

Sales/Use/Indirect:

Indiana: Software Purchased Pre-July 2018 Deemed Exempt Because No Possessory Interest

Memorandum of Decision 04-20211056R and *Memorandum of Decision: 04-20211057R*, Ind. Dept. of Rev. (4/26/23). In two separate memoranda of decision involving different taxpayers, the Indiana Department of Revenue (Department) held that both taxpayers were entitled to refunds of Indiana sales tax paid on certain transactions with various software vendors for purchased software services that occurred prior to July 1, 2018, because the facts showed that they did not acquire a possessory interest in the vendors' software. In doing so, the Department noted that as of July 1, 2018, prewritten computer software sold, rented, leased, or licensed for consideration that is remotely accessed over the internet, over private or public networks, or through wireless media, is considered an electronic transfer of computer software and is *not* considered a retail transaction under state law; accordingly, the taxpayers' software transactions occurring as of July 1, 2018 were not at issue and already considered nontaxable.

URL: <http://iac.iga.in.gov/iac/20230426-IR-045230276NRA.xml.pdf>

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For the software transactions occurring prior to July 1, 2018, the Department reasoned that certain purchased software was exempt under state law because the transactions called for the provision of software services and granted the purchasers no possessory interest in the underlying prewritten software during or after the subscription terms. The Department caveated that for certain pre-July 1, 2018 transactions at issue, the exemption only applies to those transactions in which the taxpayer paid for software services and *not* for software maintenance services. Furthermore, the Department concluded that some pre-July 1, 2018 transactions at issue were *not* exempt "because the information provided is ambiguous or the nature of the transaction (what Taxpayer is buying and what the vendor is selling) is unclear." Please contact us with any questions.

— Robyn Staros (Chicago)
Managing Director
Deloitte Tax LLP
rstaros@deloitte.com

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