

SUMMARY

QUESTION 1: Is Taxpayer's charge to its customers for access to its financial information service subject to Florida's Communications Services Tax?

ANSWER - Based on Facts Below: No. The Taxpayer's financial information service is not subject to the communications services tax of Chapter 202, F.S., because it is an "information service" excluded from the definition of "communications services." According to the documentation provided, the Taxpayer provides its customers with access to researchable databases of global financial information and news through dedicated phone lines of the customers and Taxpayer-owned communications equipment (routers). Access to the Taxpayer's services is accomplished by communications software loaded onto the customer's computer, or for an increased fee via the Taxpayer's flat panel monitor and/or computer. Thus, the Taxpayer is providing an information service that is delivered via a telephonic connection.

QUESTION 2: Is Taxpayer's charge to its customers for access to third party financial information services subject to Florida's Communications Services Tax?

ANSWER - Based on Facts Below: No. For the same reasons as stated above in Question 1, the Taxpayer's third party financial information service is not subject to the communications services tax of Chapter 202, F.S., because it is an "information service" excluded from the definition of "communications services."

September 20, 2004

Subject: Technical Assistance Advisement 04A19-001
Communications Services Tax - Financial Information Services
Section 202.11, F.S.
Section 202.12, F.S.
XXX [Taxpayer], Petitioner
Taxpayer Identification Number: XX

Dear :

This is a response to your letter dated March 25, 2004. You have requested a Technical Assistance Advisement (TAA) regarding the applicability of communications services tax to the services provided by Taxpayer. Your letter has been carefully examined, and the Department finds it 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.

ISSUE

Whether Taxpayer's charges to its customers for access to a financial information service is subject to Florida communications services tax.

FACTS

In your letter, you stated the facts relevant to the taxpayer's situation as follows:

[Taxpayer] offers its customers a financial information service (the "financial information service") comprised primarily of access to (i) a database of financial information, (ii) proprietary and/or sophisticated analytics for evaluating financial products, and (iii) comprehensive news coverage. [Taxpayer's] customers include banks, brokers, insurance companies, and similar customers in the financial services industry. The financial data, analytics and news are accessed and maintained on mainframe computers located in State A and State B. These computers continuously provide updated news and financial data accessible by the customer with real time and delayed information.

Customers generally access the information service via dedicated phone lines linked to certain [Taxpayer]-owned communications equipment, referred to as routers, installed at the customer premises. More specifically, the routers are connected via telephone lines to various node sites owned and maintained by [Taxpayer]. The node sites contain [Taxpayer] owned central communications equipment that assist[s] in routing the signals to and from the mainframe computers located in State A and State B. Customers may also access the mainframe computers through the customer's internet service provider. In addition to access to the financial data, analytics, and news, customers have the ability to send and receive e-mail to and from any internet address and any other [Taxpayer] customer as part of the service. Embedded in the financial database information are links to external internet sites; as such, the service enables limited internet access.

Generally, [Taxpayer] provides its customers with a keyboard and a small amount of communications software that is loaded onto the customer's PC. For an increased fee, the customer may also utilize a [Taxpayer] provided flat panel monitor and/or personal computer. At all times, such equipment (including the router) remains the property of [Taxpayer] and at the termination of the contract any and all equipment must be returned to [Taxpayer].

Using any of the options outlined above, customers gain access to a researchable database of global financial information and news. In addition to this access, customers may employ the analytics to use, manipulate, and present the information in various formats and to make sophisticated financial calculations using such data.

In addition to the basic information described above, additional third party information services are available for an extra charge, and are invoiced separately from the basic service. For example, feeds of real-time information from various stock exchanges (such as the Chicago Mercantile Exchange) are available for an additional charge (hereinafter referred to as "exchange feeds").

The contract entered into by [Taxpayer] with each of its customers is structured as a lease agreement whereby the lessor ([Taxpayer]) agrees to provide the lessee (customer) with the data, software, and equipment necessary to

access the electronic financial information and news service described above (see copy of actual contract attached). Each contract refers to a schedule of services, which defines the service to be provided by the number of viewable screens.

The contract refers to [Taxpayer] as the lessor and the customer as lessee. 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 customer usually enters into a two-year agreement with [Taxpayer], which allows the customer access to the overall information service for a flat monthly charge billed quarterly in advance. As the customer changes its number of screens and equipment configurations, the original contract continues to govern, but is updated over time by updated schedules of services.

Billings are based solely upon the number of users and types of equipment configurations at each subscriber location. Length of time or frequency of use is not relevant. The information service is shown on one line (with one of the descriptions above) and the charge for equipment, if any, is shown on a second line. Currently most multiple-screen users pay \$1,350 per month per screen for the information service and equipment charges are added onto that base price.

As stated above, third party information services are billed on separate invoices, and have no associated additional equipment....

[Taxpayer] has not charged its Florida customers the CST on the information service or equipment....

Additionally, you provided the following supporting documents, which are attached: Invoices, Third Party Services Invoices, Agreements, Supplemental Agreements, and Third Party Agreements.

TAXPAYER REQUESTED ADVISEMENT

1. Is [Taxpayer's] charge to its customers for access to the financial service subject to Florida's [Communications Services Tax]?
2. Is [Taxpayer's] charge to its customers for access to third party financial information services subject to Florida's [Communications Services Tax]?

TAXPAYER POSITION

In your letter, you stated the Taxpayer's position as follows:

s. 202.12(1)(a)2. imposes the CST on any communications service which "[o]riginates or terminates in this state and is charged to a service address in this state, when sold at retail." s. 202.11(3) defines communications service as the "transmission ... of ... data ... to a point ... by ... any electronic ... medium." s. 202.11(3)(a) excludes information services from the definition of communications services, and s. 202.11(3)(h) excludes internet access, electronic mail service, and electronic bulletin board services from tax.

s. 202.11(7) defines a nontaxable (per s. 202.11(3)(a)) information service as "offering of a capability for ... generating, acquiring, storing, transforming, processing, retrieving, using, or making available information *via communications services* (emphasis added)."

[Taxpayer's] financial information service fits within the definition of a nontaxable information service under s. 202.11(7), and as such is nontaxable when delivered (from State A and State B) to customers in Florida. The mere fact that the information service is delivered electronically does not subject it to CST; delivery via a communication mode is permitted per s. 202.11(7). In addition, to the extent that the service permits internet access, it can be considered nontaxable under s. 202.11(3)(h) as well.

Similarly, third party information services offered by [Taxpayer] in addition to its financial information fit within the definition of a nontaxable information service under s. 202.11(7), and as such are nontaxable when delivered to customers in Florida.

APPLICABLE STATUTES AND RULES

Section 202.11, F.S., titled "Definitions," provides in pertinent part:

As used in this chapter:

(3) "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.

(7) "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., titled, "Sales of communications services," states in part:

The Legislature finds that every person who engages in the business of selling communications services at retail in this state is exercising a taxable privilege. It is the intent of the Legislature that the tax imposed by chapter 203 be administered as provided in this chapter.

RESPONSE

Section 202.12, F.S., provides that 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(3), 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(3)(a), F.S., excludes "information services" from the definition of "communications services." Section 202.11(7), 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...."

Issue 1: Is Taxpayer's charge to its customers for access to the financial service subject to Florida's Communications Services Tax?

No. The Taxpayer's financial information service is not subject to the communications services tax of Chapter 202, F.S., because it is an "information service" excluded from the definition of "communications services." According to your letter and the documentation provided, the Taxpayer provides its customers with access to researchable databases of global financial information and news and for additional fees third party information services, such as stock exchanges, through dedicated phone lines of the customers and Taxpayer-owned communications equipment (routers). Access to the Taxpayer's services is accomplished by communications software loaded onto the customer's computer, or for an increased fee via the Taxpayer's flat panel monitor and/or computer. The Agreements specify that the customer is responsible for all electricity and communications services necessary to facilitate the Taxpayer's delivery of its information service. Thus, the Taxpayer is providing an information service that is delivered via a telephonic connection.

Issue 2: Is Taxpayer's charge to its customers for access to third party financial information services subject to Florida's Communications Services Tax?

No. For the same reasons as stated above in Question 1, the Taxpayer's third party financial information service is not subject to the communications services tax of Chapter 202, F.S., because it is an "information service" excluded from the definition of "communications services."

Other Issues

Current treatment of T-1 lines and satellite television. In your letter, you state that the Taxpayer has two revenue streams that are clearly subject to Florida's communications services tax: re-lease of T-1 lines and the provision of private satellite television feed. Because the Taxpayer has registered and currently remits the appropriate taxes, the taxpayer does not seek a ruling with respect to the applicability of Florida's communications services tax to these revenue streams.

However, it should be noted that the re-lease of the T-1 lines is subject to communications services tax at the state rate of 9.17% under section 202.12(1)(a), F.S., and the applicable local rate under section 202.19, F.S. The satellite television service is subject to communications services tax at the state rate of 13.17% under section 202.12(1)(c), F.S., and no local rates apply.

Possible substitute system. In reviewing the Software License Agreement, Standard Agreement, and various Schedules of Services, there is the possibility that the Taxpayer has created a substitute system by utilizing dedicated routers, connectivity, including T-1 lines, back up systems, and other equipment to provide some of its customers with a dedicated network and back up networks for the provision of Taxpayer's information service. Section 202.11(16), F.S., defines "substitute communications system" to mean "... any telephone system, or other system capable of providing communications services, which a person purchases, installs, rents, or leases for his or her own use to provide himself or herself with services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communication path." Section 202.12(1)(b), F.S., provides that substitute systems are subject to communications services tax at the state rate of 9.17% and the applicable local rate under section 202.19, F.S., on the actual cost of operating the substitute system.

Distribution of Lessee Data. Within the Software License Agreement, Standard Agreement, and various Schedules of Service, there are provisions by which the Taxpayer will distribute the data of its Lessee/customer to others via its information services network. This service will be delivered at no cost to the Lessee, and any user of the service shall pay the Taxpayer the standard fees for the Taxpayer's services plus any fees charged by the Lessee for access to the Lessee's data. Rule 12A-1.062(5), F.A.C., states that charges for furnishing information by way of electronic images is neither taxable as the sale of tangible personal property nor is it taxable as the sale of an information service.

Lease and License of Tangible Personal Property and Software. According to the Software License Agreement, Standard Agreement, and various Schedules of Services, the Taxpayer's services consist of a nonexclusive and nontransferable license and lease for the use of the Taxpayer's software, data, and equipment. According to the various invoices, the charges are separately stated as follows: data and software are bundled in various forms according to the type of service ordered by the customer, such as to a terminal or to a laptop, and the monitors and personal computers are listed by size.

Rule 12A-1.032(2), F.A.C., provides that "... [t]he rental of a computer and its related components including terminal equipment (hardware) which is physically located in this state, is taxable." Furthermore, canned software delivered in tangible forms, such as CDs or disks, is taxable under Section 212.05, F.S. However, software and equipment that is not separately stated and incidental to the provision of an information service provided via electronic images is not taxable. See, Department of Revenue v. Quotron Systems, Inc., 615 So.2d 774, 778 (Fla. 3rd DCA 1993) and Department of Revenue v. Henley Holdings, Inc., 599 So.2d 1282 (Fla. 1st DCA 1992), aff'g, Case No. 89-4381 (Fla.

2nd Cir. Ct. 1991). In the instant case, the provision of the software is intertwined with the provision of the Taxpayer's information service as a single charge. Thus, the charge for the software and data would not be subject to sales tax.

The provision of computer equipment is separately stated on the invoices. The Software License Agreement, Standard Agreement, and various Schedules of Services, provide the following relevant terms: upon termination, the Taxpayer has the right to recover the equipment from the lessee's premises; the Taxpayer shall have reasonable access to the Lessee's property for the purpose of maintaining the equipment; the Lessee shall not use the equipment for any other purpose than those expressly approved by the Taxpayer; Taxpayer will relocate the equipment at the lessee's expense by request; and the lessee shall not separate, unbolt, move, modify, or use for any unauthorized purpose the equipment leased from the Taxpayer. Thus, the agreements all contemplate a lease of the computer equipment for the limited purpose of accessing and receiving the 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. Section 212.05, F.S., provides that every person engaged in the business of selling tangible personal property in the state of Florida is engaging in a taxable privilege, unless specifically exempt by statute. Section 212.02(15), F.S., defines "sale" to mean and include "[a]ny transfer of title or possession, or both, ... license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration." Section 212.02(19), F.S., defines "tangible personal property" as "... personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses...." Section 212.02(16), F.S., defines "sale price" as meaning "... the total amount paid for tangible personal property, including any services that are a part of the sale...." Section 212.02(10)(g), F.S., defines "lease," "let" or "rental" to include "... 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...." Rule 12A-1.071, F.A.C., interprets these provisions.

In the instant case, the leasing of the computer equipment is a separately stated option to the provision of the Taxpayer's information service. While the terms of the agreements provide for a limited use of the computer equipment, the terms clearly provide for a lease of the equipment for which a separate charge is being made. Therefore, the lease of the computer equipment is not incidental to the provision of the services and is subject to sales tax.

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

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of 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.

Sincerely,

Sebrina L. Wiggins

Attorney

Technical Assistance and Dispute Resolution

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