



**Question:**

Whether the provision of hardcopy materials subjects the entire charge for tuition to sales tax?

**Response:**

The provision of hardcopy materials does not subject the entire charge for tuition to sales tax. Taxpayer's charge for its service offering includes the provision of printed materials for which Taxpayer makes no separate charge; therefore, Taxpayer's provision of hardcopy materials would be inconsequential to its provision of online courses and deemed a service exempt from sales tax pursuant to s. 212.08(7)(v)1., F.S.

**Question:**

Whether a student's purchase of the Technology Package upgrade subjects the entire charge for tuition to sales tax or would the tax base be limited to the \$█████ upgrade charge ?

**Response:**

A student's purchase of the Technology Package upgrade does not subject the entire charge for tuition to sales tax, but does subject the entire charge for tuition to communications services tax. The charge for the iPad is considered part of the "sales price" for the communication services, pursuant to s. 202.11(13), F.S. Therefore, Taxpayer's total charge for tuition, which includes the provision of video services and the charge for the iPad, is subject to communications services tax, when provided to a Florida service address.

**Question:**

Whether the video component of Taxpayer's services subjects the entire price of tuition to communications services tax?

**Response:**

The video component of Taxpayer's services does subject the entire price of tuition to communications services tax. When Taxpayer receives consideration from students to access its online courses, which includes video services subject to communications services tax, Taxpayer is engaged in the sale of communications services and should therefore charge communications services tax on its sales of communications services when charged to a Florida service address.

April 6, 2023

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Via email: [REDACTED]

Re: Technical Assistance Advisement – TAA #: 23A-009  
Sales and Use Tax & Communications Services Tax  
[REDACTED] (“Taxpayer”)  
Sections 202.11, 202.12, 212.02, 212.05, 212.055, 212.06, 212.07, 212.08 and  
212.21, Florida Statutes (“F.S.”)  
Rules 12A-1.045, 12A-1.062 and 12A-1.091, Florida Administrative Code (“F.A.C.”)  
BP #: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated, September 21, 2021, requesting this Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to Section (s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C., regarding the matter discussed below. 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 ADVISEMENTS**

- 1) Whether the provision of hardcopy materials subjects the entire charge for tuition to sales tax?
- 2) Whether a student’s purchase of the Technology Package upgrade subjects the entire charge for tuition to sales tax or would the tax base be limited to the \$[REDACTED] upgrade charge?
- 3) Whether the video component of Taxpayer’s services subjects the entire price of tuition to communications services tax?

**FACTS**

Your petition provides, in part:

Taxpayer is a [REDACTED], headquartered in [REDACTED]. Taxpayer provides web-based bar exam preparation courses dedicated to help bar exam candidates prepare for and pass state bar examinations. The courses are state specific and are currently offered for 46

jurisdictions. The courses are delivered asynchronously via a custom learning platform. Taxpayer differentiates itself from other bar preparation services by providing an interactive and personalized experience for each student. The bar exam preparation services include the following components:

### ***Adaptive Calendar and Progress Monitoring***

Taxpayer creates a daily study calendar for each student that is based on the bar exam date, the study start date, and the curriculum to be reviewed. The calendar tracks the student's progress on lectures, practice questions, and essays, and will redistribute tasks based on whether the students' programs is ahead of or behind schedule. Taxpayer's platform also has a performance monitoring dashboard that measures the students' progress by module – outlines, multiple choice questions, and essays. The performance monitor compares an individual student's progress to his or her personalized study plan and to the scoring progress that his or her peers are achieving.

### ***Outlines and Lectures***

Taxpayer provides an outline of each exam subject in the course curriculum. The material in the outline is also presented to students by subject matter experts via prerecorded lectures that students may watch on-demand from the Taxpayer's website or app. The lectures are generally accompanied by assessment quizzes, and online flash cards for the different topics are also available.

### ***Practice Multiple-Choice Questions***

Practice multiple choice questions are provided in assessment quizzes and simulated exams. The feedback for the multiple-choice questions includes explanations as to why the choices were correct or incorrect, with the incorrect answers directing the student to the relevant part of the outline to review. Additional feedback metrics include the time it took to answer each question as well as a popularity index, which shows how all other students answered the question, thus gauging the question's difficulty.

### ***Practice Essays***

Practice essay questions are graded by a dedicated essay grader that grades all of that student's practice exams. The grader is a licensed attorney that is trained in bar review essay grading. The grader provides a numerical score and substantive feedback on the essay. Students may have up to eight essays graded, unless they opt to purchase unlimited essay grading. Taxpayer assigns a dedicated individual to grade all of a student's essays because the single grader can better monitor a student's progress over time and can build a rapport with the student. This comparative grading would not be possible with randomly assigned graders.

### ***Personalized Success Team***

Each student has a personalized success team comprised of a dedicated essay grader, a local Director, and an Attorney Advisor. This team provides individualized support for grading and feedback, performance monitoring, substantive law questions, and study

strategies. Communication with the personalized success team occurs primarily via the in-platform Message Center, where students can submit their questions via pre-set categories – Substantive Law, Study Strategies, Customer Service, and Technical Support. Live messaging does not occur through the platform. Students may also set up an appointment for a telephone call with an employee [of Taxpayer] if they are seeking additional guidance regarding study strategies. Telephone calls take place outside of the platform.

### ***Hardcopy Materials***

Students receive a hardcopy set of materials that includes Multistate Bar Exam outlines, state-specific outlines, Multistate Performance Test questions, lecture handouts, and simulated exam questions. The Multistate Performance Test and simulated exam questions do not include any answers; students must access the answers and explanations via the online course platform. All content provided in the hardcopy materials is also available on the online course platform.

Taxpayer does not offer the hardcopy materials for standalone purchase, unless a student [requests] a replacement copy. In that case, Taxpayer will charge separately for any replacement materials that a student may request. Taxpayer does not separately charge the student for the hardcopy materials. Students may opt out of receiving the hardcopy materials, but students that elect not to receive the hardcopy materials do not receive any course discount. The printing cost of hardcopy materials to Taxpayer can range from approximately \$ [redacted] to \$ [redacted], depending on which state's exam the curriculum covers. Comparatively, the overall course tuition charge to the students is approximately \$ [redacted]. Taxpayer also bills the students a separate standard shipping fee of [redacted] to ground ship the hardcopy materials to a location within the United States. Historically, Taxpayer has paid sales tax on its purchase of the printed materials to printers that have charged ... sales tax. For other printers that have not charged tax, Taxpayer has not self-assessed and paid the tax.

### ***Technology Package Add-on***

Students may also select as an add-on a Technology Package upgrade. Students purchasing the \$ [redacted] Technology Package upgrade receive an iPad from Taxpayer. The \$ [redacted] fee which is listed on Taxpayer's website, order forms, and promotional materials, is added to the student's course tuition. Non-payment of the iPad add-on fee does not restrict access to the online course platform, but rather prevents the shipment of the iPad to the student. For students that purchase the iPad, the shipping charge is increased by \$ [redacted]. Taxpayer makes little to no margin on the iPad; it is essentially provided at cost plus the sales tax paid by Taxpayer on its purchase of the iPads. Only about 10% of students purchase this add-on. [*The iPad is an 8th Generation, 128 GB*].

\* \* \*

## **TAXPAYER POSITION**

With regard to whether Taxpayer's provision of hardcopy materials subjects the entire charge for tuition to sales tax - it is Taxpayer's position that the hardcopy materials are inconsequential to providing its web-based bar exam preparation courses and the shipment of hardcopy materials to students does not subject the charge for tuition to sales tax.

You state that because the cost of the hardcopy materials is not separately stated to the students, the question becomes whether the materials are an inconsequential element to the transaction. To make this determination you state that the transaction must be considered based on whether:

- i) the hardcopy materials are produced in the course of the services rendered, in which case you state that although the hardcopy materials are not [S/C] produced as a result of Taxpayer's services, the measure of the materials' significance is more appropriately obtained by comparing the value and necessity of the materials to the other components of the courses.
- ii) the value of the individual effort involved in the services provided in comparison to the value of the hardcopy material – to which you contend the cost of the hardcopy materials is minute in relation to the overall charge for tuition and the cost of delivering the components of the courses. You state that the cost of delivery and coordination of the services, is the most valuable component in terms of cost. You further state that the primary value drivers are the personal and technological elements of Taxpayer's services which make its students more likely to pass the bar exam. You state that the monetary value of the hardcopy materials is reflected in the fact that the books are generally not available for standalone purchase and likely add very little value to the students.
- iii) it is essential to the transaction that the hardcopy materials be created. You state that while the hardcopy materials provide a degree of convenience for students, they do not include any course content that is not also available via Taxpayer's online platform - a student can complete all coursework and practice questions without use of the printed materials. It is your opinion that the hardcopy materials are not essential to Taxpayer's service offering.

According to Taxpayer's Enrollment Policies<sup>1</sup>, Taxpayer charges a \$█ fee, plus \$█ in shipping - per book, and any applicable taxes to replace a lost, stolen or damaged course book. The charge to replace an entire set of materials is \$█, plus a \$█ shipping fee, and any applicable taxes.

As to whether a student's purchase of the \$█ Technology Package for the iPad subjects the entire charge for tuition to sales tax or whether the tax base would be limited to the \$█ charge for the iPad. It is Taxpayer's position that the price of its service offering is not linked to the Technology Package – as the iPad is not inextricably intertwined with Taxpayer's charge for tuition; therefore, sales tax should only be charged on the \$█ Technology Package. You further state that Taxpayer's service offerings are not dependent on a student having an iPad – as the course content may be accessed by a student using a capable computer or other device, including an iPad, whether obtained from Taxpayer or another vendor. You state that the price of tuition does not change

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<sup>1</sup> █

regardless of whether the student obtains an iPad from Taxpayer, purchases an iPad from another vendor, or has no tablet at all.

Regarding whether the video component of Taxpayer's service offering subjects the entire price of tuition to communications services tax, it is Taxpayer's position that despite having a video component, its services are not video services, but are more appropriately considered an information service accessible via a communications service, which does not constitute a taxable communication service.

According to the "Specifications" in Taxpayer's Terms of Use<sup>2</sup>:

It is recommended that you use a high speed Internet connection for video playback in order to attain optimum performance when operating the Portal.

\* \* \*

*Newton's Telecom Dictionary*<sup>3</sup> defines the term "playback" in part, as "... the process of viewing multimedia materials created by an author. Playback can include a range of activities, from viewing a single video clip to participating in a series of interactive multimedia training modules. ..."

It is Taxpayer's position that its tuition charges are not subject to Florida sales tax or Florida communications services tax. Taxpayer opines that only the \$█ charge for the Technology Package and the printing costs for the textbooks/written materials would be subject to Florida sales or use tax if Taxpayer has not already paid sales tax to its vendor.

## **LAW AND DISCUSSION**

### **Sales and Use Tax**

All sales of tangible personal property<sup>4</sup> in the State of Florida are subject to tax, unless specifically exempt by Chapter 212, F.S. See ss. 212.05(1)(a)1.a. and 212.21(2), F.S. The tax is due and payable at the rate of six percent (6%), plus any applicable surtaxes imposed under s. 212.055, F.S. Sales tax applies to the "sales price," and includes "the total amount paid for tangible personal property, including any services that are part of the sale. See s. 212.02(16), F.S. Service only transactions that do not involve the sale of tangible personal property are generally not subject to tax, unless the taxation of the service is specifically authorized under Chapter 212, F.S. However, when services are sold as part of the same sale as tangible personal property, the services are part of the sales price upon which tax is computed.

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<sup>2</sup> █

<sup>3</sup> See *Newton's Telecom Dictionary*. (2013). p. 923.

<sup>4</sup> "Tangible personal property" includes personal property "which may be seen, weighed, measured, or touched or is in any manner perceptible to the sense." See s. 212.02(19), F.S.

Florida law provides for the imposition of a complementary use tax upon tangible personal property that is not sold at retail in this state, but is instead “used, consumed, stored, or distributed for use or consumption in Florida.” See ss. 212.05(1)(b) and 212.06(1)(a), F.S., and Rule 12A-1.091(7), F.A.C. The tax is imposed on the “cost price”<sup>5</sup> of the item at the moment of commingling with the general mass of property in this state. See s. 212.06(1)(a), F.S.

Section 212.07(8), F.S., provides in part, “[a]ny person who has purchased at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property ... taxable under this chapter ... and cannot prove that the tax levied by this chapter has been paid ... is directly liable to the state for any tax, interest, or penalty due on any such taxable transactions.”

Section 212.08(7)(v)1., F.S., exempts from tax “professional, insurance, or personal service transactions that involve sales of tangible personal property as inconsequential elements, for which no separate charge is made.” Section 212.08(7)(v)2., F.S., and Rule 12A-1.062, F.A.C., promulgated to administer the referenced law, states that the sale of information services involving the furnishing of printed, mimeographed, multigraphed matter, or matter duplicating written or printed matter, other than professional services and services of employees, agents or other persons acting in a representative or fiduciary capacity, are taxable. See Rule 12A-1.062(1), F.A.C.

For sales and use tax purposes, the term “information services” means and includes “the services of collecting, compiling, or analyzing information of any kind or nature, or furnishing reports thereof to other persons. See Rule 12A-1.062(3)(a), F.A.C. However, the term “information services” does not include the furnishing of information, that is not or may not be substantially incorporated into reports furnished to others. Additionally, “the 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 Rule 12A-1.062(3)(b) and (5), F.A.C.

For the exemption provided under s. 212.08(7)(v)1., F.S., to apply, it must be clearly established that any tangible personal property, such as, printed material, sold is an inconsequential element of the services provided and that no separate charge is made for the printed materials.

### **Delivery Charges**

Rule 12A-1.045, F.A.C., provides in part:

- (1) “Transportation charges” include carrying, delivery, freight, handling, pickup, shipping, and other similar charges or fees.
- (2) Transportation charges which are not separately stated on an invoice or bill of sale but are included in the sales price of taxable tangible personal property, are subject to tax.

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<sup>5</sup> The term “cost price” means “the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.” See s. 212.02(4), F.S.

(3)(a) Where the seller agrees to deliver tangible personal property to some designated place and the purchaser cannot elect to avoid the charge for transportation services, the charge for the transportation service is subject to tax, even if separately stated on an invoice or bill of sale.

\* \* \*

(4)(a) The charge for transportation services is not subject to tax when both of the following conditions have been met:

1. The charge is separately stated on an invoice or bill of sale; and,
2. The charge can be avoided by a decision or action solely on the part of the purchaser.

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### **Communications Services Tax**

Chapter 202, F.S., imposes communications services tax on the sale of “communications services” in Florida. The term “communications services” means “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 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 its broad definition, the term “communications services” does not include “information services,” which are defined as the “... the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services, including, but not limited to, electronic publishing .... 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.) See s. 202.11(1)(a) and (5), F.S.

A “sale” of communications services occurs when communications services are provided for a consideration. See s. 202.11(12), F.S. 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. For video services, a service address is the location where the customer receives the services in Florida. See s. 202.11(14), F.S.



The term “sales price,” as defined by s. 202.11(13), F.S., means, in part “... the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service, ... which is part of the sale and for which the charge is not separately itemized on a customer’s bill ....” However, the sales price of communications services does not include, charges for property or other services that are not part of the sale of communications services if the charges are stated separately from charges for communications services or charges for goods or services that are not subject to tax under this chapter, including Internet access services but excluding any item described in paragraph (a), that are not separately itemized on a customer’s bill, but that can be reasonably identified from the selling dealer’s books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer’s entire service area, including territories outside this state. See s. 202.11(13), F.S.

Based on the facts presented, Taxpayer provides online bar exam preparation courses that are specific to the states where offered. The courses are delivered asynchronously through Taxpayer’s web-based learning platform which provides students an interactive and personalized experience. Taxpayer’s bar exam preparation services include adaptive calendar and progress monitoring, outlines and lectures, practice questions and essays, hardcopy materials, a personalized success team and an optional enhanced Technology Package (iPad).

Taxpayer opines that its tuition charges are not subject to Florida sales tax or Florida communications services tax. Taxpayer contends that the \$█ charge for the Technology Package and the printing costs for the textbooks/written materials would be subject to Florida sales or use tax, if Taxpayer has not already paid sales tax to its vendor.

### **Hardcopy Materials**

Taxpayer contends that its charge for hardcopy materials is not separately stated from its charge for tuition. As Taxpayer states, a student can complete the coursework and practice questions without use of the printed materials.

In this case, Taxpayer’s charge for its service offering includes the provision of printed materials for which Taxpayer makes no separate charge; therefore, Taxpayer’s provision of hardcopy materials would be inconsequential to its provision of online courses and deemed a service exempt from sales tax pursuant to s. 212.08(7)(v)1., F.S. As such, Taxpayer should not charge sales tax on its service offering. In the event Taxpayer charges a student for a replacement of the hardcopy materials, Taxpayer should charge sales tax on the hardcopy materials as well as any shipping charges which are not optional to the student. As the ultimate consumer of the hardcopy materials that is included in its charge for tuition, Taxpayer is liable for use tax on the cost price of those materials.

### **Technology Package**

Taxpayer asserts that the price of its service offering is not linked to the Technology Package – as the iPad is not inextricably intertwined with Taxpayer’s charge for tuition and that the service offerings are not dependent on a student having an iPad. Taxpayer’s course content can be

accessed using any capable computer or device, including an iPad, whether obtained from Taxpayer or other means.

Here, Taxpayer offers students an option to purchase an iPad for \$[REDACTED]. Taxpayer's enrollment forms and promotional material reflect the additional cost for the iPad, but the invoice Taxpayer issues to the student may not reflect a separate charge for the iPad. In this case, the charge for the iPad is considered part of the "sales price" for the communication services, pursuant to s. 202.11(13), F.S. Therefore, Taxpayer's total charge for tuition, which includes the provision of video services and the charge for the iPad, is subject to communications services tax, when provided to Florida service address.

### **Video Component**

Taxpayer states that despite having a video component, its online courses are not "video services," but instead, providing access to information via a communications service – not subject to communications services tax.

Pursuant to the definition of "video services" as provided in s. 202.11(24), F.S., Taxpayer's online courses includes the transmission of video programming services to a purchaser and the purchaser's interaction, if any, required for the selection or use the programming service. The term includes digital video services. Therefore, when Taxpayer receives consideration from students to access its online courses, which includes video services subject to communications services tax, Taxpayer is engaged in the sale of communications services and should therefore charge communications services tax on its sales of communications services when charged to a Florida service address.

## **CONCLUSIONS**

### **Question:**

Whether the provision of hardcopy materials subjects the entire charge for tuition to sales tax?

### **Response:**

The provision of hardcopy materials does not subject the entire charge for tuition to sales tax.

Taxpayer's charge for its service offering includes the provision of printed materials for which Taxpayer makes no separate charge; therefore, Taxpayer's provision of hardcopy materials would be inconsequential to its provision of online courses and deemed a service exempt from sales tax pursuant to s. 212.08(7)(v)1., F.S.

### **Question:**

Whether a student's purchase of the Technology Package upgrade, subjects the entire charge for tuition to sales tax or would the tax base be limited to the \$[REDACTED] upgrade charge ?

**Response:**

A student's purchase of the Technology Package upgrade does not subject the entire charge for tuition to sales tax, but does subject the entire charge for tuition to communications services tax.

The charge for the iPad is considered part of the "sales price" for the communication services, pursuant to s. 202.11(13), F.S. Therefore, Taxpayer's total charge for tuition, which includes the provision of video services and the charge for the iPad, is subject to communications services tax, when provided to Florida service address.

**Question:**

Whether the video component of Taxpayer's services subjects the entire price of tuition to communications services tax?

**Response:**

The video component of Taxpayer's services does subject the entire price of tuition to communications services tax.

When Taxpayer receives consideration from students to access its online courses, which includes video services subject to communications services tax, Taxpayer is engaged in the sale of communications services and should therefore charge communications services tax on its sales of communications services when charged to a Florida service address.

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 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 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 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: 603366

cc:

[Redacted]

## TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000603366

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.