

This Week in State Tax (TWIST)

October 7, 2024



New York: Web-based Document Processing System Taxable; Certain Related Services Are Not

The New York State Department of Taxation and Finance (Department) released an advisory [opinion](#) analyzing a taxpayer's charges for an online portal for the preparation, submission, and review of paperless applications for residential real property transactions. The portal facilitated collaboration among geographically dispersed parties, allowing them to log in, download, sign, and upload documents. The taxpayer's subscription agreement allowed customers to register buildings, create customized application packages, and manage applications through a unique login page. The subscription also included the taxpayer's initial technical support and consulting services for customers, as well as the processing of application fees. The taxpayer also offered optional services, such as form creation, custom programming, data entry, and training for separately stated additional fees.

The Department explained that the taxpayer's subscription charges for using the portal were taxable sales of prewritten software because the taxpayer granted customers constructive possession of the software allowing them to use, control, or direct its use, create and review applications, and direct potential applicants to the portal for submitting application packages. Regarding the taxpayer's optional services for creating or modifying forms, the Department explained that this service was exempt only to the extent that the modifications were created to the specifications of a specific customer and for that customer's use only, provided that the charges are separately stated and reasonable in relation to the overall charge. Similarly, the taxpayer's optional custom programming services and modifications of existing software were exempt if performed at the request of a specific customer and for that customer's only use, again provided the charges are separately stated and reasonable. Finally, the Department explained that optional data entry services and training services are not enumerated in law as services subject to tax, provided the charges for them are separately stated and reasonable. For questions [TSB-A-24\(8\)S](#) and the taxability of software and software-related charges in New York, please contact [Judy Cheng](#).

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