



**FLORIDA**

Executive

Director

Leon M. Biegalski

**QUESTION:** WHETHER, BASED UPON THE FACTS PROVIDED, TAXPAYER'S CHARGES FOR ITS BASE LINE AND ADDITIONAL SERVICES ARE SUBJECT TO SALES TAX?

**ANSWER:** TAXPAYER CHARGES FOR BASE LINE AND ADDITIONAL SERVICES, WHICH INVOLVES FURNISHING INFORMATION AND REPORTS ELECTRONICALLY, ARE NOT SUBJECT TO SALES TAX PROVIDED SUCH CHARGES ARE NOT PART OF THE SALE OF ANY TANGIBLE PERSONAL PROPERTY.

**January 27, 2017**

Re: Technical Assistance Advisement 17A-002  
Sales and Use Tax- Computers, Software, Information Services  
Sections: 212.02; 212.05, Florida Statutes (F.S.)  
Rule: 12A-1.062, Florida Administrative Code (F.A.C.)  
XXXX ("Taxpayer")  
FEI: XXXX

Dear XXXX:

This letter is a response to your petition received on XXXX, for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced party and matter. Your petition 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.

### **Issue**

Whether, based upon the facts provided, Taxpayer's charges for its base line and additional services are subject to sales tax.

### **Facts Provided**

[Taxpayer] is a data service analytics company that utilizes a unique online data-collection and manipulation platform to provide consumer experience analytic services to various companies. ...[Taxpayer's] base service line is the development of online consumer surveys to help businesses gather information from consumers visiting their websites. To initiate [Taxpayer's] survey collection process for a new customer, [Taxpayer] facilitates an up-front planning and strategy discussion to develop a customized survey instrument and to ensure [Taxpayer] is in

Child Support – *Ann Coffin, Director* • General Tax Administration – *Maria Johnson, Director*  
Property Tax Oversight – *Dr. Maurice Gogarty, Director* • Information Services – *Damu Kuttikrishnan, Director*

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sync with its customer's strategies, perceived strengths, and perceived weaknesses. Subsequently, [Taxpayer] develops XXXX and delivers it to the customer to add to the customer's website, which prompts the customer's website visitors to complete a survey at the end of their experience. ...Clicking on the survey link routes customers who choose to take the survey to [Taxpayer's] servers [outside Florida]. ...Once a sufficient sample data size has been compiled, [Taxpayer] publishes the reports to their customer's portal site. The site is hosted on the [Taxpayer] servers and allows customers to log-in and access reports on an on-going and on-demand basis. ...All of the data collected through [Taxpayer's] base service line becomes the property of [Taxpayer's] customers, and [Taxpayer] is contractually prohibited from providing this information to others.

For example, the survey may ask the survey participant to rate on a scale from 1 to 10 (1 being poor and 10 being excellent) how well the product images on the customer's website show the product details or how well the site layout helped the online consumer find what they were looking for. This data is then collected and summarized by the [Taxpayer] data analyst and made available to the customer via the online portal.... As part of its overall survey and analysis service, [Taxpayer] calculates average scores by industry and includes the relevant benchmarks in each individual [client's] custom data analysis report. These statistics allow the customer to compare its own scores against industry averages as a whole.

Beyond this base service line...[Taxpayer] has a variety of incremental service offerings that enhances its base service line by utilizing the survey data collected to illustrate different user considerations to its customers. Typically the customer chooses from among these measures based on the customer touch point that is most relevant to its market: web, mobile, tablet, or in-store....

These services include: XXXX.

1. XXXX: ... captures information about the user experience, including the amount of time consumer spent on the customer's site, the page names the customer visited, navigation through the pages viewed, information entered, scrolling, mouse clicks, and movements, among others....
2. XXXX: ... allows the customer to generate the detailed reports highlighting specifics beyond the basic survey results such as time spent on the site, number of pages viewed, etc. Additionally, the XXXX is an additional detailed report capturing areas where a customer is receiving repeated comments from consumers....
3. XXXX: ... allows customers to generate C-level executive summaries of the survey results for more advanced reporting to the customer's Board of Directors and executive management....
4. XXXX: This service includes expert analysis of the raw data collected from the consumer surveys. The deliverable is a written report presented via web-based conference call held periodically over the survey collection period....
5. XXXX: ...The XXXX includes expert analysis of the least usable features of the customer's website or mobile site. ...These results are communicated via a written report and web conference call periodically over the survey collection period at the request of the customer. ...

6. XXXX: This service provides a detailed benchmarking analysis of [Taxpayer's] customer's survey results as compared against industry competitors.... [Taxpayer] obtains industry data from an unrelated third-party regarding user satisfaction with key competitor sites and uses that data to develop a benchmark for its current customer. ...[Taxpayer] is granted a license to utilize its customer's survey results in the analytic reports given all the data collected through [Taxpayer's] base service line is the property of the customer.

### **Taxpayer Position**

Your letter provides the following in part:

... [I]t is our opinion that [Taxpayer's] services are excluded from the sales tax assessed on information services. The information produced by [Taxpayer] is produced for and provided only to the single customer for which the survey results were generated. The information gathered is the sole property of [Taxpayer's] customer, and [Taxpayer] is contractually prohibited from furnishing the information to or incorporating it in reports for others. Furthermore, the information gathered by [Taxpayer] is provided to its customers electronically via the customer's portal site. Therefore, [Taxpayer's] base line and additional services are not subject to sales or use tax in Florida....

### **Law and Discussion**

Section 212.05, F.S., generally imposes tax on the sale or lease of tangible personal property. The term "sale" is defined in s. 212.02(15)(a), F.S., to mean "[a]ny transfer of title or possession, or both ... of tangible personal property for a consideration." Pure service transactions that do not involve the sale of tangible personal property are generally not subject to tax under Florida law, unless the taxation of the service is specifically authorized by Chapter 212, F.S. When services are provided as part of the sales of tangible personal property, the services are part of the sales price<sup>1</sup> subject to sales tax.

Taxpayer has indicated that all information and reports are accessed by the customer electronically and are not provided in tangible form. Therefore, a determination of whether taxpayer provides a taxable information service is not necessary as Rule 12A-1.062(5), F.A.C., provides that a charge for furnishing information by way of electronic images which appear on the subscriber's video display screen does not constitute a sale of tangible personal property nor does it constitute the sale of a taxable information service. See also Department of Revenue v. Quotron Systems, Inc., 615 So.2d 774 (Fla. 3rd DCA 1993)

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<sup>1</sup> Section 212.02(16), F.S., defines the term "sales price" in part as "the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever...."

**Conclusion**

Taxpayer charges for base line and additional services, which involves furnishing information and reports electronically are not subject to sales tax provided such charges are not part of the sale of any tangible personal property.

Please be advised that this letter only applies to Sales and Use Tax and does not consider the applicability of 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 upon 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 from that which is 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.

Sincerely,

Taylor Hikes, Esq.  
Senior Attorney  
Technical Assistance and Dispute Resolution

Control # 211864