

# Florida – Licensing and advertising revenue sourced to customer location

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## In brief

The Florida Department of Revenue issued guidance providing that the income producing activity relating to licensing and advertising revenue occurs where the service is delivered to the customer, which effectively mirrors a market-based approach. Although the Department continues to look at the sourcing of service receipts on a case-by-case basis, Florida service providers, especially those with opposite facts – e.g., those that incur significant Florida costs when delivering services – may look to the TAA for guidance concerning how to source service revenue. [[Technical Assistance Advisement 13C1-004](#), (5/21/13)]

## In detail

### Facts

The Technical Assistance Advisement addresses the licensing and advertising revenue sourcing of ten Taxpayers, all which perform (or are partners in a partnership that performs) services, including:

- packaging and distributing originally produced and third-party television content to customers across Florida and the United States
- developing content for specific cable television Channels, such content is generally produced and packaged outside of Florida

- licensing the right to broadcast Channels to unrelated cable television and satellite television network Operators throughout the United States.

Taxpayers receive two revenue streams relevant to the TAA:

- **Licensing fees** from licensing and distributing content to the Operators
- **Advertising receipts** from the sale of advertising ‘spots’ in the programming licensed to Operators.

### ***Receipts from services sourced to location where ‘directly engaged activity’ occurs***

The Department recognized that, for purposes of the state’s sales factor, Florida sources gross receipts from sales other than sales of tangible personal property to where the ‘income producing activity’ that gave rise to the receipt is performed. Further, ‘income producing activity’ is defined as “the transaction and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits.”

### ***Licensing fee revenue sourced to customer location***

Taxpayers earn revenue from licensing fees, which are

contractual per subscriber rates based on the demand for the content distributed. Taxpayers and Operators enter into licensing agreements that run for several years, which allow the Operators to broadcast the channel programming to their subscribers. The number of subscribers served by the Operator determines the total amount of licensing fees collected.

The Department determined that *delivery* of programming is “the transaction and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits.” Accordingly, Taxpayers’ delivery of programming content to Operators is the income producing activity generating revenue and occurs where the Operator is located.

#### ***Advertising revenue sourced to customer location***

Revenue from ‘spots,’ advertising space embedded in the Channel programming, depends on the target audience and whether such spots are offered nationally or locally. National spots are sold to advertisers reaching customers throughout the United States. Local spots are sold to advertisers targeting customers specifically to where the Operators viewers are located.

The Department noted that although activities related to the production of the advertising income may occur in and outside of the State, (such as the gathering, accumulating and processing of all necessary information to develop and produce the advertisements), such activities cannot rightly be called income producing activities since there is no “transaction involved or income earned.” The income producing activity is the sale of advertising time and not the activities leading up to the sale. The advertising revenue earned will constitute a Florida sale when Taxpayers’ customers (the advertisers) are located in the state.

#### ***The takeaway***

In determining where ‘income producing activity’ occurs, the Department appears to take a market-based approach by focusing on the location of the customer rather on all costs incurred to deliver the service. In this case, Taxpayers incurred costs inside and outside of Florida to create content delivered to Operators. For licensing revenue, the Department ignored such costs and looked only to where programming content was delivered, which was the location of the Operator.

This decision draws similarities to the ‘operational’ vs. ‘transactional’

approaches to sourcing service income under the costs-of-performance methodology – which recently resulted in opposite conclusions for the same taxpayer in two different state decisions. In Massachusetts, a court found that costs of providing long distance telecommunication services were sourced using costs of the taxpayer’s global network (the operational approach) ([click here](#) for our summary). The Oregon Tax Court held that receipts from the same services from the same taxpayer were sourced to the location of the customer (the transactional approach). Massachusetts recently [issued guidance](#) regarding its operational approach, suggesting that a different result could have occurred under different taxpayer facts.

Florida service providers, especially those with opposite facts – e.g., those that incur significant Florida costs when delivering services - may look to the TAA for guidance concerning how to source service revenue. However, the Department did note that the advisement is only binding for the facts described in the TAA. The state continues to look at gross receipts from other sales on a case-by-case basis and, depending on a taxpayer’s circumstances, a different outcome can occur.

### ***Let’s talk***

If you have questions about the Department’s advisement, please contact:

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