



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

**Jim Zingale**  
Executive Director

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**QUESTION:** Whether sales of [learning services] and [internal email service] are subject to the Communications Services Tax?

**ANSWER:** Sales of [learning services] services include video services subject to Communications Services Tax. However, sales of [internal email service] are an electronic mail/information service not subject to Communications Services Tax.

October 7, 2022

XXXXX  
XXXXX  
XXXXX  
XXXXX

Via Email: XXXXX

Re: Technical Assistance Advisement – TAA # 22A19-002R  
Communications Services Tax  
Chapter 202, Florida Statutes (“F.S.”)  
XXXXX (“Taxpayer”)  
Business Partner # XXXXX

Dear XXXXX:

This is in response to your letter dated November 4, 2021, requesting this Department’s issuance of a TAA pursuant to Section 213.22, F.S., and Chapter 12-11, Florida Administrative Code, regarding the application of Communications Services Tax as it relates to Taxpayer’s service offerings. Your request 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.

**REQUESTED ADVISEMENT**

Whether sales of [learning services] and [internal email service] are subject to the Communications Services Tax (“CST”)?

## FACTS PROVIDED

Your request provides in part, the following:

### **I. Facts & Background**

[Taxpayer] is an online professional network platform that allows individual and business members to stay connected with each other and various career opportunities. [Taxpayer] offers products and services which service to facilitate collaboration, enhance professional connections, and promote business growth. The service offerings relevant to this request include [learning services] and [internal email service]. Additional information related to these service offerings are discussed below.

#### **a) [Learning Services]**

[Learning services] is an online educational platform that allows users to stream courses and instructional videos on a variety of subjects. The courses are available to users online or may be downloaded using the mobile version of [learning services] such that users can access the courses ... offline. The downloaded courses may only be accessed by the users and cannot be shared or transferred. Users can choose to add these courses and related skills to their [Taxpayer] profiles once ... completed .... [M]ost courses are created by [Taxpayer].... [T]hrough [learning services], businesses can create content specific to their organization for employees to access. Business users may upload the organization's ... custom videos, documents, and links.

When users subscribe to [learning services], they can access the entire [learning services] library of content, post completed courses to their [Taxpayer] profiles, and get recommendations based on the skills they are interested in. To further enhance the user learning experience, many of the courses come equipped with exercise files, assessments, and transcripts for the video. Offline viewing is only available through the mobile app; at this time, videos cannot be downloaded on desktop or laptop devices. An active subscription is required for accessing [learning services] online and for offline viewing.

Users can also use [learning services] to provide feedback on courses as well as access Q&A sections regarding the courses. Courses can be purchased on a stand-alone basis or accessed as part of a premium subscription (i.e., premium business subscriptions or XXXXX) or a separate Learning subscription. Users who have a subscription through [learning services] or a premium subscription have access to all of the courses and may utilize the mobile application to access the courses offline. However, users that purchase individual courses a-la-carte can only download those specific courses using the mobile application. [Learning services] courses are not customized specifically for users and live trainings are not offered through the [learning services] platform.

**b) [Internal Email Service]**

[Internal email service] allows users to directly message another [Taxpayer] member that the user is not connected to. If users have a Basic (free) account ... they can only directly message [Taxpayer] members that they are connected to. They must upgrade to a Premium account to use [internal email service] messages. Users that pay a fee for a Premium account type are allotted a certain amount of [internal email service] credits (e.g., 5 [internal email service] credits) each month that they can use to send [internal email service] messages. Premium account members have the ability to purchase additional [internal email service] credits for an additional fee. While [internal email service] may be bundled with various [Taxpayer] service offerings, for purposes of this request, it should be assumed that [internal email service] is being purchased on a standalone basis and is not bundled with any other service offering.

**II. Issue**

Whether the sales of [learning services] and [internal email service] are subject to the Communication[s] Services Tax?

**III. Pertinent Authority**

In support of Taxpayer's position, you reference s. 202.11(1), (5), and (24), F.S., and TAA #s 14A19-006, and 19A-015. You also reference the "Permanent Internet Tax Freedom Act" (PITFA), a federal moratorium made permanent on February 24, 2016, which prohibits discriminatory taxes imposed on sales of Internet access services. Included within the definition of Internet access services is basic access to electronic mail services, whether procured independently or in conjunction with other Internet access services.<sup>1</sup>

**IV. Analysis****a) [Learning Services]**

Similar to taxpayer's offering discussed in Florida Technical Assistance Advisement 19A-015, [learning services] provides online courses that can be streamed via its website or downloaded onto an app. [Taxpayer] charges its customers based on the purchase of individual courses or on a monthly or yearly subscription to access unlimited courses. Similar to the determination in [TAA] 19A-015, charges for a course offered through [learning services] should not be considered the sale of a communications service, as the service being provided neither enables the customer to communicate nor is it a video, audio, or other programming service as defined for purposes of the CST.

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<sup>1</sup> 47 U.S.C § 151 (2020).

Rather, [learning services], as a cloud-based platform that allows users to stream and download courses and instructional videos on a variety of subjects, should be considered an information service and therefore not subject to the Florida CST.

**b) [Internal Email Service]**

... The purpose of [internal email service] is to contact individuals with specific employment history and attributes. As such, [internal email service] should be considered an electronic mail service, with components of information services, as users are provided access to information on individuals compiled by [Taxpayer]. Neither electronic mail service nor information services are included within the definition of communications services. Accordingly, [internal email service] should not be subject to CST in Florida.

Further, the “Permanent Internet Tax Freedom Act” (“PITFA”), prohibits discriminatory taxes imposed on sales of Internet access services, including access to electronic mail services, whether procured independently or in conjunction with other Internet access services. ...

Included with your request was a copy of *[Taxpayer] Service Terms* as of April 23, 2021,<sup>2</sup> *[Taxpayer] Subscription Agreement* as of March 5, 2021, order forms and invoices applicable to both [learning services] and [internal email service].

### **APPLICABLE LAW**

#### **Reliance on Technical Assistance Advisements:**

Section 213.22(1), F.S., states, in part, “... 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...” Therefore, the TAAs referenced in your request have not been taken into consideration during the review of your request.

#### **Communications Services Tax:**

Chapter 202, F.S., imposes Communications Services Tax on the retail sale of communications services, unless specifically exempt. Communications services tax is comprised of the Florida communications services tax and the local communications services tax.

The term “communications services” is defined broadly and means, in pertinent part, “... 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

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<sup>2</sup> [Taxpayer] Service Terms dated April 23, 2021 were revised - the current version is dated December 21, 2021.

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....” See s. 202.11(1), F.S. The term “video services” means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction; if any, required for the selection or use of a programming service .... The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.” See s. 202.11(24), F.S. (Emphasis Added).

Despite the broad definition of the term “communications services,” certain services are excluded from the definition of communications services, including Internet access service, electronic mail service, electronic bulletin board service, and information services. See s. 202.11(1)(a) and (1)(h), F.S.

Section 202.11(5), F.S., provides in part that an “information service” means “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services... . The term includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.” (Emphasis Added).

A sale of communications services occurs when communications services are provided for a consideration. Communications services tax applies to the retail sales price of communications services that (1) originate and terminate in Florida, or (2) originate or terminate in Florida and are charged to a Florida service address. See s. 202.12(1), F.S. Service address generally means the location of the communications equipment from which communications services originate or are received by the customer. For video services, the service address is the location where the customer receives the service in Florida. See s. 202.11(14), F.S.

### **[Learning Services]**

After completing the [Taxpayer] Subscription Agreement, which requires that the customer agree to “pay the fees for the Services in accordance with the payment terms stated in the ordering document,” Taxpayer will provide the customer access to its cloud-based platform that allows users to stream and download courses and instructional videos for various subjects.

You contend that the services provided by Taxpayer neither enable the customer to communicate nor is a video, audio, or other programming service as defined for communications services purposes. It is your contention that [learning services], should be considered an information service and therefore not subject to communications services tax. However, based upon the description of the services offered, as well as review of the documentation and information provided, and a preview of Taxpayer’s online educational platform, Taxpayer’s charge for its [learning services] offering is subject to communications services tax.

Here, Taxpayer's cloud-based platform allows customers to stream and download courses and instructional videos related to various subject areas. This offering is subject to the communications services tax because it involves the "transmission of video, audio, or other programming service to a purchaser ..." and includes "digital video." *See* s. 202.11(24), F.S. Despite your contention that [learning services] would be a tax-exempt information service, this offering enables customers to stream and download courses and instructional videos and therefore could not be an information service as the statutory definition of information service excludes a video service. *See* s. 202.11(5), F.S. Therefore, a service cannot be an information service if it meets, as it does here, the statutory definition of video service. The definition of video service, unlike information service, contains no test for the "primary purpose" of the transaction, therefore the underlying purpose of the video service is irrelevant. Accordingly, Taxpayer's [Taxpayer] Learning offering that includes audio or video are "video services" subject to the communications services tax.

### **[Internal Email Service]**

Taxpayer's [internal email service] feature allows users to directly message other [Taxpayer] members. Taxpayer offers a Basic (free) [internal email service] account or a Premium (paid) [internal email service] account. Basic account holders can only directly message members with whom they are connected; whereas Premium account holders are allotted a certain number of credits per month but have the ability to purchase additional credits for an additional fee. The credits can be used to send [internal email service] messages.

You contend that the purpose of [internal email service] is to contact individuals with specified employment history and attributes and should be considered an electronic mail service with components of information services. [Internal email service] users are provided access to information, related to individuals, that is compiled by Taxpayer.

Here, Taxpayer's [internal email service] offering does not involve the transmission or routing of voice, data, audio, video, or any other information in exchange for a consideration. Based on the information provided, Taxpayer is providing its users an information service that allows data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. Therefore, Taxpayer's charge for [internal email service] is an information service, not subject to communications services tax.

### **CONCLUSION**

Based upon review of the documentation and information provided, and preview of [learning services], Taxpayer's charge to its customers for sales of its [learning services] offering is a video service subject to Florida Communications Services Tax. However, Taxpayer's sales of its [internal email service] offering would be electronic mail/information services, not subject to Florida communications services 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 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 ten (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)717-6701.

Best Regards,

***Shundra McClean***

Shundra McClean

Tax Law Specialist

Technical Assistance & Dispute Resolution

Record ID: 7000623536

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