

SUMMARY

QUESTION: Whether any of various services offered by the Taxpayer are subject to tax pursuant to either Chapter 202, F.S. (Communications Services Tax), or Chapter 212, F.S. (Sales and Use Tax).

ANSWER - Based on Facts Below: (1) Based on the description of the services available in the various described packages of services, these bundled services are not subject to communications services tax. With regard to these services, the Taxpayer is the consumer of the communications services it uses to provide its services, and not the provider of communications services. As such, the Taxpayer should pay Florida communications services tax upon any purchase of communications services taxable pursuant to Section 202.12(1), F.S.

(2) Several services provided by the Taxpayer in all of the offered packages of services constitute protection services, and are subject to tax pursuant to Section 212.05(1)(i)1.a., F.S. Section 212.05(1)(i)4., F.S., indicates that when a single charge is made for a taxable service and for services or items not subject to tax, the entire charge is subject to tax. Because the Taxpayer makes a single charge for the various services contained in the packages sold to customers (not including Calling Service, which is separately stated), the entire charge made to customers by the Taxpayer is subject to sales tax, plus any applicable local discretionary sales surtax. Because the Taxpayer charges customers for services taxable under Chapter 212, F.S., it must be registered as a sales and use tax dealer engaging in business in Florida.

(3) Calling Service. Calling Service provides customers with wireless communications services whereby the customer pre-purchases a specific number of usage minutes for a separately stated charge. These services provided by the Taxpayer under Calling Service fall within the definition of "prepaid calling arrangement" found in Sections 202.11(10) and 212.05(1)(e)1.a.(I), F.S. The sale or recharge of a prepaid calling arrangement is excluded from the tax imposed by Chapter 202, F.S., and is taxable under Section 212.05(1)(e)1., F.S. (plus any applicable local discretionary surtax). Accordingly, with regard to the charge made to customers for Calling Service, the Taxpayer must be registered as a sales and use tax dealer engaging in business in Florida. In addition, communications services used as a component part or integrated into a prepaid calling arrangement may be purchased for resale. The Taxpayer would be considered a reseller of the communications services that are used as a component part or integrated into the Calling Service plans it sells to customers. In order to properly make such a purchase for resale, the Taxpayer must register with the Department as a dealer of communications services.

April 15, 2005

Re: Technical Assistance Advisement 05A19-002

Communications Services Tax

Technical Assistance Advisement 05A-020

Sales and Use Tax

Various Services Available to Motorists

XXX (Package A)
XXX (Package B)
XXX (Package C)
XXX (Calling Service)
XXX (Customized Information)
Section 202.11, Florida Statutes (F.S.).
Section 202.12, F.S.
Section 202.16, F.S.
Section 212.05, F.S.
Rule 12A-1.0092, Florida Administrative Code (F.A.C.).

XXX (the Taxpayer)
FL Sales Tax Registration XX
Business Partner XXX

Dear :

This is a response to your letter of December 7, 2004, requesting a Technical Assistance Advise ment (TAA) regarding the above-referenced matter. This response to your request constitutes a TAA under Chapter 12-11, F.A.C., and is issued to you under the authority of Section 213.22, F.S.

Stated Facts and Requested Advise ment

The Taxpayer is a wholly owned subsidiary of XXX (Parent), with its principal place of business outside Florida. The Taxpayer offers various services to motorists, delivered from locations outside Florida using wireless communications to facilitate delivery. Generally, the Taxpayer's services are initiated by a motorist's request. Some requests are made from within the vehicle, and others from outside the vehicle.

To receive the Taxpayer's services, a motorist's vehicle must be equipped with specialized hardware and software. The equipment is sold as a part of a vehicle purchase by a third party.

The Taxpayer does not own the equipment and does not maintain or repair it. The equipment in the vehicle can dial a pre-programmed ten digit number to establish a connection between the vehicle and one of the Taxpayer's call centers, which are located outside Florida. The number is generally unknown to the motorist and can not be used to complete a call from any other type of telephone instrument. You state that none of the services subject to this request allows a customer to initiate, receive, or otherwise engage in communications except to the extent necessary for the Taxpayer to deliver the services described below.

To receive many of the Taxpayer's services, the motorist presses a button on a console within the vehicle, causing the pre-programmed number to be dialed, establishing a connection to a call center. For other services, the motorist must contact the Taxpayer from outside the vehicle, using a landline or wireless telephone and carrier of the motorist's choice to dial a toll free number provided by the Taxpayer. The Taxpayer purchases communications services from

wireless and landline providers of communications services for this purpose and to facilitate connections with the vehicles. Regardless of the manner used to contact a call center, a live representative of the Taxpayer responds to the call. The one exception is Online Concierge, a service provided only over the Internet.

As discussed below, some of the Taxpayer's services involve the use of communications services to facilitate contacts by the Taxpayer with third parties. You state that, as with the contacts between the vehicle or motorist and the call center, the contacts with third parties are part of the services provided to motorists. The Taxpayer also uses communications services to facilitate the transmission of data from the vehicle relating to its location and operational condition as required to deliver the Taxpayer's services. The Taxpayer pays for any communications services required for these purposes without any separate charge to the motorist.

The Taxpayer combines the services into packages for sale. Each package is sold for a flat monthly or annual price. There are no additional charges based on usage, number of service requests, or any other criteria. Payment is generally accomplished by check or credit card. The Taxpayer markets its services in the 48 contiguous United States, Alaska, Hawaii, and Canada, utilizing various media forms including the Internet. The basic package is the "Package A" plan, to which additional services may be added.

The following services are included in Package A for a flat monthly or annual fee:

Airbag Deployment Notification. When the airbag deploys, the hardware in the vehicle automatically sends a signal to one of the Taxpayer's call centers, without the necessity for action by the motorist. The technology in the vehicle includes a Global Positioning System (GPS) capability, which enables a call center representative to determine the location of the vehicle. The call center representative attempts to contact the motorist to ascertain if assistance is needed. The signal to the call center and the call center representative's attempt to communicate with the motorist occur through the communications services purchased by the Taxpayer. If the motorist does not respond or responds that assistance is needed, call center contacts unrelated public safety personnel, also using communications services it purchases from communications services providers.

Stolen Vehicle Trackin. The GPS functionality enables the Taxpayer to track the vehicle location if it is stolen and provide information to law enforcement authorities (not the customer). The motorist contacts a call center representative by dialing a toll free number provided by the Taxpayer that is different from the number programmed into the vehicle. These calls are necessarily initiated from outside the vehicle over a conventional landline or wireless telephone.

Emergency Services. In the event of an emergency, call center representative contacts emergency service personnel. Except where the airbag is deployed, this service is initiated when the motorist presses a red emergency button on the console within the vehicle or dials a toll-free number provided by the Taxpayer using a conventional wireless or landline telephone. The vehicle's location is available to the Taxpayer through the GPS functionality.

Roadside Assistance. The call center representative arranges for roadside assistance when required (e.g., flat tires, empty gas tank, dead battery, other breakdowns). The representative also notifies persons at the motorist's destination of the delay. The motorist presses a button on the console within the vehicle or places a conventional

telephone call using a toll-free number provided by the Taxpayer.

Remote Door Unlock. The Taxpayer can unlock the vehicle doors from its call center. The motorist calls the Taxpayer from outside the vehicle over a toll-free number provided by the Taxpayer to request that a call center representative unlock the doors. Upon verifying a PIN number provided by the motorist, the representative performs the requested function by sending a signal to the equipment in the vehicle (the representative can also remotely lock the vehicle doors).

Remote Horn and Lights. A call center representative can remotely cause the exterior lights to flash and the vehicle horn to sound to help a motorist locate his or her vehicle. The motorist would request this from outside the vehicle by dialing the call center over a toll-free number provided by the Taxpayer.

Remote Diagnostics. A call center representative can remotely access a vehicle's diagnostic system and advise the motorist whether it is safe to continue driving. For example, if a service light illuminates, the motorist may press a button on the console within the vehicle or dial the call center over a toll free number provided by the Taxpayer. The representative at the call center is able to read diagnostic data that is available from the vehicle and advise the motorist accordingly. The representative XXX will also arrange for assistance to be sent to the motorist's location if required.

Accident Assist. The motorist can notify the Taxpayer of an accident by pressing a button on the console within the vehicle or dialing the call center over a toll-free number provided by the Taxpayer. A call center representative will contact the motorist's insurance company, police, and other emergency service personnel, and a friend or family member of the motorist. The Taxpayer has a "best practices" list to assist through most accident situations.

Online Concierge. The Taxpayer maintains a website with information about entertainment, restaurants, shopping, etc. The motorist can search the database and send the Taxpayer an e-mail if unable to find the information sought. To obtain this service, the motorist accesses the website with a unique password. This service does not involve either the equipment in the vehicle or any dialing of the call center. In addition, the motorist must have his or her own, independent means of obtaining Internet access.

For a higher flat periodic amount, Package B is available. This option includes all the features of Package A, and in addition, the following:

Driving Directions. This service uses GPS tracking to aid the motorist without the need to stop or leave the vehicle. The motorist presses a button on the console in the vehicle, and a call center representative responds, ascertaining the vehicle location and assisting the motorist with directions to their destination.

Information and Convenience Services. By pressing a button on the console, the motorist obtains recommendations from call center representative for lodging, assistance with reservations, directions to the nearest ATM, gas station, restaurants, and more.

Ride Assist. If the motorist or vehicle is not suitable for driving, the call center representative will call a taxicab upon

request, or attempt to contact a relative or friend.

For a higher flat periodic sum, a motorist may purchase Package C, which consists of all the features of Package B, and in addition, an expanded version of the XXX services described previously. The expanded version is available from within the vehicle, and includes assistance with delivery of gifts, restaurant or entertainment reservations, and the like.

The Taxpayer also offers Calling Service, which allows motorists wireless communications service from within the vehicle. Calling Service is an option for customers, for which they pay a separate fixed price to prepurchase a specified number of usage minutes. The minutes included in a customer's Calling Service plan may also be used to access the Taxpayer's "Customized Information." The Customized Information service allows Calling Service customers to hear location-based weather and traffic reports, news, sports, financial information, and entertainment, and provides access to e-mail. You state in your letter that Calling Service is not a subject of the instant request.

The Taxpayer's Internet website states that the benefit to Package A is "XXX" and that the plan "XXX." The Taxpayer's television advertising follows this same theme.

Requested Advisement

That none of the stated services offered by the Taxpayer are subject to tax pursuant to either Chapter 202, F.S., or Chapter 212, F.S.

Applicable Authority

Communications Services Tax

Section 202.12(l)(a), F.S., provides in pertinent 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.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction, and the tax is due and payable as follows:

(a) Except as otherwise provided in this subsection, at a rate of 6.8 percent applied to the sales price of the communications service which:

1. Originates and terminates in this state, or
2. Originates or terminates in this state and is charged to a service address in this state,

when sold at retail, computed on each taxable sale for the purpose of remitting the tax due. The gross receipts tax

imposed by chapter 203 shall be collected on the same taxable transactions and remitted with the tax imposed by this paragraph....

Section 202.19, F.S., authorizes local government authorities to levy a discretionary communications services tax. Section 202.19(4), F.S., provides that the tax imposed by any municipality or county applies to all communications services subject to tax under Section 202.12, F.S., that originate or terminate in Florida and are charged to a service address located in the municipality or county imposing the tax. In addition, a discretionary sales surtax levied by a county or school board under Section 212.055, F.S., is imposed as a local communications services tax upon communications services subject to tax under Section 202.12, F.S., that originate or terminate in Florida and are charged to a service address in the county. Section 202.19(5), F.S.

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

(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.

* * *

(10) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered, and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

* * *

(12) "Retail sale" means the 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.

* * *

(14) "Sales price" means the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the dealer.

* * *

(b) The sales price of communications services does not include charges for any of the following:

* * *

4. The sale or recharge of a prepaid calling arrangement.

* * *

7. Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services.

* * *

Section 202.16(2), F.S., provides:

A sale of communications services that are used as a component part of or integrated into a communications service or prepaid calling arrangement for resale, including, but not limited to, carrier-access charges, interconnection charges paid by providers of mobile communication services or other communication services, charges paid by cable service providers for the transmission of video or other programming by another dealer of communications services, charges for the sale of unbundled network elements, and any other intercompany charges for the use of facilities for providing communications services for resale, must be made in compliance with the rules of the department. Any person who makes a sale for resale which is not in compliance with these rules is liable for any tax, penalty, and interest due for failing to comply, to be calculated pursuant to s. 202.28(2)(a).

Sales and Use Tax

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

212.05 Sales, storage, use tax.

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 ... or who rents or furnishes any of the things or services taxable under this chapter....

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

* * *

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

a. Prepaid calling arrangements. The tax on charges for prepaid calling arrangements shall be collected at the time of sale and remitted by the selling dealer.

(I) "Prepaid calling arrangement" means the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.

(II) If the sale or recharge of the prepaid calling arrangement does not take place at the dealer's place of business, it shall be deemed to take place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

(III) The sale or recharge of a prepaid calling arrangement shall be treated as a sale of tangible personal property for purposes of this chapter, whether or not a tangible item evidencing such arrangement is furnished to the purchaser, and such sale within this state subjects the selling dealer to the jurisdiction of this state for purposes of this subsection.

* * *

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

a. Detective, burglar protection, and other protection services....

* * *

4. If a transaction involves both the sale or use of a service taxable under this paragraph and the sale or use of a service or any other item not taxable under this chapter, the consideration paid must be separately identified and stated with respect to the taxable and exempt portions of the transaction or the entire transaction shall be presumed taxable. The burden shall be on the seller of the service or the purchaser of the service, whichever applicable, to overcome this presumption by providing documentary evidence as to which portion of the transaction is exempt from tax. The department is authorized to adjust the amount of consideration identified as the taxable and exempt portions of the transaction; however, a determination that the taxable and exempt portions are inaccurately stated and that the adjustment is applicable must be supported by substantial competent evidence.

Section 212.055, F.S., authorizes the imposition of discretionary surtaxes by local governments. The tax levied pursuant to Section 212.055, F.S., applies to all transactions occurring in the local jurisdiction that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, F.S., and communications services as defined for purposes of Chapter 202, F.S. Section 212.054(2)(a), F.S. A transaction is deemed to have occurred in a county imposing the surtax when the sale includes an item of tangible personal property, a service, or tangible personal property representing a service, and delivery takes place within the county. Section 212.054(3)(a)l., F.S.

Rule 12A-1.0092, F.A.C., provides in pertinent part:

(2)(a) Detective, burglar protection, and other protection services are those services which are rendered to minimize or prevent loss or damage to life, limb, or prope and are of a kind typically performed by security or alarm system companies, or are those investigative services which are rendered to obtain evidence or other information for legal, business, employment, or personal purposes of a kind typically performed by detective or investigative agencies.

These taxable services include:

* * *

2. Burglar or fire alarm or other securi1y system devices monitoring and maintenance;

a. The installation of alarm or security systems that remain tangible personal property is governed by the provisions of Rule 12A-1.016, F.A.C.

b. The installation of alarm or security systems that become a part of real property is governed by the provisions of Rule 12A-1.05 1, F.A.C.

c. The monitoring or maintenance of alarm or security systems is a taxable service for systems that are considered to be either tangible personal property or a part of real property. The term maintenance includes any inspection of an alarm or security system to confirm its proper working order. The term maintenance does not include the expansion or upgrade of an existing system, but does include the replacement of defective components.

* * *

(b) The services in paragraph (a) above are taxable for all persons, businesses, residences, or nonresidential properties.

* * *

(3)(a) If a transaction involves both the sale or use of a service which is taxable and the sale or use of a service which is not taxable, the charges for the taxable portion of the transaction must be separately stated from the charges for the nontaxable portion or the entire transaction will be presumed taxable.

* * *

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

Discussion and Response

Communications Services Tax

The term "communications services" is defined in Section 202.11(3), F.S., as:

"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....

Based on your description of the services available in the Packages A, B, and C, these bundled services are not subject to communications services tax pursuant to Chapter 202, F.S. With regard to the services provided in the three described packages, the Taxpayer is the consumer of the communications services it uses to provide its services, and not the provider of communications services. As such, the Taxpayer should pay Florida communications services tax upon any purchase of communications services taxable pursuant to Section 202.12(l), F.S.

In advancing the proposition that the packaged services do not involve the sale of communications services, you take the position that that the sale should be analyzed under the "true object" test. It must be noted that the "true object" test has not been adopted in Florida. See AT&T v. Department of Revenue, 764 So.2d 665 (Fla. 1st DCA 2000). The court in AT&T specifically declined AT&T's invitation to adopt the "true object" test. AT&T at 670. The Department in the instant circumstances likewise declines such an invitation.

Sales Tax

You correctly identify in your letter that Section 212.05(l)(i).a., F.S., is the relevant provision of Chapter 212, F.S., to discuss with regard to the services provided by the Taxpayer. The position taken by the Taxpayer is that Section 212.05(l)(i).a., F.A.C., does not apply to its services.

Section 212.05(l)(i).a., F.S., imposes a tax upon "charges for all ... [d]etective, burglar protection, and other protection

services." The Department has defined "detective, burglar protection, and other protection services" as "those services which are rendered to minimize or prevent loss or damage to life, limb, or property and are of a kind typically performed by security or alarm system companies." (emphasis supplied) Rule 12A-1.0092(2)(a), F.A.C. **(FN 1)** Rule 12A-1.0092(2)(a), F.A.C., continues by providing a non-exhaustive list of taxable services, including "[b]urglar or fire alarm or other system devices monitoring and maintenance." Rule 12A-1.0092(2)(a)2., F.A.C. The monitoring and maintenance of alarm or security systems is a taxable service whether such systems are considered tangible personal property or part of real property. Rule 12A-1.0092(2)(a)2.c., F.A.C.

The Taxpayer points to TAA 93A-053 as consistent with its view that the services it provides are not subject to sales tax, indicating that the services it provides and those provided by the taxpayer in TAA 93A-053 are similar, and stating that neither "are of a kind typically performed by security or alarm system companies." As the Taxpayer has correctly pointed out in prior correspondence, a taxpayer may not rely on a TAA issued to a different taxpayer. See Rule 12-11.007(i), F.A.C. However, a comparison of the Taxpayer's services to those involved in TAA 93A-053 is inapposite. The company's services in TAA 93A-053 simply did not involve monitoring.

The company in TAA 93A-053 offered "wellness check" and "reminder" services to subscribers for a monthly charge. For wellness check services, the company (by computer or mechanically) would call the telephone number of a subscriber at specified times each day and ask the subscriber to respond by punching "1" if not requiring assistance, or "0" if they did require assistance. If the subscriber did not answer the telephone after 10 rings, the company would telephone up to three designated numbers, requesting assistance for the subscriber. For reminder services, at times designated by the subscriber, the company would call and provided a requested verbal reminder. The subscriber was not directed or required to respond to the reminder messages. The only requirement for a subscriber was that they have a touch-tone phone - no specialized equipment was required or installed at the subscriber's residence. The company's services consisted of pre-planned telephone calls - the company did not monitor anything.

Monitoring of alarm or security systems is specifically identified by the Department as a service taxable pursuant to Section 212.05(l)(i)l.a., F.S. See Rule 12A-1.0092(2)(a)2.c., F.A.C. Several services provided by the Taxpayer in Package A clearly constitute the monitoring of alarm or security system devices and are thus subject to tax, including: Airbag Deployment Notification; Stolen Vehicle Tracking; Emergency Services; Remote Diagnostics; and Accident Assist. As stated above, the Taxpayer markets the Package A portion of its plans to potential customers as the provision of "safety and security services." **(FN 2)** Therefore, this determination is completely in line with the Taxpayer's own characterization of the services it offers.

Section 212.05(l)(i)4., F.S., indicates that when a single charge is made for a taxable service and for services or items not subject to tax, the entire charge is subject to tax. See also Rule 12A1.0092(3)(a), F.A.C. Thus, only one taxable service offered in a packaged or "bundled" group of services and items need exist to make the entire charge to a customer subject to tax pursuant to Section 212.05(l)(i)l.a., F.S. Here, a single charge is made by the Taxpayer for the various services contained in the packages sold to customers (not including Calling Service," which is separately stated as discussed above). Therefore, the entire charge made to customers by the Taxpayer (excluding any separately stated charge for Calling Service) is subject to sales tax, plus any applicable local discretionary sales surtax. Because the Taxpayer charges customers for services taxable under Chapter 212, F.S., it therefore must register as a sales and use tax dealer engaging in business in Florida. See Rule 12A-1.060, F.A.C.; see also Rule

12A-1.056, F.A.C., for return filing requirements.

Calling Service

Although advice was not requested with regard to the taxability of Calling Service, the following analysis is provided to aid the Taxpayer in complying with Florida law.

Calling Service provides the customers with wireless telephone service whereby the customer prepurchases a specific number of usage minutes for a separately stated charge. The minutes in a customer's Calling Service plan include access to the Customized Information feature. There is no separately stated charge with regard to Customized Information. Rather, usage minutes purchased under a Calling Service plan may be used to access the Customized Information feature.

Section 212.05(1)(e)1.a., F.S., imposes sales tax at the rate of six percent (6%), plus any applicable local discretionary surtax, upon the charge for "prepaid calling arrangements." A "prepaid calling arrangement" is defined by Section 212.05(1)(e)1.a.(I), F.S., as:

... the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.

The sale or recharge of a prepaid calling arrangement is treated as a sale of tangible personal property, regardless of whether a tangible item is received by the purchaser. Section 212.05 (1)(e) 1a. (III), F.S. When the sale or recharge of a prepaid calling arrangement does not take place at the seller's place of business and no item of tangible personal property is shipped to the customer, the sale or recharge is deemed to take place at "the customer's address or the location associated with the customer's mobile telephone number." Section 212.05(1)(e)1.a.(II), F.S. Chapter 202, F.S., contains a definition of prepaid calling arrangement identical to that used in Chapter 212, F.S. Section 202.11(10), F.S. The sale or recharge of a prepaid calling arrangement is excluded from the tax imposed by Chapter 202, F.S. See Section 202.11(14)(b)4., F.S.

The wireless telephone services provided by the Taxpayer under Calling Service clearly are "communications services" as defined in Section 202.11(3), F.S. The charge to a customer for Calling Service is equally clearly a "separately stated retail sale of communications services" that are sold in predetermined units whose number declines with usage. In addition, in order to be considered a prepaid calling arrangement, the communications services that are sold must consist exclusively of telephone calls. **(FN 3)** Under Calling Service, the only communications services sold by the Taxpayer consist exclusively of telephone calls. **(FN 4)** Thus, the charge for Calling Service is taxable under Section 212.05(1)(e)1., F.S., including any applicable local discretionary surtax, as a charge for a prepaid calling arrangement. Under the facts presented, the sale or recharge of Calling Service minutes is deemed to take place at the customer's address or location associated with the customer's mobile telephone number.

Accordingly, with regard to the charge made to customers for Calling Service, the Taxpayer must register as a sales

and use tax dealer engaging in business in Florida. See Rule 12A-1.060, F.A.C.; see also Rule 12A-1.056, F.A.C., for return filing requirements. In addition, Section 202.16(2), F.S., indicates that communications services used as a component part or integrated into a prepaid calling arrangement may be purchased for resale. In order to properly make such a purchase for resale, the Taxpayer must register with the Department as a dealer of communications services. See Rule 12A-19.010. The Taxpayer is encouraged to register through the Department's Internet site: www.myflorida.com/dor. The Taxpayer would be considered a reseller of the communications services that are used as a component part or integrated into the Calling Service plans it sells to customers. See Section 202.16(2), F.S. A registered dealer making purchases for resale may issue copies of its Communications Services Tax Annual Resale Certificate (form DR-700015) in lieu of paying communications services tax to its providers. Therefore, once registered, the Taxpayer may present a copy of its Communications Services Tax Annual Resale Certificate to its provider in lieu of the provider including communications services tax on its bill to Taxpayer. See Rule 12A-19.060, 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 backup documents are public records under Chapter 119, F. S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 922-4710.

Sincerely,

Thomas K. Butscher
Senior Attorney
Technical Assistance & Dispute Resolution

TKB/
Control # 62319

FOOT NOTE #1 - It is noted that "security" is defined to include "[f]reedom from doubt, anxiety, or fear,... [s]omething that gives or assures safely...." The American Heritage Dictionary, 1575 (4 th ed. 2000).

FOOT NOTE #2 - This would seem to indicate that a customer's primary reason for purchasing the Taxpayer's

services (at the urging of the Taxpayer's marketing) should be to receive security services. It is perhaps noteworthy that the Taxpayer does not, as it did with regard to communications services, urge the adoption of the "true object" test with regard to taxability under Section 212.05(l)(i)l.a., F.S.

FOOT NOTE #3 - Such telephone calls must be "originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered." The information available to the Department indicates that this requirement is met.

FOOT NOTE #4 - Customized Information, a feature of Calling Service, is accessed using the wireless telephony that is only made available to Calling Service subscribers. Moreover, Customized Information does not itself constitute communications services but is in the nature of an "information service," which is specifically excluded from the definition of communications services. See Section 202.11(3)(a) and (7), F.S.