



# This Week in State Tax (TWIST)

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## Florida: Another Bite at the Apple? New Suit Challenges Market Sourcing Methodology

On July 10, 2024, a complaint was filed in the Leon County Circuit Court once again challenging the Florida Department of Revenue's interpretation of the sourcing rule that applies to sales of other than tangible personal property. Recall, under Fla. Admin. Code Ann. 12C-1.0155(2)(l), "other receipts," are sourced to Florida if the income-producing activity giving rise to the receipts is performed wholly within Florida or if a greater proportion of the income-producing activity is performed in Florida, based on the costs of performance (IPA/COP rule). On audit, the Department has consistently interpreted the IPA/COP rule in a manner that essentially results in a customer-based sourcing regime (i.e., receipts attributable to Florida-based customers/sources are included in the Florida sales factor numerator). In two relatively recent decisions, the Leon County Circuit Court has effectively held that Florida is not a market or customer sourcing state and that under the plain language of Florida's IPA/COP rule, receipts are sourced focusing on the transactions and activities of the taxpayer, not of the taxpayer's customer.

In the most recent suit, *Apple Inc. v. Department of Revenue*, the taxpayer argues that the Department applied its market-based methodology to source Apple's revenue from sales of digital music and subscriptions, books and apps, as well as licensing fees. The taxpayer alleges that its receipts should be sourced under the IPA/COP rule as stated in the Department's regulation and that greater proportion of its costs of performance occurred outside Florida. The lawsuit also challenges the Department's exclusion of certain service revenues and other income from the denominator of the Florida sales factor. Please stay tuned to TWIST for updates on this case.

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