



Executive Director
Marshall Stranburg

ISSUE: WHETHER REVENUE RELATED TO CHARGES FOR INTERNATIONAL ROAMING MOBILE COMMUNICATIONS SERVICES FOR CUSTOMERS OF FOREIGN CARRIERS IS SUBJECT TO CST.

RESPONSE: FLORIDA CST APPLIES TO THE SALES PRICE OF MOBILE COMMUNICATIONS SERVICES PROVIDED TO A CUSTOMER BY A HOME SERVICE PROVIDER PURSUANT TO S. 117(a) OF THE MTSA, IF SUCH CUSTOMER'S SERVICE ADDRESS IS LOCATED WITHIN FLORIDA. IN THIS CASE, THE TAXPAYER IS NOT THE "HOME SERVICE PROVIDER" FOR THE CUSTOMER. FURTHER, MOBILE COMMUNICATIONS SERVICES DEEMED TO BE PROVIDED TO A "CUSTOMER" BY A "HOME SERVICE PROVIDER" MUST BE SOURCED TO THE TAXING JURISDICTION IN WHICH THE MOBILE COMMUNICATIONS SERVICES CUSTOMERS' "PLACES OF PRIMARY USE" ARE LOCATED. IF UNDER THE FACTS PRESENTED, THE CUSTOMERS' "PLACES OF PRIMARY USE," SERVICE ADDRESSES, ARE NOT IN FLORIDA, THEN SALES OF ROAMING MOBILE COMMUNICATIONS SERVICES TO SUCH CUSTOMERS ARE NOT SUBJECT TO CST.

January 7, 2015

RE: Technical Assistance Advise ment –TAA 15A19-001
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 Florida Communications Services Tax (CST) applies to charges for roaming mobile communications services provided to customers of other foreign carriers. The information provided with your letter established that you meet the requirements for a TAA.

The TAA was requested by XXXX "on behalf of XXXX, along with related XXXX entities." The Taxpayer has provided a signed DR-835, Power of Attorney (POA) form for "XXXX and Affiliates listed on Exhibit A," which is attached to the POA. The POA lists the following XXXX related entities to whom the TAA is requested to apply:

<u>Entity</u>	<u>FEI#</u>
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX
XXXX	XXXX

ISSUE

Whether revenue related to charges for international roaming mobile communications services for customers of foreign carriers is subject to CST.

FACTS

XXXX and related entities (Taxpayer) provide mobile communications services. In addition to providing these services to its own customers, the Taxpayer has also entered into agreements with foreign carriers. Under these agreements, the Taxpayer provides international roaming services to customers of foreign carriers when the foreign carriers' customers are "roaming" in the Taxpayer's service area. The agreements require that the Taxpayer charge the foreign carrier for the roaming services and the foreign carrier, in turn, charges its customer for the roaming services. The end-user customers roaming in Taxpayer's service area have residential or business street addresses, "place of primary use," that are located outside Florida.

The Taxpayer provided copies of "International Roaming Agreement[s] for GSM and/or 3GSM" for various foreign carriers. Pertinent excerpts are taken from one of the contracts, as follows below.

XXXX (XXXX) and XXXX (XXXX)

This contract, dated October 2002 and signed on January 27, 2004 and February 11, 2004, provides, in part, the following:

The above mentioned parties agree to establish International Roaming between each other, by operating GSM and or 3GSM digital cellular telecommunications service on the terms and conditions as stated below.

Page 5 of the contract provides, in part,

2. Introduction

2.1 The Memorandum of Understanding on GSM provides for the establishment of International Roaming Services whereby a subscriber provided with Services in one country by one of the network operators can also gain access to the Services of any of the other network operators in their respective countries.

3. Definitions

3.2 “Roaming subscriber” shall mean a person or entity with valid subscription for international use issued by one of the Parties and using a GSM SIM (Subscriber Identity Module) and/or GSM USIM (Universal Subscriber Identity Module) who seeks GSM and/or 3GSM service(s) in a geographic area outside the area served by its HPMN Operator.

3.6 “HPMN Operator” shall mean a Party who is providing Services to its subscribers in a geographic area where it holds a license or has a right to establish and operate a GSM and/or 3GSM network.

3.7 “VPMN Operator” shall mean a Party who allows Roaming Subscribers to use its GSM and/or 3GSM network(s).

3.12 “Services” shall mean the services for International GSM and/or International 3GSM Roaming as agreed upon by the Parties in AA.14 and may include: [The next 2 paragraphs list various switched services provided]

8. Charging, Billing and Accounting

8.1.1 *Both parties agree that when a Roaming Subscriber uses the Services of the VPMN Operator, the Roaming Subscriber’s HPMN Operator shall be responsible for payment of charges for the Services so used in accordance with the tariff of the VPMN Operator stated in Annex I.3.1. (Emphasis added.)*

Contracts and portions of contracts were provided between other XXXX entities and foreign carriers such as XXXX, XXXX, XXXX, XXXX, XXXX, and others. These contracts indicate that the parties agree to establish International Roaming between each other.

TAXPAYER POSITION

The Taxpayer states that the roaming services provided to the customers of the foreign carriers are not subject to CST based on the definitions and sourcing provisions provided in Sections 202.11 and 202.12, F.S., and the Mobile Telecommunications Sourcing Act, Pub. L. No 106-252

(MTSA). The Taxpayer first states that the customers' "place of primary use" is located outside Florida. Second, the Taxpayer opines that the MTSA, in Section 117(a), states that charges billed by or for a mobile telecommunications customer's home service provider shall be deemed to be provided by such telecommunications customer's home service provider. Florida law, in s. 202.12(1)(d), F.S., provides that charges for mobile communications service deemed to be provided by a mobile communication customer's home service provider are only subject to CST if the customer's service address, the "place of primary use," is located in Florida.

The foreign customers' "home service provider," the foreign carrier, has contracted with the customers to provide mobile communications services. It is therefore the "home service provider's" requirement to charge CST, and then, only when the customer's service address is located in Florida. Therefore, the Taxpayer's charges to the foreign carrier are not subject to CST.

LAW AND DISCUSSION

Section 202.11, F.S., defines the following terms applicable to the issue presented:

(7) "Mobile communications service" means commercial mobile radio service, as defined in 47 C.F.R. s. 20.3 as in effect on June 1, 1999. The term does not include air-ground radiotelephone service as defined in 47 C.F.R. s. 22.99 as in effect on June 1, 1999.

(14) "Service address" means:

(c) In the case of mobile communications services, the *customer's* place of primary use. (Emphasis added.)

(17)(a) "Customer" means:

1. The person or entity that contracts with the home service provider for mobile communications services; or
2. If the end user of mobile communications services is not the contracting party, the end user of the mobile communications service. This subparagraph only applies for the purpose of determining the place of primary use.

(b) "Customer" does not include:

1. A reseller of mobile communications services; or
2. A serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(19) “Home service provider” means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile communications services.

(20) “Licensed service area” means the geographic area in which the home service provider is authorized by law or contract to provide mobile communications service to the customer.

(21) “Place of primary use” means the street address representative of where the customer’s use of the mobile communications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(22)(a) “Reseller” means a provider who purchases communications services from another communications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile communications service.

(b) “Reseller” does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider’s licensed service area.

(23) “Serving carrier” means a facilities-based carrier providing mobile communications service to a customer outside a home service provider’s or reseller’s licensed service area.

Section 202.12(1)(d), provides that CST applies to the sales price of mobile communications services if the customer’s service address is located in Florida:

At the rate set forth in paragraph (a) applied to the sales price of all mobile communications services *deemed to be provided to a customer* by a home service provider pursuant to s. 117(a) of the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, if such customer’s service address is located within this state.

Section 117, Mobile Telecommunications Sourcing Act, Public Law No. 106-252, provides,

(a) TREATMENT OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—Notwithstanding the law of any State or political subdivision of any State, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer’s home service provider, shall be deemed to be provided by the customer’s home service provider.

(b) JURISDICTION.—All charges for mobile telecommunications services that are deemed to be provided by the customer’s home service provider under sections 116 through 126 of this title are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

(Emphasis added.)

Pursuant to Sections 202.12(1)(d) and 202.19, F.S., Florida communications services tax and local communications services tax apply to the sales price of all mobile communications services deemed to be provided to a customer by a home service provider pursuant to s. 117(a) of the MTSA, if such customer’s service address is located within Florida.

Pursuant to Florida law, a “home service provider” is “... the facilities-based carrier or reseller with which the customer contracts for the provision of mobile communications services....” The “customer” is the person/entity that contracts with the home service provider for mobile communications services and/or is the end user of the mobile communications service. A “customer” is not a reseller of mobile communications services or a “... serving carrier under an agreement to serve the customer [end user] outside the home service provider’s licensed area.” A “serving carrier” is the facilities-based carrier providing mobile communications service to a customer outside a home service provider’s or reseller's licensed service area.

The Taxpayer, the serving carrier, provides mobile communications services to end users under an agreement with the end users’ “home service provider” (a foreign carrier). The end users are billed by their “home service provider.” Because the end users are billed by their “home service provider,” the mobile communications services at issue are deemed to be provided by the “home service provider,” rather than by Taxpayer. (Section 202.12(1)(d), F.S.; and Section 117(a) of the MTSA .)

As provided in section 202.11(17)(a)2., F.S., because these end users are not the contracting party with the Taxpayer, they are deemed to be the “customer(s)” receiving the mobile communications services. Furthermore, pursuant to section 202.12(1)(d), F.S., mobile communications services deemed to be provided to a “customer” by a “home service provider” must be sourced to the taxing jurisdiction in which the mobile communications services customers’ “places of primary use” are located.

If under the facts presented, the customers’ “places of primary use,” service addresses, are not in Florida, then Taxpayer’s sales of roaming mobile communications services to such customers are not subject to CST.

CONCLUSION

Based upon the discussion above, Taxpayer's sales of roaming services are not subject to CST, if the services are provided to mobile communications services customers whose "places of primary use" are outside the State of Florida.

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

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

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