



Executive Director
Marshall Stranburg

QUESTION: WHETHER TAXPAYER'S GROSS RECEIPTS EARNED FROM THE ABOVE MENTIONED REVENUE CATEGORIES SHOULD BE SOURCED TO FLORIDA.

ANSWER:

REVENUE CATEGORY 1: THIS CONSISTS OF REVENUES FROM SALES OF PRINTED MATERIALS. PURSUANT TO S. 220.15(5)(b)1., F.S., AND RULE 12C-10155(1)(a), F.A.C., THESE REVENUES SHOULD BE TREATED AS FLORIDA SALES IF THE PROPERTY IS DELIVERED OR SHIPPED TO A PURCHASER IN FLORIDA.

REVENUE CATEGORY 2: THIS CONSISTS OF REVENUES FROM THE LICENSING OF PROPRIETARY INTANGIBLE ASSETS. PURSUANT TO RULES 12C-1.0155(1)(f)1., F.A.C., THESE REVENUES SHOULD BE TREATED AS FLORIDA SALES IF THE UNDERLYING INTANGIBLE ASSET IS LICENSED TO A CUSTOMER LOCATED IN FLORIDA, PROVIDED THAT THE ROYALTY INCOME IS SIGNIFICANT.

REVENUE CATEGORY 3 – 9: THESE CONSIST OF REVENUES FROM PRODUCTS AND SERVICES DELIVERED (OR IN SOME CASES SUBMITTED) VIA THE INTERNET TO TAXPAYER'S ONLINE DATABASE OR INTERACTIVE NETWORK. PURSUANT TO RULE 12C-1.0155(2)(h)5.A., F.A.C., THESE REVENUES SHOULD BE TREATED AS FLORIDA SALES IF THE CUSTOMER IS LOCATED IN FLORIDA. IF THE PRODUCTS AND SERVICES ARE SUBMITTED VIA EMAIL, THE SALE WILL BE SOURCED PURSUANT RULE 12C-1.0155(2)(l), F.A.C., IF THE CUSTOMER IS LOCATED IN FLORIDA.

REVENUE CATEGORY 10: THIS CONSISTS OF REVENUES FOR CONVERSION OF DATA INTO A FORMAT REQUIRED TO SATISFY DATA SUBMISSION REQUIREMENTS BY TAXPAYER. PURSUANT TO RULE 112C-1.0155(2)(l), F.A.C., THESE REVENUES SHOULD BE SOURCED TO FLORIDA IF THE CUSTOMER IS LOCATED IN FLORIDA.

REVENUE CATEGORY 11 AND 12: THESE CONSIST OF REVENUES FROM THE ADMINISTRATION OF PREMIUM PLANS. PURSUANT TO RULE 12C-1.0155(2)(l), F.A.C., THESE REVENUES SHOULD BE SOURCED TO FLORIDA IF THE CUSTOMER IS LOCATED IN FLORIDA.

October 25, 2013

Re: Technical Assistance Advisement 13C1-007
Taxpayer: XXX (“Taxpayer”)
FEIN: XXX
Corporate Income Tax
Income Calculation
Section (“s.”) 220.15, Florida Statutes (F.S.)
Rule 12C-1.0155, Florida Administrative Code (F.A.C.)

Dear XXX:

This is in response to your request dated XXX, for a Technical Assistance Advisement (“TAA”) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the gross receipts calculation for Taxpayer. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

FACTS SUPPLIED BY TAXPAYER

Taxpayer is a private corporation that is headquartered in XXX and incorporated in XXX. Taxpayer serves the XXX industry by providing XXX, XXX¹, XXX and XXX information. Specifically, Taxpayer collects, processes, and analyzes XXX and other information, provides XXX and XXX, XXX and XXX by XXX, and performs XXX for XXX programs as more fully described below.

Taxpayer's primary customers consist of approximately XXX, XXX and XXX who XXX or XXX against XXX ("Customers"). These Customers pay licensing fees that provide them with access to many of Taxpayer's products and services used to XXX. Customers may elect to be a XXX or XXX of Taxpayer. XXX pay an additional fee and participate in the ownership of Taxpayer. XXX have voting and dissolution rights, and are eligible to be on the Board of Directors and Board Committees. Approximately XXX are Taxpayer XXX. Since the Taxpayer is a XXX, all XXX must sign the same agreement in order to ensure equity. Customers also supply Taxpayer with XXX that Taxpayer collects, processes and analyzes to produce its products and services.

In addition to the Customers, Taxpayer provides XXX, information, and statistics to XXX, XXX, XXX², XXX and XXX, XXX, and other XXX. Taxpayer also promulgates XXX and produces XXX³ worksheets for XXX for use by XXX, XXX and XXX which are used to adjust standard XXX based on an employers XXX and XXX.

¹ Loss costs refer to the portion of XXX that is allocated for the XXX, and not for XXX. XXX can use these loss costs as the basis for their XXX, typically adjusting them for expenses with a loss cost multiplier.

² XXX.

³ XXX.

In addition to information and advisory services, Taxpayer authors and administers XXX⁴ and XXX⁵ for XXX in nearly XXX. Taxpayer also administers XXX⁶ and XXX⁷ in numerous XXX.

Taxpayer's revenue is generated primarily from the XXX and XXX information, products, and services. Many of the products, services and information provided by Taxpayer are available to Customers by accessing Taxpayer's XXX. Taxpayer's specific information and services offerings include XXX and XXX⁸, XXX⁹ management, production of XXX, XXX, XXX, XXX (XXX), and administration of XXX, including the development and maintenance of XXX, XXX, XXX, and XXX forms. As stated above, many of the products, services, and information are available online, with some XXX also offered in hardcopy format.

Receipts from sales of tangible personal property

1. XXX and other print publications (Hardcopy Versions)

Although primarily offered online, Taxpayer also offers a number of publications in hardcopy. These materials constitute tangible personal property and are shipped to the Taxpayer's customer.

Receipts from licensing of intangible property

2. Royalty XXX

Taxpayer royalties are earned from licensing agreements with third party customers, under which those customers are authorized to republish products utilizing Taxpayer's proprietary, intangible, and XXX-related information.

Receipts from providing access to an interactive network

3. XXX Fees

XXX fees are charged to Taxpayer Customers who choose to become a XXX of Taxpayer. XXX participate in the ownership of Taxpayer, have voting and dissolution rights, and are eligible to be on the Board of Directors and Board Committees.

XXX fees are charged to all Taxpayer Customers. This license provides Customers with the right to access and use Taxpayer's XXX rules, guidelines and information, for the purpose of XXX.

⁴ XXX.

⁵ XXX.

⁶ XXX.

⁷ XXX.

⁸ XXX.

⁹ XXX.

The XXX rules, guidelines and information made available to Taxpayer Customers upon payment of the XXX fees are accessed via the internet through Taxpayer's website.

4. *Data Management/Statistical Services - XXX*

Data Management and statistical services are the collection, management and validation of XXX provided by Taxpayer's customers as required by XXX. As noted above, Taxpayer collects, processes, and analyzes data from its customers to produce many of its products and services. This service is used mostly by Taxpayer Customers and is an integral and essential component of XXX with Taxpayer. Customers are required to provide this data, and pay for these data services, pursuant to their contract with Taxpayer.

5. XXX

Taxpayer collects XXX from its customers, including notices of XXX. Taxpayer's XXX service consists of it reporting a position of XXX relating to the XXX, on behalf of its customers, to XXX, XXX and XXX that reflect XXX in that state. In addition, Taxpayer also provides XXX to the XXX on behalf of its customers. XXX information is made available and is accessed by XXX and XXX via the internet through Taxpayer's website, as well as by it providing a XXX to the states in certain instances.

6. XXX

For each XXX employer, a XXX information worksheet is automatically produced and delivered to XXX approximately XXX to XXX. This XXX worksheet uses an XXX and compares it to XXX. The resulting XXX contained within the worksheet is used by the XXX to reflect the expected XXX. For many of Taxpayer's customers, this worksheet is delivered by making it available via the internet through the Taxpayer's website. Under this delivery method, the customer is sent an email notification that the document is available by logging onto the Taxpayer website, where it can be downloaded. For other customers, the worksheet is emailed directly to the customer's email address. For most other customers, the worksheet is provided through a secure mailbox.

7. XXX

Taxpayer offers a variety of XXX and XXX that are utilized by the XXX. Customers may order products such as XXX and XXX worksheets, XXX, XXX and XXX. These products are made available via XXX or by contacting Taxpayer directly.

8. *Online Publications*

All publications provided by Taxpayer are available online as well as certain publications made available in a hardcopy format (see #1 above). The online versions of these publications are made available to customers via Taxpayer's website on a subscription basis. Customers also have the option to obtain an XXX to its online manuals.

9. *XXX, XXX and XXX Services*

Taxpayer produces XXX and XXX through the analysis and validation of data submitted by XXX and XXX methodologies and trends. Taxpayer also performs XXX services which provide customers with timely interpretation of pending and recently XXX. XXX, XXX and XXX Services provide Taxpayer Customers with a license to adopt and utilize the XXX filed and approved by the XXX on their behalf. Taxpayer also provides information regarding proposed XXX and XXX activities through its website.

Receipts from the sale of services

10. *XXX*

This service is provided to Customers who choose to submit their XXX data in a hardcopy format. Taxpayer utilizes a third party vendor to convert that data into standard Taxpayer reporting formats. Taxpayer Customers can view their converted data via the internet through Taxpayer's website.

11. *XXX*

In various XXX, Taxpayer is authorized to administer the XXX¹⁰ ("XXX"). Taxpayer may serve in this capacity in states where Taxpayer-developed XXX rules are approved by the XXX to govern the assignment, administration, eligibility, and issuance requirements with respect to XXX. Taxpayer screens applicants to establish eligibility and collects and maintains extensive databases to store, among other things, applications and compliance information.

12. *XXX*

XXX services provided to the XXX (XXX) and XXX whereby Taxpayer (1) provides administrative services to the respective XXX in accordance with the prescribed XXX agreements and guidelines, (2) serves as a clearinghouse for information relative to XXX transactions, (3) handles XXX financial management and administrative obligations, (4) determines XXX reserves and makes recommendations for final approval, and (5) provides administration and oversight of XXX contracts.

ISSUE

Whether Taxpayer's gross receipts earned from the above mentioned revenue categories should be sourced to Florida.

¹⁰ XXX.

LAW

Section 220.15, F.S., states in part:

(5) The sales factor is a fraction the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.

(a) As used in this subsection, the term "sales" means all gross receipts of the taxpayer except interest, dividends, rents, royalties, and gross receipts from the sale, exchange, maturity, redemption, or other disposition of securities....

(b)1. Sales of tangible personal property occur in this state if the property is delivered or shipped to a purchaser within this state, regardless of the f.o.b. point, other conditions of the sale, or ultimate destination of the property, unless shipment is made via a common or contract carrier....

Rule 12C-1.0155, F.A.C., provides in part:

(1) For the purposes of the sales factor, the term "sales" means all gross receipts received by the taxpayer from transactions and activities in the regular course of its trade or business.

(f)1. Where the income producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible personal property and income from the sale, licensing, or other use of intangible personal property. The sale or licensing of the use of a trade name, trademark, or patent will be attributable to the state in which the trade name, trademark or patent is used.

2. Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

3. In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(h) Sales of services. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, the performance of equipment service contracts, or research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(2) Florida sales. The numerator of the sales factor shall include gross receipts attributed to this state which were derived by the taxpayer from transactions and activities in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incident to such gross receipts shall be included regardless of the place where the account records are maintained or the location of the contract or other evidence of indebtedness.

(a) Sales of Tangible Personal Property in Florida. Gross receipts from sales of tangible personal property are in this state if the property is delivered or shipped to a purchaser within this state regardless of the F.O.B. point, other conditions of the sales, or the ultimate destination of the property. Tangible personal property shipped by common or contract carriers will use a destination test to determine whether the sale is a Florida sale or a sale without this state.

(f)(1) The rental, leasing, licensing, or other use of a trade name, trademark, or patent to a business entity located in Florida will be considered a Florida sale. The mere holding of intangible personal property is not, of itself, an income producing activity.

(h) Computer related sales.

5. Interactive networks.

a. Where there are charges to Florida customers for direct access to a data base, these charges are considered Florida sales. These charges include, but are not limited to, fees to access the network, fees based on the number of information requests made, time charges for connection to the data base and lines, and information retrieval from the data base.

b. Where there are charges by a corporation located in Florida to Florida customers for access to third party data bases, all charges will be considered Florida sales, regardless of where the third-party data bases are located.

c. Where a foreign (out-of-state) corporation charges Florida customers for access to third party data bases, all charges will be considered Florida sales except for charges directly related to the retrieval of information from the third-party data base.

d. When a P.C. or mainframe is physically located in Florida, a corporation will have a "Florida customer" for purposes of this subparagraph.

(l) Other Sales in Florida. Gross receipts from other sales shall be attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts shall be attributed to this state if the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance. The term "income producing activity" applies to each separate item of

income and means the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits. Where independent contractors are used to complete a contract, the term “income producing activity” will include amounts paid to the independent contractors.

ANALYSIS

A state is allowed by the United States Constitution to tax the income of a multistate corporation if the state applies a formula that fairly apportions a percentage of the corporation’s income attributable to business activities inside and outside the state. Under s. 220.15, F.S., and Rule 12C-1.015, F.A.C., a corporation that conducts business activities occurring both within and without Florida and that, by virtue of that activity, are taxable in another state, must apportion its business income. Florida has adopted an apportionment fraction with a sales factor representing fifty percent of the fraction, a property factor representing twenty-five percent of the fraction, and a payroll factor representing twenty-five percent of the fraction.

The Florida sales factor is a measure of receipts received from business activity conducted in Florida. Section 220.15(5), F.S., provides the general proposition that the “sales factor is a fraction the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.” Rule 12C-1.0155(2), F.A.C., states that “the numerator of the sales factor shall include gross receipts attributed to this state which were derived by the taxpayer from transactions and activities in the regular course of its trade or business.” Rule 12C-1.0155(2), F.A.C., sources various items of sales to Florida. Those items which are not specifically included, may be included pursuant to Rule 12C-1.0155(2)(l), F.A.C., which is a catch-all rule, provided the item meets the requirements of the rule. The determination of whether a sale is to be attributed (or “sourced”) to Florida generally will be based upon the factors and concepts set forth in s. 220.15(5), F.S., and Rule 12C-1.0155(2), F.A.C.

Receipts from sales of tangible personal property

Revenue Category 1

Rule 12C-1.155(1)(a), F.A.C., states that sales of tangible personal property are included in the sales factor. Rule 12C-1.0155(2)(a), F.A.C., sources the sale of tangible personal property to Florida if the property is “delivered or shipped to a purchaser within this state regardless of the F.O.B. point, other conditions of the sales, or the ultimate destination of the property.” If a common carrier is used, then tangible personal property is sourced depending upon the destination of the tangible personal property. Accordingly, if tangible personal property is delivered or shipped to a purchaser in Florida either directly by the Taxpayer or by a common carrier, the sale of tangible personal property will be sourced to Florida.

Receipts from licensing of intangible property

Revenue Category 2

Section 220.15(5)(a), F.S., generally excludes royalty income from the sales factor. Rule 12C-1.055(1)(f)1., F.A.C., provides an exception that states business income from intangible personal property (such as trade names and trademarks) that can be readily identified is included in the denominator of the sales factor, and if such income producing activity occurs in Florida, is included in the numerator as well. Rule 12C-1.055(2)(f)1., F.A.C., provides that if the intangible personal property is licensed or used by an entity located in Florida, the income from such licensing or use will be considered a Florida sale.

The purpose of apportionment is to fairly divide a taxpayer's income amongst the states by measuring its significant business activity. Apportionment looks to the business activities of a taxpayer in making this measurement. The United States Supreme Court has stated that the "factor or factors used in the apportionment formula must actually reflect a reasonable sense of how income is generated."¹¹ The states usually measure the business activities of a taxpayer by the use of a three-factor apportionment formula – a combination of a taxpayer's payroll, property, and gross receipts (sales). If an item of income does not fairly represent a taxpayer's business activity in a state, the Department will not allow the item to be included in the apportionment factor. If an item of income is a significant part of a taxpayer's income, factor representation will be necessary to fairly represent a taxpayer's business activity in a state and the item will be required to be included in the apportionment factor.

Taxpayer's predominant business activity consists of earning revenue from providing access to an interactive network, the sale of tangible personal property, and the sale of services. If Taxpayer's royalty income is not significant, the income will not be allowed to be included in the Taxpayer's sales factor since it does not clearly reflect Taxpayer's business activity. If significant, the income must be included and sourced according to where the Taxpayer's customer is located. If the royalty payments are made from third-parties located in Florida and they are significant, the receipts should be sourced to Florida in the sales factor.

Receipts from providing access to an interactive network

Revenue Categories 3 – 9

Rule 12C-1.0155(2)(h)5.a, F.A.C., provides a sourcing methodology for "interactive networks" and specifically states that "charges to Florida customers for direct access to a data base ... are considered Florida sales." Such charges include, but are not limited to, "fees to access the network, fees based on the number of information requests made, time charges for connection to the data base and lines, and information retrieval from the data base. Revenue categories 3 – 9, facts stated above, involve Taxpayer's customers accessing Taxpayer's online data base for various products. Pursuant to Rule

¹¹ Container Corp. of Am. v. Franchise Tax Bd., 463 US 159, 169 (1983)

12C-1.0155(2)(h)5.a., F.A.C., the sourcing of Taxpayer's online database depends upon the location of the customer. When a customer located in Florida accesses Taxpayer's online database, the sales will be sourced to Florida. Revenue categories 6 and 7 can also be delivered via email. Such a delivery methodology is not sourced according to Rule 12C-1.0155(2)(h)5.a., F.A.C., and is discussed below.

Receipts from the sale of services

Revenue Categories 6 – 7 and 10 – 12

Pursuant to Rule 12C-1.0155(2)(l), F.A.C., sales are attributed to Florida if the income producing activity which gave rise to the receipt is wholly performed within Florida. "Income producing activity" is defined as "the transaction and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits." The income producing activity generally occurs where the customer is located and not where a taxpayer processes the income producing activity. A taxpayer's processing of the income producing activity is generally accounted for by the payroll and property factors. The purpose of the sales factor is to account for a taxpayer's sales, and if the sales are made to and income is derived from a Florida customer, the sales must be sourced to Florida.

Revenue categories 6 and 7 are ordinarily sourced according to where the Taxpayer's customer is located since they are accessed via an interactive network. If these same products are delivered to the customer through email, the sale is a sale of a service and sourced pursuant to Rule 12C-1.0155(2)(l), F.A.C. The transaction involved is the payment for Taxpayer's product and the activity involved is the delivery of the email from the Taxpayer to its customer. Therefore, sales should be sourced according to the location of the customer. If the customer is located in Florida, the sale will go into the numerator of the sales factor.

For revenue category 10, the transaction and activity directly engaged in by the Taxpayer is the conversion of data into standard electronic reporting formats for its customer to access online and the payment by the customer for this service. Whether Taxpayer actually performs the service or outsources it to a vendor is irrelevant for purposes of this analysis. The outsourcing is generally a separate and distinct transaction between the Taxpayer and the vendor. Since Florida is a market state, the transaction and activity is sourced according to where the income producing activity occurs, which is usually where the customer resides. In this case, sales should be sourced according to the location of the customer.

For revenue category 11, the transaction and activity directly engaged in by the Taxpayer is the administration of various XXX, including the screening of XXX to establish eligibility into the XXX and the collection and maintenance of extensive databases to store critical information related to the XXX. The transaction and activity occurs in the state where the customer is located since the actual administration occurs in the administered state. In addition, the specific XXX that entered into the contract with Taxpayer is the customer and is the XXX where the customer is located. Therefore, the sales from revenue category 11 will be sourced according to where the customer is located.

For revenue category 12, the transaction and activity directly engaged in by the Taxpayer is the administration services provided to the XXX and four other XXX. The transaction and activity occurs in the XXX where the customer is located since the actual administration occurs in the administered XXX. In addition, the specific XXX that entered into the contract with Taxpayer is the customer and is the state where the customer is located. Therefore, the sales from revenue category 12 will be sourced according to where the customer is located.

CONCLUSION

For the reasons stated above, the methods for sourcing each of Taxpayer's Revenue Categories for purposes of calculating the company's Florida sales factor is summarized below:

Revenue Category 1: This consists of revenues from sales of printed materials. Pursuant to s. 220.15(5)(b)1, F.S., and Rule 12C-1.0155(1)(a), F.A.C., these revenues should be treated as Florida sales if the property is delivered or shipped to a purchaser in Florida.

Revenue Category 2: This consists of revenues from the licensing of proprietary intangible assets. Pursuant to Rule 12C-1.0155(1)(f)1, F.A.C., these revenues should be treated as Florida sales if the underlying intangible asset is licensed to a customer located in Florida, provided that the royalty income is significant.

Revenue Categories 3 - 9: These consist of revenues from products and services delivered (or in some cases submitted) via the internet to Taxpayer's online database or interactive network. Pursuant to Rule 12C-1.0155(2)(h)5.a., F.A.C., these revenues should be treated as Florida sales if the customer is located in Florida. If the products and services are submitted via email, the sale will be sourced pursuant Rule 12C-1.0155(2)(l), F.A.C., if the customer is located in Florida.

Revenue Category 10: This consists of revenues for conversion of XXX data into a format required to satisfy data submission requirements by Taxpayer. Pursuant to Rule 12C-1.0155(2)(l), F.A.C., these revenues should be sourced to Florida if the customer is located in Florida.

Revenue Categories 11 and 12: These consist of revenues from the administration of XXX and both XXX. Pursuant to Rule 12C-1.0155(2)(l), F.A.C., these revenues should be sourced to Florida if the customer is located in Florida.

This response constitutes a Technical Assistance Advise ment 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 documents 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 before disclosure. In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advise ment, backup material and response within fifteen days of the date of this advise ment.

Sincerely,

Affan Qureshi, Esq.
Senior Attorney
Technical Assistance and Dispute Resolution
(850)717-7602

Record ID #142122