

Sales/Use/Indirect:

New York: Advisory Opinion Concludes that Financial Service Firm's Charges for Accessing Trading Platform are Taxable Receipts from Software Sale

TSB-A-24(43)S, N.Y. Dept. of Tax. & Fin. (10/8/24). A recently posted New York Department of Taxation and Finance advisory opinion involving a financial services firm that provides investment and risk management systems to clients – including three online-based products that are made available only to subscribing clients and involve a trading platform with various functionalities – concludes that based on the provided facts, its annual fee receipts from these three products constitute taxable receipts from the sale of prewritten computer software because its customers have the right to use, control, or direct the use of the software that underlies its products. To the extent that additional charges are made for access to additional software, “which appears to be the case for access to a premium risk service that is offered,” the opinion explains that these charges also would constitute taxable receipts from the sale of software.

URL: https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-43s.htm

Moreover, the opinion concludes that the *situs* of a sale for purposes of determining the proper local tax rate and jurisdiction is the location associated with the right to use the firm's software (*i.e.*, the location of the client or its employees (if applicable)); and if a client has employees located both in and outside of New York who use the firm's software, the firm must collect tax based on the portion of the receipts attributable to users located in New York. In doing so, the opinion notes that the location of the code embodying any of the software at issue is irrelevant, “because the software can be used just as effectively by a client even if such client never receives the code on a tangible medium or by download.” The opinion also distinguishes the facts at hand from an earlier referenced advisory opinion that involved nontaxable information services which qualified for the “personal or individual” exclusion. Please contact us with any questions.

— Philip Lee (Jericho)
Managing Director
Deloitte Tax LLP
philee@deloitte.com

Stephanie Csan (Morristown)
Managing Director
Deloitte Tax LLP
scsan@deloitte.com

Brianne Moriarty (New York)
Senior Manager
Deloitte Tax LLP
bmoriarty@deloitte.com

Justin Gulotta (New York)
Senior Manager
Deloitte Tax LLP
jgulotta@deloitte.com

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