

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

BDO KNOWS:

SALT



SUBJECT

THE SUPREME COURT OF CALIFORNIA DENIES REVIEW OF THE COURT OF APPEAL'S DECISION IN LUCENT TECHNOLOGIES AND OPENS THE DOOR TO REFUND OPPORTUNITIES FOR SIMILARLY SITUATED TAXPAYERS

SUMMARY

On January 20, 2016, the Supreme Court of California denied review of the Court of Appeal of California, Second Appellate District's October 8, 2015, decision in *Lucent Technologies, Inc. v. State Board of Equalization*, Docket No. B257808, which renders that decision final and paves the way for the taxpayer's refund. In *Lucent Technologies*, the California Appellate Court held that an assessment of nearly \$25 million in sales taxes in connection with a sale of software transferred via magnetic tapes and discs under the terms of a technology transfer agreement (or "TTA") was erroneous. See the [BDO SALT alert](#) that discusses the Appellate Court decision.

DETAILS

In *Lucent Technologies*, the California Court of Appeal issued its decision on October 8, 2016, in which it held that: (i) computer software used by computers to operate telecommunication switches that was transferred to the customer via magnetic discs and tapes was not tangible personal property; and (ii) the underlying software contracts qualified as nontaxable TTAs. On November 18, 2015, the State Board of Equalization filed a petition with the Supreme Court of California seeking review of the appellate court's decision, which California's highest court denied on January 20, 2016. See Supreme Court of California Docket No. S230657. With no apparent federal question or other issue within the Supreme Court of the United States' review jurisdiction, the California high court's denial of the State Board of Equalization's petition for review renders the lower court's decision in favor of the taxpayer final, and the taxpayer's right to a nearly \$25 million refund sealed.

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BDO INSIGHTS

- ▶ As a result of the Supreme Court of California's denial of the petition for review, the State Board of Equalization will need to review and process thousands of refund claims that had been held in abeyance pending the final outcome in *Lucent Technologies*.
- ▶ Retailers that have paid sales tax under an arrangement similar to that of the taxpayer in *Lucent Technologies* should consider whether to seek a refund, and those retailers that are collecting tax under such an arrangement should consider whether to continue to collect tax.

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