

This Week in State Tax (TWIST)

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Tennessee: Department rules that health and heart care app is taxable prewritten software

The Tennessee Department of Revenue recently ruled that a taxpayer's mobile healthcare solution subscription is subject to sales and use tax as a sale of software. The taxpayer provides a service that enables users to monitor their heart health via a mobile app which tracks a user's blood pressure, pulse, weight, and activity levels. Clients pay an annual subscription fee and, in turn, make the service available to their employees and their employees' dependents. The subscription includes access to the app and FDA-approved Bluetooth blood pressure monitors that function only with the subscription, as well as ongoing technical support and engagement materials in the form of emails, postcards, and videos.

Analyzing the totality of the facts and circumstances, the Department found that the primary purpose (i.e., true object) of the subscription is access to the health-tracking mobile app. Under Tennessee law, sales of prewritten computer software, including remotely accessed software, are taxable. When a transaction bundles taxable and nontaxable items for a single price, and the taxable item is the main purpose of the transaction, the entire price is subject to tax. Here, the Department found that the app's software tracks participants' health metrics, generates reports, and provides wellness guidance. All these features are automated, and none are performed by medical professionals or other employees. In the Department's view, the mobile app was the "objective that is being accomplished" in the taxpayer's transactions with its customers. As such, the true object was the taxable sale of remotely accessed software.

The Department also found that the subscriptions were not exempt from taxation as information or data processing services. Data processing means the "converting of raw data to machine-readable form and its subsequent processing (such as storing, updating, rearranging, or printing out) by a computer." In this case, the Department found that there was no raw data (absent the monitor and the app) to be converted into a readable form and subsequently processed by a computer.

Finally, The Department noted that the taxpayer's subscription includes tangible personal property elements, including the Bluetooth blood pressure monitors, postcards, and posters. The Department found that the taxpayer was not the ultimate consumer or user of these materials, and therefore, the materials were included in the taxable sales price of the taxpayer's subscription. Accordingly, the taxpayer may choose to use a resale certificate when purchasing the monitors and other materials included in the package. For more information on [Tennessee Revenue Ruling 25-08](#), contact [Justin Stringfield](#).

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