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This Week in State Tax (TWIST)

January 26, 2026

New York: Vendor management software constitutes taxable prewritten software

In a recently published decision, a New York appeals court has ruled that a taxpayer's fees charged to clients for a license to access its vendor management software (VMS) are taxable as sales of prewritten software. The taxpayer in this case uses its proprietary technology platform to match clients with suppliers of contingent and temporary labor, then provides additional services associated with the management, retention, and invoicing of such labor to its clients. In 2016, the Department of Taxation and Finance audited and assessed the taxpayer for unpaid sales and uses taxes based on a finding that the fees charged its clients are for a license to access the taxpayer's prewritten software, a taxable transaction under New York law.

The taxpayer petitioned to the Division of Tax Appeals (DTA) for redetermination, arguing that the VMS is not prewritten software, and even if it was so found, the "true object" of the taxpayer's business is not the selling software. Instead, the taxpayer is providing the service of matching buyers and sellers of contingent and temporary labor. The DTA upheld the department, stating that the taxpayer was selling licenses to prewritten software and that the licenses were not incidental to the taxpayer's business. The taxpayer appealed to the Tax Appeals Tribunal, which affirmed the DTA findings, holding that selling licenses to the VMS, a prewritten computer software, is a "core element" of the taxpayer's business. The taxpayer then pursued the matter in the appellate court.

Throughout the proceedings, the taxpayer's central argument was that it does not sell prewritten software, but instead, provides nontaxable services through the use of its VMS platform. In evaluating the tribunal determination, the appeals court referenced sample client agreements furnished by the taxpayer which included provisions stating that the taxpayer granted its clients a "limited, nonexclusive, nontransferable license to use and access the [taxpayer's] VMS solutions". Based on this language, and similar wording found on the taxpayer's website, the appeals court found that the tribunal determination that the taxpayer had made retail sales of tangible personal property by selling a software license was supported by substantial evidence. The taxpayer also unsuccessfully argued that its VMS is not prewritten software because it is tailored to each client. The appeals court agreed with the tribunal, however, that this tailoring was purely aesthetic and did not require amendments to the VMS source code.

Finally, the taxpayer argued that New York law requires application of the primary function or true object test when the sale of tangible personal property is bundled with nontaxable services. While noting that New York typically applies the true object test to transactions which involve multiple services, the appeals court found that the tribunal engaged in the functional equivalent to the true object test by finding that the licenses sold by the

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taxpayer were not incidental to the services rendered. Instead, it found that the software was central to the taxpayer's transactions, as it was the primary means for clients to request labor, select candidates, and bill for labor. The court also examined other subsidiary arguments, and on all counts, upheld the determination that the taxpayer's sales of VMS licenses were taxable as a sale of tangible personal property. Please contact Judy Cheng or Jennifer White with questions on *Beeline.com v. Tax Appeals Tribunal*.