



This Week in State Tax (TWIST)

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New York: Receipts from Electronic Currency Trading System Taxable

The New York State Department of Taxation and Finance (Department) released an advisory [opinion](#) regarding whether a taxpayer's receipts from operating an online platform used for trading currencies on foreign exchange markets was subject to sales and use tax. The taxpayer's customers included traders, asset managers, corporate treasurers, market makers, and brokers. The taxpayer charged its customers a variety of fees, including: an annual license fee to access the system; a monthly support charge for customer support and training services; several transaction charges to allow users to offer quotes to other users and execute trades; and miscellaneous other charges which covered secure ID tokens to access the system, system enhancements and upgrades, and preparation of monthly user reports.

In its analysis, the Department explained that New York imposes sales tax on receipts from retail sales of tangible personal property, which include prewritten software regardless of the medium by which the software is conveyed to a purchaser. A sale also includes a "right to use" the software. The Department found that the taxpayer's license fees, transaction charges, and other charges constituted the sale of prewritten software because the charges represented rights to use the software. The secure ID tokens represented tangible personal property which were subject to tax. The taxpayer's support charges for customer support and training were exempt from sales tax if reasonable and separately stated.

Finally, the taxpayer's charges for providing monthly user reports were considered an information service and were exempt from sales tax if the information was personal or individual in nature and not substantially incorporated in reports furnished to others. The taxpayer's monthly reports included the user's own statistics, but also provided benchmarking data comparing the user's performance to others. The Department stated that if the benchmarking data in these reports is not sufficiently anonymized or constitutes more than a de minimis part of the service, the entire charge would be subject to tax. For questions regarding [TSB-A-24\(9\)S](#) and the taxability of software and related charges in New York, please contact [Judy Cheng](#).

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