

## Sales/Use/Indirect:

### New York: Advisory Opinion Addresses if Retailer that Stores Inventory at Fulfillment Center's In-State Warehouse is a Vendor

*TSB-A-24(45)S*, N.Y. Dept. of Tax. & Fin. (10/10/24). A recently posted New York Department of Taxation and Finance advisory opinion involving an out-of-state online retailer concludes that based on the provided facts, if the retailer's only in-state presence is the storage of inventory at an unaffiliated fulfillment center's in-state warehouses, then the retailer is not considered a "vendor" for New York sales tax purposes. The opinion notes that because the hired fulfillment company provides an internet platform on which sales of the retailer's tangible personal property are made, and it collects the receipts from such sales from customers, then it may be considered a "marketplace provider" under state law that is required to register and collect New York sales tax if certain *Wayfair* nexus-type thresholds are met. According to the opinion, if the fulfillment company qualifies as a marketplace provider under state law, it must collect sales tax on all sales of tangible personal property to New York customers that it makes or facilitates, including sales of the retailer's products, regardless of whether the services provided to the retailer are limited to fulfillment services as defined in Tax Law § 1101(b)(18). Please contact us with any questions.

**URL:** [https://www.tax.ny.gov/pubs\\_and\\_bulls/advisory\\_opinions/sales/24-45s.htm](https://www.tax.ny.gov/pubs_and_bulls/advisory_opinions/sales/24-45s.htm)

— 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

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).