



This Week in State Tax (TWIST)

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Texas: Services Containing Data Processing Elements Not Necessarily Taxable

The Texas Comptroller of Public Accounts has clarified that certain employee health benefits and retirement administration services containing data processing components are not necessarily a taxable data processing service. In a private letter ruling, the Comptroller clarified, among other issues, that the use of data processing services to facilitate the provision of certain employee health benefits and retirement administration services does not cause said services to become taxable data processing services. The requesting taxpayer provided several services to streamline employee health benefits administration and to develop and administer retirement plans for employees. Specifically, the taxpayer provided the following services: (1) Flex Spending Account; (2) COBRA Administration; (3) Retirement Plan Administration & 401(k) Reporting; and (4) ACA Reporting Only.

For the first three services listed, the Comptroller noted there were components of data processing services being provided, such as compiling and storing account information, notices, and statements, as well as the manipulation of data. However, these services also required professional knowledge and skills in physical sciences, accounting principles, and tax law, which goes beyond the mere processing of data. Accordingly, the Comptroller reasoned that the data processing component of these services merely facilitated the provision of an overall service that required the application of professional knowledge and skills. Because such services were not expressly enumerated as taxable services, such as insurance services, the taxpayer had no Texas sales and use tax obligation despite the presence of a data processing component to the overall services. The Comptroller contrasted this with the ACA Reporting Only services, which the Comptroller found to be a taxable data processing service (akin to payroll processing services) because it consisted merely of automated generation, printing, distribution, and filing of IRS forms involving the compilation and manipulation of customer data and did not require the application of professional knowledge and skills.

Of note, the Comptroller found the taxpayer's ACA Comprehensive and Eligibility Verification service lines to be taxable insurance services. They included evaluating the eligibility or qualification of employees and their dependents for insurance coverage under the ACA, thus meeting the definition of insurance investigation which is a taxable insurance service. Please contact Karey Barton with questions on Private Letter Ruling No. 20220222104614.

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