

Sales/Use/Indirect:

Florida Circuit Court Holds that Intercompany Sales of Electronically Delivered Software are Not Taxable

Case No. 2021-CA-000206, Fla. Cir. Ct., Leon County (9/27/23). In a case involving electronically delivered software sold by a telecommunications company to an affiliate, a Florida circuit court (Court) recently held that the company was entitled to a refund of Florida sales tax on such transactions because it successfully showed that the software was neither a taxable sale of tangible personal property nor a service sold with tangible personal property. In doing so, the Court referenced a 2023 administrative law judge ruling from the Florida Division of Administrative Hearings and explained that electronically delivered software is an intangible rather than a service and thus not subject to Florida sales and use tax. The Court also explained that unlike customized software which may constitute a taxable service under Florida law, electronically delivered software is *not* a service. Moreover, the Court concluded that the electronically delivered software was not sold with tangible personal property under the provided facts. Please contact us with any questions.

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