

Digital Ad Software Sales Taxable, New York Tax Department Says

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A company's receipts for sales of software used to create digital advertising are subject to sales and use tax, according to the New York State Department of Taxation and Finance.

In an [advisory opinion](#) issued June 30 (published November 6), the department said the petitioner's company receipts for sale of software are subject to tax because the software wasn't designed or developed for a specific customer and therefore meets the definition of pre-written computer software under [section 1101\(b\)\(14\)](#).

The company's customers are given access to software tools through a platform to "create, deliver, and manage their own digital advertisements," according to the opinion. Although the products are referred to as services by the company, the department said "selling a customer access to or the right to use prewritten software constitutes the sale of prewritten software, which is taxable."

According to the department, the sale of the pre-written software qualifies as tangible personal property and is subject to sales tax. The opinion also noted that although the company's consulting services and advertisement placement services are not subject to sales tax, the petitioner's complete non-itemized sale price is subject to tax.

Timothy Noonan of Hodgson Russ LLP told *Tax Notes* this opinion is another in a "long line of New York state sales tax rulings around the taxation of software." He also said it is good to see the department issuing more advisory opinions this year, noting that the department has a "severe backlog."