

Those communications services purchased by Taxpayers that are used for the transmission, relay, and routing of the calls made by their customers are not taxable because those services are purchased for resale. They are integrated into the communications services sold by Taxpayers. The services purchased for use at cell sites, MTSOs, microcells, and the SWITCH are not taxable to Taxpayers for this reason. Their taxability does not depend on whether they are "used in connection with" Taxpayers' communications services business for purposes of s. 202.11(14)(b)6., F.S., because the purchase of those services by Taxpayers are not taxable retail sales on which tax is imposed by ss. 202.12 and 202.19, F.S.

Dealer's Internal Use of Communications Services:

In regard to communications services purchased for use at the other facilities described above, those services are not "integrated into" the cellular services sold by Taxpayers. Those purchased services are taxable unless they fit into the internal use provision of s. 202.11(14), F.S. That provision provides that taxable "sales price" for purposes of the communications services tax does not include a "dealer's internal use of communications services in connection with its business of providing communications services." In applying this provision to Taxpayers' purchases, it is necessary to address two interpretation issues. The first is whether the term "dealer" refers to the selling dealers from whom Taxpayers are making purchases or to Taxpayers as purchasing dealers. The second is the scope of the concept "in connection with its business of providing communications services."

If the reference to a dealer's internal use in s. 202.11(14)(b)6., F.S., is interpreted to mean charges for internal use of communications services by the selling dealer, the result would be that when a selling dealer separately itemized a charge for internal use of communications services, it would not be included in the taxable sales price. This result would be inconsistent with the provision in the introductory paragraph of s. 202.11(14), F.S., which provides, "The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the dealer...." Statutes should be construed so as not to conflict with each other. See, e.g., Forsythe v. Long Boat Key Beach Erosion Control District, 604 So.2d 452, 455 (Fla. 1992). Courts have held that it would be inappropriate to interpret one statute without consideration of a related statute, because statutes must be construed in conjunction with others related to the same subject matter. Ferguson v. State, 377 So.2d 709 (Fla. 1979); Smith v. Crawford, 645 So.2d 513 (Fla. 1st DCA 1994). Furthermore, when considering two statutes governing the same general field, they must, if possible, be construed harmoniously. State v. E.D.P., 23 Fla. L. Weekly S524 (Fla. 1998); Woodgate Development Corporation v. Hamilton Investment Trust, 351 So.2d 14 (Fla. 1977). Interpreting the reference to "dealer" in s. 202.11(14)(b)6., F.S., to refer to a purchasing dealer does not create any conflict with the introductory paragraph of the subsection. This interpretation, therefore, must be viewed as the correct one. As a result, the proper inquiry is whether communications services purchased by Taxpayers are used in connection with Taxpayers' business of providing communications services.

The second interpretation issue is the meaning of the phrase "in connection with," which is not defined by the statute. Section 202.11(14), F.S., is a definitional statute that sets forth a statement of what is and is not included in the taxable "sales price." As such, it must be construed against the state and in favor of the taxpayer. See, e.g., State ex. rel. Drum Service Company of Florida v. Kirk, 234 So.2d 358 (Fla. 1970); Maas Bros. v. Dickinson, 195 So.2d 193 (Fla. 1967); Florida Hi-Lift v. Department of Revenue, 571 So.2d 1364 (Fla. 1st DCA 1990). This is to be contrasted with statutes that grant exemptions from tax and which are strictly construed against the taxpayer and in favor of taxability. See Department of Revenue v. Anderson, 403 So.2d 397 (Fla. 1981); Housing by Vogue v. Department of Revenue, 403 So.2d 478 (Fla. 1 DCA 1981); State ex rel. Szabo Food Services, Inc. v. Dickinson, 286 So.2d 529 (Fla. 1973).

An attempt to obtain guidance regarding the phrase "in connection with" by reference to its interpretation in other Florida taxing statutes was not successful. For example, the

Fourth District Court of Appeal had a chance to address the phrase, "in connection with," in the case Traci Communications, Inc. v. Florida Department of Revenue, 737, So.2d 1255 (Fla. 4th DCA 1999). Traci was a Florida corporation in the business of providing telephone answering services to its customers. The court held that those answering services were subject to sales tax and gross receipts tax under a statute that defined "local telephone service" as including any service provided "in connection with" access to a local telephone system and the privilege of telephone communications with the other subscribers to that system. The case is not helpful in determining whether the communications services **used** by Taxpayers at the facilities under consideration are "in connection with" the providing of cellular telephone service.

An initial determination that assists in interpretation of the term is that "in connection with" means something different from "integrated into." Services that are integrated into the communications services provided by Taxpayers are purchased for resale and are not subject to communications services tax so long as the registration and certification procedures are met. It must be assumed that if the intent in the definition of "sales price" in s. 202.11(14), F.S., was simply to refer to the same services included in the definition of "retail sale" in s. 202.11(12), F.S., the same terminology would have been used in both definitions. Since the term "integrated into" requires that purchased communications services actually be resold by becoming part of the communication services provided to customers, the term "in connection with" must be viewed as involving something less than that.

When a statute does not define a term, courts look to its ordinary meaning. See, e.g., Pederson v. Green, 105 So. 2d 1, 4 (Fla. 1958); Dept. of Revenue v. John's Island Club, 680 So.2d 475, 477 (Fla. 1st DCA 1996). Webster's New Universal Unabridged Dictionary, 1996, defines "connection" as "association, relationship." In order for charges to Taxpayers for purchased communications services to be used "in connection with" Taxpayers' business of providing cellular telephone services, the activities in which those services are used must be associated with or related to the provision of cellular services.

All of the activities described in the discussion of the facts of this case that are not purchased for resale are connected with or related to Taxpayers' provision of cellular communications services.

Call Center [XXX Locations]: Call centers purchase local and long distance telephone service to provide customer service support functions. Customer service support functions are connected with or related to the business of providing cellular communications services. Therefore, communications services consumed at call center locations are excluded from tax.

Kiosk [XXX Locations]: Kiosks are small retail locations that sell Taxpayers products and services. Taxpayers purchase communications services for cash register and credit card approval functions. Cash register and credit card approval functions are support functions that are connected with or related to the business of providing cellular communications services. Therefore, communications services consumed at Kiosks are excluded from tax.

Office [XXX Locations]: Offices provide various administrative, accounting, and support functions that are connected with or related to the business of providing cellular communications services. Therefore, communications services consumed at office locations are excluded from tax.

Retail Locations [XXX Locations]: Taxpayers purchase communications services for retail locations to sell products and services and to provide customer service. The sale of products and services and customer service support functions are connected with or related to the business of providing cellular communications services. Therefore, communications services consumed at retail locations are excluded from tax.

Service Center [XXX Locations]: Taxpayers purchase communications services for service center locations for administrative and customer service functions. Administrative and customer support functions are connected with or related to the business of providing cellular communications services. Therefore, communications services consumed at service center locations are excluded from tax.

Warehouse [XXX Locations]: Taxpayers purchase communications services for warehouse locations that store equipment and furnish it to network facilities. Warehouse locations serve a support function that is connected with or related to the business of providing cellular communications services. Therefore, communications services consumed at warehouse locations are excluded from tax.

Advisement

Based on the foregoing discussion and analysis, Taxpayers' purchases of communications services at cell sites, microcells, MTSOs, and the SWITCH are not taxable to Taxpayers at the time of purchase because those services are integrated into the cellular communications services Taxpayers sell to their customers. Taxpayers may purchase such services without paying tax by extending their resale certificates. Charges to Taxpayers for purchases of communications services used at Taxpayers' call centers, kiosks, offices, retail locations, service centers, and warehouses are not taxable because the activities at those locations are carried on "in connection with" the provision of cellular communications services and fall within the scope of the internal use provision.

It is important to note that Taxpayers have no business other than the provision of cellular services. This advisement does not address and makes no representation as to a situation where a single taxpayer carries on a communications services business and some other business and purchases communications services that are used in connection with both of those business activities. This advisement also does not address procedural questions such as how to document that a purchase is for internal use or what records must be maintained by taxpayers to account for internal use of communications services.

Closing Statement

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)922-4729.

Sincerely,

Gary L. Gray
Tax Law Specialist
Technical Assistance & Dispute Resolution

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Control No: 51201