

## Sales/Use/Indirect:

### New York Tax Appeals Tribunal Says Some Taxable Information Services Fall Under Statutory Exclusion

*Decision DTA Nos. No. 828619*, N.Y. Tax App. Trib. (1/20/22). The New York Tax Appeals Tribunal (Tribunal) partially modified an administrative law judge (ALJ) ruling and held that while some of a taxpayer's services, including measuring "advertising effectiveness" and disseminating related improvement recommendations, was providing taxable information services that could be substantially incorporated into reports furnished to others, certain other services may in fact be excluded from taxation as personal or individual in nature. The Tribunal held that "the possibility that information could be furnished to third parties in the future if the service provider develops a means to do so does not disqualify an information service" from the applicable statutory exclusion "substantially incorporated" provisions. In previously deeming all the information services at issue taxable, the ALJ had considered whether the furnished information i) was personal or individual in nature and ii) is not or may not be substantially incorporated in reports furnished to others. The ALJ had determined that while the information furnished by the service provider to its clients was personal and individual and not publicly available, all such information potentially could be substantially incorporated in reports furnished to others and thus deemed them all taxable. Partially modifying the ALJ's conclusion, the Tribunal held that the ALJ was incorrect in concluding that just because the service provider had the right to use underlying data it collects in the performance of its services, the resulting information may be substantially incorporated into reports furnished to others within the meaning of New York Tax Law § 1105 (c) (1) and thus taxable. Please contact us with any questions.

**URL:** <https://www.dta.ny.gov/pdf/decisions/828619.dec.pdf>

— Philip Lee (Jericho)  
Managing Director  
Deloitte Tax LLP  
philee@deloitte.com

Lindsay McAfee (San Francisco)  
Senior Manager  
Deloitte Tax LLP  
lmcafee@deloitte.com

Brianne Moriarty (New York)  
Senior Manager  
Deloitte Tax LLP  
bmoriarty@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

**About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.