



Executive Director  
Marshall Stranburg

**QUESTION:** ARE TAXPAYER'S SALES OF SIMPLE STORAGE SERVICE (S3) SUBJECT TO SALES TAX OR CST?

**ANSWER:** THE TAXPAYER'S SALES OF S3 SERVICE ARE SALES OF AN INFORMATION SERVICE AND ARE NOT SUBJECT TO SALES TAX OR CST.

**QUESTION:** ARE TAXPAYER'S SALES OF ELASTIC CLOUD COMPUTE (EC2) SERVICE WITH AN OPEN SOURCE INSTANCE OR A THIRD PARTY INSTANCE SUBJECT TO SALES TAX OR CST?

**ANSWER:** THE EC2 SERVICE IS AN INFORMATION SERVICE. WHETHER SOLD AS AN "OPEN SOURCE INSTANCE" OR A "THIRD PARTY INSTANCE," THE CHARGES ARE NOT SUBJECT TO SALES TAX OR CST.

**QUESTION:** THE DATA TRANSFER FEE IS CHARGED IN CONJUNCTION WITH EITHER THE S3 OR THE EC2, OR BOTH. IS THE DATA TRANSFER FEE SUBJECT TO CST OR SALES TAX?

**ANSWER:** THE DATA TRANSFER FEES CHARGED BY THE CUSTOMER ARE INFORMATION SERVICES AND NOT SUBJECT TO SALES TAX OR CST.

**March 13, 2014**

RE: Technical Assistance Advisement – TAA 14A19-001  
Communications Services Tax and Sales and Use Tax  
XXX (Taxpayer)  
FEI #: XXX  
Chapter 202 and 212, Florida Statutes

Dear XXX,

This is a response to your letter dated XXX. You have requested a Technical Assistance Advisement (TAA) regarding the Department's position on whether Florida Communications Services Tax and gross receipts tax (CST) and/or Sales and Use Tax (sales tax) apply to the sales of XXX Simple Storage Service (S3), Elastic Compute Cloud (EC2), or data transfer fees. The information provided with your letter established that you meet the requirements for a TAA.

**ISSUE**

1. Are Taxpayer's sales of S3 service subject to sales tax or CST?

2. Are Taxpayer's sales of EC2 with an Open Source Instance service subject to sales tax or CST?
3. Are Taxpayer's sales of EC2 with a Third Party Instance subject to sales tax or CST?
4. The data transfer fee is charged in conjunction with either the S3 or the EC2, or both. Is the data transfer fee subject to CST or sales tax?

### **FACTS**

The Taxpayer offers "information technology infrastructure" services, such as computing power and storage capacity, to customers that need these services and capacity without the cost of the capital investment in equipment, staff, and other resources. The Taxpayer headquarters are located in XXX with additional offices in XXX and XXX. The Taxpayer utilizes data centers in XXX, XXX, XXX, and several countries outside the U.S. The Taxpayer also utilizes smaller data centers in many states and around the world as Points of Presence (PoP sites).

Both the large data centers and the PoP sites are owned and operated by affiliated entities.

#### *Simple Storage Service (S3)*

The Taxpayer's Simple Storage Service,

... allows customers to store and retrieve content, data, applications, and software on its servers. [Taxpayer] essentially provides customers with remote access to computing infrastructure so that they can store and retrieve large amounts of data at any time and from any location via the [I]nternet. Customers do this by setting up an account via the [I]nternet which enables them to upload and store their own content on the [Taxpayer] network and later download that content.

Companies and individual developers both use this service. Companies back up data or store large amounts of data for which they do not have memory capacity. Instead of investing in infrastructure, individual developers will use this service as a remote storage service. Customers retain all ownership of content and information stored on the Taxpayer's network. The Taxpayer's customers do not receive access to or possession of the tangible personal property, which includes both hardware and software that the Taxpayer uses to store the customer's content.

The customer may also purchase certain software development kits and management consoles made available by the Taxpayer. The software and consoles are made available free of charge. "The management console is a simple and intuitive web interface that allows user to create S3 storage 'buckets' and then upload or delete objects in those buckets." The tools simply aid the user in utilizing the Taxpayer's service, but they are not required for the customer to purchase or use the Taxpayer's service.

Customers are not charged Internet access or any similar charge for use of the Internet to store and retrieve information. Customers purchase their own Internet access (or telecommunications services) from third party dealers.

Elastic Compute Cloud (EC2)

The Taxpayer's Elastic Compute Cloud (EC2) service provides a "scalable virtual computing environment."

... Through EC2, customers can procure computing resources in order to perform a variety of activities, including, but not limited to, running applications, monitoring computers and computer usage, and hosting web domains – essentially anything computer equipment, especially a computer server, can do. The service's core benefit is that it allows customers to obtain remote access to computing capacity and control of their computing resources without a significant information technology investment (e.g., customers no longer have to buy their own servers or set up and maintain their own on premises data centers). In the technology industry, the EC2 service is commonly referred to as Infrastructure as a Service (IaaS).

In order to use EC2, customers request a configuration of memory, CPU, storage and operating system. This configuration is called an "Instance" and is the basis for the fee the customer is charged for EC2 usage.

A customer must have some basic operating system to direct the computing power it is purchasing from the Taxpayer. Therefore, the Taxpayer provides its customers access to two "types" of instances. The open source operating system software is used in an Open Source Instance. This operating system is freely accessible to anyone over the Internet. Customers may opt to use a third party operating system in a Third Party Instance. Either way, the operating system runs only on servers within the Taxpayer network to provide the EC2 service. The customer does not download the software, does not have access to the software or the physical remote location of the software, or have a license for the software. This is true for both types of instances.

As with the S3 service, the Taxpayer makes available free tools for the EC2 service. These tools are application programming interfaces and software development kits that help the customer "more easily utilize the computing power." Again, the tools are optional, free, and not required to use the service.

For both services, customers are charged a base fee and an incidental fee in the form of Data Transfer Fees. (Data Transfer Fees are discussed in more detail below.) For the S3 service, the flat fee is determined by the amount of gigabytes (GB) used in the month. The EC2 service flat fee is charged based on the amount of computing power used in a given month. Third Party instances cost more than an Open Source instances.

### Data Transfer Fees

As mentioned earlier, the Taxpayer utilizes large data centers in three states with additional centers outside the U.S. Customers must select one or more specific data center(s) to use the Taxpayer's services. Beyond that, a customer has no visibility as to exactly which server its data is stored on and customers are not allowed physical access to the Taxpayer's infrastructure. The Taxpayer may, at its discretion and without customer notice, move customer data from one server to another to provide the storage services purchased. However, customers may decide to have data moved from one data center to another or to be made available in one or more data centers. It is for this that customers incur the incidental Data Transfer Fees.

Data Transfer Fees are "incidental" usage charges separately stated on customer's bills from the S3 or EC2 services. As mentioned earlier, often the Taxpayer makes decisions to move customers' stored data within a data center. Sometimes customers want their data to be available in two (or more) data centers simultaneously; or the customer may wish to process data using computing power provided by multiple data centers. When a customer requests this type of service, the Taxpayer charges "Data Transfer" fees to make the data or the computing power accessible to the customer in the data center or region in which the customer has requested it.

According to the Taxpayer's letter,

These fees act as a metering mechanism that tracks a customer's usage of the AWS services and network and are not fees for the underlying telecommunications infrastructure...

The Data Transfer Fees are charged only in relation to the S3 or EC2 services and are "... a consequence of a customer's active use of a different and primary service such as the EC2 service." The charge may be incurred for the customer requesting that files be moved between data centers or "backed up" at a second data center or for the retrieval of certain stored data back to an origin server.

### **TAXPAYER POSITION**

The Taxpayer believes its sales of the S3 and EC2 services and the data transfer fees constitute information services not subject to CST or sales tax.

### **LAW AND DISCUSSION**

Section 202.11(1), F.S., provides the following definition of communications services:

"Communications services" means 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 existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

(a) Information services.

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Section 202.11(5), F.S., provides the following definition for information services:

“Information service” means 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 does not include video service.

Section 212.031(1)(a), F.S., provides that the lease of real property is a taxable transaction, stating in part:

It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property....

Section 212.05, F.S., provides, in part, the following regarding the sale of tangible personal property:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident.... (Emphasis added.)

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In general, CST applies to the retail sale of communications services. Communications services are broadly defined in Florida statute as 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 existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.... The term does not include:

(a) Information services.” (See s. 202.11(1), F.S.)

Information services are defined in Florida statute as “... 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 does not include video service.” (See s. 202.11(5), F.S.)

### Simple Storage Service Base Fee (S3)

As described, this service allows the customer to utilize the storage capacity within the Taxpayer’s server/computer equipment. However, the Taxpayer does not actually provide access or license to use that equipment or the real property facilities where the servers are located. Customers, in fact, have no knowledge of what “server space” actually stores the information outside of the geographic location where the data center(s) is located. Customers upload and download their own data via their own Internet connection. As such, this service is not a communications service. Customers are not charged Internet access or any similar charge of use of the Internet. Customers are not being sold the ability to “transmit, convey, or route ...” data. Customers purchase Internet access and telecommunication services from third parties. As this service is the “... offering of a capability for ... storing, ... retrieving, using, or making available information via [a communications service]...,” it is properly classified as an information service. Information services are excluded from CST.

The customer is not purchasing or being granted a license to use tangible personal property or real property. Therefore, the service is also not a sale subject to sales tax.

### Elastic Compute Cloud Service Base Fee (EC2)

The Taxpayer describes in its letter that:

... The service’s core benefit is that it allows customers to obtain remote access to computing capacity and control of their computing resources without a significant information technology investment (e.g., customers no longer have to buy their own servers or set up and maintain their own on premises data centers). . . .

EC2 is referred to as “Infrastructure as a Service.” To utilize this service, Taxpayer customers must also have an operating system. Therefore, the Taxpayer provides the operating system. The operating system is only used by the customer when using the EC2 service. It is not downloaded, leased, or kept by the customer. It operates only on the Taxpayer’s servers. The customer has no access to the physical location or server equipment. Customers are not charged Internet access or

any similar charge for use of the Internet. Customers are not being sold the ability to “transmit, convey, or route ...” data. Customers purchase Internet access and telecommunication services from third parties.

As this service is the “offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services...,” it is also properly classified as an information service. The service is an information service whether the customer chooses an Open Source or Third Party Instance. As an information service, it is not subject to CST.

Because there is no sale or lease of software, tangible personal property, or real property, the service is not subject to sales tax.

#### Data Transfer Incidental Charges

As explained above in the FACTS, customers may want and request that data be available in two (or more) data centers simultaneously; or the customer may wish to process data using computing power provided by multiple data centers. When a customer requests that data be made available at a different data center or at multiple data centers, the Taxpayer charges “Data Transfer” fees for providing this service. While the Taxpayer may utilize communications services to move the data from or between data centers, the charge is not the Taxpayer providing the communications service to the customer. This is because the customer is not being sold the ability to “transmit, convey, or route ...” data. The charge is for the Taxpayer to make the data or the computing power available, accessible, in the data center or region in which the customer has requested it.

While the Taxpayer explains that this charge is only incurred as part of either the S3 or EC2 service, either way, the charge is an information service not subject to sales tax or CST.

### CONCLUSION

The Taxpayer’s sales of S3 service are sales of an information service and are not subject to sales tax or CST.

The EC2 service is also an information service. Whether sold as an “Open Source Instance” or a “Third Party Instance,” the charges are not subject to sales tax or CST.

The Data Transfer fees charged by the customer are information services and not subject to sales tax or CST.

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 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

Record ID: 153404