



# This Week in State Tax (TWIST)

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## Florida: Customized Digital Video and Bar Prep Services Subject to Communications Services Tax

The Florida Department of Revenue recently issued two Technical Assistance Advisements concluding that certain types of services were subject to the state's Communications Services Tax.

In Technical Assistance Advisement-TAA # 23A19-001, the taxpayer offered customers the ability to customize messages pre-recorded by talent, such as entertainers, musicians, athletes, or other social media personalities. The messages were viewed, downloaded, or streamed through the taxpayer's website or mobile application using the customer's own internet access; they were not transmitted to the public or other customers. The taxpayer collected payment for the messages and transmitted most of the payment to the individual who recorded the message. The taxpayer's position was that it was providing a personal/information service and not a taxable video service because the messages were customized. Further, customers were not paying for and did not receive access to digital content such as movies, television shows, and sporting or news events. The taxpayer also asserted that if it was required to collect communications services tax, it should be required to do so on only the amount it retained and not the portion of the cost paid over to the talent. The Department of Revenue disagreed, concluding that the taxpayer's charges were subject to communications services tax on the full amount of the sales price collected from the customer. In the Department's view, the services involved the "transmission of video, audio, or other programming service to a purchaser," and they were included in the definition of taxable video services. Consistent with other rulings, the Department noted its position that if a service was a taxable video service, it could not also be an information service. Therefore, the taxpayer's offerings that included audio or video were "video services" subject to the communications services tax.

In Technical Assistance Advisement-TAA# 23A-009, the taxpayer provided bar exam preparation services that were delivered through the taxpayer's web-based learning platform. In addition to outlines and practice bar exams and essays, students had access to pre-recorded lectures that could be viewed on-demand from the taxpayer's website or app. One issue presented in the TAA for the Department's consideration was whether the provision of on-demand video lectures subjected the entire price of tuition to communications services tax. In the Department's view, the taxpayer was providing digital video services because its online courses "included 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 Department concluded that when the taxpayer received consideration from students to access its online courses, which included video services subject to communications services tax, the taxpayer was engaged in the sale of communications services. As such, communications services tax should be charged on all tuition received from sales to customers with a Florida service address. Please contact Amanda Ribeiro with questions.

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