

Sales/Use/Indirect:

New York: Telecom Deemed Not Liable for Sales Tax on Collected Federal Universal Service Fund Fees

Decision DTA No. 830442, N.Y. Div. of Tax App. (5/20/25). In a case involving a telecommunications company (telecom) that provides intrastate, interstate, and international voice over internet protocol (VoIP) telecommunication services to customers in New York, the New York Tax Appeals Tribunal (Tribunal) reversed a 2024 ruling issued by an administrative law judge at the New York State Division of Tax Appeals to hold that the Federal Universal Service Fund (FUSF) fees the telecom collected and recovered from its customers for its contributions to the FUSF were *not* subject to sales tax pursuant to New York Tax Law § 1105 (b). In doing so, the Tribunal concluded that the mandatory FUSF fees passed on to the telecom's customers constitute receipts of the nontaxable interstate and international services that are similarly excepted from taxation, rather than expenses of provided taxable telephony and telephone services that would have been a component of the taxable receipts. The Tribunal explained that because the New York Division of Taxation cannot tax interstate and international services, "it is not permissible to tax the federal regulatory surcharge on the nontaxable service." A dissenting opinion follows. Please contact us with any questions.

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