

Sales/Use/Indirect:

California Office of Tax Appeals Says Act of Processing Customer's Water to Snow is a Taxable Sale

Case No. 21088332, Cal. Off. of Tax App. (5/21/24). In a case involving an out-of-state company that contracts with customers to operate snowmaking equipment, produce artificial snow onsite at the customer location, and provide related services, a recently posted unpublished California Office of Tax Appeals (OTA) opinion held that the company's process of making snow for its California customers constitutes a taxable sale of tangible personal property for California sales and use tax purposes. Under the facts, the company brought its snowmaking equipment to its customers' sites and used its customers' liquid water (which the customers owned, respectively, both before and after the water was processed into snow) to make snow onsite. The OTA explained that the act of processing tangible personal property for customers who provide the material used in the processing is a taxable sale of tangible personal property under California law.

URL: <https://ota.ca.gov/wp-content/uploads/sites/54/2024/08/309-Snowmagic-PFR.pdf>

The OTA also noted that after the company created the snow using its customers' water, its customers (and the customers' guests) then used the snow in California. Accordingly, because the company operated in California for the purpose of selling tangible personal property and that tangible property was used by its customers in California, the company was a retailer engaged in business in California and, at a minimum, had an obligation to collect and remit use tax. Moreover, the OTA concluded that the true object desired by the company's customers was the snow itself and thus the transactions at issue constituted a "sale" of tangible personal property under California law. Among its arguments to the contrary, the company contended that its snowmaking process was *not* a taxable sale of tangible personal property because the process did not use chemical additives and simply reconditioned water from a liquid form to a solid form where nothing different was created. In response, the OTA explained that there is no requirement under Cal. Rev. & Tax Code section 6006(b) and accompanying California Code of Regulations, title 18, section 1526(a) that tangible personal property must undergo a change in its molecular composition to be considered a taxable sale in California. Please contact us with any questions.

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