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NY Tax Talk: Sourcing, Retroactivity, Information Services

By **Elizabeth Cha and Chelsea Marmor** (April 28, 2025, 2:53 PM EDT)

This article is part of a quarterly column that examines recent developments in New York tax law. In this installment, we discuss select decisions regarding the sourcing of broker-dealer receipts, the first challenge to the New York's Corporate Franchise Tax regulations, and the sales tax exemption for taxable information services.

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The last four months were active in New York tax law. In addition to numerous legislative proposals, decisions were issued in multiple court cases involving the application of sales tax, preferential tax rates, sourcing and the retroactive application of the New York Department of Taxation and Finance corporate franchise tax regulations.

Jefferies

Look-through sourcing has been at the forefront of multistate taxation for several years, with Washington, Ohio and Florida cases taking the lead. However, New York is not without its own look-through sourcing questions.

In Matter of Jefferies Group LLC & Subsidiaries, the New York State Tax Appeals Tribunal reversed the New York Division of Tax Appeals, in part, holding on Feb. 25 that for pre-corporate tax reform years — before 2015 — a broker-dealer must source its receipts to the location of its customers and not the underlying investors.[1]

While the case interprets the statute pre-corporate tax reform, the decision is still relevant in that it reinforces the applicable burden of proof when a party claims that sourcing methods are distortive and seeks to apply an alternative methodology.[2]

That party must seek to apply alternative methodologies permitted by the New York tax law, otherwise the New York courts will not permit such methodology.

In Jefferies, the taxpayer was a registered broker-dealer that earned commissions and other receipts from executing brokerage transactions at the direction of institutional intermediaries like investment advisers, pension funds and hedge funds.

Under former Section 210(3)(a)(9) of the N.Y. Tax Law, receipts from brokerage commissions, fees for management and advisory services, and similar receipts are sourced based on the customer's location.

The taxpayer argued that it was distortive to source its receipts to the location of the institutional intermediaries, which were largely based in New York, and that instead sourcing should be based on the location of the underlying investors.

While the administrative law judge agreed with the taxpayer, the tribunal reversed, holding that "the law is clear and does not allow for a look-through to source the receipts using any form of reasonable approximation of the location of the underlying investor."[3]

Thus, the taxpayer was required to source its receipts the location of its customers, who were the intermediary investors.

Paychex

Moving to post-reform years, in December 2024 the first decision on the retroactive application of the Corporate Franchise Tax regulations, which were adopted on Dec. 27, 2023, was issued in Paychex Inc. v. New York Department of Taxation and Finance.

In Paychex, the taxpayer requested a declaratory judgment holding that two subsections of the regulations violated state and federal law, and that the retroactive application of the regulations violated Paychex's due process rights.[4]

The department moved to dismiss Paychex's complaint arguing that Paychex failed to exhaust all available administrative remedies.

On Dec. 18, 2024, the New York Supreme Court, Albany County, granted the department's motion for summary judgment, holding that Paychex failed to exhaust its administrative remedies. The court held that courts "lack the discretion to rely on these exceptions where the legislature itself has specifically delineated the exclusive steps a party must undertake to seek judicial relief."[5]

The court cited two primary reasons for granting the department's motion.

First, the court held that because Paychex did not allege that it had been injured but instead argued that it would be injured in future years, it would not "speculate on what could or could not happen," and therefore Paychex must exhaust its administrative remedies through the administrative process.[6]

Second, regarding the constitutional challenges — that the nine-year retroactive application violates the due process clause — the court held that Paychex's due process rights were not violated because it was aware of the department's position from early drafts of the regulations.

Paychex met with the department to discuss the regulations, sent the department letters explaining its concerns and continued its dialogue with department when it issued different drafts. In addition, Paychex and the department entered into a closing agreement for the 2014-2019 tax years, which included an agreement on the issues Paychex specifically alleged were an unconstitutional violation in its complaint.

All of this, the court held, weighed in favor of the department's argument that Paychex was not injured, and that Paychex was aware of the regulations.

Paychex filed its notice of appeal on Jan. 17. It is unlikely we will have an appellate decision on these

issues before 2026.

In addition to affecting New York state taxpayers, this case could also affect New York City taxpayers. Reform of the New York City Business Corporation Tax took effect on Jan. 1, 2015, one year later than the state reform. The city has yet to promulgate BCT regulations — or issue draft regulations — but has indicated that it too intends to apply the regulations on a retroactive basis.

Dynamic Logic

Finally, 2025 brings another decision regarding what constitutes a taxable information service for New York sales tax purposes. Information services are one of the few services that are specifically enumerated as being subject to sales tax. However, a two-prong exception applies if the service involves the furnishing of information that is (1) personal or individual in nature, and (2) is not or may not be substantially incorporated in reports furnished to other persons.[7]

On April 17, the New York Court of Appeals decided Matter of Dynamic Logic Inc. v. Tax Appeals Tribunal, upholding the tax department's determination that the provision of advertisement and market campaign reports is a taxable information service.[8]

While the court rarely accepts tax cases, it has recently ruled on the taxation of information services.

In 2019, the court addressed the first prong of the exclusion, holding in Wegmans Food Markets Inc. v. Tax Appeals Tribunal that pricing reports purchased by the Wegmans grocery chain were not personal or individual in nature because they were "derived from a non-confidential and widely-accessible source, the supermarket shelves of Wegmans's competitor." [9]

Since Wegmans, the department has been aggressive in its assessment of what services should be classified as taxable information services.

Dynamic provided reports that measured the effectiveness of digital advertising campaigns. To create the reports, Dynamic identified individuals who had been exposed to the client's advertisements, and surveyed their reactions and compared their responses with those of a control group.

The survey results were also compared to broader market data contained in Dynamic's database, which included anonymized data from campaigns of Dynamic's prior clients.

The court held that Dynamic was providing an information service, and that the information service was not excluded from taxation because the information collected for the surveys was substantially incorporated into reports that are later provided to other customers.[10]

The court's decision was based on its observation that even though data from prior reports only made up a relatively small portion of each subsequent report, the reincorporation of such information was "qualitatively important to the analytic value" of subsequent reports, rendering the reincorporation substantial.[11]

Judge Shirley Troutman dissented, disagreeing with the majority's ruling that the department was entitled to deference in its interpretation of the term "substantially" and the majority's framing of the exclusion generally. The dissent wrote that the meaning of "furnished" and "substantially incorporated" were not ambiguous because each could be determined by the plain language meaning in the statute.

In interpreting each term, the dissent argued, the statute looks to "whether the end product is substantially incorporated into reports furnished to others," not whether the underlying data used to prepare the report is furnished to others.[12]

Because each client's report, including Dynamic's customized findings and advice, are never uploaded to the database or shared with other clients, the dissent argued that the work product of Dynamic's customized service was not substantially incorporated into subsequent reports.

Unfortunately, as the dissent in Dynamic notes, the Court of Appeals generally deferred to the department's interpretation of the statute without providing substantive guidance regarding the outer limitations of the types of services that can deemed information services.

Given the department's aggressive nature when pursuing assessments in this area, taxpayers may be left wondering when such an outer limit may be found.

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[1] DTA Nos. 829218 & 829219 (N.Y.S. Tax App. Trib. Feb, 20, 2025).

[2] New York enacted significant tax reform for the corporate franchise tax regime for tax years beginning Jan. 1, 2014.

[3] Jefferies at 65-66.

[4] Paychex Inc. v. New York Dep't of Taxation & Fin.; Index No. 904047-24, Decision (N.Y. Sup. Ct. Dec. 18, 2025).

[5] Paychex at 12.

[6] Id. at 14-15.

[7] N.Y. Tax Law § 1105(c)(1).

[8] Dynamic Logic, Inc. v. Tax Apps. Trib., No. 35, Opinion (N.Y. Apr. 17, 2025).

[9] Wegmans Food Mrkts., v. Tax Appeals Tribunal, 33 N.Y.3d 587, 595 (2019).

[10] The parties conceded that the information was personal or individual in nature, which is the first prong of the exclusion. Dynamic Logic at 4.

[11] Id. at 7-8.

[12] Dynamic Logic, Dissent, at 12.