

## Recent New York Decision Raises Questions About Taxation of Information Services

Article By:

Christopher T. Lutz

---

On February 29, the New York Supreme Court issued its [latest decision](#) construing what types of services can be considered taxable information services. In *Dynamic Logic*, the court upheld the New York Tax Appeals Tribunal's determination that a research tool that “gauges the effectiveness of a particular advertisement by surveying consumers or Internet users who have seen the advertisement and comparing the results to responses of those who have not been exposed to it” constituted a taxable information service. The taxpayer contended it provided nontaxable consulting services because while its employees collected and compiled data, they simply used that data in reports to provide advice and guidance to its customers regarding the effectiveness of their advertising campaigns. Deferring heavily to the Tax Appeals Tribunal, the court determined that because the consulting services were “drawn heavily from the data collected[,]” the Tribunal's conclusion that the services were fundamentally information services was reasonable.

This case should come as a warning to taxpayers that the New York Department of Taxation and New York courts are broadly interpreting what constitutes a taxable information service. However, as I've [written before](#), it is a mistake to construe New York's definition of information services too broadly. In at least three recent Division of Tax Appeals decisions ([In the matter of Breakdown Services](#), [Lender Consulting Services](#), and [LendingTree](#)), the Division concluded that a service provider was not providing taxable information services even though the services required collection of data to provide the service. Each of these cases correctly relied on the “primary function” test and determined that the primary function of each respective business was the substantive service being provided, not the information alone.

Christopher Lutz of Jones Walker... told Tax Notes in a March 1 email that the appeals court “spent little time on the actual service being provided and leaned fairly heavily on its standard of review.” “Unlike [Wegmans Food Markets Inc. v. New York Tax Appeals Tribunal], here there was an actual dispute as to whether the taxpayer was actually providing an information service. In its deference to the Tribunal, I think the court created new ambiguity as to just how broad the definition of an information service is,” Lutz said. According to Lutz, the court's finding that Dynamic Logic's recommendations to clients would not exist without the underlying data “opens up questions as to what other types of professional services could be construed as information services if those services involve any type of collection of data to perform the service...”

[www.taxnotes.com/...](http://www.taxnotes.com/...)

© 2025 Jones Walker LLP

---

National Law Review, Volume XIV, Number 72

Source URL: <https://natlawreview.com/article/recent-new-york-decision-raises-questions-about-taxation-information-services>