

Income/Franchise:

New York City: Appellate Court Addresses Sourcing of Company's Subscription-Based Service Receipts

2021 NY Slip Op 02102, N.Y. App. Div. (4/6/21). The New York Supreme Court, Appellate Division (Court), considered the proper method for sourcing a company's receipts from subscription-based services for purposes of calculating the company's New York City general corporation tax (GCT) sales factor and liability. The Court affirmed that such receipts must be allocated to New York City based on compensation paid to its nonemployee consultants, research managers (who are employees), as well as certain other employees – focusing on the nature of the taxpayer's entire business operation and all the personnel who contribute to the performance of the services, including the company's salespeople, information technology (IT) staff and consulting managers. The company unsuccessfully claimed that the compensation it paid to certain employees who did not "perform" its core consulting services (*i.e.*, its salespeople, consultant managers, and IT personnel) must be excluded from the sourcing calculation because these employees did not generate receipts for tax purposes. In this respect, the company maintained that its GCT liability must be based solely upon the location of and amounts paid to its consultants and research managers who together perform the consulting services that it provides to clients. Affirming the New York City Tax Tribunal's 2017 ruling, the Court held that the taxpayer provides a "package" of services, rather than just consultation services, and that the efforts of its other non-consultant individuals "are all part of the delivery of services for which clients pay an upfront flat subscription fee and the fee is customized depending on the services purchased under the subscription agreement." Please contact us with any questions.

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