



FLORIDA

Executive

Director

Leon M. Biegalski

QUESTIONS: WHETHER IT IS APPROPRIATE FOR TAXPAYER TO SOURCE SALES TO THE LOCATION OF THE INCOME PRODUCING ACTIVITY? WHAT IS THE PROPER DETERMINATION OF WHERE THE INCOME PRODUCING ACTIVITY OCCURS FOR EACH OF THE FOUR TYPES OF SERVICES TAXPAYER PROVIDES?

ANSWERS: PURSUANT TO RULE 12C-1.0155(2)(L), F.A.C., WHEN THE ACTIVITY PRODUCING THE SALES REVENUE OCCURS ENTIRELY IN FLORIDA, THE RECEIPTS FROM THE FLORIDA ACTIVITY ARE DEEMED TO BE FLORIDA SALES. THE INCOME PRODUCING ACTIVITY OCCURS ENTIRELY IN FLORIDA WHEN TAXPAYER'S CUSTOMER IS PHYSICALLY LOCATED IN FLORIDA.

April 17, 2017

XXXXX
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XXXXX

Re: Technical Assistance Advisement – 17C1-004
XXXXX (“Taxpayer”)
FEIN: XXXXX
Corporate Income Tax
Income Calculation
Section (“s.”) 220.15, Florida Statutes (“F.S.”)
Rule 12C-1.0155, Florida Administrative Code (“F.A.C.”)

XXXXX:

This is in response to your request dated October 21, 2016, for a Technical Assistance Advisement (“TAA”) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the sales factor 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.

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

www.floridarevenue.com
Florida Department of Revenue
Tallahassee, Florida 32399-0100

FACTS SUPPLIED BY TAXPAYER

Taxpayer has two distinct lines of business, customer support services and XXXXX. Taxpayer provides customer support services to the XXXXX, allowing XXXXX to outsource certain functions needed XXXXX. Taxpayer also provides general support services, such as accounting and marketing, to its customers. Taxpayer's customers are primarily located outside of Florida.

Customer Support Services

Taxpayer provides the following services to XXXXX on behalf of its customers:

- **General Telephone and Online Customer Services:** Taxpayer provides support by answering XXXXX product and service questions, and resolving product or service problems. Much of these services are performed via telephone or online. To support these operations, Taxpayer maintains call centers in Florida and contracts with third-party call centers outside the United States. Approximately XXXXX of all calls/online discussions are handled by third-party call centers outside the United States. For these services, Taxpayer charges a XXXXX. The XXXXX may be located throughout the world.
- **Fulfillment Services:** Taxpayer provides services related to the fulfillment of XXXXX accounts. This includes maintaining XXXXX records, processing orders, payments, and cancellation requests for XXXXX accounts. Taxpayer charges XXXXX for these services.

In addition to the services above, Taxpayer provides these services directly to its customers:

- **XXXXX Services:** Taxpayer provides support staff services to its customers. These services include financial services such as accounting and reconciliation, as well as marketing services XXXXX.
- **XXXXX Services:** Taxpayer provides two general types of XXXXX services. One is a XXXXX. The second service consists of Taxpayer XXXXX.

XXXXX

Taxpayer XXXXX. Specifically, Taxpayer uses XXXXX. To perform these services, Taxpayer predominately XXXXX. Only one percent of XXXXX. Currently, Taxpayer provides its XXXXX. Taxpayer XXXXX. In the future, Taxpayer plans to XXXXX.

ISSUES PRESENTED

Whether it is appropriate for Taxpayer to source sales of its customer support services to the location of the income producing activity? If yes, what is the proper determination of where the income producing activity occurs for each of the four types of services Taxpayer provides?

Whether it is appropriate for Taxpayer to source sales of XXXXX? Additionally, does the same sourcing rule apply XXXXX?

LEGAL AUTHORITY

Section 213.22(1), F.S., states in part:

(1) The department may issue informal technical assistance advisements to persons, upon written request, as to the position of the department on the tax consequences of a stated transaction or event, under existing statutes, rules, or policies. After the issuance of an assessment, a technical assistance advisement may not be issued to a taxpayer who requests an advisement relating to the tax or liability for tax in respect to which the assessment has been made, except that a technical assistance advisement may be issued to a taxpayer who requests an advisement relating to the exemptions in s. 212.08(1) or (2) at any time. 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. Any modification of an advisement shall be prospective only...

Section 220.02(1), F.S., states in part:

(1) It is the intent of the Legislature in enacting this code to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners...

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

(1) Except as provided in ss. 220.151, 220.152, and 220.153, adjusted federal income as defined in s. 220.13 shall be apportioned to this state by taxpayers doing business within and without this state by multiplying it by an apportionment fraction composed of a sales factor representing 50 percent of the fraction, a property factor representing 25 percent of the fraction, and a payroll factor representing 25 percent of the fraction...

(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., states 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.

(a) Sales of tangible personal property. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products. Gross receipts for this purpose means gross sales, without regard to returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales...

(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 includes gross receipts attributed to Florida 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 Florida if the property is delivered or shipped to a purchaser within Florida 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 outside Florida...

XXXXX

(l) Other Sales in Florida. Gross receipts from other sales shall be attributed to Florida if the income producing activity which gave rise to the receipts is performed wholly within Florida. Also, gross receipts shall be attributed to Florida if the income producing activity is performed within and without Florida but the greater proportion of the income producing activity is performed in Florida, 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.

DISCUSSION

Reliance on Technical Assistance Advisements

Taxpayer states that its suggested sourcing method is consistent with several TAAs issued by the Department. TAAs are binding on the Department only under the facts and circumstances described in the request for a specific taxpayer. Section 213.22(1), F.S., states “Technical assistance advisements shall have no precedential value except to the taxpayer who requests the advisement...” Therefore, other TAAs have not been taken into consideration when reviewing Taxpayer’s request.

Customer Support Services

Section 220.02(1), F.S., conveys the Legislature’s intent to subject corporations and other entities to corporate income tax for the privilege of conducting business, deriving income, or existing in Florida. The apportionment factor provides a measure of a taxpayer’s business activity in the states in which it does business, and serves as a means of attributing income to the states from which the income was derived.

Furthermore, section 220.15(5), F.S., provides that “[T]he sales factor is a fraction the numerator of which is the total sales of the taxpayer in this state during the taxable year and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.”

Rule 12C-1.0155, F.A.C., provides guidance on sourcing income to Florida. Subsection (2)(l) of this rule focuses on each separate item of income and the activities which produce that income. To paraphrase that rule, sales are attributed to Florida if the income producing activity which gave rise to the receipt is within Florida. The income producing activity is not analyzed holistically as one major activity, but each individual transaction is considered a separate transaction and consequently a separate income producing activity.

The term "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."¹ The word “and” signifies that both transactions and activities must exist simultaneously in order for any activity to be considered the income producing activity. The word “transaction” is used several times in the Florida Statutes and Rules, but is not defined. Black’s Law Dictionary² defines “transaction” as:

1. The act or an instance of conducting business or other dealings.
2. Something performed or carried out; a business agreement or exchange.

¹ Rule 12C-1.0155(2)(l), F.A.C.

² 716 (2nd Pocket Edition 2001)

3. Any activity involving two or more persons.

Under Rule 12C-1.0155(2)(l), F.A.C., when the activity producing the sales revenue occurs entirely or predominately in Florida, the receipts from the Florida activity is deemed to be a Florida sales. Since Florida is generally referred to as a market state, and the sales factor is generally based upon where the customer is located.

Taxpayer performs general telephone/online customer service and XXXXX. The income producing activity for the services provided to XXXXX is the telephone/online discussion or interaction. It is that contact that generates the income for Taxpayer. The income producing activity occurs entirely in Florida when the XXXXX is physically located in Florida. Taxpayer would not be entitled to receive the fee unless there was a XXXXX who required assistance from customer support and if that XXXXX is located in Florida the fee would be received in Florida.

It also provides XXXXX services and XXXXX services for its customers. The income producing activity for the XXXXX and XXXXX services performed for Taxpayer's customer is the purchase of those services by its customer. Therefore, the income producing activity occurs entirely in Florida when Taxpayer's customer is located in Florida.

XXXXX

Section 220.15(5), F.S., provides that "[T]he sales factor is a fraction the numerator of which is the total sales of the taxpayer in this state during the taxable year and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period." It provides that a taxpayer's gross receipts from sales of tangible personal property are to be included in both the numerator and the denominator of its Florida sales factor when the goods are delivered or shipped to a purchaser in Florida, regardless of the F.O.B. point, other conditions of the sale, or the ultimate destination of the property. However, when tangible personal property is shipped by common or contract carriers, a destination test is to be used to determine if the sale is a Florida sale or if the sale should be sourced to another state.

XXXXX income will be attributed to Florida if XXXXX is performed in Florida and the customer XXXXX. It also states, if the XXXXX. Therefore, based on the facts provided by Taxpayer, XXXXX, would be sourced based on the destination of the product. If the product is delivered in Florida, then the income would be sourced to Florida. The remaining XXXXX, where Taxpayer's customer XXXXX, would be sourced to the location XXXXX and if the XXXXX is located in Florida, the income would be sourced to Florida.

CONCLUSION

Pursuant to Rule 12C-1.0155(2)(l), F.A.C., when the activity producing the sales revenue occurs entirely in Florida, the receipts from the Florida activity is deemed to be a Florida sales. The income producing activity occurs entirely in Florida when Taxpayer's XXXXX is physically located in Florida.

Technical Assistance Advisement

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XXXXXX, provides that XXXXXX income will be attributed to Florida if XXXXXX. Also, if the XXXXXX income will be sourced based on the delivery destination of the product.

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 based on those facts and specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon this advice is based may subject 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 15 days of the date of this letter.

Sincerely,

Susan R. Coxwell
Tax Law Specialist
Technical Assistance and Dispute Resolution
(850) 717-6478

Record ID 212092

Cc: XXXXXX