



This Week in State Tax (TWIST)

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Utah: Streaming Service Taxable as Part of Bundled Transaction

Recently, an ALJ for the Utah State Tax Commission addressed whether a taxpayer owed sales tax on subscription fees charged to customers for access to streaming services. The taxpayer, a multinational provider of licensed and original entertainment programming, offered customers various subscriptions to its streaming services platform for a monthly fee. During the audit period, the taxpayer included online streaming, as well as the ability to download programming for viewing offline through the streaming platform. Per the taxpayer, 99 percent or more of its content was viewed by the subscribers through the online-streaming feature. The taxpayer had stopped collecting and remitting sales tax on its subscription fees after legislation specifically imposing sales tax on streaming services was repealed in 2019. However, on audit the Business Taxes and Discovery Division of the Commission took the position that the taxpayer's subscription fees were taxable as "products transferred electronically" or that they were taxable as part of a bundled transaction. The taxpayer protested, and the matter came before an ALJ with the Utah State Tax Commission.

The ALJ first rejected the Division's position that online streaming services were subject to Utah sales tax as a product transferred electronically. Importantly, this conclusion would have directly contradicted several previous Private Letter Rulings issued by the Commission concluding that streaming services were not products transferred electronically and were not taxable. The ALJ next addressed the Division's position that the services were taxable because they were part of a bundled transaction. Under Utah law, which incorporates the Streamlined Sales and Use Tax Agreement, a bundled transaction is the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are: (i) distinct and identifiable; and (ii) sold for one nonitemized price. "Distinct and identifiable" does not include a product that is provided free of charge with the purchase of another product or a service. The taxpayer argued that the ability to download content for viewing offline was not a "distinct and identifiable" product because the offline download feature was provided for no extra charge with the purchase of online streaming. The ALJ, however, determined that the taxpayer had not established that the offline download feature was provided "free of charge." Although there was a press release noting that the download option was being added to subscriptions for "no extra cost," the ALJ noted that there were no statements, invoices, press releases or other documentation supporting the taxpayer's assertion that the offline download feature was offered "free of charge." Rather, the taxpayer's price list showed that the download benefit increased with the more costly subscription packages. As such, the ALJ concluded that the that the subscription fees were "bundled transactions." Because one product in the bundle was subject to tax the entire bundled transaction was subject to taxation. Please contact Mike Larkin with questions.

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