



Executive Director
Marshall Stranburg

QUESTION: ARE ANY OF THE FOUR “MESSAGING SOLUTIONS SERVICES” COMMUNICATIONS SERVICES PURSUANT TO S. 202.11(1), F.S.?

RESPONSE: TAXPAYER’S SALES OF THE IDM AND NOTIFICATIONS EMAIL SERVICES THAT ARE NOT FROM OR RECEIVED BY A “TRADITIONAL FAX MACHINE” ARE NOT SUBJECT TO CST. IF THE TAXPAYER CHARGES FOR A VPN, SUCH CHARGES ARE SUBJECT TO CST WHEN SUCH SERVICES (1) ORIGINATE AND TERMINATE IN FLORIDA, OR (2) ORIGINATE OR TERMINATE IN FLORIDA AND ARE CHARGED TO A FLORIDA SERVICE ADDRESS. THE SERVICE ADDRESS IS BASED ON THE LOCATION OF THE COMMUNICATIONS EQUIPMENT FROM WHICH COMMUNICATIONS SERVICES ORIGINATE OR AT WHICH COMMUNICATIONS SERVICES ARE RECEIVED. IF THE TAXPAYER DOES NOT SEPARATELY ITEMIZE CHARGES RELATED TO OR CALCULATED ON “TRADITIONAL FAX MACHINES FAXES” ON A CUSTOMER’S BILL, AND THOSE CHARGES CAN BE REASONABLY IDENTIFIED FROM THE TAXPAYER’S BOOKS AND RECORDS KEPT IN THE REGULAR COURSE OF BUSINESS, THE TAXPAYER MAY ALLOCATE THOSE CHARGES.

QUESTION: IF ANY OF THE “MESSAGING SOLUTIONS SERVICES” ARE NOT COMMUNICATIONS SERVICES, ARE THEY SUBJECT TO ANY OTHER TAX IN FLORIDA?

RESPONSE: SEE ANSWER TO #1.

QUESTION: IF ANY OF THE “MESSAGING SOLUTIONS SERVICES” ARE SUBJECT TO TAX IN FLORIDA, HOW SHOULD THE SERVICE BE “SOURCED” FOR TAXING PURPOSES?

RESPONSE: COMMUNICATION SERVICES TAX IS “SOURCED” BASED ON SERVICE ADDRESS. THE SERVICE ADDRESS APPLICABLE FOR TAXPAYER’S SERVICES IS PROVIDED IN S. 202.11(14)(a)1., F.S., WHICH PROVIDES THAT THE SERVICE ADDRESS IS “[T]HE LOCATION OF THE COMMUNICATIONS EQUIPMENT FROM WHICH COMMUNICATIONS SERVICES ORIGINATE OR AT WHICH COMMUNICATIONS SERVICES ARE RECEIVED BY THE CUSTOMER.”

QUESTION: IF ANY OF THE “MESSAGING SOLUTIONS SERVICES” ARE SUBJECT TO TAX IN FLORIDA, ARE THE TAXPAYER’S PURCHASES OF COMMUNICATIONS SERVICES CONSUMED OR RESOLD TO PROVIDE THE SERVICE(S) ENTITLED TO BE PURCHASED AS SALES FOR RESALE?

RESPONSE: YES. IF THE TAXPAYER REGISTERS AS A FLORIDA DEALER OF COMMUNICATIONS SERVICES, THEN IT MAY PURCHASE COMMUNICATIONS SERVICES RESOLD AS SALES FOR RESALE.

May 30, 2014

RE: Technical Assistance Advise ment - TAA 14A19-003
Communications Services Tax – various services
XXXX, (Taxpayer)
FEI #'s: XXXX, XXXX, and 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 Florida Communications Services Tax (CST) applies to the Taxpayer's sales of integrated desktop messaging (IDM), notifications email, production email, and electronic data interchange value added network (EDI VAN) services. The information provided with your letter established that you meet the requirements for a TAA.

ISSUES

1. Are any of the four "messaging solutions services" communications services pursuant to s. 202.11(1), F.S.?
2. If any of the "messaging solutions services" are not communications services, are they subject to any other tax in Florida?
3. If any of the "messaging solutions services" are subject to tax in Florida, how should the service be "sourced" for taxing purposes?
4. If any of the "messaging solutions services" are subject to tax in Florida, are the Taxpayer's purchases of communications services consumed or resold to provide the service(s) entitled to be purchased as sales for resale?

FACTS

Based on its Internet website, the Taxpayer is a global provider of "cloud messaging and business integration services" that help companies optimize relationships with their partners, suppliers, customers, and other stakeholders. In its letter of request, the Taxpayer explains that the services it provides allow its clients to outsource certain data processing and billing functions, providing the services more economically than if the clients handled the functions themselves. The services work, in part, as follows.

... Taxpayer enters into contracts with its clients and pursuant to such contracts provides its clients with on-line access to various data, manipulation of data, and creation of data reports, including billing statements, billing letters, and billing notices. Many of the data reports created by Taxpayer, such as customer billing statements, letters, and notices, are sent directly by Taxpayer to the customers of Taxpayer's clients.

... Financial institutions and other sources, including merchants, provide Taxpayer with raw data, which data is specific to individual customers and is required to be treated as confidential data in the hands of Taxpayer. Taxpayer then stores, organizes, and manipulates the raw data or information that it maintains in order to generate the personalized documents sent to the customers of Taxpayer's clients. Taxpayer generally pays or accrues sales or use tax on the paper its uses when creating these personalized documents. In very limited circumstances, Taxpayer purchases specialized paper and resells it to its clients, and in these circumstances Taxpayer collects and remits sales tax on the charges for paper.

The Taxpayer sells what it refers to as "complete messaging solutions" to business customers. The four messaging solutions are known as:

- Integrated Desktop Messaging (IDM)
- Notifications Email
- Production Email
- Electronic Data Interchange Value Added Network (EDI VAN)

For the four services Taxpayer discusses in its TAA request, the following facts, as presented in the Taxpayer's letter, remain the same for all services:

1. While the Taxpayer has employees and offices in Florida, the servers that host or facilitate the services are located in XXXX, XXXX, and/or XXXX. Contracts are approved/concluded in Georgia.
2. Though not the same for the four services, the Taxpayer's clients may manage and submit data and information for the services in various forms and types of files.
3. The Taxpayer's clients may log in and submit data to the Taxpayer's network via the Internet, use a Virtual Private Network, File Transfer Protocol (FTP), or other secure method, but clients use their own "telecommunication connectivity" to do so.

Integrated Desktop Management (IDM)

The Taxpayer provides the following explanation of its IDM service:

IDM enables a customer's employees (users) to receive and send digital fax documents as electronic messages directly from their existing email accounts via their email application, at their convenience....

The service is a comprehensive solution that provides secure communication, detailed management reports and analytics, and a complete service management dashboard for use by the customer's service administrator. The web portal may be white labeled (customized) specifically for the customer.

[Taxpayer's] network software that resides on [Taxpayer's] servers accepts the data files sent by the initiator and converts the files to "tiff" or "pdf" format suitable for standardized viewing, and provides personal customization as required.

Excerpted, pertinent facts from the Taxpayer's letter provide the following about how the service works:

10. [Taxpayer's] network software converts the file to a tiff image if the ultimate destination is a fax machine. The destination can be anywhere in the world.

11. For users with Email Inbox receiving capability, [the Taxpayer] assign[s] an e-fax number to that user's email address. An e-fax destined to that number is received on [Taxpayer's] network, converted into tiff or pdf format and then delivered to the user inbox via SMTP.

12. Most often, the document flows from one inbox to another. However, documents can also be sent from a user's email application to a traditional fax machine; they are also received in a user's inbox from a traditional fax machine. In all cases, the file formats and data are converted as required for the recipient's use.

14. Users may have both inbound and outbound messaging capabilities, inbound only or outbound only. If a user has inbound capabilities, that user is assigned an e-fax number that maps to the user's email address, e.g., []123-456-7890. If a user has outbound only services, that user does not need an e-fax number associated with their email address. The e-fax number is for receiving purposes only.

15. [The Taxpayer] obtain[s] use of numbers from third party telecommunications carriers. The numbers are allocated or assigned to customers based on how many the customers require for their inbound messaging users. As mentioned above, the number is mapped to the user's email address. [emphasis supplied]

16. [Taxpayer's clients] may port/transfer their existing traditional fax number to their IDM account.

A sample "Messaging Services Agreement" (contract) was provided. Pertinent excerpts of the Task Order One provide the services Taxpayer provides to the client, on page 29:

E-mail to Fax Service – a fully outsourced scalable fax service to enable users to send a fax directly from their e-mail client without requiring additional hardware, software, or telephone lines....

Fax to E-mail Service – a fully outsourced scalable fax service to enable users to receive faxes as either a TIFF or PDF attachment to an e-mail message. [Taxpayer] assigns users an individual fax number to which faxes are sent. Upon receiving a fax, [Taxpayer] converts the fax into the user's desired file format and delivers it to the e-mail address associated with that fax number.

The “Fees” indicate a set-up fee of \$3.00 per user, along with a monthly fee of \$1.00 per user and a \$.045 per page fee (inbound and outbound). The charge for International inbound service is \$175.00 for set-up, and \$15.00 monthly per user, with a per page fee that varies based on country of origin (a schedule of fees is attached). Additional “customization” fees are charged for services such as From Address, Content on Delivery/Non-Delivery Notices, Content on Inbound Messages, Welcome Letter, Custom Domain, and a Domain Monthly Maintenance Fee (per domain).

In addition, the Taxpayer provides number ownership and porting rights:

[Taxpayer] agrees that, with respect to any inbound fax number provided by [Taxpayer], or ported to [Taxpayer] from [another company], [Taxpayer’s client] shall have the right to port any such number to a carrier or other service provider of [Taxpayer’s client’s] choosing....

The Taxpayer charges for the porting of numbers.

Task Order Two contains additional provisions. The service description provides:

[Taxpayer] Production Messaging is described as a fully outsourced scalable service to automate the delivery and/or receipt of electronic messages with business and mission critical applications. Production Messaging supports multiple delivery options, including e-mail, fax and file transfer.

The Fees are \$.045 per page for Standard Fax Delivery with minimum revenue commitments both for the initial term and for renewal terms. There is also a variable per page rate chart provided for outbound international faxes.

Task Order Two also contains a provision for Connectivity. It states:

[Taxpayer] agrees to provide *port access and monitoring* of the XXXX services (“Monthly Facility Management Fee”) through a VPN connection for [Taxpayer’s client’s] secure access....

The charges for this will be:

Installation Charge (Non-Recurring):	\$500.00 per VPN
Monthly Facility Management Fee:	\$100.00 per VPN

Notifications Email

The Taxpayer’s letter explains that its Notifications Email service is a cloud based solution that “automates the creation and delivery of [Taxpayer’s clients’] customized outbound high

volume emails.” Examples of uses of this service are for subscription related information, service outage or impairment notifications, promotions, and other high volume communications that must be customized to each customer of the Taxpayer’s client.

The Taxpayer’s explanation also provides:

Notifications Email allows [Taxpayer’s client] to upload data via the [I]nternet and deliver the processed data via email, SMS, fax and voice, according to the business rules specified by the [Taxpayer’s client]. The service provides customized “From” domains, unique [I]nternet URLs, the ability to insert [traceable] links to other websites, add attachments and schedule the timing of the message release to the recipient. It also provides file storage so that recipients are able to retrieve files from [the Taxpayer’s] servers. Business rules, including personalization rules and logos, may also be stored on [the Taxpayer’s] servers and merged with uploaded files.

Additional, excerpted, pertinent facts from the Taxpayer’s letter provide the following about how the Notifications Email service works.

4. [Taxpayer’s] servers accept various forms of data from [Taxpayer’s client’s] systems. Emails are personalized according to the business rules provided by the [Taxpayer’s client],

7. [Taxpayer’s client] uploads typically include the message(s) to be sent with the destination email address or a text file of recipients’ email addresses and other information to be inserted into the message. ...

9. The same message can be delivered via email, SMS text, fax or voice, according to the [Taxpayer’s client’s] specifications. [Taxpayer’s] software processes the customer's uploaded email files according to the business rules specified and delivers the output in the specified communication format.

15. The [Taxpayer’s client] can schedule the timing of the email notification release and receives a detailed report of successful and unsuccessful deliveries based on standard email delivery conditions.

16. [The Taxpayer] provide[s] Sent Messages status reports and various other detailed management reports that allow [Taxpayer’s clients] to monitor service usage and provide a complete audit trail for all transactions.

18. Email services are priced on a transaction basis, e.g.[,] per email; there is a charge for each delivery or attempted and re-attempted delivery. [The Taxpayer] optionally receive[s] revenue when a recipient clicks on a third-party link. These fees reflect usage of [the Taxpayer's] services and the network utilized by the [clients]....

The Taxpayer did not provide a sample contract for the Notifications Email service.

Production Email

The Taxpayer's letter explains that its Production Email service is a cloud based solution that "automates the creation and delivery of customers' outbound high volume emails." Examples of uses of this service are trade confirmations, letters of credit, customer statements, business reports, etc. These are high volume communications that must be customized to each of the customer's clients.

Customers provide a single message file template, for example, along with the custom and personal data for each client. The Taxpayer's service populates the portions of the template that may be customized with the personalized data for each client. The service is performed according to the business rules and output needs established by the customer.

The service works in a similar manner as described above for the Notifications Email, with the following exceptions excerpted from the Taxpayer's letter.

9. The same message can be delivered to multiple addresses, or customized documents/messages can be delivered to multiple users. However, Production Email usually represents one message to one recipient. ...

15. Email services are priced on a transaction basis, e.g. per email; there is a charge for each delivery and there may also be a charge for attempted and re-attempted delivery. [The Taxpayer] optionally may receive revenue when a recipient clicks on a link contained in the email to access the file/data intended for them. These fees reflect usage of [the Taxpayer's] services and the network utilized by the customer....

The sample contract provided for the Production Email contains nonspecific general terms, but not a service description. The Service and Rate Schedule attached to the contract's Second Amendment provides that the Taxpayer provides "MessageReach (Email)" with attachments, HTML/image pull, and data collection options. The cost per email is \$.004 - .005, depending on the number of emails sent. The options range in cost from \$.005 - .25 each.

Electronic Data Interchange Value Added Network (EDI VAN)

The Taxpayer explains EDI as,

EDI in its most efficient form flows directly out of a company's computer system directly into a receiver's computer system without any human intervention. EDI is used for routine business documents like purchase orders, shipping documents and invoices.

EDI standards specify how data will be formatted. A business' data can generally be accessed only by authorized users and is accompanied by audit trails and archiving of data.

The Taxpayer provides an explanation of its VAN as follows:

...[VAN]is [the Taxpayer's] network of servers that receives data, processes and formats it, and delivers it to the recipient company. For example, a customer sends a transaction to the VAN, the VAN processes and formats the information, and the VAN then places the transaction in the on-line mailbox of the recipient company. The recipient then contacts the VAN to pick up its transactions. It is similar to e-mail, but rather than being unstructured text, it is used to create structured standardized data. The transactions typically travel via the [I]nternet. [The Taxpayer's] VAN interconnects with other VAN[s] allowing customers to send messages to any of its trading partners rather than having to manage interconnects to every trading partner themselves.

The Taxpayer explains that the data, as delivered to the VAN, is not usable for EDI purposes by the customer's trading partner. The VAN receives the data, transforming it and making it available for pickup by or delivery to the customer's trading partner. The Taxpayer provides the following excerpted, pertinent facts about how the EDI VAN service works.

4. The services include a hosted software solution that translates customer data files to industry-standard formats and routine business documents, such as purchase orders, shipping documents and invoices.

5. The service allows customers' computers to automatically submit data to [the Taxpayer's] servers and customers' global trading partners to retrieve the translated data in the form of a standardized business document.

6. [The Taxpayer] does not provide communication line or channels to its customers. Customers upload and retrieve data using their own lines or channels.

12. [The Taxpayer] manages and maintains its own EDI network infrastructure. It is a fully redundant network ...

18. [Taxpayer's clients] are charged for sending and/or receiving EDI messages.

On November 6, 2013, the Taxpayer, through its representative, provided an Addendum to address questions posed by the Department in regards to the EDI VAN service. In the Addendum, the Taxpayer characterizes the EDI service as a structured or standardized form of electronic mail. It explains:

The [Taxpayer] provide[s] the EDI value-added network (“VAN”) which functions essentially as an electronic post office that receives, forwards, sorts, and stores each customer’s EDI messages. The VAN also provides the necessary translation software and data processing functions to ensure the outgoing transactions are placed into the correct format to be received and processed by the designated recipient. In a typical transaction, a customer’s outgoing message is sent via an [I]nternet connection which is acquired by the customer from a third-party [I]nternet provider. Once the EDI message is received, it is formatted and converted by the [Taxpayer’s] translation software into the appropriate standardized format required for processing by the recipient. Then the transaction is placed into an electronic mailbox on the [Taxpayer’s] network (assuming the recipient is also a customer of the [Taxpayer]) or, alternatively, passed along to another VAN with which the [Taxpayer is] connected for delivery to the recipient’s mailbox on that network.

TAXPAYER POSITION

In its letter, the Taxpayer opines that in each of the services described the Taxpayer does not provide the transmission of the data, that the Taxpayer is not providing communications services. That function is performed by third party communications services providers. Taxpayer states further that the communications services providers possess “communications infrastructure necessary to transmit information” and that it does not. Rather, the Taxpayer states that the services it provides are what may be referred to as “information services” or “other professional services.”

The Taxpayer further explains that instead of being a conduit for receiving messages from a client and delivering same messages to its client’s customers, the Taxpayer performs additional work on the messages prior to delivery of the message to the client’s customer. The Taxpayer explains that its services,

... utilize its network software that acts on the form, code, or protocol of the content to merge disparate files and convert files to a different standardized format so it can be read by the end user, all through a secure platform.

The [Taxpayer’s] services allow data to be generated, acquired, processed and delivered to a recipient. The value in the [Taxpayer’s] services is in cost-effectively processing, merging, and customizing data according to business rules specified by the customer, as well as the detailed management reporting capabilities. Customers are able to provide files of varying formats and content,

have the files merged and transformed into multiple personalized messages, and efficiently delivered to multiple recipients. The primary benefit to the user of the underlying transaction is the processed data.

Taxpayer opines that its email and EDI services constitute “electronic mail services, or similar online computer services,” excluded from the definition of communications services provided in s. 202.11(1), F.S.

In its letter, the Taxpayer references *Department of Revenue v. Quotron Systems*, 615 So.2d 774 (Fla. 3rd DCA 1993), wherein the taxpayer’s service of providing financial information to the subscriber’s video display was not subject to sales tax, nor did the sales constitute a sale or rental of tangible personal property.

The Taxpayer states that all the described services are primarily Internet or email based, “[utilizing] similar technology as an email system and [transferring] data in a similar fashion, such services could be deemed to be exempt services similar to email...” As such, “... the services are exempt and protected from taxation under the 2007 amendments to the federal Internet Tax Freedom Act as ‘[I]nternet access.’”

If any of the services are communications services, the Taxpayer states that the services would only be subject to Florida CST when the communications services (1) originate and terminate in Florida, or (2) originate or terminate in Florida and are provided to a Florida service address.

LAW AND DISCUSSION

Communications Services Tax

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.

Section 202.11(5), F.S., provides the definition for information service.

“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 video service.

Section 202.11(6), F.S., provides the definition of Internet access service.

“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.

Section 202.11(13)(a)7., F.S., provides that a fax is part of the sales price of communications services.

“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.

7. The service of sending or receiving a document commonly referred to as a facsimile or “fax,” except when performed during the course of providing professional or advertising services.

Section 202.11(13)(b)8., F.S., provides:

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.

Section 202.11(14), F.S., quoted in pertinent part, provides the definition of service address for CST purposes:

“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;

Section 202.12, F.S., provides that sales of communications services are subject to CST in Florida as follows:

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....

The Internet Tax Freedom Act of 1998 § 1105, 47 U.S.C. 151 (2007) defines the term Internet access 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.

Sales and Use Tax

Section 212.08(7)(v), F.S., provides an exemption from sales tax for professional services and provides in part:

1. Also exempted are professional, insurance, or personal service transactions that involve sales as inconsequential elements for which no separate charges are made.
2. The personal service transactions exempted pursuant to subparagraph 1. do not exempt the sale of information services involving the furnishing of printed, mimeographed, or multigraphed matter, or matter duplicating written or printed matter in any other manner, other than professional services and services of employees, agents, or other persons acting in a representative or fiduciary capacity or information services furnished to newspapers and radio and television stations. As used in this subparagraph, the term “information services” includes the services of collecting, compiling, or analyzing information of any kind or nature and furnishing reports thereof to other persons.

Rule 12A-1.062(3) and (5), F.A.C., quoted in pertinent part, provide guidance on information services for sales tax purposes.

- (3)(a) “Information services” means and includes the services of collecting, compiling or analyzing information of any kind or nature, or furnishing reports thereof to other persons. The charge for furnishing information services, such as newsletters, tax guides, research publications, and other written reports of compiled information, which are not produced for and provided exclusively to a single customer, is taxable.
- (b) The term “information services” does not include the furnishing of information, including a written report to a person of a personal or individual nature, that is not or may not be substantially incorporated in reports furnished to other persons.

(5) The charge for furnishing information by way of electronic images which appear on the subscriber's video display screen does not constitute a sale of tangible personal property nor does it constitute the sale of a taxable information service.

Florida CST law specifically addresses two types of services, communications services and information services (definitions as provided above) that are at issue in this TAA. The services are distinguishable by their definitions. Communications services are the “*transmission, conveyance, or routing of ... data, ...or any other information or signals, ... to a point, or between or among points, by or through any electronic, ... or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.*” (Emphasis supplied.)

Information services are the “... generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services” (Emphasis supplied.)

In the provision of an information service, communications services are, generally, *consumed* by the information services provider in order to provide the information service. Therefore, as a general rule, communications services are not sold to or passed on to the consumer when it provides an information service. However, there may be instances where the provision of communications services to a customer for a charge may be subject to tax even if the communications services are used by the customer to gain access to information services.

Internet access service, which includes homepages and instant messaging, electronic mail service, electronic bulletin board service, or similar online computer services, is excluded from the definition of communications services and is not subject to CST. However, for Internet access, the above quoted federal definition is clear in (D) that if there is a charge for the “... voice, audio or video programming, or other products and services ... that utilize Internet protocol or any successor protocol,” or the transmission and routing through the Internet, this charge is not for Internet access. Such charges may be subject to CST.

Florida law recognizes various protocols as a method of transmission, conveyance, or routing within the definition of communications services under s. 202.11(1), F.S. The definition of communications service states that “... [the] term includes such transmission ... *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 service or is classified by the Federal Communications Commission as enhanced or value-added.*” (Emphasis supplied.)

While Internet access is not a communications service, federal law draws a distinction between Internet access and “...products and services ... that utilize Internet protocol...” In addition,

Florida law recognizes transmissions "...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..." as communications services.

The Taxpayer cites *Department of Revenue v. Quotron Systems*, 615 So.2d 774 (Fla. 3rd DCA 1993) ruling that "the taxpayer's electronic transmission of financial information to subscribers' video display terminals was not subject to sales tax; the taxpayer's services did not constitute a sale or rental of tangible personal property." *Quotron* considers the burden of proof resting upon the Department in sales of tangible personal property and the rental of tangible personal property. It is important to note the "services" described in the decision and whether the "images on the screen" constitute tangible personal property. The court determined they are nontangible personal property under the provisions of sales and use tax. This ruling is not applicable in the instant case. First, it is not the "images on the screen" at issue, but the delivery, or potential *transmission, conveyance, or routing* of such images that is at issue. Second, where Quotron provided, "The Legislature cannot have intended to tax a technology that postdates the enactment of the measure in question ...," specifically referencing the "... common meanings of the statutory terms used in Chapter 212...," it is clear that, CST law intends to incorporate future unknown methods of transmission by the term "... hereafter devised."

Florida law for CST is structured so that if a retail sale contains the provision of communications services to the customer along with other property and services, only the sales price of the communications service is subject to CST when the charges for the communications service "... can be reasonably identified from the selling dealer's books and records kept in the regular course of business." The charge for the communications services need not be separately stated. (See s. 202.11(13)(b)8., F.S.)

In Florida, retail sales of communications services are subject to CST (1) when such services *originate and terminate* in Florida, or (2) when such services *originate or terminate in Florida and are charged to a Florida service address*.

In addition, the retail sale of tangible personal property in Florida is subject to Sales and Use Tax (sales tax). (See Section 212.05, F.S.) Sales tax is due on the "sales price." (See s. 212.02(16), F.S.) By definition, the "sales price" includes services that are part of the sale of tangible personal property. However, professional services are exempted from sales tax, except for information services. Information services for sales tax purposes are defined as "... services of collecting, compiling or analyzing information of any kind or nature, or furnishing reports thereof to other persons...."

Note that while both CST and sales tax contain definitions and provisions related to information services, the definitions for information services differ for sales tax and CST.

Integrated Desktop Management (IDM)

The Taxpayer's IDM service, as described by the Taxpayer, allows client's users to receive and send "digital" fax documents as electronic messages directly to and from email accounts. Faxes

are not sent in the “traditional hard copy manner.” In addition, the Taxpayer states that its customers receive a “comprehensive solution that provides secure communication, detailed management reports and analytics, and a complete service management dashboard for use by the customer service administrator.”

While the faxes may generally “flow from one [email] inbox to another,” such email inboxes are assigned an “e-fax” or individual fax number. Faxes to this number are converted into the user’s desired file format and then delivered via SMTP (email protocol). (See “Task Order One” of the Messaging Service Agreement.) Additionally, though the fax may be initiated from an email inbox, it may still be received by or routed to a traditional fax machine. While the Taxpayer characterizes that it obtains use of numbers from a third party telecommunications carrier, Taxpayer uses these numbers for the purposes of fax transmissions, even if they are mapped to a user email address. The Taxpayer charges a set-up fee and a monthly subscription fee for use of the service, as well as a per sent/received faxed page fee.

The contract, in Task Order Two, also states that the Taxpayer “... provides port access and monitoring of the [Taxpayer’s] services...through a VPN connection for [Taxpayer’s client’s] secure access.” For the VPN installation, Taxpayer charges \$500.00 and for the “Monthly Facility Management Fee,” the Taxpayer charges \$100.00 per VPN. In general, VPN is an acronym for Virtual Private Network.

The Taxpayer’s charges include a set-up fee (or a registration fee, as it is termed in the contract), a monthly subscription fee (termed as an IDM Monthly Fee in the contract), and a transaction-based fee (per page fee, inbound and outbound in the contract).

The charges that involve faxes received by or routed to a “traditional fax machine”, as described in Task Orders One and Two, are subject to CST when charged to a Florida service address. In line with Section 202.11(13)(b)8., Florida Statutes, if the Taxpayer does not separately itemize charges related to or calculated on “traditional fax machines faxes” on a customer’s bill, and those charges can be reasonably identified from the Taxpayer’s books and records kept in the regular course of business, the Taxpayer may allocate those charges.

In addition, Task Order One indicates charges for customization (such as “From Address,” “Content on Delivery/Non-Delivery Notices,” “Content on Inbound Message,” “Welcome Letter,” “Customer Domain”) and a monthly maintenance fee for the custom domain. These are additional charges ranging from \$50 to \$500 for each customizable item. As these fees are charged separate from the IDM service (not part of the IDM service), and because they are not communications services, they are not subject to Florida CST. Such services are also not subject to sales and use tax.

Notifications Email

The Taxpayer describes this service as a “cloud-based notifications solution that automates the creation and delivery of customers’ customized outbound high volume emails.” Taxpayer’s

clients may use this service to notify customers of subscription information, outages or service impairments, promotions, or other high volume communications the Taxpayer's client needs customized to each customer.

For this service, the Taxpayer's client may upload or submit data in multiple formats via its own connectivity. The Taxpayer's software processes the submitted data, using the business rules provided by the client, and delivers the message to the client's customers by email, SMS text, fax, or voice, depending on how the client specifies delivery. The Taxpayer explains that, "[the] service offers the ability to insert links to websites in the email message and then track the recipients who access the links..." The client's customer may also receive a link to client information stored on the Taxpayer's servers.

Reports of successful/unsuccessful deliveries, tracking recipients who access links, and other detailed management reports are provided to Taxpayer's clients. The Taxpayer charges clients for the email services on a per email basis for each delivery and attempted delivery. The Taxpayer optionally receives revenue when a client's customer clicks on a link included in an email.

The invoice provided by the Taxpayer as an example of the notification email service charges for fax and email distributions. While email is excluded from the definition of communications services, fax is specifically included as part of the sales price of a communications service. In addition, it appears messages may also be distributed via text and voice.

The Taxpayer has opined that in its distribution of the client's messages, it is providing information services via communications services. The invoice does not charge for nor does it indicate any data processing services or reports as part of the charge. Instead, the charge is only for fax and email distributions.

The Taxpayer is providing a fax service when its faxes client information to client customers. Taxpayer's charges that involve faxes received by or routed to a "traditional fax machine" as part of the Notifications Email service, are subject to CST when such services (1) originate and terminate in Florida, or (2) originate or terminate in Florida and are provided to a Florida service address. The Taxpayer explains that the servers that "host" this service are located in XXXX and XXXX. If this is where the faxes originate, then the service would not originate in Florida. If any of the faxes terminated in Florida and are charged to a Florida service address, such charges are subject to Florida CST. In general, the service address applicable would be based on the location of the equipment at which the fax is received.

The Taxpayer is not providing the transmission, conveyance, or routing of voice, text or email communications to its clients. Therefore, any charges for these services would not be subject to CST.

The charges for reporting services or reports are not subject to sales and use tax.

Production Email

The Taxpayer describes this email service as a “cloud-based solution that automates the creation and delivery of [Taxpayer’s client’s] outbound emails.” The Taxpayer’s clients may use this service for distributions related to trade confirmations, letters of credit, customer statements, business reports or other high volume communications the Taxpayer’s client needs customized to each customer.

For this service, the Taxpayer’s client provides a single message file template and text files that contain custom and personalized data for each recipient. The Taxpayer’s service uses the text file individual customer data and populates the templates with the personalized recipient data based on the business rules and output needs provided by the Taxpayer’s client.

Data may be submitted in multiple formats, via the client’s own communications service. Once data is received, some data processing functions may occur, such as merging of data fields, the adding of logos, and other customizations. Though the Production Email service usually is one message sent to one recipient, the same message can be delivered to multiple addresses, or customized messages may be delivered to multiple users.

Reports of successful/unsuccessful deliveries, Sent Message status reports, and various other detailed management reports are provided to the Taxpayer’s clients. The Taxpayer charges clients for the email services on a per email basis for each delivery and attempted/re-attempted delivery. The Taxpayer optionally receives revenue when a client’s customer clicks on a link included in an email.

Both the contract and the invoice provided indicate the Taxpayer charges only for emails. The Taxpayer’s explanation of the service indicates only email messages are sent to the Taxpayer’s client’s customers. As this service is email only, and email is excluded from the definition of communications services, the charge for this service is not subject to Florida CST. The service is also not subject to sales tax.

Electronic Data Interchange Value Added Network (EDI VAN)

The Taxpayer explains its EDI VAN service as “... the [Taxpayer’s] network of servers that receives data, processes and formats it, and delivers it to the recipient company. For example, a customer sends a transaction to the VAN, the VAN processes and formats the information, and the VAN then places the transaction in the on-line mailbox of the recipient company. The recipient then contacts the VAN to pick up its transactions.” The VAN is “... similar to e-mail, but rather than being unstructured text, it is used to create structured standardized data. The transactions typically travel via the [I]nternet. [The Taxpayer’s] VAN interconnects with other VANs allowing customers to send messages to any of its trading partners rather than having to manage interconnects to every trading partner themselves.”

One “Master Customer Agreement” was provided for the EDI service. Attached to the master agreement is a “Service Schedule,” which provides,

... [Taxpayer's] EDI Value-Added network through which [Taxpayer's client] may exchange documents such as authorizations, claims and notices, planning schedules, ship notices, purchase orders, and invoices with trading partners who also have *access to the network...*" (Emphasis supplied.)

Pertinent EDI Fees include a charge for private network internconnect (PNI) setup and testing, a PNI gateway surcharge, and a VPN setup charge. A "gateway" is an entrance and exit into a communications network.¹

Newton's Telecom Dictionary, 27th Edition, 448, provides the following definition, in pertinent part, for EDI.

A series of standards which provide computer-to-computer exchange of business documents between different companies' computers over phone lines and the Internet. These standards allow for the transmission of purchase orders, shipping documents, invoices, invoice payments, etc., between an enterprise and its "trading partners." ... EDI is used for placing orders, for billing and paying for goods and services via private electronic networks or via the Internet.... EDI *software* translates fixed field or "flat" files that are extracted from applications into a standard format and hands off the translated data to communications software for transmission....

Newton's Telecom Dictionary, 27th Edition, 1256, provides the following definition, in pertinent part, for a VAN.

A data communications network in which some form of processing of a signal takes place, or information is added by the network. ... The general idea is that a VAN buys "basic" transmission and sometimes switching services from local and long distance phone companies and adds something else – typically an interactive computer with a database, a computer and massive storage. In this way, the VAN adds value to basic communications services ... *A VAN can also be communication network that provides features other than transmission of information*, such as translation of one type of computer signal to another type of computer signal called protocol conversion. VAN sometimes refers to packet-switched networks with protocol conversion. The value added is referred to as dissimilar system interface capability. (Emphasis supplied)

Electronic Data Interchange "... allows for the transmission ..." of documents/data "... between an enterprise and its 'trading partners.'" But it is not a communications service. While there must be a transmission component to an EDI VAN, the Taxpayer states it does not provide the transmission component to its clients. The Taxpayer's VAN does provide "value added" services, such as message encryption, EDI standards translation services, management monitoring, audit information, and technical support. But these are also not communications services.

¹ Pursuant to Newton's Telecom Dictionary, 27th Edition, 545.

Because the Taxpayer is not providing the transmission component, it is not providing a communications service. Therefore, the Taxpayer's EDI VAN is not subject to CST. The service is also not subject to sales tax.

Virtual Private Networks (VPN's)

Some of the contracts provided by the Taxpayer referenced connecting to and charges for VPN's (as noted in the FACTS section of this advisement), though it is not clear in what context a VPN is addressed.

In general, a VPN is a "virtually" private network that allows remote locations to communicate and transfer data to the home office or hub securely through the public Internet. In order to create security, data is authenticated, encrypted, and tunneled (or routed) through the Internet network. A VPN allows employees, or other users, to log into a distant local area network, server, or other Intranet, over the Internet. The user may then transmit, and transfer and receive, data securely, as though it were a private network, though it is transmitting and routing through the public Internet network. These transmissions are encrypted TCP/IP transmissions. The charge for a VPN is a charge for the secure IP transmissions. A VPN, though it may utilize Internet access or provide a component that is Internet access, is not itself Internet access.

The quoted federal definition of Internet access is clear in (D) that if there is a charge for "products and services ... that utilize Internet protocol or any successor protocol," (the transmission and routing of information through the Internet), this is excluded from the definition of Internet access. Florida law recognizes protocols as a method of transmission, conveyance, or routing within the definition of communications services under s. 202.11(1), F.S. As such, a charge for IP transmission is a communications service potentially subject to CST.

It is not clear if the Taxpayer is providing a VPN. If the Taxpayer is providing a VPN as part of any of the above described services, the charge is subject to CST when the service originates or terminates in Florida and is charged to a Florida service address.

CONCLUSION

1. Are any of the four "messaging solutions services" communications services pursuant to s. 202.11(1), F.S.?

Taxpayer's sales of the IDM and Notifications Email services that are not from or received by a "traditional fax machine" are not subject to CST. If the Taxpayer charges for a VPN, such charges are subject to CST when such services (1) originate and terminate in Florida, or (2) originate or terminate in Florida and are charged to a Florida service address. The service address is based on the location of the communications equipment from which communications services originate or at which communications services are received. If the Taxpayer does not separately itemize charges related to or calculated on "traditional fax machines faxes" on a customer's bill, and those charges can be reasonably identified from the Taxpayer's books and records kept in the regular course of business, the Taxpayer may allocate those charges.

2. If any of the “messaging solutions services” are not communications services, are they subject to any other tax in Florida?

See answer to #1.

3. If any of the “messaging solutions services” are subject to tax in Florida, how should the service be “sourced” for taxing purposes?

Communication Services Tax is “sourced” based on service address. The service address applicable for Taxpayer’s services is provided in s. 202.11(14)(a)1., F.S., which provides that the service address is “[t]he location of the communications equipment from which communications services originate or at which communications services are received by the customer.”

4. If any of the “messaging solutions services” are subject to tax in Florida, are the Taxpayer’s purchases of communications services consumed or resold to provide the service(s) entitled to be purchased as sales for resale?

Yes. If the Taxpayer registers as a Florida dealer of communications services, then it may purchase communications services resold as sales for resale.

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
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Technical Assistance and Dispute Resolution
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