



**Florida Department of Revenue**  
*Technical Assistance and Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

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**QUESTION:** Taxpayer seeks advisement as to the Department’s position regarding the sourcing of revenues generated from sales of software subscriptions and sales of implementation services.

**ANSWER:** Pursuant to Rule 12C-1.0155(2)(h)4., F.A.C., licensing fees for software are Florida sales to the extent the software is used in Florida.

Rule 12C-1.0155(2)(l), F.A.C., provides that 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 in Florida when Taxpayer’s client is located in Florida.

March 3, 2020

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXX

Re: Technical Assistance Advisement 20C1-003  
Corporate Income Tax  
Sales Factor of Apportionment  
Section (s.) 220.15, Florida Statutes (F.S.)  
Rule 12C-1.0155, Florida Administrative Code (F.A.C.)  
XXXXX (hereinafter “Taxpayer”)

Dear XXXXXXX,

This is in response to Taxpayer’s request dated November 1, 2019, for a Technical Assistance Advisement (“TAA”) pursuant to s. 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding how to correctly source sales of XXXXX services.

### **FACTS SUPPLIED BY TAXPAYER**

Taxpayer is a XXXXX. Taxpayer's XXXXX solutions are delivered XXXXX to organizations headquartered in the United States. Specifically, XXXXX services. In addition to the standard services XXXXX that are provided to Taxpayer's clients, XXXXX can be configured extensively to XXXXX specialized requests.

Taxpayer has two primary revenue sources: recurring revenues XXXXX and service revenues XXXXX.

XXXXX.<sup>1</sup> XXXXX. XXXXX.

XXXXX.

### **ISSUE PRESENTED**

Taxpayer seeks advisement as to the Department's position regarding the sourcing of revenues generated from sales of XXXXX services.

XXXXX.

### **LEGAL AUTHORITY**

Section 220.15(5), F.S., provides in pertinent part:

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. ...

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

(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.

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(h) Computer related sales.

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<sup>1</sup> XXXXX. XXXXX.

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4. Licensing fees for software are Florida sales to the extent the software is used in Florida.

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(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.

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### ANALYSIS

#### Reliance on Technical Assistance Advisements

Taxpayer cites several TAAs issued by the Department in its TAA request. 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.

#### Sales of XXXXX

Taxpayer's XXXXX revenue are receipts related to XXXXX. XXXXX. XXXXX. XXXXX. XXXXX. XXXXX; XXXXX.

XXXXX.

As described, this XXXXX transaction is essentially a short-term license of software and should be included in the sales factor of apportionment according to Rule 12C-1.0155(2)(h)4., F.A.C., which states that licensing fees for software are Florida sales to the extent the software is used in Florida.

In the event Taxpayer is unable to determine the physical location where the software is used, a subscriber's billing address is a reasonable approximation.

### Sales of XXXXX Services

XXXXX services revenue is generated from XXXXX the specifications provided to Taxpayer by each client in order to meet that client's business requirements. Fees charged for XXXXX services are priced on a fixed fee basis XXXXX.

XXXXX services are almost exclusively provided XXXXX, from locations throughout the United States. XXXXX. XXXXX.

XXXXX services provided to Taxpayer's clients generally include:

- XXXXX.
- XXXXX.
- XXXXX. XXXXX.
- XXXXX.
- XXXXX.
- XXXXX.
- XXXXX.
- XXXXX.

XXXXX.

Rule 12C-1.0155(2)(f), F.A.C., provides guidance for sourcing sales of services. The 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.

"Income producing activity" is defined in the rule as "the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits."

Pursuant to the rule, when the activity producing the sales revenue occurs entirely or predominantly in Florida, the receipts from the Florida activity are deemed to be Florida sales.

In the instant case, the income producing activity is the purchase of XXXXX services by a client. The income producing activity occurs entirely in Florida when Taxpayer's client is located in Florida.

In the event Taxpayer is unable to determine the physical location where the purchase of XXXXX services occurred, a client's billing address is a reasonable approximation of customer location for sales factor purposes.

**CONCLUSION**

Pursuant to Rule 12C-1.0155(2)(h)4., F.A.C., licensing fees for software are Florida sales to the extent the software is used in Florida. In the event Taxpayer is unable to determine the physical location where the software is used, a subscriber's billing address is a reasonable approximation.

Rule 12C-1.0155(2)(l), F.A.C., provides that when the activity producing the sales revenue (i.e., the purchase of XXXXX services) occurs entirely in Florida, the receipts from the Florida activity are deemed to be Florida sales. The income producing activity occurs in Florida when Taxpayer's client is located in Florida. In the event Taxpayer is unable to determine the physical location where the purchase of XXXXX services occurred, a client's billing address is a reasonable approximation of customer location for sales factor purposes.

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,

*Jennifer M. Ensley*

Jennifer M. Ensley  
Tax Law Specialist  
Technical Assistance and Dispute Resolution

Activity: 288391

Cc: XXXXXXXXX  
XXXXXXX  
XXXXXXX