



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

QUESTION:

Whether Taxpayer's charges for its [REDACTED], [REDACTED], and [REDACTED] offerings are subject to Florida's Communications Services Tax.

ANSWER:

Taxpayer's charges for its [REDACTED], [REDACTED], and [REDACTED] offerings are subject to Florida's Communications Services Tax.

March 7, 2023

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

Via Email: [REDACTED]

Re: Technical Assistance Advise ment – TAA #: 23A19-001
Communications Services Tax - Video Services
[REDACTED].¹ ("Taxpayer")
Section 202.11, Florida Statutes ("F.S.")
BP #: [REDACTED]
FEI#: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated September 21, 2021, requesting this Department's issuance of a TAA pursuant to Section (s.) 213.22, F.S., and Chapter 12-11, Florida Administrative Code, regarding whether Taxpayer's service offerings, as referenced herein, are subject to Florida's Communications Services Tax. 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 ADVISMENT

Whether Taxpayer's charges for [REDACTED], [REDACTED], [REDACTED], and [REDACTED] offerings are subject to Communications Services Tax.

FACTS

¹ Taxpayer's current legal name is [REDACTED], doing business as [REDACTED]o, but will be changed to [REDACTED]. during the fourth quarter of [REDACTED].

Your petition provides that Taxpayer, headquartered in [REDACTED], is a provider of digital goods and services, including [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

[REDACTED]

A [REDACTED] is a customized and personalized message that is pre-recorded by Talent² such as entertainers, musicians, athletes or other social media personalities. Customers explore Taxpayer's website or mobile application to browse available Talent and their service offerings. Talent controls services available to customers at any particular time - including setting the prices of their offerings.

Upon requesting a [REDACTED], customers must complete a questionnaire regarding the recipient, the occasion, and other instructions to be used by Talent to cater the message for the customer. Once the [REDACTED] request is fulfilled, Taxpayer collects payment from the customer and passes most of the payment on to the Talent. Taxpayer retains a fixed percentage of the fees for its services.

Using its internet or mobile data plan, a customer can access and view [REDACTED] as well as download or stream video messages through Taxpayer's website or mobile application. Taxpayer contends that since the customer is presumably paying communications services tax on its mobile communications services, the imposition of communications services tax on [REDACTED] would result in double taxation.

You assert that although [REDACTED] can be downloaded and viewed several times, they are not a video transmission disseminated to the public or other customers. [REDACTED] differ from streaming video services and video rentals, in that customers or members of streaming services pay for access to digital content such as movies, television shows, and sporting or news events, whereas Taxpayer's customers pay for video messages created by Talent and tailored to the customer's request.

Although a customized digital video is the result of the customer's purchase, Taxpayer contends that customers are essentially purchasing a personal service and not the ability to stream or download a video. You further contend that some of Taxpayer's services are delivered via digital or telephonic media, but similar to other professional or personal services delivered via video, the true object of the transaction is a personal service.

You state that the primary component of [REDACTED] is the creation of the customer's video message, which you contend is a personal service and the second component being delivery of the video message, which Taxpayer believes to be an information service, neither of which should be subject to communications services tax.

You state that Taxpayer does not provide the telecommunications services needed for customers to access its website, platform, or mobile application and thus should not be subject to communications services tax.

In the event the Department finds that [REDACTED] are subject to communications services tax, you assert that the tax base is only the portion of the payment that Taxpayer retains and should not include the portion of the payment that Taxpayer collects on behalf of Talent.

² [REDACTED]

██████████

Taxpayer's ██████████ offering allows customers to schedule live video calls or attend live events which are charged on a per-minute basis at a price set by Talent. Taxpayer asserts that Taxpayer's ██████████ goes beyond video streaming, in that customers are paying for a real-time interaction with Talent. Taxpayer contends that the live video calls between the customer and Talent are analogous to entertainment services. You further contend that Taxpayer's hosting of video calls and live events should not be the determining factor. Channeling calls through Taxpayer's app simply facilitates the tracking of connections and billing customers. Taxpayer contends that ██████████ and ██████████ are comprised of personal services and information services not subject to communications services tax.

██████████

Through Taxpayer's Direct Messages offering, upon paying the applicable fee set by Talent, customers can connect with and send Talent a message of up to ██████████. Taxpayer retains a fixed percentage of the fee charged by Talent. You state that Taxpayer's direct messaging offering occurs within the ██████████ mobile application. This offering is comprised of proprietary software and uses support purchased from third party software providers.

Taxpayer contends that its direct messaging offering should not be subject to communications services tax, as it does not provide data services. You state that to access Taxpayer's direct messaging offering, customers are required to have their own data service plans upon which customer is presumably paying communications services tax.

██████████

According to the Terms of Service, Taxpayer's ██████████ is free, but customers may subscribe to any available Paid Features. For a monthly fee, Taxpayer's ██████████ offering grants customers access to additional digital content or discounts offered by Talent via Taxpayer's website and mobile application. You state that the object of this offering is VIP or priority access to the Talent and content created by Talent. It is Taxpayer's position that its ██████████ offering is a personal or entertainment service, not subject to communications services tax

Other Revenue Streams and Payment Structure

Taxpayer's other revenue streams include "██████████," which allows businesses to purchase personalized messages recorded by Talent to endorse the business' brand. ██████████ for Business enables business customers to purchase credits to be redeemed by the business customer's employees in the future for any of Taxpayer's products. The concierge fee offers additional customer support services such as drafting scripts for Talent.

All such transactions occur on the ██████████ website. Taxpayer collects payment from customers and passes most of the payment on to the Talent. The Taxpayer retains a fixed percentage of the fees for its services, essentially serving as an intermediary between Talent and customers.

It is Taxpayer's position that its offerings, including ██████████, ██████████, ██████████, and ██████████ are personal services and/or information services, not subject to communications

services tax. To support its position, Taxpayer references TAA #15A-014, dated October 16, 2015. You state that in examining online video-based offerings provided by other taxpayers, the Department has advised that subscription-based streaming video services and rentals of digital videos are subject to communications services tax, whereas, in TAA #14A19-005, dated December 18, 2014, the Department determined that the purchase of digital video content stored on an online library for online streaming or available for download is the sale of an information service not subject to communications services tax.

LAW AND DISCUSSION

As an initial matter, with regard to your references to TAA #s 14A19-005 and 15A-014, it must be noted that TAA's issued to other Taxpayers have no precedential value except to the taxpayer who requested the advisement, and then, only for the specific transaction presented. *See* s. 213.22(1), F.S.

Chapter 202, F.S., imposes Communications Services Tax on the retail sale of communications services. Communications services tax is comprised of the Florida communications services tax and the local communications services tax. *See* s. 202.11(1), F.S.

Section 202.11(5), F.S., defines the term "information service" to mean "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 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." The term "information service" does not include video service.

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.

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 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.

As stated above, communications services tax is computed on the "sales price," which is defined in s. 202.11(13), F.S., and means in part:

... 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.

In this case, Taxpayer provides a variety of service offerings, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Taxpayer contends that these offerings are personal and/or information services, not subject to Florida communications services tax. Taxpayer further contends that it is not providing the telecommunications services necessary to access their website or platform or app; therefore, its offerings should not be subject to communications services tax. For customers to access Taxpayer's offerings via its website, platform, or mobile application, the customer must have their own data service plans.

Based on the description of Taxpayer's service offerings, as well as review of the documentation and information provided, Taxpayer's charges for its offerings are subject to communications services tax, as these services, involve the "transmission of video, audio, or other programming service to a purchaser ..." including "digital video," which is defined as video services, pursuant to s. 202.11(24), F.S.

Despite your contention that Taxpayer's offerings are nontaxable information services, these offerings fall clearly within the statutory definition of video services, they cannot be information services. 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. The issue of "personal service" becomes irrelevant. Accordingly, Taxpayer's offerings that include audio or video are "video services" subject to the communications services tax.

Section 202.12, F.S., provides that every person who engages in the business of selling communications services at retail in this state is exercising a taxable privilege. As discussed above, part of the definition of communications services in s. 202.11(1), F.S., includes "... 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 definition of video services in s. 202.11(24), F.S., encompasses Taxpayer's offerings. Taxpayer is providing communications services as defined by Chapter 202, F.S., and therefore must register as a dealer.

You state that if the Department finds Taxpayer's offerings to be subject to communications services tax, it is your assertion that the tax base is only the portion of the payment that Taxpayer retains and should not include the portion of the payment that Taxpayer collects on behalf of Talent. However, pursuant to s. 202.11(13), F.S., the term, sales price, means the total amount charged for the sale of the right or privilege of using communications services. The sales price 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. Therefore, the total amount charged is subject to communications services tax.

CONCLUSION

Based upon review of the documentation and information provided, as well as Taxpayer's Terms of Use, as of [REDACTED], Taxpayer's charges for its [REDACTED], [REDACTED], [REDACTED], and [REDACTED] offerings are subject to Florida's communications services tax.

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 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: 597994

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 address 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: 7000597994

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.