

Sales/Use/Indirect:

New York High Court Affirms that Offering Constitutes Taxable Information Services that Do Not Fall Under Statutory Exclusion

2025 NY Slip Op 02262 (No. 35), N.Y. (4/17/25). The New York Court of Appeals (Court) affirmed [see *State Tax Matters*, Issue 2024-10, and *State Tax Matters*, Issue 2022-5, for details on the earlier New York Supreme Court, Appellate Division's and Tax Tribunal's rulings in this case] that a taxpayer's provided services, including measuring "advertising effectiveness" and disseminating related improvement recommendations, constituted taxable information services that are substantially incorporated into reports furnished to others and thus could *not* be excluded from taxation as personal or individual in nature. In doing so, the Court noted that because the parties had conceded that the information was personal and individual in nature, the question of whether sales tax was properly imposed on the taxpayer's offering "boils down to two determinative statutory issues" – *i.e.*:

URL: <https://www.nycourts.gov/ctapps/Decisions/2025/Apr25/35opn25-Decision.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240308_12.html

URL: https://dhub.deloitte.com/Newsletters/Tax/2022/STM/220204_6.html

1. Whether the provided service represents the "furnishing of information," and if so,
2. Whether the information is "substantially incorporated in reports furnished to other persons."

The Court ultimately agreed that based on the facts provided, the taxpayer's offering was not merely the provision of exempt personalized consulting services; rather, it was reasonable for the New York Tax Tribunal to conclude that:

1. The primary function of the reports at issue was the collection and analysis of information, and
2. The underlying reincorporation of data in the reports represented an appreciable portion of each subsequent report even though information from prior reports made up a relatively small portion of each subsequent report, as this reincorporation was qualitatively important to the analytical value of the furnished reports, rendering them "substantial."

A lengthy dissenting opinion authored by one judge, as well as signed by another judge concurring with the dissent, follows. Please contact us with any questions.

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