

201705045L [Tax Type: Sales] [Document Type: Letter/Memo]

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Texas Comptroller of Public Accounts STAR System

201705045L

May 30, 2017

Re: Private Letter Ruling No. 151250584

Dear *****:

This letter is issued in accordance with Rule 3.1, Private Letter Rulings and General Information Letters. [ENDNOTE 1] We are responding to your request dated April 21, 2015. Detrimental reliance relief is provided in accordance with Rule 3.10, Taxpayer Bill of Rights.

You requested guidance regarding the taxability of a text and messaging service offered through a cloud-based software system. You also requested guidance about the taxability of printer usage fees.

Relevant Facts

The description of relevant facts is based on publicly-available information published on *****'s (Taxpayer) website, as well as the description of Taxpayer's business provided in the private letter ruling request.

Taxpayer, located in California, offers a cloud-based software platform marketed as "a better, faster way to communicate with today's customers." [ENDNOTE 2] Subscribing businesses access the platform through a web-based application called the dashboard. From the dashboard application, subscribing businesses can interact with customers through text and other mobile messaging channels. Subscribing businesses do not download or install Taxpayer's software.

When a business has subscribed to Taxpayer's service, its customers can text questions, requests, orders or other messages to the business from any type of mobile device. Taxpayer reconfigures the incoming communication for display on the business's dashboard application. This may include, for example, translating a message from a foreign language into English. The subscribing business can respond to incoming messages with a pre-set reply, a custom response, or both. The outgoing response, whether pre-set or custom, is reconfigured for transmission back to the customer's device.

The dashboard gives businesses the ability to manage conversations, analytics, contacts, and automations from any device. Taxpayer's services include data and analytics functions that track and report communication activity. For example, a subscribing business can generate a report on the number of request per day, the categories of requests, and the average response times. The dashboard also stores data, allowing a business to display all communications with a particular customer.

Taxpayer also provides the rental of specialized printers designed to print customer's messages. For example, a customer text messages a coffee order to a subscribing coffee shop through Taxpayer's software. The coffee shop uses the specialized printer to print out the message and then fills the order. Charges for the specialized printers are separately billed as a "Usage Fee" and are not a required component of Taxpayer's services.

Rulings and Analysis

Our restatement of your questions is shown below, followed by our rulings and analysis.

Question 1: Is Taxpayer's cloud-based software texting service subject to Texas sales and use tax?

Ruling: Taxpayer provides a taxable data processing service. The first 20 percent of data processing service charges are not subject to Texas sales and use tax, pursuant to Section 151.351 and Rule 3.330(b).

Analysis:

Data processing services are defined in Section 151.0035, in relevant part, as word processing, data entry, data retrieval, data search, information compilation, and other computerized data and information storage or manipulation.

Through its archiving and report functions, Taxpayer stores customers' messages, and information about the messages, for subsequent retrieval. It also receives and processes data for subscribers. Taxpayer translates incoming messages into an accessible format, and creates analytic reports for the subscriber's use.

Further, Taxpayer's services fall squarely within the exclusion from telecommunications services for data processing. Section 151.0103 defines telecommunications services and expressly excludes the storage of data or information for subsequent retrieval. It also excludes "the processing, or reception and processing, of data or information intended to change its form or content."

Taxpayer's dashboard service is software as a service (SaaS). As the agency has previously noted, SaaS is commonly defined as "a software application delivery model where a software vendor develops a web-native software application and hosts and operates (either independently or through a third-party) the application for use by its customers over the Internet. Customers do not pay for owning the software itself but rather for using it." [ENDNOTE 3] SaaS is a taxable data processing service.

Section 151.351 exempts the first 20 percent of data processing service charges from Texas sales and use tax. *See also* Rule 3.330(b). Only 80 percent of Taxpayer's service fees are subject to Texas tax.

Question 2: Is Taxpayer's printer usage fee subject to Texas sales and use tax?

Ruling: Taxpayer's separately stated charge for the rental of a specialized printer is subject to Texas sales and use tax.

Analysis:

The sale, lease, or rental of tangible personal property in Texas is subject to Texas sales tax. *See* 151.010 (Taxable Item) and 151.051 (Sales Tax Imposed). Similarly, the use in Texas of tangible personal property purchased, leased, or rented outside of this state is subject to Texas use tax. *See* Section 151.101 (Use Tax Imposed).

Taxpayer's specialized printers are tangible personal property. Therefore, the separately stated charge for the rental of the specialized printer (*i.e.*, the Usage Fee) is subject to Texas sales and use tax as the rental of tangible personal property. *See* Rule 3.294.

Comptroller's Decisions and STAR documents cited can be found on the Comptroller's State Tax Automated Research (STAR) system. The Texas Tax Code, Texas Administrative Code, and the STAR system are accessible at www.comptroller.texas.gov/taxes/.

If you have questions about this private letter ruling, please email us through our website at <https://comptroller.texas.gov/taxhelp/> and reference Private Letter Ruling #151250584.

Sincerely,
Tax Policy Division
Indirect Taxes

ENDNOTES

1 Unless otherwise indicated, all references to "Section" are to the Texas Tax Code, and all references to "Rule" are to Title 34 of the Texas Administrative Code.

2 Taxpayer's website (last visited May 5, 2017).

3 *See* STAR Accession No. 200805095L (May 28, 2008).

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