



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

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QUESTION: Whether sales of [Taxpayer] [REDACTED] services are subject to the Communications Services Tax?

ANSWER: Sales of [Taxpayer] [REDACTED] services include video services subject to Communications Services Tax. However, sales of [Taxpayer] [REDACTED] services are an electronic mail/information service not subject to Communications Services Tax.

October 7, 2022

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Email: [REDACTED]

Re: Technical Assistance Advisement – TAA # 22A19-002R
Communications Services Tax
Chapter 202, Florida Statutes (“F.S.”)
[REDACTED] (“Taxpayer”)
Business Partner [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated November 4, 2021, requesting this Department’s issuance of a TAA pursuant to Section 213.22, F.S., and Chapter 12-11, Florida Administrative Code, regarding the application of Communications Services Tax as it relates to Taxpayer’s service offerings. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

REQUESTED ADVISEMENT

Whether sales of [Taxpayer] [REDACTED] services are subject to the Communications Services Tax (“CST”)?

FACTS PROVIDED

Your request provides in part, the following:

I. Facts & Background

[Taxpayer] is an online professional network platform that allows individual and business members to stay connected with each other and various career opportunities. [Taxpayer] offers products and services which service to facilitate collaboration, enhance professional connections, and promote business growth. The service offerings relevant to this request include [Taxpayer] [REDACTED]. Additional information related to these service offerings are discussed below.

a) [Taxpayer] [REDACTED]

[Taxpayer] [REDACTED] is an online educational platform that allows users to stream courses and instructional videos on a variety of subjects. The courses are available to users online or may be downloaded using the mobile version of [Taxpayer] [REDACTED] such that users can access the courses ... offline. The downloaded courses may only be accessed by the users and cannot be shared or transferred. Users can choose to add these courses and related skills to their [Taxpayer] profiles once ... completed [M]ost courses are created by [Taxpayer].... [T]hrough [Taxpayer] [REDACTED], businesses can create content specific to their organization for employees to access. Business users may upload the organization's ... custom videos, documents, and links.

When users subscribe to [Taxpayer] [REDACTED], they can access the entire [REDACTED] library of content, post completed courses to their [Taxpayer] profiles, and get recommendations based on the skills they are interested in. To further enhance the user learning experience, many of the courses come equipped with exercise files, assessments, and transcripts for the video. Offline viewing is only available through the mobile app; at this time, videos cannot be downloaded on desktop or laptop devices. An active subscription is required for accessing [Taxpayer] [REDACTED] online and for offline viewing.

Users can also use [Taxpayer] [REDACTED] to provide feedback on courses as well as access Q&A sections regarding the courses. Courses can be purchased on a stand-alone basis or accessed as part of a premium subscription (i.e., [REDACTED] or [REDACTED]) or a separate [Taxpayer] [REDACTED] subscription. Users who have a subscription through [Taxpayer] [REDACTED] or a premium subscription have access to all of the courses and may utilize the mobile application to access the courses offline. However, users that purchase individual courses a-la-carte can only download those specific courses using the mobile application. [Taxpayer] [REDACTED] courses are not customized specifically for users and live trainings are not offered through the [Taxpayer] [REDACTED] platform.

b) ██████

█████ allows users to directly message another [Taxpayer] member that the user is not connected to. If users have a Basic (free) account ... they can only directly message [Taxpayer] members that they are connected to. They must upgrade to a ██████ account to use ██████ messages. Users that pay a fee for a ██████ account type are allotted a certain amount of ██████ credits (e.g., ██████ credits) each month that they can use to send ██████ messages. ██████ account members have the ability to purchase additional ██████ credits for an additional fee. While ██████ may be bundled with various [Taxpayer] service offerings, for purposes of this request, it should be assumed that ██████ is being purchased on a standalone basis and is not bundled with any other service offering.

II. Issue

Whether the sales of [Taxpayer's] ██████ services are subject to the Communication[s] Services Tax?

III. Pertinent Authority

In support of Taxpayer's position, you reference s. 202.11(1), (5), and (24), F.S., and TAA #s 14A19-006, and 19A-015. You also reference the "Permanent Internet Tax Freedom Act" (PITFA), a federal moratorium made permanent on February 24, 2016, which prohibits discriminatory taxes imposed on sales of Internet access services. Included within the definition of Internet access services is basic access to electronic mail services, whether procured independently or in conjunction with other Internet access services.¹

IV. Analysis**a) [Taxpayer] ██████**

Similar to taxpayer's offering discussed in Florida Technical Assistance Advisement 19A-015, [Taxpayer] ██████ provides online courses that can be streamed via its website or downloaded onto an app. [Taxpayer] charges its customers based on the purchase of individual courses or on a monthly or yearly subscription to access unlimited courses. Similar to the determination in [TAA] 19A-015, charges for a course offered through [Taxpayer] ██████ should not be considered the sale of a communications service, as the service being provided neither enables the customer to communicate nor is it a video, audio, or other programming service as defined for purposes of the CST.

¹ 47 U.S.C § 151 (2020).

Rather, [Taxpayer] ██████████, as a cloud-based platform that allows users to stream and download courses and instructional videos on a variety of subjects, should be considered an information service and therefore not subject to the Florida CST.

b) ██████████

... The purpose of ██████████ is to contact individuals with specific employment history and attributes. As such, ██████████ should be considered an electronic mail service, with components of information services, as users are provided access to information on individuals compiled by [Taxpayer]. Neither electronic mail service nor information services are included within the definition of communications services. Accordingly, ██████████ should not be subject to CST in Florida.

Further, the “Permanent Internet Tax Freedom Act” (“PITFA”), prohibits discriminatory taxes imposed on sales of Internet access services, including access to electronic mail services, whether procured independently or in conjunction with other Internet access services. ...

Included with your request was a copy of [Taxpayer] ██████████ ██████████ [Taxpayer] ██████████ as of March 5, 2021, order forms and invoices applicable to both [Taxpayer] ██████████

APPLICABLE LAW

Reliance on Technical Assistance Advisements:

Section 213.22(1), F.S., states, in part, “... Technical Assistance Advisements shall have no precedential value except to the taxpayer who requests the advisement and then only for the specific transaction addressed in the technical assistance advisement, unless specifically stated otherwise in the advisement...” Therefore, the TAAs referenced in your request have not been taken into consideration during the review of your request.

Communications Services Tax:

Chapter 202, F.S., imposes Communications Services Tax on the retail sale of communications services, unless specifically exempt. Communications services tax is comprised of the Florida communications services tax and the local communications services tax.

The term “communications services” is defined broadly and means, in pertinent part, “... 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

² [Taxpayer] ██████████ were revised - the current version is dated ██████████

existence or hereafter devised, regardless of the protocol used for such transmission or conveyance....” See s. 202.11(1), F.S. The term “video services” means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction; if any, required for the selection or use of a programming service The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.” See s. 202.11(24), F.S. (Emphasis Added).

Despite the broad definition of the term “communications services,” certain services are excluded from the definition of communications services, including Internet access service, electronic mail service, electronic bulletin board service, and information services. See s. 202.11(1)(a) and (1)(h), F.S.

Section 202.11(5), F.S., provides in part that an “information service” means “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services... . The term includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.” (Emphasis Added).

A sale of communications services occurs when communications services are provided for a consideration. Communications services tax applies to the retail sales price of communications services that (1) originate and terminate in Florida, or (2) originate or terminate in Florida and are charged to a Florida service address. See s. 202.12(1), F.S. Service address generally means the location of the communications equipment from which communications services originate or are received by the customer. For video services, the service address is the location where the customer receives the service in Florida. See s. 202.11(14), F.S.

[Taxpayer] ██████████

After completing the [Taxpayer] ██████████, which requires that the customer agree to “pay the fees for the Services in accordance with the payment terms stated in the ordering document,” Taxpayer will provide the customer access to its cloud-based platform that allows users to stream and download courses and instructional videos for various subjects.

You contend that the services provided by Taxpayer neither enable the customer to communicate nor is a video, audio, or other programming service as defined for communications services purposes. It is your contention that [Taxpayer] ██████████, should be considered an information service and therefore not subject to communications services tax. However, based upon the description of the services offered, as well as review of the documentation and information provided, and a preview of Taxpayer’s online educational platform, Taxpayer’s charge for its [Taxpayer] ██████████ offering is subject to communications services tax.

Here, Taxpayer’s cloud-based platform allows customers to stream and download courses and instructional videos related to various subject areas. This offering is subject to the

communications services tax because it involves the “transmission of video, audio, or other programming service to a purchaser ...” and includes “digital video.” *See* s. 202.11(24), F.S. Despite your contention that [Taxpayer] ██████ would be a tax-exempt information service, this offering enables customers to stream and download courses and instructional videos and therefore could not be an information service as the statutory definition of information service excludes a video service. *See* s. 202.11(5), F.S. Therefore, a service cannot be an information service if it meets, as it does here, the statutory definition of video service. The definition of video service, unlike information service, contains no test for the “primary purpose” of the transaction, therefore the underlying purpose of the video service is irrelevant. Accordingly, Taxpayer’s [Taxpayer] ██████ offering that includes audio or video are “video services” subject to the communications services tax.

██████

Taxpayer’s ██████ feature allows users to directly message other [Taxpayer] members. Taxpayer offers a Basic (free) ██████ account or a ██████ (paid) ██████ account. Basic account holders can only directly message members with whom they are connected; whereas ██████ account holders are allotted a certain number of credits per month but have the ability to purchase additional credits for an additional fee. The credits can be used to send ██████ messages.

You contend that the purpose of ██████ is to contact individuals with specified employment history and attributes and should be considered an electronic mail service with components of information services. ██████ users are provided access to information, related to individuals, that is compiled by Taxpayer.

Here, Taxpayer’s ██████ offering does not involve the transmission or routing of voice, data, audio, video, or any other information in exchange for a consideration. Based on the information provided, Taxpayer is providing its users an information service that allows data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. Therefore, Taxpayer’s charge for ██████ is an information service, not subject to communications services tax.

CONCLUSION

Based upon review of the documentation and information provided, and preview of [Taxpayer] ██████, Taxpayer’s charge to its customers for sales of its [Taxpayer] ██████ offering is a video service subject to Florida Communications Services Tax. However, Taxpayer’s sales of its ██████ offering would be electronic mail/information services, not subject to Florida communications services tax.

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 ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6701.

Best Regards,

Shundra McClean

Shundra McClean

Tax Law Specialist

Technical Assistance & Dispute Resolution

Record ID: 7000623536

cc:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
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TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000623536

Respondent code: 44

Tax type: Communications Services Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.