



May 25, 2007

General Tax Administration
Child Support Enforcement
Property Tax Administration
Administrative Services
Information Services

VIA FACSIMILE AND U.S. MAIL

Mr. Marion J. Radson
City Attorney
200 E. University Avenue, Suite 425
Gainesville, FL 32601

Re: Letter of Technical Advice
Communications Services Tax
Section 202.20, Florida Statutes (F.S.)

Dear Mr. Radson:

This is in response to your letters dated May 3, 2007, where you requested the issuance of a Technical Assistance Advisement (TAA) and follows a telephone conversation I had with Ms. Nicolle Smith on Tuesday, May 22, 2007. TAAs are written statements issued to taxpayers regarding the position of the Department on the tax consequences of a stated transaction or event, under existing statutes, rules, or policies. See generally Section 213.21, F.S., and Rule 12-11, Florida Administrative Code (F.A.C.) TAAs are binding upon the Department only with respect to the specific transaction and taxpayer in question. During my conversation with Ms. Smith, we agreed that I would issue to you an informal letter of technical advice in lieu of the more formal TAA. This was done primarily in recognition of your need for an expedient response, but also in recognition of the limited value that the more formal TAA would provide the City, given the nature of such advisements.

ISSUE

Whether a local taxing jurisdiction may adjust its local communications services tax rate pursuant to s. 202.20(2), F.S., more than once.

FACTS AS PROVIDED

The City [of Gainesville] is a municipal corporation existing under the laws of the State of Florida and is a local taxing jurisdiction for purposes of Chapter 202, F.S., known as the "Communications Services Tax Simplification Law" (the "Law").

On June 25, 2001, the City adopted Ordinance No. 001358 to establish the local communications services tax rates effective October 1, 2001 and thereafter. . .

On August 26, 2002, the City adopted Ordinance No. 020154 to increase the local communications services tax rates effective October 1, 2002 and thereafter. ... This emergency rate setting ordinance was the result of the City's analysis of revenue data for the periods ending December 31, 2001 and March 31, 2002. The data from those periods evidenced that the replaced revenue generated under the Law was less than the corresponding 2000-2001 period, plus the anticipated growth and one month of foregone revenues, thereby meeting the statutory requirement for the increase in rates as described in Section 202.20(2), F.S. ... and Rule 12A-19.050(3), F.A.C. ... The current rate under Ordinance No. 020154 is 5.32%.

City staff has recently re-analyzed the revenue data for the periods ending December 31, 2001 and March 31, 2002 and analyzed the revenue data for the periods ending June 30, 2002 and September 30, 2002 and determined that the replaced revenue for those periods was less than the corresponding 2000-2001 period, plus the anticipated growth as described in Section 202.20(2), F.S.

As a result of this recent analysis, City staff recommends another emergency rate increase. The proposed increased rate would be 7% for taxable sales on bills dated September 1, 2007 through August 31, 2008, and 5.57% for taxable sales on bills dated on or after September 1, 2008 (these proposed new rates include the .12% add-on authorized for electing not to collect permit fees pursuant to Section 337.401(3)(c)1.b., F.S.)

CITY'S POSITION

Section 202.20(2), F.S. does not expressly limit the number of times that an emergency rate increase may be adopted, nor does it state a deadline by which a local government must do so. The Section appears only to limit the revenue data periods upon which the rate increase analysis is based (i.e., periods ending December 31, 2001; March 31, 2002; June 30, 2002 and September 30, 2002). Therefore, it is the position of the City that the statute does not preclude the City from now re-analyzing the revenue data for the periods ending December 31, 2001 and March 31, 2002 and analyzing the revenue data for the periods ending June 30, 2002 and September 30, 2002 and adopting a second emergency rate increase pursuant to 202.20(2), F.S. ...

DISCUSSION AND CONCLUSION

The Department of Revenue has no statutory role in approving local communications services tax rates enacted by local taxing jurisdictions pursuant to s. 202.20(2), F.S. Having said that, the City's position cited above appears to be based upon a reasonable reading of Section 202.20(2), F.S. I see nothing contained in that statute, nor am I aware of any other provision of law that would prevent the City from adopting a second emergency rate increase under the facts provided.