



Executive Director
Marshall Stranburg

QUESTION ONE: IS THE SUBJECT SOFTWARE PRODUCT SUBJECT TO SALES TAX?

ANSWER: NO. THE TAXPAYER PROVIDES THAT THE VENDOR DOES NOT TRANSFER ANY TANGIBLE SOFTWARE OR OTHER TANGIBLE PERSONAL PROPERTY TO THE TAXPAYER AS PART OF THE LICENSE AGREEMENT. REVIEW OF THE SUPPORTING DOCUMENTATION INDICATES THE SUBJECT SOFTWARE PRODUCT IS NOT SUBJECT TO FLORIDA SALES AND USE TAX.

January 31, 2014

Re: Subject: Technical Assistance Advisement – TAA 14A-001
Sales and Use Tax – Computer Software
Sections 212.02 and 212.05, Florida Statutes (F.S.)
Rule 12A-1.032, Florida Administrative Code (F.A.C.)
XX (“the Taxpayer”)
XX (“the Vendor”)
FEI # XX

Dear XXX:

This is in response to your letter dated XXX, requesting this Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., concerning the taxability of computer software. An examination of your letter has established 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

Your letter provides the following in part:

The Taxpayer previously requested an advisement regarding this issue in a letter dated March 14, 2013. In that letter, the Taxpayer provided the following facts:

This letter is to request a Letter of Technical Advice on whether Florida sales tax should be charged and collected by a vendor located in Florida to [the Taxpayer], a Canadian corporation. The contract with the vendor is to license software that [the Taxpayer] accesses exclusively through the Internet. The vendor does not provide any tangible software (or other tangible personal property) to [the Taxpayer] as part of the license agreement.

The vendor's electronic software resides on a computer server in Florida, and [the Taxpayer's] sole method to access the software is through the Internet. The license agreement does not grant [the Taxpayer] any rights to control or possession of the server, but merely grants a right to access the software electronically. Additionally, the software license agreement grants the customer a right to store a limited amount of information electronically on the server using the vendor's cloud computing application.

* * *

The Taxpayer provided the following along with its request for advisement:

- A copy of a [Vendor] Financial Products License Agreement between the Taxpayer and Vendor dated October 1, 2012 (the Agreement),
- A copy of a Subscription Product Rider – Schedule A, of the Agreement, and
- A copy of a Statement of Work – Schedule B, of the Agreement.

The Agreement provides the following in part:

1. RECITALS

1.1 [Vendor] is in the business of licensing customized software solutions (the "Solution(s)") to the financial investment and services industry. [Vendor's] Solutions may be licensed for installation (referred to herein as a "License") or for access on a subscription (software as a service) basis (referred to herein as a "Subscription").

* * *

2. DEFINITIONS

. . . 2.22 "Statement of Work" or "SOW" means an addendum to a Product Rider and this Agreement which sets forth the scope of the Services and Deliverables that [Vendor] will provide with respect to the Licensed/Subscribed Solution(s)

2.23 "Subscribed Solution(s)" means all Solutions that are the subject of a Product Rider executed by the Parties and made a part of this Agreement that are being made available by subscription, and all components of and add-ons for such Solutions.

* * *

3 SERVICES AND DELIVERABLES

3.1 All Services rendered and all Licensed/Subscribed Solutions and other Deliverables provided pursuant to this Agreement shall be provided pursuant to a Product Rider and written SOW. . . .

... 7. INSTALLATION LICENSES

7.1 The terms of this Article 7 do not apply to Subscribed Solutions. . . .

7.3 Unless otherwise expressly provided in the applicable Product Rider, the following terms and conditions apply to all Licenses:

... (d) [Vendor] will provide Customer with login ids to access the Subscribed Solutions. Each login id may be assigned to and used by only one unique Authorized User. . . .

* * *

The Product Rider provides the following in part:

This is a software as a service (SaaS) Product Rider to the October 1, 2012 [Vendor] Financial Products License Agreement (the “Agreement”) between [the Vendor] and [the Taxpayer]

Subscribed Solutions. The Subscribed Solutions covered by this Product Rider are listed in the Subscribed Solutions Table below:

Subscribed Solutions Table

- [XX] Fund Accounting Solution
- Added Features: CRM Solution and Data Warehouse with SharePoint

* * *

5. Grant of Subscription Licenses

(a) [XX] Fund Accounting Solution Subscription License. Subject to the terms and conditions of this Product Rider and the Agreement, including without limitation all terms applicable to Subscription licenses, [Vendor] grants Customer’s Authorized Business Units a personal, non-exclusive and non- transferable limited license . . . to access via the Internet and use the hosted [XX] Fund Accounting Solution during the Initial Term and any Renewal Term for Authorized Usage only (the “[XX] Fund Accounting Solution Subscription”). . . .

* * *

The Statement of Work (SOW) provides the following in part:

... 1. This SOW relates to the following Hosted Solution:

Hosted Solution

- [XX] Fund Accounting Solution, including CRM Solution and Data Warehouse with Sharepoint.

* * *

6. Detailed Description of Services and Deliverables including Functional Specifications:

[Vendor] will implement the [XX] Fund Accounting Solution on a hosted basis. The Services provided pursuant to this SOW include:

. . . System Installation – [Vendor] will migrate the final database to the cloud and provide access to Customer along with appropriate credentials. . . .

* * *

Applicable Authority and Discussion

Section 212.05, F.S., provides that the sale of tangible personal property is subject to tax. Section 212.02(15), F.S., defines the term “sale” to include a license to use tangible personal property. “Lease,” “let,” and “rental” are defined in s. 212.02(10)(g), F.S., to include those transactions in which the owner of tangible personal property transfers possession or use of this property to another, for consideration, without the transfer of title. Service only transactions, except those authorized for taxation by Chapter 212, F.S., are generally not subject to tax. Section 212.02(16), F.S., provides that when tangible personal property and services are a part of the same sale, the entire sales price is subject to tax. Software supplied on a tangible medium is taxable. Charges for services that are part of the sale of such taxable software are part of the sales price and are subject to sales tax.

Rule 12A-1.032, F.A.C., provides that a sale of customized software is a service transaction and is not subject to sales tax provided the customized software is not part of the sale of other tangible personal property. Likewise exempt is a sale that solely involves software, canned or customized, that is provided to the customer in an electronic format, as there is no conveyance of tangible personal property. However, electronically accessed software is subject to Florida sales tax when sold as part of the sale of tangible personal property, such as computer hardware.

The Taxpayer provides that the vendor does not transfer any tangible software or other tangible personal property to the Taxpayer as part of the license agreement. The Agreement provides that the Vendor licenses “customized software solutions” that are provided for “installation or for access on a subscription basis.” A software solution provided for access on a subscription basis is referred to as a “Subscription.” Review of the “software as a service” Product Rider reveals that the Taxpayer purchased “subscribed solutions” from the Vendor. Review of the Statement of Work reveals that the Vendor will implement the subscribed solutions “on a hosted basis” and that the Vendor will migrate “the final database to the cloud.”

Conclusion

Based on review of the facts and the supporting documentation provided, licensing of the subject software product is not subject to Florida sales and use tax.

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 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 that 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 10 days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850) 717-6839.

Sincerely,

Brinton Hevey
Tax Law Specialist
Technical Assistance and Dispute Resolution

Record ID: 146583