

Mar 17, 1989

Re: TAA 89(A)-013

Installation of Security Monitoring Equipment and Security
Monitoring Service

Rules 12A-1.006, 12A-1.046(5), and 12A-1.051(2), F.A.C.

Dear :

This is in response to your letter of July 20, 1988,
wherein you requested a technical assistance advisement on the
taxable or exempt status of certain revenues generated by XXX.
This response constitutes a technical assistance advisement
under the authority of s. 213.22, F.S.

ISSUE PRESENTED BY TAXPAYER

Per your letter of above date you provided the following
information:

"On June 27, 1988, XXX of your XXX office began a sales/use
tax audit of XXX (the Company). During the course of his audit,
XXX determined that the type of revenues billed by the company
were not subject to sales tax. We are requesting this
advisement in order to receive confirmation of XXX
determination.

* * *

"In September 1987, we received a Technical Assistance
Advisement (TTAA 87(AER)-096) stating, 'sales tax does not apply
to the fixed price charges for installation of rewiring and
security devices equipment in individual units under
construction by a developer where such installations are made
pursuant to a contract'."

REVENUE SOURCE - SECURITY MONITORING SERVICE

"There are two types of revenue at issue here. The first
is that of the security monitoring service provided. Each
customer is charged a monthly fee for the actual monitoring

service provided by the company. XXX stated that since this is a service, it is not subject to sales tax."

Subsequent phone conversations with you and XXX, business manager of your XXX office, have provided the following information.

1. The Company provides security monitoring services to residential units via television monitors and telephonic equipment monitoring. This service is provided over the same coaxial cable used to carry cablevision and telephone service to the residential unit. The Company is not involved in furnishing regular telephone service to the units, but does provide cable television service to the units.

2. The Company is currently invoicing the cablevision service and security service on a single monthly statement, each statement separately itemizing the cablevision and security monitoring service. Sales tax is being billed and collected for each type of service.

Additional information concerning your request has been provided at your instructions in a communication from XXX, dated January 5, 1989, which states as follows:

"The Company offers two monitoring methods. Two-way supervised monitoring occurs over cable television lines with this alternative, a central computer sends a digital pulse to each home terminal. These terminals are assigned exclusive identification numbers. A control panel in the home, containing a modem, receives a signal, and, depending upon whether an alarm condition exists, returns either a normal (non-alarm) status or alarm status response. Thus there is definite two-way communication. Telephone lines are not involved.

"The second method is one-way telephone communication. There is no polling by a central computer. Rather a condition at the home, i.e., fire, intrusion, etc., generates a one-way response via telephone lines to a digital receiver at the Company."

DISCUSSION - SECURITY MONITORING SERVICE

Business transactions which entail only the provision of a service generally are not subject to Florida sales tax. However, from the description you have provided of this revenue source (security monitoring service), the Company, in the case of its two-way monitoring service, is providing a telecommunication service, a business transaction subject to both sales tax and gross receipts tax. The authority for these taxes is embodied in Chapters 203 and 212, F.S., which state in pertinent part:

Section 212.05(1)(e)1., F.S., provides:

"[Sales tax is imposed] at the rate of 6 percent on charges for all telegraph messages and long distance telephone calls beginning and terminating in this state; on charges for telecommunication services as defined in s. 203.012..." (Emphasis Supplied)

Section 203.01(1), F.S., provides:

"(a) Every person... that receives payment for... telecommunication services shall report quarterly to the Department of Revenue... the total amount of gross receipts derived from business done within this state... and at the same time shall pay into the State Treasury an amount equal to 1.5 percent of such gross receipts."

Further, Section 203.012(2)(b), F.S., provides a definitional section for the terms used in Chapter 203, F.S., and reads in part:

"(b) Gross receipts for telecommunication services do not include:...

"2. Charges made to the public for commercial or cable television, unless it is used for two-way communication; however, if such two-way communication service is separately billed, only the charges made for two-way communication service will be subject to tax hereunder..."

DETERMINATION - SECURITY MONITORING SERVICE

As stated previously, the monthly service fee which represents charges for two-way supervised monitoring over cable television lines is subject to both the gross receipts tax and sales tax. The second method of security monitoring service using one-way telephone communication is not subject to gross receipts tax since the subscriber has paid gross receipts tax on charges by the provider of the communication path. Neither is this second method subject to sales or use tax as this type of security monitoring service does not fall within the definition of telecommunication service.

You should be aware, however, that transactions which fell within the category of security services, not qualifying as a telecommunication service subject to gross receipts tax, were subject to sales tax from the period of July 1, 1987, through December 31, 1987, inclusive. This was the period during which this state imposed a sales tax on services, a tax imposed by Chapter 87-6, L.O.F. (Chapter 87-548, L.O.F., subsequently repealed this tax effective January 1, 1988).

REVENUE SOURCE - UPGRADE REVENUES

"The second type of revenue results from charges to current customers for the installation of additional wiring and equipment in order to provide a higher level of protection. These revenues are called upgrade revenues. Note, this upgrade does not increase the monthly monitoring revenue previously discussed.

"In the situation in question, the upgrade revenues are received for work performed after a unit is complete. In some instances, we must go behind the walls of the unit and add additional wiring. In other instances, we merely need to add additional equipment."

DISCUSSION - UPGRADE REVENUES

Section 212.05(1)(e)1., F.S., and Rules 12A-1.006(3), 12A-1.016(3)(a) and (b)17., 12A-1.046(4), and 12A-1.051(2), F.A.C., provide guidance on transactions which are installations

of tangible personal property (cable television and security monitoring equipment) or improvements to real property (installation of wiring prior to the installation of drywall and upgrade of the wiring within the drywall in an existing structure). The cable television is an issue which is considered because in your petition for a technical assistance advisement written to this Department on June 5, 1987, you noted that Parent corporation (owners of the Company) is in the business of "... installing, owning and operating... cable television systems and, over and through cable television systems, computer controlled interactive multiple purpose security services."

Section 212.05(1)(e)1., F.S., imposes sales tax at the rate of 6 percent on:

"... all charges for the installation of telecommunication, wired television, and telegraphic equipment..."

Rule 12A-1.006, F.A.C., addresses the issue of the taxability of charges for the installation of tangible personal property, but specifically provides:

"(3) The provisions of this rule do not apply to contracts covering a combination of work on both real and personal property. Such contracts are governed by the provisions of Rule 12A-1.051."

Rule 12A-1.016(3)(a) and (b), F.A.C., provides in pertinent part:

"(3)(a) The total consideration received for labor or services used in installing tangible personal property which is sold and does not become a part of realty, is taxable even though such charge may be separately stated.

"(b) Contractors and manufacturers who furnish and install the following items are considered to be retail dealers and are required to charge sales tax on the full price, including installation and any other charges:

* * *

"17. Wired television (See Rule 12A-1.046).,"(Emphasis

Supplied)

Rule 12A-1.046(4), F.A.C., provides that:

"The charge for wired television and its installation are taxable, effective October 1, 1971."

Rule 12A-1.051(2), F.A.C., (copy enclosed) addresses the issue of contracts which cover improvements to real property and which are lump sum, fixed fee or guaranteed price contracts performed by a contractor or subcontractor who repairs, alters, improves or constructs real property. Such contractors or subcontractors include electrical contractors. For lump sum, [12A-1.051(2)(a)] cost plus or fixed fee basis [12A-1.051(2)(b)], and guaranteed price contracts [12A-1.051(2)(c)], the contractor or subcontractor is the ultimate consumer of materials and supplies and is required to pay tax on the purchase price of same. For contracts described in Rule 12A-1.051(2)(d), F.A.C., the contractor or subcontractor is deemed to be selling tangible personal property at an agreed retail price and must collect tax from his purchaser based upon the amount of the receipts from such sales, excluding installation charges if separately stated.

DETERMINATION - UPGRADE REVENUES

To determine the application of sales tax to your transactions which generate "upgrade revenues", the Company must determine whether the transaction is one that is, in effect, an improvement to real property or a charge made for the installation of tangible personal property (e.g. cable television or security equipment). Installation of security monitoring equipment (and cable television equipment), not becoming part of the realty, is subject to sales tax. Prewiring during the construction process or installation of additional wiring within drywall or crawl spaces in an existing structure is an improvement to real property and charges for installation labor are not subject to tax. See Rule 12A-1.051(2) and (3), F.A.C., to determine the application of sales tax on the materials and supplies used in improving real property.

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 and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details which might lead to identification of the taxpayer must be deleted by the Department before disclosure. In an effort to protect the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

Kathy Henley,
Technical Assistant

KH/pb

Enclosure