



# This Week in State Tax (TWIST)

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## **Tennessee: Staff Augmentation and Payment Processing Services not Subject to Sales and Use Tax**

Recently, the Tennessee Department of Revenue addressed whether a taxpayer's staff augmentation and payment processing services were subject to sales and use tax. The taxpayer at issue provided a platform to connect workers with short term jobs offered by the taxpayer's customers. On the platform, customers could customize job requests and review and approve completed jobs. Workers used the platform to sort through job requests and report their time worked. Customers and workers accessed the platform through a downloadable app. The taxpayer processed payments from the customers to the workers and transmitted payment to the workers. Its fee for these services was typically a percentage of the amount paid to a worker. The taxpayer requested a ruling as to whether its fees were subject to sales and use tax.

The Department first concluded that the fees charged to customers were not subject to Tennessee sales and use tax because staff augmentation is not a specifically enumerated taxable service in Tennessee. In the Department's view, the taxpayer's platform was analogous to a labor hall, hiring hall, or employment agency in that it brought together workers seeking jobs and those that needed workers for short-term projects. Labor halls, hiring halls, and employment agencies are generally not subject to Tennessee sales and use tax for the services that they provide connecting workers with job offers. Thus, the taxpayer's platform was not subject to Tennessee sales and use tax for providing essentially the same service through a downloadable app. As to the payment processing aspect of the taxpayer's services, the Department noted that payment processing is also not a specifically enumerated taxable service in Tennessee law. The Department went on to say, however, that the platform was accessed through an app, which could be considered as the taxable sale of computer software. The app provided customers with some functions that could be considered the use of computer software, including the generation of templates for future job requests and a means of creating lists of favored workers to contact in the future. Thus, in the Department's view the taxpayer's fees consisted of both taxable and non-taxable items. Applying the true object test, the Department concluded that connecting businesses and workers for the purpose of arranging short term employment was the true object of these transactions. Because the true object of the transaction was the provision of non-taxable services, and the software components were merely incidental to those services, the taxpayer's fees were not subject to Tennessee sales and use tax. Please contact [Justin Stringfield](#) with questions on Letter Ruling #23-05.

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