



Executive Director
Marshall Stranburg

QUESTION: ARE CHARGES TO FLORIDA CUSTOMERS FOR SERVICES PROVIDED BY THE TAXPAYER RELATED TO ITS VIRTUAL CALL CENTER, INCLUDING CHARGES FOR SOFTWARE SUBSCRIPTIONS AND CHARGES FOR COMMUNICATIONS SERVICES, SUBJECT TO FLORIDA CST?

RESPONSE: SERVICES PROVIDED AND CHARGED BY THE TAXPAYER, INCLUDING SOFTWARE SUBSCRIPTIONS, INCLUDE CHARGES FOR THE PROVISION OF COMMUNICATIONS SERVICES. HOWEVER, BECAUSE THE COMMUNICATIONS SERVICES ORIGINATE AND ARE BEING RECEIVED BY THE CUSTOMER FROM EQUIPMENT LOCATED IN A DATA CENTER OUTSIDE FLORIDA, THE SERVICES ARE NOT SUBJECT TO CST, EVEN IF CHARGED TO A FLORIDA CUSTOMER.

May 22, 2014

RE: Technical Assistance Advise ment – TAA 14A19-002
Communications Services Tax
XXXX (Taxpayer)
FEI #: XXXX
Chapter 202, Florida Statutes

Dear XXXX,

This is a response to your letter dated XXXX. You have requested a Technical Assistance Advise ment (TAA) regarding the Department’s position on whether XXXX Communications Services Tax and Gross Receipts Tax (CST) applies to the sales calling services provided by XXXX. The information provided with your letter established that you meet the requirements for a TAA.

ISSUE

Are charges for services offered by the Taxpayer to customers located in XXXX, including charges for software subscriptions and charges for communications services, subject to XXXX CST?

FACTS

The Taxpayer provides “cloud based” call center services to customers, which it calls a Virtual Call Center (VCC). The Taxpayer’s VCC software, located on servers in XXXX and XXXX, provides many functions, the main one being a call bridging function to facilitate the VCC. In the example contract provided, VCC is defined as,

... [the Taxpayer’s] proprietary hosted virtual call center software and system, hosted on servers owned and operated by [the Taxpayer], that enables the user to process data and to deliver and/or accept text, recorded messages and/or voice conversations by telephone to a list of recipients that have been created and input by the user.

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Per the referenced contract, the VCC services provided are,

... all services or products provided through the VCC including a fixed number of seat licenses, any specially ordered premium services, local and long distance telecommunications services, and implementation services.

Seats or Seat Licenses are defined as,

... the maximum number of concurrent Customer users [consumers] that may simultaneously access the VCC....

The service allows a customer to operate a “call center” without the capital outlay of a physical call center. In addition, customer agents may be located anywhere in the U.S. versus a single geographical location for a physical call center, regardless of where the customer is located. The Taxpayer’s customers include (1) organizations that receive a high volume of inbound calls, typically, for the purpose of customer support and services (inbound communications) and (2) organizations needing to establish contact with large numbers of people, typically for marketing and sales purposes (outbound communications).

The sample contract provided specifies, under “2. USE OF VCC SERVICE,” that the customer specifies the services ordered through a Service Order. A Service Order is completed upon initiation of the contract and again anytime additional services are requested.

As part of the “Initial Service Activation and Provisioning,” “ including implementation and activation fees, the first month’s Seat License fees and pre-paid long distance fees as applicable (collectively, the ‘Activation Fee’).” The contract later specifies that the prepaid long distance services fees amount is held as a deposit and that the customer will be invoiced “ for long distance usage monthly in arrears as it is incurred.” (See pp. 2 and 3 of the [Taxpayer] Customer License Agreement.) However, pursuant to the sample Service Order provided, on page 2, specifies that, as calls are made, the cost of each call is deducted from the Prepaid Long Distance balance, and that the customer shall maintain a sufficient Prepaid Long Distance balance to ensure continued use of the Taxpayer’s VCC services.

Features of Inbound Service

Inbound communications traffic is generated when consumers seek customer support from the Taxpayer’s customers. As the Taxpayer describes,

In a typical case, a consumer places a call to the customer’s telephone number. The number might be an 800 or local telephone numbers owned by the customer, or it might be an 800 or local telephone number owned by [the Taxpayer], but which is licensed to the customer. The incoming call from the consumer, instead of going directly to the customer’s office, terminates at one of [the Taxpayer’s] data centers. At the data center, [the Taxpayer’s] software performs a bridging function. The software permits a connection between the consumer and the data center and [a customer] agent. Thus, when a consumer makes a call to a customer telephone number hosted at a [Taxpayer] data center, an agent of [the Taxpayer’s] customer is alerted, and a bridge is established between the [customer agent’s] connection to the data center and the consumer’s connection to the data center. (Emphasis added.)

In response to additional inquiry on the 800 or local numbers, the Taxpayer provided the additional information.

[The Taxpayer] *may* assign local telephone numbers to customers, so that consumers calling a [Taxpayer] customer are able to reach the customer using telephone numbers that are local to the consumers. For example, a customer located in XXXX that anticipates inquiries from consumers in XXXX, XXXX, might license the use of a telephone number with a “515” area code (which is a local area code for XXXX, XXXX). A consumer in XXXX, XXXX, dials that number using the consumer’s own telecommunications carrier, in which case the consumer pays his or her own telecommunications carrier for a local call. The [Taxpayer’s customer], meanwhile, is charged by [Taxpayer] for the termination of the consumer’s call to either [the Taxpayer’s] XXXX or XXXX data centers. [The Taxpayer] also typically charges a fixed monthly fee for local telephone numbers, but for some customers no such fee is charged. (Emphasis added.)

Where [the Taxpayer] licenses an “800” number to a customer, [the Taxpayer] charges the customer for the use of the “800” number and for inbound service from consumers to [the Taxpayer’s] data centers. Thus, for example, where a consumer in XXXX, XXXX, dials an “800” number that [the Taxpayer] has licensed to a customer, [the Taxpayer] charges the customer for the exclusive use of the “800” number *and for the connection between Iowa and either [the Taxpayer’s] XXXX or XXXX data centers.* (Emphasis added.)

In both the case of a call to a local telephone number and the case of a call to an “800” number, [the Taxpayer] purchases the inbound service (between the consumer and the data center) from a third-party telecommunications carrier (*e.g.*, AT&T or Verizon Communications). Local telephone numbers and “800” numbers licensed by [the Taxpayer] to its customers are not associated with actual telephones; they simply facilitate inbound calls from consumers to [the Taxpayer’s] data centers.

Features of Outbound Service

The software acts in a similar bridge capacity for outbound calling.

Generally, in the case of outbound communications, customer agents upload databases of consumer telephone numbers to servers at [the Taxpayer’s] data centers and instruct the data centers to make calls to the consumers, all through a web-based interface. Because not every call is answered, an agent need not be on the line for each call that is made. If a consumer answers a call, the software alerts an agent to the response, and a bridge is established between the agent’s connection to the data center and the consumer’s connection to the data center. In addition, under certain circumstances, [the Taxpayer’s] servers may be instructed by a customer to deliver a pre-recorded message.

Other Features

The software allows other functions for the Taxpayer’s customer agents, agent supervisors, and agent administrators.

[Agents may access and use scripts for use during calls], set up online chat sessions, play audio files to consumers, email consumers, access historic customer information, dial calls manually transfer calls to supervisors or other agents, create conferences among three or more parties, record calls, make callbacks, edit or delete contact records and session notes, add numbers to a Do Not Call List, access a web browser during a call, and wrap up and dispose of calls. (Emphasis added.)

While supervisors rarely speak with consumers, they have access to various features of the software. A supervisor may,

... be able to access agent status and data in real time, review recording and voicemails of agents, monitor (and “barge” into) calls, “whisper coach” agents during calls, view chat sessions, view current campaign statistics and data, view data for all or certain skills, access data for their own or all agent groups, and view billing information , among other options.

The Taxpayer’s customer’s administrators, who also rarely speak with consumers, access more administrative functions provided by the software. Administrators may use the software to set up, conduct, and manage call center campaigns. They may also,

... manage call lists, determine who will be called and when, limit when calls may be made to consumers in certain states or localities, control options available to agents during calls, create and edit interactive voice response (“IVR”) scripts, modify campaign profiles and call variables, and edit prompts, dispositions, reason codes and workflow rules.

Administrators can also configure the software to generate, automatically or by request, various custom and standard reports related to call center activity.

The features of the Inbound service, Outbound service, and Other services, may all be accessed *by the customer* through an Internet connection to the data center. The customer purchases its Internet access from a third party.

Communications Charges for Outbound Service

For the Outbound service, the connection established between the data center and the consumer is accomplished through traditional telephone service. The Taxpayer will purchase long distance communications services from a communications services provider and “resell” the service to its customer based on actual usage. If this service is used to make outgoing calls for the customers, the customer invoice will reflect usage charges. There may also be charges for use of telephone numbers licensed to the Taxpayer and charges for connecting a customer’s telephone number(s) to ports at data centers. The Taxpayer, depending on the contract, may also require the customer to prepay for long distance and maintain a minimum balance. Then, when usage charges are incurred, they show up on the customer invoice, but are deducted from the prepaid balance.

Customer Connections to Data Centers

Customers will generally connect to the data centers through the Internet with the customer purchasing Internet access from a third party provider. Once the customer is connected by the

Internet, the *customer agent may speak with the consumer* using Voice-over-Internet Protocol (VoIP) or other IP application. The Taxpayer does not charge for the VoIP or other IP service it provides.

The conferee requested additional information on what software the Taxpayer purchases to facilitate the VoIP or other IP service it provides. The Taxpayer's representative responded with the following.

[The Taxpayer] has historically paid licensing fees to a vendor called XXXX for the use of "libraries" of functions that [the Taxpayer] integrates into the IP application that [the Taxpayer] makes available to its customers. These libraries permit [the Taxpayer's] IP application to convert voice into data and data back into voice. [The Taxpayer] downloads the libraries over the Internet from XXXX. When downloaded, the libraries take the form of code that cannot function independently. In other words, the libraries do not take the form of standalone software. The libraries must be made part of a larger program to be usable.

[The Taxpayer] creates its own code for the IP application and then compiles that code. A program called a "linker" then combines [the Taxpayer's] code with the XXXX code to create a functioning piece of software. [The Taxpayer] permits its customers to use this software free of charge.

[The Taxpayer] is now in the process of switching to "open source" libraries so that it will no longer have to pay licensing fees to XXXX.

Some of the Taxpayer's customers establish a connection through either a Multiprotocol Label Switching (MPLS) or Session Initiation Protocol (SIP) connection. The MPLS connection is "purchased by [the Taxpayer's] customer from the customer's own carrier." The SIP connection is "established across the Internet with [the Taxpayer's] assistance."

In these situations, [the Taxpayer] occasionally charges its customer a nominal charge for connecting its servers to the customer's own communications service.

In addition, the conferee asked if the "other IP applications" included Virtual Private Networks (VPN's). The Taxpayer's representative explained that the Taxpayer owns VPN equipment so that if a customer requests that its connection to the Taxpayer be made through a customer's VPN, the Taxpayer is able to oblige such a request. The Taxpayer will assist with setting up a Taxpayer connection to the customer's VPN and make a related one-time set up charge. In a small number of instances, the Taxpayer charges a very small number of its customers a monthly fee for the maintenance of the Taxpayer's connection to the customer's VPN.

TAXPAYER POSITION

The Taxpayer opines that while it may provide some communications services, its services either (1) do not originate and/or terminate in XXXX and/or are not charged to a service address in XXXX, or (2) the Taxpayer does not charge for the communications service provided.

The Taxpayer explains that its services are not “traditional communications services. By themselves, [the Taxpayer’s] services do not permit a user to make a telephone call.” The Taxpayer explains that its software provides, mainly, bridging services from equipment located outside XXXX. The services provided by the Taxpayer, as explained in its letter, originate and terminate at the equipment located at the data centers outside XXXX. Therefore, there is no origination or termination in XXXX.

The Taxpayer does provide some communications services to connect either the customer agent or the consumer to the bridging equipment in the form of 800 calls, long distance, or VoIP. However, the consumer and agent may be located anywhere in the United States. Even if the customer is located in XXXX, the communications services would not necessarily originate or terminate at the XXXX location. In addition, for the VoIP service, the Taxpayer does not charge the customer.

The Taxpayer states that even for communications services, “charges for the services should generally be apportioned outside of XXXX because the origination point, termination point, and possibly the service address of the services will generally be located outside of XXXX. Accordingly, [the Taxpayer] requests a ruling that, as a matter of XXXX tax law, no CST or [gross receipts tax] is collectible by [the Taxpayer] from its XXXX-based customers for the services that it renders.

LAW AND DISCUSSION

Section 202.11(1), F.S., provides the following definition of communications services:

“Communications services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video 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 includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

(h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

Information services are defined in s. 202.11(5), F.S., as,

... 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 video service. (Emphasis added.)

Florida law defines Internet access in s. 202.11(6), F.S. (as amended by Chapter 2012-70, Laws of Florida) as

“Internet access service” has the same meaning as ascribed to the term “Internet access” by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by Pub. L. No. 110-108.

The federal definition, included in the Internet Tax Freedom Act of 1998 § 1105, 47 U.S.C. 151 (2007), defines the term as:

(5) Internet access.—The term ‘Internet access’—
(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;
(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—
(i) to provide such service; or
(ii) to otherwise enable users to access content, information or other services offered over the Internet;
(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;
(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and
(E) includes a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access. (Emphasis added.)

Sales price is defined in s. 202.11(13), F.S., as quoted in pertinent part below.

“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 service, not described in paragraph (a), which is part of the sale and for which the charge is not separately itemized on a customer’s bill or separately allocated under subparagraph (b)8. The sales price of communications services may not be reduced by any separately identified components of the charge which constitute expenses of the dealer, including, but

not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

(a) The sales price of communications services includes, whether or not separately stated, charges for any of the following:

1. The connection, movement, change, or termination of communications services.

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

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.

8. Charges for goods or services that are not subject to tax under this chapter, including Internet access services but excluding any item described in paragraph (a), that are not separately itemized on a customer's bill, but that can be reasonably identified from the selling dealer's books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

Service address is defined in s. 202.11(14), F.S., as follows:

“Service address” means:

(a) Except as otherwise provided in this section:

1. The location of the communications equipment from which communications services originate or at which communications services are received by the customer;

2. In the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, and in the case of third-number and calling-card calls, the term “service address” means the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number; or

3. If the location of the equipment described in subparagraph 1. is not known and subparagraph 2. is inapplicable, the term “service address” means the location of the customer's primary use of the communications service. For purposes of this subparagraph, the location of the customer's primary use of a communications service is the residential street address or the business street address of the customer. (Emphasis added.)

Section 202.12(1)(a), F.S., provides when the sale of communications services in Florida are subject to Florida CST.

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 6.65 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(4)(a), F.S., imposes local CST on the same transactions as addressed above.)

Communications services are defined, in part, as the transmission, conveyance, or routing of voice, data, audio, video, and/or any other information or signals to a point or between or among points, regardless of the medium or methods used. It includes transmissions where “computer processing applications” are used to act on the form, code, or protocol of the content for purposes of transmission. The definition of communications services excludes information services and Internet access.

Internet access, by definitions quoted above, is not a communications service. Internet access is “a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet” It includes services such as homepages, electronic mail, instant messaging, and services related to the provision of Internet access. However, Internet access “*does not include* voice, audio or video programming, or other products and services that utilize Internet protocol or any successor protocol and *for which there is a charge*” (Emphasis added.) Therefore, charges for Internet Protocol transmissions are not charges for Internet access, but are charges for communications services, potentially subject to CST under Florida law.

Information services are also excluded from the definition of communications services. Information services are “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or *making available information via communications services*” Information service providers, generally, consume any communications services used to provide information services. Information services do not include video services. (See s. 202.11(24), F.S.)

Communications services tax is imposed upon the retail sale of communications services when the services (1) originate and terminate in XXXX, or (2) originate or terminate in XXXX and are charged to a XXXX service address. (s. 202.12(1), F.S.)

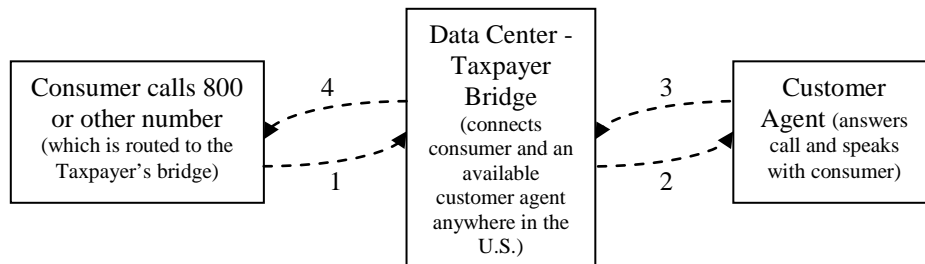
XXXX law defines a retail sale as a sale of communications services for any purpose other than for resale or for use as a part of or integration into another communications service to be resold in the ordinary course of business. (s. 202.11(11), F.S.) A service address is, in general, the location of the communications equipment from which the services originate, or the location at which the services are received. (s. 202.11(14), F.S.) However, when the location of the equipment for origination or termination is not known, then the services address is the “place of primary use,” which is the residential street address or the business street address of the customer.

Communications services tax is computed on the sales price of the communications services. By definition, the sales price includes items such as detailed billing, voicemail, directory assistance, etc., whether or not separately stated. It also allows that when charges for communications services include products or services otherwise not subject to CST, such products or services may be excluded from the taxable sales price when such charges “... can be reasonably identified from the selling dealer’s books and records kept in the regular course of business.” (s. 202.11(13)(a) and (b)8., F.S.) If the products and services otherwise not subject to CST are not separately stated or may not be identified from the dealer’s books and records, then such charges are considered part of the sales price and are subject to CST.

While the Taxpayer refers to its product as “software,” it recognizes that the software provides, in part, communications services in the form of call bridging between at least two parties. The software that creates the bridge is stored and used on equipment located in data centers outside the state of Florida. In addition, the Taxpayer will purchase and resell some communications services.

Inbound Service

For the Inbound service, the Taxpayer may resell to its customer the consumer telephone line (800 or local access number) the consumer calls to contact the Taxpayer’s customer, or the customer may provide its own consumer telephone line which is routed to the data center. The line called by the consumer routes to the Taxpayer’s equipment so that a bridge may be created between the consumer and the customer agent, as illustrated below (#’s 1 and 2). The connection between the consumer and the customer agent is facilitated through the Taxpayer’s bridge (#’s 3 and 4). Bridges are located in XXXX and XXXX.



The customer agent often connects to the Taxpayer’s bridge through the Internet (3). When this is the case, the customer agent’s portion of the call is facilitated, *free of charge*, using a VoIP application provided by the Taxpayer. In a few cases, the connection between the customer and the data center is facilitated through an MPLS or SIP connection, which the customer procures on its own, but for which the Taxpayer may charge a fee to connect the Taxpayer’s service to its servers.

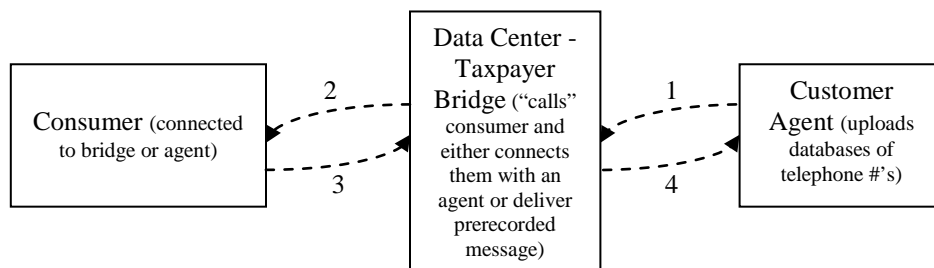
The Taxpayer's sale of an "800" number or local number telephone line the consumer calls to connect to the call center is the sale of a communications service. The telephone line will be charged to the Taxpayer's customer. This is the retail sale of the telephone line, as the customer is the consumer of the telephone line. The location from which the communications service originates is unknown, as a consumer may call from anywhere, but the service terminates at the equipment located at one of the data centers outside XXXX. Therefore, the services are not subject to CST even if charged to a Florida customer.

The equipment where the bridging function is performed is located outside the state of XXXX. Therefore, any charges for the bridging function are not subject to XXXX CST.

The Taxpayer has stated that the customer agent may use the Taxpayer's VoIP service, its own MPLS service, or SIP service to connect to the bridge (#3). These are Internet Protocol (IP) transmissions. However, either the Taxpayer does not charge for or is not providing these services. The Taxpayer does not charge for the VoIP, and therefore, though VoIP is a communications service, no tax is due. The Taxpayer charges a nominal fee to connect the *customer's self-procured* MPLS or SIP service to the Taxpayer's servers. The charge to connect the customer's service to the Taxpayer's equipment is not a charge for a communications service, nor is it part of the sales price of a communications service. Therefore, the charge is not subject to CST.

Outbound Service

For the Outbound Service, the customer agent uploads databases of telephone numbers to the Taxpayer's servers. (For the Outbound Service, the service "starts" at #1 on the illustration.) This is facilitated through the Internet, using Internet access the customer procures from a third-party provider. The Taxpayer's system, using regular long distance services, on the customer's behalf, calls the consumer (#2). If the consumer answers, then a connection to the bridge is established between the consumer and the bridge (#'s 2 and 3). The customer is charged for the long distance service used. The software at the data center may then either bring in the customer agent (#4), facilitated by the bridge; or it may deliver the consumer a prerecorded message (#'s 2 and 3, a communication between the bridge at the data center and the consumer).



The agent uses Internet access purchased from a third party to upload the databases of telephone numbers to the servers. This is not subject to CST. The software at the data center uses long distance telephone service to contact the consumer. It is presumed that the customer is charged only once a connection is established between the consumer and the data center bridge. If the customer has the software provide a prerecorded message, the Taxpayer is consuming a communications service (long distance telephone service) to provide an information service. For the information service, the Taxpayer would be considered the consumer of the long distance

service. Because the server equipment from which the call originates is located outside Florida, then the Taxpayer does not owe CST on the long distance telephone service it consumes in providing the information service.

If the customer requires that the data center bridge facilitate a connection between consumer and the customer agent, the charges to the customer are for a communications service. The communications services originate and are being received by the customer from the equipment located at the data center outside XXXX. Therefore, the services are not subject to CST even if charged to a XXXX customer.

Note: The Taxpayer may require customers to “prepay” for long distance services. These are not considered “prepaid calling arrangements” as defined in s. 202.11(9), F.S. Such charges are not subject to CST, as any amounts deducted from the prepaid balance are for the outbound service as described above, which are not subject to CST.

Other Features

The additional features the VCC allows are all facilitated from the Taxpayer’s equipment located at the data center outside XXXX. The services described and provided to customer agents, supervisors, and administrators include communications services (call transferring) and information services. The communications services originate and are received at the equipment located at the data center outside XXXX. Therefore, the services are not subject to CST even if charged to a XXXX customer. The information services are generally provided through an Internet access interface. Charges for these services are also not subject to CST.

Customer Connections to Data Centers

The VoIP (or other IP application) provided by the Taxpayer for customer use is provided free of charge. This is not subject to CST. The Taxpayer explains that what it purchases to provide VoIP is not VoIP service, but are instead “function” libraries that, once combined with the Taxpayer’s own coding, create the VoIP service. Therefore, no potential liability exists for communications services use tax.

Taxpayer’s customers may prefer a customer agent connection to the data center equipment be made through an MPLS, SIP, or even a VPN connection. The Taxpayer does not provide any of these services. It may charge a fee to connect/maintain the customer MPLS, SIP, or VPN service to its equipment. However, because the Taxpayer is not providing the communications service, the associated connection/maintenance charges are not subject to CST.

CONCLUSION

The Taxpayer’s Inbound and Outbound services, including software subscriptions, include charges for the provision of communications services. However, because the communications services originate and are being received by the customer from equipment located in a data center outside XXXX, the services are not subject to CST even if charged to a XXXX customer.

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.

Should you have any questions, please feel free to contact me.

Sincerely,

Carla M. Bruce
Tax Law Specialist
Technical Assistance and Dispute Resolution
(850) 717-6315

Record ID: 156037