STATE OF NEW YORK

TAX APPEALS TRIBNUNAL

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In the Matter of the Petition	:
	:
of	:
	:
BEELINE.COM, INC.	:
	:
for Revision of a Determination or for Refund of Sales	:
and Use Taxes under Articles 28 and 29 of the Tax	:
Law for the Period June 1, 2010 through May 31,	:
2016.	:

DECISION
DTA NO. 829516

Petitioner, Beeline.com, Inc., filed an exception to the determination of the

Administrative Law Judge issued on February 9, 2023. Petitioner appeared by Akerman, LLP

(Peter O. Larsen, Esq., and Raye C. Elliott, Esq., of counsel). The Division of Taxation appeared

by Amanda Hiller, Esq. (Elizabeth Lyons, Esq., of counsel).

Petitioner filed a brief in support of the exception. The Division of Taxation filed a brief

in opposition. Petitioner filed a reply brief. Oral argument was heard on November 16, 2023, in

New York, New York, which date began the six-month period for issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the

following decision.

ISSUE

Whether the Division of Taxation erred in determining that Beeline.com, Inc.'s vendor

management system fees are taxable as the sale of pre-written software.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set

forth below.

1. Petitioner is a company headquartered in Jacksonville, Florida, that provided services/products (services) in New York during the period June 1, 2010 through May 31, 2016 (period at issue).

2. Petitioner provided services to assist large national and global companies (customers) with gathering, organizing, assembling and managing their contingent labor force. Petitioner's customers were typically large companies that spent between twenty million to several billion dollars annually on contingent labor and temporary workers.

3. By an appointment letter dated September 20, 2016, the Division's auditor, Norai Pisano, scheduled a field audit of petitioner for the period at issue. In response to the Division's request for books and records, petitioner produced certain information, including copies of its payment register, certain contracts and pages of its general ledger showing petitioner's New York revenue by year. In addition to reviewing the documents provided by petitioner, the Division's auditor also reviewed petitioner's website, did general online research of petitioner's marketing materials and spoke with several of petitioner's representatives regarding petitioner's operations.

4. As a result of the audit, the Division determined that petitioner sold licenses to use pre-written software referred to as petitioner's vendor management system (VMS). The Division also determined that petitioner sold nontaxable professional services referred to as petitioner's managed supplier program (MSP). The Division determined that petitioner's books and records reflected that petitioner accounted for receipts from the sale of VMS separately from the receipts from the sale of MSP. The Division concluded that petitioner owed sales tax on the sale of the VMS but not the MSP.

5. The Division issued notice of determination, notice number L-048608997, dated July 31, 2018 (notice), assessing petitioner additional sales tax of $686,570.66 plus interest thereon of $306,698.60, and no penalties. Pursuant to the stipulation executed by the parties, neither the audit methodology nor the calculation of the amount of sales tax due is in dispute.

6. Petitioner submitted a request for a conciliation conference to the Division's Bureau of Conciliation and Mediation Services (BCMS) in protest of the notice. A conciliation conference was held on December 4, 2018, and BCMS issued an order, dated July 19, 2019, sustaining the notice.

7. Petitioner filed a petition with the Division of Tax Appeals in protest of the BCMS order and a videoconferencing hearing via CISCO Webex was held on February 11, 2022.

8. At the hearing, the Division's auditor testified that she concluded that petitioner generates revenue through the sale of pre-written software. The Division concluded that petitioner bills its VMS fees separately from any other fees it bills clients. Ms. Pisano concluded that a client could purchase only the VMS or could buy the VMS along with the MSP. She concluded that if the customer also enters into a MSP agreement with petitioner, the fees for MSP services are separately stated on petitioner's books and records. The Division concluded that petitioner's employees perform no services other than IT support of the software and do not provide the MSP services themselves. Petitioner's clients access the VMS through the internet via a username and password.

9. Copies of pages of petitioner's website were included in the audit file. Petitioner's website noted that:

> "[s]imply put VMS is the software that automates the hiring process of contract workers. It is often a web-based application that helps to manage and procure staffing services from requisition through billing. Most VMS tools are delivered through a software-as-a-service model. VMS tools provide significant

improvements in reporting analytics capabilities that far outperform manual
system and processes.

* * *

This structure enables a streamlined and automated process with real-time
visibility for all parties. Suppliers see all relevant job orders, and you can
accurately assess labor services spend [sic] and performance, leading to
significant cost reduction."

10. During the audit, petitioner provided the Division with six contracts/agreements as
an example of its agreements with clients. Specifically, they were: (i) a blank sample contract;
(ii) a copy of a contract with NYSE Euronext; (iii) a copy of a contract with Verizon Telematics,
Inc.; (iv) a copy of a contract with Deutsche Bank, AG; (v) a copy of a contract with Marsh &
McLennan Companies, Inc.; and (vi) a copy of a contract with The Bank of New York Mellon
Corporation.[1]

11. At the hearing, petitioner[2] introduced into evidence 15 contracts/agreements.[3] They
were as follows:

Exhibit 1	Sample Client Services and Solutions Agreement
Exhibit 2[4]	Sample Exhibit A to the Sample Client Services and Solutions Agreement
Exhibit 3	Beeline Access and Services Agreement with NYSE Euronext, dated January 30, 2012
Exhibit 4	Client Services and Solutions Agreement with Verizon Telematics, Inc., dated October 3, 2014
Exhibit 5	Managed Supplier Program (MSP) Professional Services Agreement between Beeline.com., Inc., and The Bank of New York Mellon Corporation, dated December 30, 2011
Exhibit 6	Managed Supplier Program Professional Services Agreement with Deutsche Bank, AG, dated February 24, 2006

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[1] It appears that most of the contracts/agreements petitioner provided the Division during the audit were
also offered by petitioner as separate exhibits during the hearing.

[2] In its post-hearing briefs, petitioner did not offer any detailed analysis of the contracts/agreements in the
record.

[3] An examination of the contracts/agreements petitioner submitted into evidence reveals that petitioner's
chief operating officer executed exhibits 4, 7, 8, 9, 11, 12 and 13.

[4] It appears that exhibits 1 and 2 are part of the same contract.

Exhibit 7	Master Services Agreement with Marsh & McLennan Companies, Inc., effective as of March l, 2011
Exhibit 8	Client Access Agreement with Pfizer, Inc., dated July 31, 2015
Exhibit 9	Services and Solutions Agreement with Allegis Global Solutions, Inc., dated January 1, 2013
Exhibit 10	Application Service Provider Agreement with MasterCard International Incorporated, dated February 29, 2012
Exhibit 11	Master Application Service Provider Agreement with Metropolitan Life Insurance Company, dated April 20, 2015
Exhibit 12	Client Services and Solutions Agreement with Epiq Systems, dated November 1, 2013
Exhibit 13	Client Services and Solutions Agreement with OFI Global Asset Management, Inc., dated April 21, 2016
Exhibit 14	Supplier Access and Services Agreement (sample)
Exhibit 15[5]	MS Online Services Client Access and Terms of Use with The Bank of New York Mellon Corporation, dated December 30, 2011

12. It appears that in all of contracts for VMS services entered into the record, petitioner granted to its client a license to use petitioner's software technology. In the contracts where it appears the MSP service is offered, the MSP service fees appear to be separately billed from the VMS service.[6]

TESTIMONY OF AUTUMN VAUPEL, CHIEF OPERATING OFFICER

13. At the hearing, petitioner presented the testimony of Ms. Autumn Vaupel, petitioner's chief operating officer. Ms. Vaupel characterized petitioner's business in the following facts.

14. Petitioner essentially provided a "matching" service to match customers that desired to purchase the services of temporary workers with the suppliers of temporary contingent labor.

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[5] It appears that exhibits 5 and 15 are part of the same contract.

[6] The record is not entirely clear on what petitioner's MSP service was.

15. Petitioner provided services by obtaining large amounts of information from the customers regarding the customer's needs and processes and used that information to match the needs to the available supply of labor.

16. Petitioner's services also included the provision of legal compliance services. These services included the hiring, invoicing and payable process, the management of data and reports to the customers and suppliers and other general services to assist in all aspects of contingent labor management.

17. In order to most efficiently provide its services, petitioner used the services of its hundreds of employees, a minority of which designed and used an internet-based system or process, which enabled petitioner to streamline the process of assisting in the recruiting, management and hiring of contingent labor.

18. When customers were interested in entering into an agreement with petitioner, petitioner spent months of time gathering information about the scope of a customer's particular labor needs and business processes that would include the different labor categories the customer wanted petitioner to manage, the customer's locations, the customer's internal hiring and other processes and workflow, and the customer's data. For example, petitioner would need to gather information about the customer's internal organizational structure in order to create a work process to properly route and tailor labor requisition requests in the most efficient format through the customer's approval hierarchy. Petitioner spends an average of nine months and hundreds or thousands of hours of labor gathering information from customers about their needs and business before the customer even signs a contract with petitioner.

19. Petitioner spent hundreds or thousands of hours gathering information from a customer because petitioner tailored its services based on each individual customer and therefore

needed to understand the scope of the services required by the customer. As part of that process, petitioner advised customers on best practices in all aspects of managing their contingent labor program. Because petitioner works with so many large global companies managing their contingent labor programs, petitioner knows and understands the best practices, needs and solutions for procuring and managing contingent labor.

20. Petitioner customizes its approach to each customer to match the customer's system requirements and needs. For example, petitioner sends the suppliers' invoices to the customer in a format that complies with the customer's accounts payable system and other invoicing processes so that the suppliers' invoices meet the customer's payable and information needs and allows the invoices to be pulled into the customer's system for a fast turnaround of payment and accurate capture of the needed information.

21. After a customer signs a contract with petitioner, petitioner continues to provide all of the services to the customers and the suppliers, including consulting and training services to the customer throughout the lifecycle of the contract. For example, petitioner initiated 18,000 customized work orders for customers in 2021. Petitioner's customer programs, processes, needs and requirements are changing constantly because of the complexity of and change in customer needs, supplier needs, hiring processes and laws.

22. Petitioner also regularly makes changes to its work processes and systems for a wide variety of events and occurrences, such as if a customer brings a new labor category into its contingent labor program because a customer may have a different process for hiring information technology workers than for hiring warehouse workers.

23. Petitioner also regularly updates the services it provides based on changes in labor, tax or other laws. For example, a recent tax law change in India required petitioner to advise

suppliers and customers of the law change and to change the invoicing process and structure for all of its customers with contingent labor in India.

24. Petitioner also makes recommendations to customers about potential suppliers that would support the customers' overall business needs and strategy. For example, if a customer were to institute a new or updated diversity and inclusion initiative, petitioner would recommend suppliers that would help meet that specific need, such as "The Mom Project" that gets working mothers back into the workplace.

25. Petitioner also provides training to its customers on the best and most efficient ways to manage its purchases of contingent labor and of petitioner's services, such as how to best create a requisition for labor, as well as how to view various reports that petitioner makes available on its site. Petitioner creates a variety of customized reports regarding the customer's contingent labor program and needs, which the customer receives by email or views on petitioner's system. Approximately 50% of petitioner's employees during the period at issue were involved in directly providing the services to customers and suppliers and the remaining 50% of petitioner's employees worked in product management and development, finance, accounting or legal areas.

26. Petitioner also has employees and teams that are dedicated to each individual customer. Petitioner assigns to each customer one or more "client operations managers" who assist the customer with managing its contingent labor program, assist the customer with changes the customer may want to make to its processes, and communicate updates on the services or service changes that petitioner can provide to the customer. Petitioner also assigns to each customer one or more dedicated "client relation managers" that perform similar functions. Petitioner also has what it refers to as "centers of excellence" consisting of teams of experts that

support the customers during the life of the contract, such as experts in reporting or invoicing or in other specialized areas.

27. Petitioner has a team that specializes in understanding the specific customer's contingent labor program, which are referred to as "solution consultants" who are focused on resolving customers' problems and providing consulting on best practices.

28. One of the many aspects of petitioner's integrated services included the management of, and consulting for, the labor requisition process that involves a customer submitting a request for contingent labor, which petitioner then reviews and eventually sends to the suppliers, who then submit candidates for consideration by the customer, and who then ultimately choose the candidates for the positions. Petitioner has a very large and extensive network of suppliers that it has curated over many years and petitioner sends the customer's requests for labor to the specific suppliers based upon petitioner's knowledge of which suppliers would be most appropriate to best provide the workers for each customer.

29. Prior to using petitioner's services, a customer may only know the suppliers it had worked with in the past and typically would only have used one or two suppliers to provide its contingent labor. There could be hundreds of suppliers that might be able to supply the labor required by the customer, but the customer may only know of one or two suppliers. With petitioner's services, customers have access to hundreds of suppliers that can best provide the labor the customer needs and whom petitioner has reviewed, evaluated and determined on a regular basis were suitable suppliers for the customer. Based on its extensive knowledge of the suppliers, petitioner carefully evaluated and often identified areas where customers were overpaying or could save money on contingent labor. Since petitioner is able to provide highly

specialized insight into the market and to exert some control and influence over the rates charged by suppliers, petitioner can ensure that the customer is not overpaying for contingent labor.

30. In order to work with petitioner as a supplier to customers, the suppliers sign an access agreement that allows the suppliers to have access to the customers and work with petitioner. Suppliers that enter into contracts with petitioner are able to review the customers' contingent labor needs and respond to requests from petitioner and petitioner's customers.

31. The benefit of petitioner's services to the suppliers is that they streamline, organize, and make the hiring process more efficient than in the past. Previously, a customer would have had to send a requisition by mail, fax, or email or make a telephone call to each supplier with a description of the customer's needs. Similarly, each supplier would then have to obtain, review and submit resumes of potential candidates to the customer by mail, fax or email or by calling the customer and describing the candidate.

32. Petitioner's services provide similar benefits to the customers. The customers no longer have to send requisitions by mail, fax, or email or make telephone calls to multiple suppliers to try to fill their contingent labor needs. Instead, the customer's hiring manager can create multiple and varying requests for labor in a single request (instead of multiple requests to multiple suppliers) that petitioner can review, provide input and consulting, and then release to multiple suppliers. Previously, the hiring manager may have had to fill out a paper form or Excel spreadsheet to capture all of the information required by the customer to request contingent labor. With petitioner's services, each customer can use a unique and customized form that the hiring manager uses to request contingent labor. That unique form is set up for each customer during petitioner's customer onboarding process. Petitioner customizes the customer's hiring requisition needs and forms by identifying the information the customer needs

to capture and any information that the customer wants the suppliers to be able to see. Petitioner does not charge a separate fee to the customer for customizing the hiring requisition form and instead, it is included as part of petitioner's overall and integrated services. Petitioner is also able to advise the customer on the information that should be included in its hiring requisition form in order for the customer to get the strongest candidates based on its experience in the industry.

33. Customers also benefit from the services because the approval process for hiring contingent labor is now streamlined. Every customer has its own approval process for the expenditure of money, the hiring of contingent labor, and compliance with labor and tax laws, invoicing, payables, generation of relevant reports and managing the efficiency of the process. Previously, the hiring manager would have to go to their manager's office to obtain approval of a paper labor requisition or send an email to the manager with details on the labor requisition. The manager may also have had to obtain approval from his or her manager. With petitioner's services, the approval process is accelerated and streamlined because when the hiring manager creates the requisition using petitioner's services, petitioner's personnel and system will generate emails or other notifications to route the requests for approval to the correct manager or managers and will also manage and monitor any responses.

34. Once the hiring requisition is reviewed by petitioner and approved by the customer's internal decision makers, petitioner releases the requisition to the suppliers to allow suppliers to evaluate the request and bid on the work. The supplier then submits candidates for the customer's consideration through petitioner's system. Petitioner also vets or evaluates candidates for customers by reviewing potential candidates submitted by multiple suppliers and curating the potential candidates down to a short list of the most viable candidates for the

customer to select, saving the customer time and expense. The customer's hiring managers view candidates' resumes that petitioner has obtained from the suppliers and select candidates the hiring manager may want to interview. The hiring manager's request to interview a candidate would be routed back to the supplier and petitioner would set up that interview.

35. Petitioner also provides monitoring services to ensure that customer required background checks, drug testing and other employment related services are properly performed by the vendor who performs those services and that all relevant information regarding these services is provided to the proper persons.

36. Petitioner also provides legal compliance services to its customers by having a team of people that research various labor, tax and other laws that affect contingent labor on a global basis. Any changes to labor or employment, tax or other laws that affect a particular customer are typically communicated to the customer by the customer's client operations manager. For example, a change in a labor law in the United Kingdom would be communicated to customers who have contingent labor programs in the United Kingdom.

37. Another aspect of petitioner's integrated services is the management of invoicing, including assistance with providing suppliers the information to enable the suppliers to submit invoices in the proper form and the consolidation of all of the supplier invoices for each customer so that the customer only receives one consolidated invoice for the particular project, rather than hundreds of invoices from different suppliers. The customer then pays the consolidated invoice by submitting the funds to petitioner, which then remits the funds to the suppliers. According to Ms. Vaupel, the suppliers pay petitioner's fee for the services based typically on a percentage of the supplier's fees and therefore, according to Ms. Vaupel, petitioner is actually paid by the suppliers and not by the customers for the services.

38. Ms. Vaupel testified that none of the services provided by petitioner are separately billed, there is no separate charge for any of the services and that the invoices sent to customers do not include any charge for a software license or a subscription fee. Ms. Vaupel asserted that petitioner's only charge is to the suppliers for the integrated services provided to customers and suppliers.

39. Neither the customers nor the suppliers may log-in and use petitioner's system unless they have entered into a contract with petitioner that governs all of the integrated services provided by petitioner.

40. Petitioner's customers are not allowed to and do not alter or download petitioner's system, modify the system or re-sell or re-license the system. Neither petitioner's customers nor the suppliers can modify the system.

41. Petitioner's contracts with its customers are designed to protect petitioner. Petitioner needs to ensure that its customers cannot copy the system, sell the system to another party, or use it for an unintended purpose. The use of the term "license" in the customer contracts is to confirm that the customers and suppliers are allowed to access petitioner's system that petitioner created to assist it in the performance of the services, but further cautions that the customers and suppliers cannot download, alter, modify, distribute or use it in any other way to protect petitioner's proprietary technology that it has developed over years.

42. Ms. Vaupel asserted that unlike software companies that track licenses to use software and the number of users accessing software and who sell software based on the number of users or licenses, petitioner does not track information for users or charge for software usage in any form.

43. Petitioner marketed its services through a variety of methods, including using a network of business connections, advertising, its website and videos that are intended to provide prospective customers and suppliers with "sound bites" of the value that petitioner can bring to the customers and suppliers. Any tangible marketing materials are tailored to the person being addressed, which in some cases can be senior management, finance people, human resources personnel, hiring managers and others. In its marketing materials, petitioner does not fully describe all of the work that it does in order to provide its services because it only provides the information that the customer or supplier would believe provides them the most value. Ms. Vaupel testified that the specific petitioner marketing video submitted by the Division into evidence was directed solely to the tasks that a customer's hiring manager would perform and was not intended to represent a summary of the true object of petitioner's services. The video and the website information submitted by the Division concentrates on the technology that customers may find useful from the standpoint of efficiency and provides information on how to navigate within the system to obtain information. The marketing video submitted into evidence by the Division was directed at a customer's hiring manager to show the hiring manager how easy it is to work with petitioner and how much benefit the customer would get from working with petitioner. Petitioner might market its services differently to a customer's chief financial officer or legal counsel. For those individuals, petitioner's marketing would focus on risk mitigation and compliance factors, cost savings and other similar things. Petitioner did not submit any additional website, video or other marketing materials into the record.

44. Petitioner owns the servers the VMS software runs on. The VMS software is developed solely by petitioner. Petitioner has internal programmers and other professionals that designed the VMS software.

45. Ms. Vaupel testified that petitioner attempts to avoid customizing its software for particular customers but that such customization is possible.

46. When asked about why the contracts were so long, Ms. Vaupel testified that petitioner needs to protect its intellectual property and that petitioner is "providing access to a platform, we need to ensure that a customer can't copy that platform or use it for some other unintended purpose or try to resell our IP to another party."

47. Ms. Vaupel explained that petitioner only offered the MSP service up until 2012;[7] however, after that year petitioner no longer offered that separate service. Ms. Vaupel asserted that all of the services she testified about above were part of the VMS bundled package of services. The Division does not advance that the MSP services offered, aside from the software, are taxable.

EXAMPLE VMS CONTRACT LANGUAGE

48. As noted above in finding of fact 10, during the audit, petitioner provided the Division examples of the contracts entered into with its customers. During the hearing, petitioner also entered additional certain contracts into the record. Petitioner's contract with Verizon Telematics, Inc., dated October 3, 2014 (example contract), was both provided to the Division during the audit as a model contract and was also separately submitted into evidence by petitioner during the hearing. The example contract was executed by Ms. Vaupel, as petitioner's chief operating officer.

49. The example contract states the following:

"1.   Definitions: Besides the terms defined elsewhere in this Agreement, the following terms shall have the following meanings: a) *'Beeline VMS' is Beeline's*

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[7] It appears the Division mistakenly believed that petitioner offered the separate MSP service throughout the entire period at issue.

vendor management system, a web based application delivered through a software-as-a-service model,[8] b) '**Documentation**' means the User instructions and such other instructional information provided by Beeline for use with the Beeline VMS and Services; c) ˈ**Services**' *means the Beeline VMS, solutions and services as set forth in a statement of work attached hereto that are procured by Client and made available by Beeline via the Internet at the URL www.beeline.com and/or other web pages designated by Beeline*. Services specifically excludes staffing services; d) '**Supplier(s)**' means the third party labor suppliers designated by Client, who have entered Into Beeline's Supplier Access and Services Agreement; e) '**Users**' means employees, consultants and contractors of Client using and accessing the Services (excluding Suppliers), Beeline VMS, and Documentation who are properly registered and authorized to access the Beeline VMS by virtue of password(s).

2.   Beeline VMS Access; Services Use.
        a) *Beeline hereby grants to Client a limited, nonexclusive, nontransferable license to use and access the Beeline VMS solutions set forth in Exhibit A in the Beeline VMS areas designated by Beeline in object code form during the Term.* The Beeline VMS and Services shall be used by Client and Users solely (i) for Client's internal business purpose and (ii) to implement electronic procurement and supply chain management. Client may also use the Documentation in association with the licensed use of the Beeline VMS. Client shall administer the registration and password access of its Users and remove or deny access to terminated or unauthorized personnel. Client agrees to immediately notify Beeline of any unauthorized use of any registration or password. Client shall not share passwords or transfer registrations from one User to another.

        b) *Suppliers shall be permitted to use and access areas of the Beeline VMS designated by Beeline.* Suppliers may use the Documentation designated by Beeline in connection with Supplier's use of the Beeline VMS. The terms of Suppliers' use and access of the Beeline VMS, Services and Documentation shall be governed by Beeline's Supplier Access and Services Agreement. Client is not responsible for breaches of the Beeline Supplier Access and Services Agreement.

3.   Services Scope; Billing.
        a) *Client or its agent shall have and maintain a direct contractual relationship with each Supplier for that Supplier's services, and Beeline shall not serve as a prime contractor in this regard. Client acknowledges and agrees that Beeline is not Client's or Supplier's agent for any purpose other than as expressly stated herein and is not responsible for the acts or omissions of Client or any Supplier, the quality of services or products derived from any Supplier, or for the quality or accuracy of information received from any Supplier.*

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[8] The contract provision describing "VMS" as a "web based application delivered as a software-as-a-service model" appears in several of VMS contracts petitioner placed into evidence for this case.

* * *

4.   <u>Proprietary Rights</u>.

a) Beeline, its affiliates and licensors, retain all right, title and interest in, to and under the Beeline VMS and Documentation, as well as all software, source code and components thereof and all know how, ideas and developments derived thereby. No title or right, or any intellectual property or other right, express or implied, is transferred by Beeline to Client by virtue of this Agreement. ***The license granted hereunder is limited solely to the right to access the Beeline VMS via the World Wide Web and does not include the transfer or distribution of software or source code to Client. Beeline shall inform each Supplier of the same in the Supplier Access and Services Agreement.***

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5.   <u>Payment and invoicing</u>.

a) The fees due Beeline for Services rendered and use of the Beeline VMS and Documentation ('Fees') are set forth in exhibit F.[9] Unless otherwise stated in Exhibit F, Beeline shall submit consolidated invoices to Client for Fees due Beeline and amounts due Suppliers. Client shall pay such consolidated invoices in the method and timeframe described in exhibit F.

b) Client shall remain responsible for the payment of all applicable taxes, duties, assessments and levies attributable to the fees or use of the Beeline VMS, Services or Documentation, including all state and local sales or use, gross receipts, transaction privilege, business and occupation and other similar taxes or levies, VAT, electronic/internet commerce, export/import and withholding taxes, penalties and interest. Beeline shall remain responsible for any taxes based on Beeline's income.

c) Client shall remit payments to Beeline Settlement Company LLC, a single purpose special bankruptcy remote company established by Beeline and incorporating governance and other standards consistent with rating agency requirements for bankruptcy remote entities, for the purpose of remitting payment to Suppliers. Client's payments to Beeline Settlement Company LLC shall not be co-mingled with other Beeline operating accounts. Within seven (7) business days of receipt of payment from Client, Beeline shall send payment to Suppliers" (emphasis in original and added).

50. Exhibit A to the Example Agreement provides in relevant part:

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[9] Exhibit F to the example contract provides a fee scale based upon the client's "Annualized Spend Captured in Technology" (e.g., If the client's Annualized Spend Captured in Technology is $30,000,001.00 - $60,000,000.00 in Year 1, petitioner's fee is .95%, in Year 2, petitioner's fee is .85%, in Years 3+, petitioner's fee is .65% of the total amount due suppliers). Exhibit F also provides that all invoices shall be submitted to client via the Beeline VMS or as otherwise agreed to by the client and Beeline.

"1. SERVICES AND SOLUTIONS.
Client retains Beeline to provide its Vendor Management System, consisting of its core platform, ('Beeline VMS') and purchased solutions set forth in this Exhibit A (together, the 'Service'), to facilitate Client's procurement of contingent workers from sources and suppliers identified and selected by Client ('Suppliers') and in accordance with Client specifications (the 'Client Program'*). Beeline VMS, a web-based application delivered through software-as-a-service, provides, automation solutions for sourcing, managing, and measuring Suppliers and their personnel ('Supplier Personnel'). Solutions available on the Beeline VMS may include Contingent Staffing, Resource Tracking, Outsourced Workers, and Services Procurement. Client will be provided with approved access to utilize the Service to facilitate the procurement and management of Supplier Personnel"* (emphasis added).

51. Exhibit A to the example contract goes on to note that the following are

included under Beeline VMS:

"3.1. Contingent Staffing
Contingent Staffing encompasses sourcing non-employees for professional and temporary staffing needs, such as Admin/Clerical, IT, Non-IT, Blue-Collar/Light Industrial, and Onshore/Offshore, on a per-worker basis through a Supplier.

3.1.1. Procurement and Sourcing. Through Supplier-neutral sourcing, approved Suppliers receive job requisitions based on rules predefined by Client. They respond with potential candidates who, in turn, follow Client's qualification processes. This competitive model is facilitated automatically and results in lower time-to-fill ratios, higher quality candidates, more competitive pricing, and overall improved supplier performance . . . .

* * *

3.2. Services Procurement
Services Procurement encompasses strategic management and procurement of complex category services including but not limited to contract labor, consultancy services, IT, marketing, and legal services, typically through a Statement of Work with a Supplier.

* * *

3.3 Outsourced Workers
Outsourced Workers encompasses management and tracking of non-strategic services outside the core competencies of Client's organization that are generally not time constrained. These services are usually bound by agreements between Client and the non-strategic services Supplier. Some examples of non-strategic

services include lawn maintenance, janitorial services, security guards, maintenance and facilities, dining services.

* * *

3.5. Additional Solutions

3.5.1. SmartView®. Interactive data discovery platform enables visibility to track, measure, trend, and predict Supplier metrics, total spend and compliance issues, program performance, and quality improvement opportunities. Through a visual, interactive and web-based interface, users explore and analyze program data collected by the Beeline VMS. The flowing capabilities comprise SmartView, but do not represent an exhaustive feature set: Standard Visualizations (Adoption Management, Process Efficiency, Program Metrics, Rate Intelligence Metrics, Risk Mitigation Metrics, Supplier Optimization), Charts, Graphs, Outlier Diagrams, Maps, Dynamic Analysis, Filters, Export Services (PDF, MS Excel), and Bookmarking/Social BI."

52. Exhibit B-1 to the example contract provides in relevant part:

2. VMS Solutions

"The following Beeline VMS Solutions will be implemented in Phase l, in the United Sates, with invoicing in US dollars, and will include business units identified by Client. Deployment of any other VMS Solutions will require a separate [statement of work]. Unless otherwise expressed in this Exhibit It [sic] is intended that the ***VMS Solutions described herein will be deployed in a standard fashion utilizing the VMS technology without customization of software. Any deviations or requirements subsequently identified that require custom software development shall require a separate [statement of work] and be subject to additional costs as may be applicable at rates described in [another exhibit to the agreement"*** (emphasis added).

53. Exhibit B-1 to the example contract provides that the VMS Solutions referred to in the above provision includes what appears to be most of the services petitioner provides its clients, classifying such as "Contingent Staffing," "Standard Integrations" and "Non-Standard (Custom) Integrations" and expressly including all of those services described in Exhibit A to the contract.

EXAMPLE SUPPLIER ACCESS AND SERVICES AGREEMENT

54. As noted above, during the hearing, petitioner submitted an example of the contracts

it entered into with the suppliers of labor (*see* exhibit 14 in evidence [example supplier

contract]). The example supplier contract notes that the services for which suppliers are engaged

are for "the electronic procurement and supply chain management services available on

[petitioner's website] which are offered by [petitioner]." The example supplier contract

provides:

> "2. Technology Access; Services Use. Beeline hereby grants to Supplier
> a limited, nonexclusive, nontransferable license to use and access certain
> Technology areas designated by Beeline for Supplier during the Term solely for
> Supplier's use in fulfilling Client's labor and/or professional requirements."

55. Exhibit A to the example supplier contract provides in part:

> "FEES. ***Client shall pay a fee to Beeline as set forth in Beeline's agreement with
> Client.*** Beeline shall have the right to collect such fee by collecting from
> Supplier an amount equivalent to ___% of all charges by Supplier attributable to
> services delivered each month by Supplier to Client, exclusive of expense
> reimbursement and applicable taxes. Beeline may deduct the amount of the fee
> from the payment received from the Client attributable to Supplier's services, and
> the balance shall be accepted by Supplier as payment in full for services rendered
> to Client. Beeline has agreed to invoice Client every X days. Beeline shall remit
> the balance to the Supplier at the address currently on file with Beeline, within 5
> business days of receipt from Client. Beeline shall in no case be responsible for
> failure or delay in payment by Client" (emphasis added).

THE DETERMINATION OF THE ADMINISTRATIVE JUDGE

The Administrative Law Judge began his determination by observing that a presumption

of correctness attaches to a notice that is properly issued by the Division as long as the

Division's assessment has a rational basis, which he found to be the case in this matter.

Next, the Administrative Law Judge reviewed the Tax Law provisions pertaining to retail

sales and observed that pre-written software is included within the definition of tangible personal

property for sales tax purposes. He found that petitioner's contracts grant customers and the

suppliers of contract labor with access to and a license to use the Beeline VMS over the internet, thereby resulting in a sale of pre-written software.

The Administrative Law Judge determined that the primary function analysis is not applicable in this case since petitioner's software is bundled and sold together with services as one product. Nevertheless, he found that the software license to access and use the Beeline VMS software is a primary purpose of petitioner's contracts. The Administrative Law Judge determined that the Beeline VMS used standardized software, even though it could be customized to the needs of a particular customer for an additional fee. The Administrative Law Judge found unavailing petitioner's argument that the suppliers of contract labor and not the customers pay for the use of the Beeline VMS. He determined that, pursuant to the contracts, petitioner's customers are obligated to pay petitioner a fee for the Beeline VMS that is separate and apart from the fees paid to the suppliers of contract labor.

The Administrative Law Judge noted the law pertaining to the parol evidence rule in relation to the testimony of petitioner's witness.

ARGUMENTS ON EXCEPTION

Petitioner argues that the primary purpose of its business is to bring together, and provide services to, the buyers and suppliers of contract labor. Petitioner contends that, while in the past its services were performed manually, today it uses the Beeline VMS software technology to deliver the services in a more efficient and effective manner. It contends that this is no different than the many other businesses that have been transformed by technology and that the use of the software technology does not change its primary business function from providing services to selling pre-written software. Petitioner asserts that the law requires the use of the true object or primary function test to determine whether it is selling tangible personal property or services.

Petitioner contends that to constitute a taxable sale of pre-written software, a seller must give possession, custody and control of the software to the buyer in exchange for consideration, none of which occurred here. Petitioner alleges that customers were given limited rights to access the software and had no attributes of property ownership; and customers cannot buy the software separately or access the Beeline VMS unless they purchase the entire service that petitioner offers. Petitioner asserts that customers and suppliers are not charged for the software or a software license but, instead, are paying for the suite of services provided by petitioner. Petitioner further asserts that the software is not pre-written software because it is customized to the needs and requirements of each customer.

Petitioner argues that the Administrative Law Judge improperly used the parol evidence rule to dismiss the testimony of its witness at the hearing. Petitioner asserts that the testimony was offered to fully describe all of the services that petitioner provides beyond those that are included in the contracts and not to contradict the language of the contracts.

The Division takes the position that petitioner's Beeline VMS is pre-written software, the receipts from which are taxable as tangible personal property. The Division argues that petitioner only provided information technology ("IT") services in support of the Beeline VMS and that those services were also properly subject to tax since they were performed in conjunction with the sale of software and were not separately invoiced. The Division asserts that any other consulting services provided by petitioner required a separate statement of work and were billed separately. The Division argues that, even if petitioner provided nontaxable services with the sale of the Beeline VMS, the primary function test would be inapplicable because that test does not apply in the case of a mixed bundle of taxable tangible personal property and nontaxable services.

The Division contends that petitioner hosted the Beeline VMS software on its servers and allowed customers and suppliers to remotely access and use the software over the internet. The Division stresses that petitioner's customers were also given a license to use the Beeline VMS software. It asserts that this arrangement constitutes a taxable transfer of actual and constructive possession and the right to use, control or direct the use of the software. The Division contends that there is no need to transfer the source code to a customer to transfer access and use of the software, as it fully functions without transfer of the code.

The Division agrees with the determination that the Beeline VMS is not custom software. The Division also agrees with the Administrative Law Judge's determination not to consider the testimony of petitioner's witness to the extent that it violated the parol evidence rule by contradicting the written contracts introduced into evidence.

OPINION

Sales tax is imposed on the receipts from every retail sale of tangible personal property (*see* Tax Law § 1105 [a]; *Matter of Shuai Yin v N.Y. State Dept. of Taxation & Fin.*, 151 AD3d 1497, 1498 [3d Dept 2017]). It is presumed that the receipts from the sale of tangible personal property are subject to tax until the contrary is established, and the burden of proving that any receipt is not taxable shall be upon the person required to collect tax or the customer (Tax Law § 1132 [c] [1]; *see* 20 NYCRR 532.4 [b] [1]).

A sale, for purpose of the sales tax, is broadly defined as:

"Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefore, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor" (Tax Law § 1101 [b] [5]; *see also* 20 NYCRR 526.7 [a]).

A "retail sale" is a sale of tangible personal property to any person for any purpose, other than for resale (*see* Tax Law § 1101 [b] [4] [i]).

For purposes of a license to use, transfer of possession occurs when one of the following attributes of property ownership has been transferred:

(i)   custody or possession of the tangible personal property, actual or constructive;

(ii)   the right to custody or possession of the tangible personal property;

(iii)   the right to use, or control or direct the use of tangible personal property (20 NYCRR 526.7 [e] [4]).

Tangible personal property, for tax purposes, includes pre-written computer software, "whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser" (Tax Law § 1101 [b] [6]). Pre-written computer software is any software that is not designed and developed by the author or other creator to the specifications of a specific purchaser (Tax Law § 1101 [b] [14]). Pre-written computer software that is modified or enhanced to the specifications of a specific purchaser remains pre-written software, except that any modification or enhancement shall not constitute pre-written software where there is a reasonable, separately stated charge for such modification or enhancement (*id.*).

Tax Law § 1105 (c) imposes sales tax on the receipts from every sale, except for resale, of the services specifically enumerated in that subdivision. The Division makes no assertion that any services provided to petitioner's customers as described herein are specifically taxable under Tax Law § 1105 (c).

Petitioner has designed and developed vendor management software to help large, national and global companies procure and manage their contingent, or contract, labor

workforces throughout the world. Although petitioner describes its vendor management system in terms of a service, the Beeline VMS software falls within the definition of pre-written software and, therefore, is tangible personal property under the Tax Law (*see* Tax Law § 1101 [b] [6]). Despite petitioner's contention that the software is "customized" for each client, there is no evidence in the record demonstrating that the Beeline VMS is "designed and developed to the specifications of a specific purchaser" (*see* Tax Law § 1101 [b] [14]). Instead, the client agreements provide that the "VMS solutions" will be deployed in a standard fashion utilizing the VMS technology without customization or change of the software code (finding of fact 52). Any customization would require a separate statement of work and be subject to additional application development fees (*id.*). Petitioner's witness testified that, as part of the client onboarding process, petitioner would adjust forms and screens on the VMS platform to meet a customer's business requirements and integrate the software for use on a customer's own computer system. She also testified, however, that customization of the software for a particular customer, while possible, is avoided (finding of fact 45). To the extent that petitioner modified the VMS software to the needs of a specific customer, the software remains pre-written software except that those modifications would not constitute pre-written software as long as there is a "reasonable, separately stated charge" for any modifications or alleged customizations (*see* Tax Law § 1101 [b] [14]). The integrations that petitioner would make during the implementation phase, and throughout the course of a contract to meet a customer's changing needs, appear to be configurations or modifications, as opposed to the individual design and development of custom software. Further, although petitioner claims that its software is "customized" for each customer, it failed to submit any details regarding the customizations or any documentary evidence in support of that conclusory allegation.

The formal client agreements, on their face, show taxable retail sales in that petitioner transferred constructive possession of the VMS software and granted a license to use the software to its clients and the suppliers of labor by giving them remote access and use of the software over the internet at the Beeline VMS internet address (findings of facts 49 and 54); (*see* Tax Law § 1101 [b] [5]). Although petitioner contends that the license was granted solely to protect its technology, the record shows that customers and suppliers had the "right to use, or control or direct the use of" the software (*see* 20 NYCRR 526.7 [e] [4] [iii]). The fact that petitioner did not transfer ownership of the software or source code, or that petitioner's customers do not have the right to change or alter the underlying code of the software, is not determinative as a sale is defined as any transfer of title or possession, or both, and the definition of sale includes license to use (*see* Tax Law § 1101 [b] [5]).

Petitioner received consideration for its sales in the form of its recurring, monthly service fee or "Beeline fee" (findings of fact 49 and 54).   We are not persuaded by petitioner's claim that no sale of the VMS software occurred since its customers allegedly did not pay for the technology. Although petitioner claims that only the suppliers paid petitioner, the record shows that consideration was provided by customers when petitioner deducted the Beeline fee from the amount that customers paid to the suppliers of the contract labor. The payment of the Beeline fee allowed customers to gain access to the VMS system and software that was running on petitioner's servers.

Having determined that the Beeline VMS software is pre-written computer software, the receipts from which are taxable as tangible personal property under the Tax Law, we address petitioner's argument that the Tribunal must apply a true object or primary function test to the transactions at issue to determine whether petitioner sold nontaxable services or tangible

personal property. Petitioner argues that it facilitates the creation of professional relationships matching customers' needs with suppliers' services and contends that its services are functionally similar to online dating services. It points to the Tribunal's decision in ***Matter of SSOV '81 Ltd., d/b/a People Resources*** (Tax Appeals Tribunal, January 19, 1995), where the issue was whether petitioner provided taxable information services to its members.   The Tribunal determined in that matter that an integrated service is to be taxed according to its primary function. Petitioner also finds support for its argument in ***Matter of Principal Connections, Ltd.***, (Tax Appeals Tribunal, February 12, 2004), where the Tribunal looked to the primary purpose of petitioner's business to determine whether its services were properly subject to tax as information services.

Petitioner's reliance on ***Matter of SSOV '81 Ltd., d/b/a People Resources*** and ***Matter of Principal Connections, Ltd.***, is misplaced. Those matters concerned the taxability of services consisting of multiple components. The Tribunal applied a primary function analysis to "focus[ ] on the service in its entirety, as opposed to reviewing the service by components or by the means in which the service is effectuated" (***Matter of SSOV '81 Ltd., d/b/a People Resources***). In the instant matter, the Tribunal is being asked to consider the sales of a mixed bundle of tangible personal property and services. The Tribunal has declined to apply a primary function analysis when considering the taxability of mixed bundles of tangible personal property and services in consideration of the fact that retail sales of tangible personal property are taxable unless specifically exempt, whereas services are taxable only if specifically enumerated in the Tax Law (***compare***, Tax Law § 1105 (a) and (c); ***see also Matter of Strata Skin Sciences, Inc.,*** Tax Appeals Tribunal, May 5, 2022, ***confirmed*** _____AD3d _____ [3d Dept 2024]), 205 NYS3d 807 [2024]).

The Tribunal did address the sale of a mixed bundle of tangible personal property and services in *Matter of Galileo Intl. Partnership* (Tax Appeals Tribunal, March 24, 2005, *confirmed*, 31 AD3d 1072 [3d Dept 2006]) where the taxpayers provided subscribers (mostly travel agents) with access to a computer reservations system through which subscribers could obtain information about and make reservations for flights, car rentals, hotels and cruises. In addition to granting access, the taxpayers leased computer equipment and software to their subscribers. The contracts referred to the computer equipment transfer as a lease. Petitioner argued that applying the true object test would show that their agreements with subscribers were for nontaxable connectivity services. The Tribunal determined that, in addition to the nontaxable services, the petitioner in that case leased equipment and licensed software and that the rental payments on those leases were subject to sales tax. In confirming the holding of the Tribunal, the Third Department found that "[t]here was adequate evidence to sustain the Tribunal's conclusion that the transfer of equipment was a lease and that such was a significant part of the transaction, not merely a trivial element of a contract for services" (*id.* at 1075).

More recently, in *Matter of Strata Skin Sciences, Inc.,* the Tribunal addressed the mixed bundled sales of tangible personal property and services with regard to the sale of laser devices used by physicians to treat certain skin diseases with ultraviolet light. Petitioner both sold the laser devices to medical practices outright and, under a recurring revenue model, placed other devices in physicians' offices at no up-front cost and charged the physicians to use the device on a per-treatment basis pursuant to a usage agreement. The usage agreement entitled participating physicians to a suite of training, maintenance, marketing and reimbursement services to facilitate the use of the device by the medical professionals. Petitioner collected sales tax on the outright sales of the machines but did not do so when it received payments from a medical practice

pursuant to a usage agreement. Petitioner argued that the placement of its laser equipment in a physician's office was merely an incidental transfer of tangible personal property and that the sales of therapeutic services were the true object of the transactions at issue. The Tribunal found that the petitioner made taxable retail sales of the laser equipment when it extended licenses to its customers to use the laser equipment following the purchase of treatment codes. The Appellate Division confirmed the decision and found that the Tribunal properly determined that the transactions fell within the definition of retail sale (*see* Tax Law § 1101 [b] [4], [5], [7]). The Court also found substantial evidence to support the Tribunal's conclusion that the primary function analysis was inapplicable because the evidence showed that the use of the laser device was more than incidental to the sale of services and that it was sold on a standalone basis and had a market value distinct from the services rendered (*see Matter of Strata Skin Sciences, Inc.*).

Although petitioner views its primary business purpose as an integrated service and contends that the Beeline VMS is only one aspect of the means by which petitioner provides that service, the record clearly demonstrates that the Beeline VMS software technology is the core element of petitioner's business and is anything but incidental or ancillary to petitioner's services. Petitioner's assertions to the contrary notwithstanding, customers and suppliers accessed the Beeline VMS platform to not only view reports and information, but to use the system's tools to accomplish the various tasks associated with the sourcing, managing and supplying of contract labor. Under the terms of the example client contract, "users" is defined as "employees, consultants and contractors" of a client (finding of fact 49). Petitioner licenses user instructions for the Beeline VMS and provides help desk support 24 hours per day seven days a week. Petitioner also provides various training options for users, including on-site training for "super users" that require in-depth knowledge of the Beeline system and reporting functionality.

Indeed, as is clear from testimony at the hearing, petitioner devoted substantial employee time to the effort of integrating the Beeline VMS software with a customer's IT system and its internal business processes precisely for the purpose of enabling the customer and its employees to use, and take advantage of, the VMS's functional capabilities.

According to testimony at the hearing, a customer, usually a hiring manager, initiates the labor requisition process by logging on to the Beeline VMS portal and entering information to complete an online request for labor. The VMS portal interface and forms would have been configured to meet the customer's business requirements during the onboarding process. The VMS software automatically routes the request for labor through the customer's approval hierarchy. The customer's managers receive email notifications and may approve requests for labor by accessing the VMS portal. Once the approvals are received from within the company, the request for labor is reviewed by petitioner and then released to multiple suppliers through the Beeline VMS platform. Suppliers must also log on to the Beeline VMS portal to see and review requests for labor. Suppliers may submit resumes for consideration through the VMS portal. A customer hiring manager would log on to the VMS portal to review the resumes submitted by suppliers. The hiring manager would submit requests to interview candidates on the VMS platform and those requests would be routed to the appropriate suppliers.

The invoice process is also managed through the use of the Beeline VMS. The agreements with suppliers require that they submit their invoices on the VMS platform. Instead of a customer receiving monthly invoices from multiple suppliers, a customer is provided with one single, consolidated invoice that includes the charges from all of its suppliers of labor. The invoices are provided to customers on the Beeline VMS platform in a format that can be read by the customer's own computer system, another integration that occurs during the onboarding

process. Petitioner then provides a settlement service whereby a customer pays petitioner the total invoice amount charged by all of the suppliers of labor for a month. Petitioner retains a percentage of this amount as its Beeline fee and then remits the balance to the various suppliers.

The contracts also show that petitioner was accountable to customers for the performance of the Beeline VMS. According to the "Technology Performance/Service Levels" in exhibit G of the example contract, if the VMS "core activities of procurement approval, recordkeeping and time entry" were available less than 90% of the time during a particular month, a customer would receive a credit equal to 15% of the monthly Beeline service fee. If the Beeline VMS was available less than 90% of the time for two consecutive months, a customer would have the option to terminate its agreement with petitioner altogether. This contractual provision highlights not only the significance of the VMS to petitioner's services, but also that the functions and availability of the VMS were essential to customers, and that the monthly Beeline fee paid for the VMS technology as well as petitioner's services.

Petitioner contends that the Beeline VMS is not sold separately and thus argues that its services must be the primary function. While petitioner's services may provide value to customers and the subject transactions, the customer contracts demonstrate that the Beeline VMS software is central to the service that petitioner provides. As noted above, the contracts specifically state that:

> "[C]lient retains Beeline to provide its Vendor Management System, consisting of its core platform, ('Beeline VMS') and purchased solutions set forth in this Exhibit A (together the 'Service'); to facilitate Client's procurement of contingent workers from sources and suppliers identified and selected by Client ('Suppliers') and in accordance with Clients specifications (the 'Client Program'). Beeline VMS, a web-based application delivered through software-as-a-service, provides automation solutions for sourcing, managing, and measuring Suppliers and their personnel ('Supplier Personnel'). Solutions available on the Beeline VMS may include Contingent Staffing, Resource Tracking, Outsourced Workers, and Services Procurement. Client will be provided with approved access to utilize the

Service to facilitate the procurement and management of Supplier Personnel"
(finding of fact 50).

Indeed, the contracts between petitioner and customers and the suppliers of labor demonstrate that the VMS software has value whether or not petitioner chooses to charge separately for the technology. The Division alleges that petitioner did, in fact, charge separately for the VMS technology in the MSP contracts where petitioner took over all aspects of contingent labor hiring and management for a customer. The fees in the sample MSP contract were calculated as a percentage of the amount spent on contingent labor and were separately stated as the "Technology" fee and the "MS" fee (exhibit 5, p 24).

Based upon of the facts before us and viewing the record as a whole, it is clear that the transactions at issue constitute retail sales of tangible personal property. Further, although the VMS software and license are packaged with petitioner's services and sold as one integrated "service," the customer contracts and record demonstrate that the Beeline VMS software technology was the central element of those contracts and that customers were not just purchasing petitioner's services, they were purchasing pre-written software that they used to facilitate the sourcing, hiring and management of contract labor. Indeed, to find otherwise given these facts would effectively create an exemption for certain sales of tangible personal property where none exists in the law. Furthermore, although petitioner's employees may have performed otherwise nontaxable services, petitioner failed to substantiate that claim by providing reasonable and separately stated charges for those services (*see* Tax Law § 1115 [o] [services provided in conjunction with the sale of tangible personal property is exempt only where separately stated and reasonable in amount]).

In light of the foregoing discussion, petitioner's argument regarding parol evidence is moot.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Beeline.com, Inc., is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Beeline.com, Inc., is denied; and

4. The notice of determination, dated July 31, 2018, is sustained.

DATED: Albany, New York
      May 2, 2024

/s/   Anthony Giardina_ ___
       Anthony Giardina
       President

/s/   Cynthia M. Monaco___
       Cynthia M. Monaco
       Commissioner

/s/   Kevin A. Cahill_____
       Kevin A. Cahill
       Commissioner