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Alert | State & Local Tax (SALT)

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New York Finds Personalized Analysis of Advertising Campaigns Is Taxable

New York State imposes sales tax on information services but excludes from tax "the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons. . .." Tax Law § 1105 (c) (1). In the *Matter of Dynamic Logic v. Tax Tribunal of the State of New York*, decided April 17, 2025, New York's highest court held that an analysis of an advertising campaign that was specifically made for individual clients was taxable since the "the data generated for each report is incorporated into the MarketNorms database, which Dynamic separately markets and sells as an independent product." Ultimately, the court concluded there was substantial evidence to support the Tribunal's decision based on the finding that the information gathered was also included in a database used for other clients.

While the facts in the case were particularly complicated, the issue before the court was simple: Does the fact that the data the taxpayer accumulates is aggregated and anonymized and then used to establish industry "benchmarks" of averages for a broad range of advertising campaigns no longer qualify for the exclusion for services of a personal and individual nature? The majority held that it did.

The court took up a similar issue previously in *Matter of Wegmans Food Mkts., Inc. v Tax Appeals Trib. of the State of N.Y.* (33 NY3d 587 (2019)) where it concluded that if the information gathered is from publicly available sources, it is not personal and individual in nature. Much of that case involved a discussion on the applicability of the strict construction of tax exemptions, reversing precedents that held that exclusions from tax are construed in the taxpayer's favor. The dissent in *Dynamic Logic* did not take

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issue with that, but rather relied on the plain language of the exclusion. The dissent examined the product that the taxpayer's clients received to find it was personal and individual to that client, was confidential, and tailored to the needs of the client. This follows what had been a long-standing policy of tax agencies to look at the "true object" of the transaction to determine taxability. Applying the true object test, the dissent noted that each of the taxpayer's clients received an analysis of their digital advertising that was specifically designed for them and their products. The fact that some of that data went into a larger database did not make it less personal. Quoting from the dissent, "'[T]he majority today declares a new rule: in New York, the taxpayer always loses' - Wegmans at 596 [Stein, J., concurring])." TROUTMAN, J. (dissenting).

This decision highlights two potential obstacles for taxpayers seeking to challenge a tax determination in New York: 1) the courts, using the limited "substantial evidence" standard for review of Tax Tribunal decisions, may search the record for "any facts or reasonable inferences" (*Dynamic Logic* at page 4) that support affirming the administrative determination; and 2) strictly construing exemptions from tax and applying the same strict standard to exclusions from tax imposes a burden on taxpayers.

The *Dynamic Logic* case highlights some of the challenges with sales tax laws that were enacted based on a manufacturing economy from 1940 to 1960 and the application of these laws in 2025 to technology that was not envisioned when the statutes were drafted.

Following this and other recent cases, those selling information services or other digital products should carefully examine what they are selling and consider separately stating the price of each component of any packaged products to minimize sales tax exposure in the event any part might be considered taxable.

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