

## Sales/Use/Indirect:

### Tennessee: Letter Ruling Says Nontaxable Services Provided through Digital Platform Remain Nontaxable

*Letter Ruling No. 23-05*, Tenn. Dept. of Rev. (6/30/23). The Tennessee Department of Revenue (Department) issued a letter ruling concluding that an out-of-state technology company offering staff augmentation and payment processing services accessed through a digital platform (*i.e.*, via a mobile application (“APP”)) is *not* subject to Tennessee sales and use tax on such transactions because they are not enumerated taxable services under state law – reasoning the same conclusion would apply had the company been offering its services through more traditional forums such as “labor halls, hiring halls, and employment agencies.” The Department also held that while the company’s provision of services via an APP arguably could be subject to Tennessee sales and use tax as a taxable use of computer software, such was not the case here as the APP is used to gain access to the platform and is merely incidental to the nontaxable services the company provides. That is, according to the Department, connecting businesses and workers for purposes of arranging short-term employment is the true object of the transactions. The Department pointed out that, under the facts:

**URL:** <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/sales/23-05.pdf>

1. There is no charge for customers to download the APP,
2. The APP is primarily used to gain access to the nontaxable services, and
3. The APP, along with the limited functionality of providing templates and creating lists of favored workers, is worthless without the provided nontaxable services.

Lastly, the Department noted that although the company provides the means for customers and workers to communicate through the APP regarding job details and logistics, the company is *not* furnishing taxable telecommunication services because these services also are merely incidental to the nontaxable true objects of the transactions. Please contact us with any questions.

— Doug Nagode (Atlanta)  
Tax Managing Director  
Deloitte Tax LLP  
dnagode@deloitte.com

Joe Garrett (Birmingham)  
Tax Managing Director  
Deloitte Tax LLP  
jogarrett@deloitte.com

Liudmila Wilhelm (Atlanta)  
Tax Senior Manager  
Deloitte Tax LLP  
lwilhelm@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **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](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).