

Sales/Use/Indirect:

Massachusetts DOR Issues Release on Right to Apportion Tax Based on Where Software is Used

Technical Information Release (TIR) No. 22-8, Mass. Dept. of Rev. (5/19/22). The Massachusetts Department of Revenue (Department) released a technical information release (TIR 22-8) explaining its administration of a Massachusetts Supreme Judicial Court decision from 2021 [see Case No. SJC-13013, Mass. (5/21/21) and previously issued Multistate Tax Alert for more details on this case], which held that taxpayers have a statutory right to apportion sales and use tax on software transferred for a consideration for use in more than one state and that the general abatement process of G.L. c. 62C, § 37 is available to taxpayers seeking refunds based on such apportionment. According to TIR 22-8, the 2021 decision addresses “the general procedure for claiming a tax abatement with respect to software transferred for multi-state use,” but it “does not address the specific methods of apportioning the sales or use tax on such transfers.” Accordingly, the Department explains that “taxpayers should continue to follow the apportionment process set out in the Commissioner’s regulation,” and taxpayers “may apply for an abatement based on the apportionment of sales and use tax on software in the time and manner set out under G.L. c. 62C, § 37.” In either case, as per the regulation, TIR 22-8 states that the Department will generally accept an apportionment method that is based on the number of licensed users in a particular state; however, “other methods may also be considered reasonable, depending on the specific facts.”

URL: <https://www.mass.gov/technical-information-release/tir-22-8-decision-of-the-massachusetts-supreme-judicial-court-in-oracle-usa-inc-v-commissioner-of-revenue>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-mta-massachusetts-supreme-judicial-court-rules-in-favor-of-taxpayers-on-sales-tax-apportionment-for-software.pdf>

Furthermore, TIR 22-8 provides that the burden of proving whether an apportionment methodology meets such requirements is on the taxpayer seeking an abatement – noting that the apportionment “must accurately reflect the actual use, or a reasonable approximation of the use, of the software” in Massachusetts. To this end, a taxpayer that seeks to apportion a software transaction to one or more states other than Massachusetts must submit all documentation that substantiates the apportioned use in such other states. The apportionment method also “must be consistent and uniform and supported by the taxpayer’s books and records as they existed at the time the transaction was reported for sales or use tax purposes.” TIR 22-8 also cautions that the Department “may request additional documentation before making a determination whether a taxpayer seeking apportionment through an application for abatement has met its burden of proof.” Please contact us with any questions.

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