

Sales/Use/Indirect:

New York: SaaS Provider's Vendor Management System Fees Deemed Taxable Software Licensing

Decision DTA No. 829516, N.Y. Tax App. Trib. (5/2/24). In a case involving a taxpayer providing a seamless, automated and efficient system of fulfilling and monitoring its customers' temporary employment needs through a "web based application delivered through a software-as-a-service model," the New York Tax Appeals Tribunal (Tribunal) affirmed an administrative law judge ruling [see *State Tax Matters*, Issue 2023-8, for details on this earlier ALJ ruling] that the taxpayer's charged vendor management system (VMS) fees constituted taxable licensing of prewritten software via a bundled transaction. In doing so, the Tribunal explained that the provided taxable prewritten software was the core element of the taxpayer's business and was anything but incidental or ancillary to its provided services. According to the Tribunal, although the software and license were packaged with the taxpayer's services and sold as one integrated "service," the customer contracts and record demonstrated that the software technology was the central element of those contracts and that customers were not just purchasing the taxpayer's services – in fact, they were purchasing prewritten software that they used to facilitate the sourcing, hiring and management of contract labor. The Tribunal also explained that "to find otherwise given these facts would effectively create an exemption for certain sales of tangible personal property where none exists in the law." Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/decisions/829516.dec.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230224_7.html

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