

Sales/Use:

Massachusetts High Court Affirms Abatements and Right to Apportion Tax Based on Where Software is Used

Case No. SJC-13013, Mass. (5/21/21). The Massachusetts Supreme Judicial Court (Court) affirmed a Massachusetts Appellate Tax Board ruling, which held that:

URL: <https://www.mass.gov/files/documents/2021/05/21/y13013.pdf>

1. Mass. G. L. c. 64H, § 1, provides taxpayers a statutory right to apportion sales tax on software transferred for use in more than one state, and
2. Sales tax abatements may be claimed by computer software vendors on software sold/licensed to a company based in Massachusetts but having employees both inside and outside of Massachusetts – agreeing that sellers first may remit tax based on the software’s full value and then subsequently seek a timely abatement under state law once the apportionment between software users in various states has been determined.

Under the facts, the vendors had remitted tax payments to the Massachusetts Department of Revenue (Department) based on the entire value of the software transactions and then subsequently claimed refunds when the Massachusetts company notified them that a portion of the software would be used outside of Massachusetts. The Department had denied the vendors’ abatement applications, claiming that its corresponding regulations for apportionment of sales tax on software transfers had not been followed. However, the Court explained that the Department’s regulations provide simple, efficient processes for taxpayers to follow in seeking apportionment at the time the sales tax is due but they “do not preclude taxpayers from achieving apportionment through the abatement process” after tax on the full value has been remitted.

See forthcoming Multistate Tax Alert for more details on this case and please contact us with any questions in the meantime.

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