

PA Sales & Use Tax Notes

PEO'S ADMINISTRATIVE SERVICE FEE NOT TAXABLE AS "HELP SUPPLY" SERVICE

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In *All Staffing, Inc. v. Commonwealth*, 325 F.R. 2006 (December 2, 2010), the Commonwealth Court upheld an earlier panel decision, ruling that administrative services performed by All Staffing, Inc., a professional employer organization ("PEO"), were not subject to Pennsylvania's sales tax as "help supply services."

All Staffing is a PEO, an entity that provides certain human resources-related services ("PEO Services") to clients by placing the clients' employees on its payroll. Although the clients retain control and direction over the day-to-day activities of the employees and make all hiring, firing, wage setting, disciplinary and other personnel decisions, All Staffing performs various PEO Services for its clients, including data processing services, human resources assistance, safety and risk management assistance, and maintenance of workers' and unemployment compensation accounts. The Commonwealth contended that, because All Staffing places all of a client's employees on its payroll, its business activities fall within the definition of "help supply services," and fees charged for the PEO Services are subject to sales tax. All Staffing argued that the sales tax statute imposes tax on a vendor's provision of "help" to its customers, and that it does not provide "help" (i.e., personnel) to any of its clients. The Commonwealth Court agreed with All Staffing's position that the PEO Services are not subject to sales tax because All Staffing does not supply new or additional workers to its clients.

The Commonwealth filed a Notice of Appeal to the Pennsylvania Supreme Court on December 30, 2010.

Following are notes of other recent Pennsylvania sales & use tax developments.

Natural Gas Extraction

The Department of Revenue has issued a ruling applying sales and use tax law to natural gas extraction activities. Equipment predominantly used directly in performance of fracturing services is exempt from tax under the mining exclusion. Materials (gases, sand, cement, etc.) predominantly used directly in fracturing services also are exempt. Fracturing services are not subject to tax as these services are directly used in mining. Equipment brought in for use in Pennsylvania qualifies for the isolated sales exemption as long as the sales are infrequent and nonrecurring. Vehicles and trailers registered under the International Registration Plan ("IRP") are subject to tax to the extent that they are required to be registered under 75 Pa. C.S. §§ 101-9909 (the "Vehicle Code"). *Ruling No. SUT-10-003, September 15, 2010.*

Taxability of Web-Based Services

Web-based services are not taxable if access to the software is solely through the Internet and the server

or data center is not located in Pennsylvania. This rule applies to web-based services that enable subscribers to have remote computer access, attend and participate in meetings online, attend online webinars and provide attended or unattended technical computer support to their employees and external customers. If, however, a subscriber's access is evidenced by a "license to use" computer software applications, such charges are taxable when the software is hosted on a server in Pennsylvania. *Ruling No. SUT-10-005, issued November 8, 2010.*

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