

# Live-Stream Products Taxable When Bundled With Optional Cloud Services, New York Says

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A company's webinar and live-streaming products purchased alone are not subject to New York sales tax, but when bundled with some optional cloud-computing products for an additional charge, the entire transaction becomes taxable, according to the New York Department of Taxation and Finance.

In an August 9 [sales tax advisory opinion](#) released September 12, the state tax department said two of the company's optional services are subject to sales tax: the online or on-site evaluations component of the online library, and the evaluations and continuing education module. Since the company imposes an additional charge for each service, they are taxable whether they are charged separately or bundled.

The New York tax department said both services are subject to state sales tax as pre-written software.

For the evaluations and continuing education module, the company is "giving the viewers the ability to use prewritten software at an additional charge," and therefore it is "making taxable sales of tangible personal property in New York to the extent that the customer's viewers are using prewritten software in New York," the department said. "Similarly, the separate charge for the on-site or online evaluations optional component of the On-line Library product is also taxable as prewritten software," the advisory opinion said.

The company "must separately state the tax for those products on any invoice or memorandum of sale given the customers and collect tax based on the proportion of the customers' viewers who give New York addresses in their CE [continuing education] information." But if the company "sells the webinar or live-stream product with these optional products and does not break out a separate charge . . . the entire charge is taxable."

Timothy Noonan of Hodgson Russ LLP told Tax Analysts that this aspect of the advisory opinion "creates an interesting twist, since usually the failure to separately state taxable and nontaxable components of a sale makes the whole transaction taxable, under the infamous 'cheeseboard rule' in the tax regulations.

"But this ruling confirms that when the 'taxable' part of the service is ancillary or incidental, the cheeseboard rule doesn't apply," Noonan continued. "In fact, in this situation, it is better for the taxpayer to bundle all charges together."

The department said the other optional priced services offered by the company are not taxable. However, it said some of the services included at no extra cost with the purchase of its webinar

and live-streaming products — such as the access to pre-written software — would have been taxable if sold separately.

“Because these additional services and software are ancillary to the main function of [the company's] live-stream and webinar products, they do not suffice to make those products taxable,” the agency said.

Jennifer White of Reed Smith LLP said she was happy to see the department “expressly acknowledge that the ancillary component of software, within a service, does not reclassify the entire transaction.”

However, she told Tax Analysts that the advisory opinion’s conclusion that if the company “sells the webinar or live-stream product with [evaluation and CE information] products and does not break out a separate charge for the optional products, the entire charge is taxable” was hard for her to reconcile.

“This seems to go against the factual and legal conclusion that, if sold as a packaged product, the ancillary and incidental software component should not reclassify the entire transaction,” White said.

“I have to presume that the department does not believe that these two products are not part of the main function of webinar and live-streaming services, and therefore is merely reiterating the long-established rules related to bundled transactions,” she concluded.