

BF&R Docket No. 2317876, 2317877
Petition Filed: 1/9/2024
License No. [REDACTED]
IN RE: ONE MARKET DATA LLC
PETITION FOR Review for Sales/Use Tax
PERIOD(S) 1M2020-12M2022

AND NOW, June 27, 2024, pursuant to the Fiscal Code, the Act of 1929, April 9, P.L. 343, as amended, (72 P.S. § 1 et seq), the Board of Finance and Revenue of the Commonwealth of Pennsylvania, based upon the reasons set forth herein, hereby ORDERS the following:

Jurisdiction

These petitions come before the Board of Finance and Revenue pursuant to Section 2704 of the Tax Reform Code of 1971, *as amended*, 72 P.S. § 9704.

Issues

Whether Petitioner has established that it is entitled to a reassessment of tax on computer software/services.

Whether Petitioner has established that it is entitled to an abatement of interest.

Whether Petitioner has established that the license revocation issued by the Department of Revenue was improper.

Statement of the Case

Petitioner, One Market Data, LLC, was audited for the period of January 1, 2020 through December 31, 2022. As a result, on May 15, 2023, the Department of Revenue (“Department”) revoked the sales tax license for Petitioner pursuant to Section 208(b.1) of the Tax Reform Code of 1971 and further on May 24, 2023, the Department issued Petitioner an assessment of tax, penalties, and interest in the total amount of \$ [REDACTED]

On June 20, 2023, Petitioner filed petitions with the Board of Appeals (“BOA”) appealing the sales tax license revocation as well as the assessment of tax, penalties, and interest. Petitioner argued that the services it performed were nontaxable customer software

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configuration and training services, as well as nontaxable customer software migration services. Petitioner argued that it did not provide any “Licensor Property” as part of its separately stated nontaxable professional services.

On November 13, 2023, the BOA granted an abatement of the penalties assessed while denying the remainder of the petitions. As to the assessment of tax, the BOA pointed to the audit narrative which stated that the auditor found numerous invoices where Petitioner was not properly charging sales tax, as Petitioner’s activities involved the installation, setup, design, implementation, and training of licensed software. The BOA found that these services were taxable as cloud computing and as support services to canned computer software. As to the request to abate interest, the BOA stated that it does not have the authority to abate interest that is properly computed and assessed. As to the sales tax license revocation, the BOA sustained the revocation on the basis that Petitioner had outstanding tax obligations that remained unresolved at the time of the decision.

On January 9, 2024, Petitioner filed petitions with the Board of Finance and Revenue (“Board”) requesting an abatement of the tax and interest assessed and further requesting that its sales tax license be reinstated. In support, Petitioner provided a narrative of its arguments for relief, copies of assessments, invoice copies, an appeal schedule, contracts, and statements of work. Petitioner argued that its services qualify as professional services and that they do not qualify as tangible personal property. In support, Petitioner cited to 72 P.S. § 7201(m)(2)(ix) and 61 Pa. Code § 60.19(c)(2)(ii). Petitioner argued that it separates out any taxable services it performs. Petitioner stated that it does not provide any “Licensor Property” as part of its separately stated nontaxable professional services.

On June 21, 2024, Petitioner advised that it had paid the tax due. Department records showed that there were no other outstanding tax liabilities.

Conclusion

After a review of the evidence and arguments for relief, the Board concludes the following:

As to the request to abate the tax assessed, the Board finds that Petitioner’s activities involved taxable cloud computing and support services to canned computer software, or that Petitioner has not provided sufficient evidence to show that these transactions involved separately stated nontaxable professional services. Petitioner bears the burden of proof. 72 P.S. § 9705.

As to the request to abate interest, Petitioner has not established that interest should be abated, as interest is charged to compensate the Commonwealth for the loss of the use of funds while in possession of the taxpayer.

As to the request to reinstate Petitioner’s sales tax license, Petitioner has paid the outstanding liability that prompted the license revocation and Department records do not show

any other outstanding tax liabilities. As such, Petitioner has shown that it is entitled to the requested relief.

Accordingly, this Board enters the following:

ORDER

2317876

This petition is denied.

2317877

Petitioner's request is granted to the extent that the Department has not already reinstated the sales/use tax license.

By Order Of The Board Of Finance And Revenue

**Jacqueline A. Cook, Chair
Designee for Stacy Garrity, State Treasurer**

David R. Kraus, Board Member

Paul J. Gitnik, Board Member

