

Sales/Use/Indirect:

New York: ALJ Holds that Fees Charged Were for Nontaxable Services Rather than Taxable Software

Determination No. 829434, N.Y. Div. of Tax App., ALJ Division (11/10/21). An administrative law judge with the New York Division of Tax Appeals held in a taxpayer's favor that when viewing its healthcare navigation service offering in its entirety, the primary function is to provide nontaxable services associated with the administrative part of its members' medical needs and thus its charged membership fees were *not* subject to state sales tax – reasoning that just because its customers may utilize the offerings through its software by accessing them through its web portal or mobile application does *not* make the services taxable. In doing so, the judge explained that the standard for determining the taxability of integrated services with multiple components is to determine the primary function of the service – clarifying that “something can be integral to a service without being the primary function.” The New York Division of Taxation unsuccessfully claimed that the taxpayer is selling taxable prewritten software for use of its mobile application and web portal, and that such use of the prewritten software is the primary function of its service offering. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/829434.det.pdf>

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

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

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

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 to learn more.