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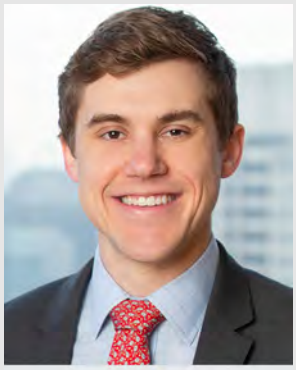

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In this installment of A Pinch of SALT, Gove and Fokaidis examine how New York's recent decisions evaluating bundled transactions have led to confusion and further controversy and how the recent decision of the state supreme court's appellate division in *Matter of Beeline* may finally be providing clarity.

Bundled and mixed transactions play an ever-increasing role in sales tax determinations. Nontaxable consulting and professional services are often accompanied by software or portal access and sold for one nonitemized price. This business practice raises questions about whether the tax treatment is predicated on the nontaxable service component or the generally taxable software component. Nowhere is this ambiguity more apparent than in New York, where bundled transactions continue to be a focus of the Department of Taxation and Finance.

This article delves into how New York's recent decisions evaluating bundled transactions have led to confusion and further controversy and how the appellate division's recent decision in *Matter of Beeline* may finally provide clarity.

New York's Bundled Transaction History

Despite the prevalence and growth of bundled transactions, New York has not defined bundled transactions. For reference, the Streamlined Sales and Use Tax Agreement (of which New York is not a member) defines a bundled transaction as "the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price."[1] Although the term "product" is not defined, New York has applied the bundled transaction doctrine to sales of two or more distinct services that are sold for one nonitemized price.

In addition to the term "bundled transaction" not being defined in New York tax law, the tax law does not define the term "mixed bundle," which is a creature of New York case law that has come to refer to bundled transactions that include tangible personal property and services in the bundle.[2] Given that these two phrases are undefined, it should come as no surprise that the tax law also does not provide a test for determining how to tax bundled transactions or mixed transactions. Instead, bundled transactions of multiple services offered by taxpayers to New York customers have

[1] Streamlined Sales and Use Tax Agreement, Appendix C, Part I.

[2] *See, e.g.*, *In the Matter of Strata Skin Sciences Inc.*, DTA No. 828704 (N.Y. Tax App. Trib. May 5, 2022), *aff'd*, *Matter of Strata Skin Sciences Inc. v. N.Y. State Tax Appeals Tribunal*, 225 A.D.3d 953 (N.Y. App. Div. 2024).

been routinely analyzed under the judicially created "primary function" test.

As a judicially created doctrine, the primary function test has been applied by the New York State Tax Appeals Tribunal to determine whether a service composed of multiple components is a taxable information service. The frequently cited case implementing the primary function analysis is *Matter of SSOV '81 Ltd.*, in which the tribunal held that a dating service that transmitted profile information among its members was not a taxable information service.[3]

In New York, one of the enumerated taxable services is information services, which are defined as:

> The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding 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.[4]

Determining what an information service is and the scope of the personal or individual exclusion included in the definition has been the subject of frequent litigation in New York.[5] The New York Court of Appeals has created a narrow understanding of when taxable information services qualify for the personal or individual exclusion from tax.[6] What is and is not a taxable information service is also the subject of frequent litigation, with the New York State Division of Tax Appeals using the primary function test when categorizing taxpayers' services.[7]

In concluding that the primary function of the dating service was not a taxable information service, the tribunal in *SSOV* found that the "primary function [of the taxpayer's service] was not to provide information services" and "to determine a service's taxability, the analysis employed by the New York courts and the tax appeals tribunal focuses on the service in its entirety, as opposed to reviewing the service by components or the means in which the service is effectuated."[8] Thus, the tribunal in *SSOV* concluded that "to neglect the primary function of petitioners' business in order to dissect the service it provides into what appear to be taxable events stretches the application of Article 28 far beyond that contemplated by the Legislature."[9]

Taxpayers Try to Expand the Primary Function Test to Mixed Bundles

Although the primary function test began and continues to be used in New York's numerous information service disputes, including information service bundling disputes, a recent decision expanded the test to apply to mixed bundles. In *Matter of Beeline*, the appellate division expanded the primary function test to mixed bundles of tangible personal property and services. As recently as 2025, the tax appeals tribunal rejected expanding the primary function test to cover mixed bundles.

In *Matter of Strata Skin*, the Division of Tax Appeals, the tax appeals tribunal, and the appellate division evaluated the taxpayer's claim that its bundled offering of tangible personal property and nontaxable services was nontaxable under the primary function test. In *Strata Skin*, the tribunal evaluated the taxability of mixed bundled sales of tangible personal property with services for skin treatments performed using laser devices. The tribunal overturned the administrative law judge's determination, which

[3] *In the Matter of SSOV '81 Ltd.*, DTA Nos. 810966, 810967 (N.Y. Tax App. Trib. Jan. 19, 1995).

[4] N.Y. Tax Law section 1105(c)(1).

[5] Information service disputes have proceeded through each possible stage of New York tax litigation: (1) the Division of Tax Appeals, (2) the tax appeals tribunal, (3) the appellate division (the state's intermediate appellate court of general jurisdiction), and (4) even up to the court of appeals (New York's highest court).

[6] *Matter of Wegmans Food Markets Inc. v. Tax Appeals Tribunal*, 33 N.Y.3d 587 (2019); *Matter of Dynamic Logic Inc. v. Tax Appeals Tribunal*, 44 N.Y.3d 508 (2025).

[7] *See, e.g.*, *Matter of Breakdown Services Ltd.*, DTA No. 829396 (N.Y. Tax App. Trib. Jan. 27, 2022); *Matter of Lending Tree Inc.*, DTA No. 829714 (N.Y. Tax App. Trib. Dec. 9, 2021).

[8] *Matter of SSOV*, DTA Nos. 810966, 810967.

[9] *Id.*

relied on the primary function test.[10] In overturning the ALJ's conclusions of law relying on the primary function test, the tribunal found that it "has not applied the primary function test to bundled sales of tangible personal property and services" and said it remains "unpersuaded by petitioner's argument that all mixed bundled sales of tangible personal property and services should be analyzed using the primary function test."[11] On appeal, the appellate division affirmed, finding that "the Tribunal reasonably concluded from [the record] that the primary function analysis was inapplicable."[12]

Similar to *Strata Skin*, in 2025 the tribunal in *Matter of FacilitySource* found that the "petitioners sell a bundle of prewritten computer software and services for one charge and *thus application of the primary function test is not warranted*. Because the tax is imposed on an entire mixed bundle of tangible personal property and services, petitioners' facilities management services are subject to sales tax."[13] Thus, as recently as last year the tribunal was consistently rejecting the notion that the primary function test was the proper means of analyzing bundled transactions, which the appellate division was not disturbing.

Matter of Beeline and the Appellate Division

The tribunal's decisions in *Strata Skin* and *FacilitySource* may appear consistent with its decision in *Matter of Beeline.* However, as the appellate division identified, the tribunal departed from its historical application of the primary function test. Beeline provides services through its web-based application to assist its customers with gathering, organizing, and managing their contingent and temporary workers. Beeline's customers receive a limited, nonexclusive, nontransferable license to use and access the application. The department rejected Beeline's contention that it provided a nontaxable professional service, concluding that Beeline sold taxable licenses to use prewritten computer software (that is, the web-based application).

The taxpayer in *Matter of Beeline*, like the taxpayers in *Strata Skin* and *FacilitySource*, asked the tribunal to apply a primary function analysis to determine the taxability of its bundled offering. The tribunal, consistent with its prior decisions in *Strata Skin* and *FacilitySource*, did not apply the primary function test, finding it to be "misplaced" in evaluating the taxability of a bundled transaction.[14] The tribunal noted that it "has declined to apply a primary function analysis when considering the taxability of mixed bundles of tangible personal property and services in consideration of the fact that retail sales of tangible personal property are taxable unless specifically exempt, whereas services are taxable only if specifically enumerated in the Tax Law."[15]

Despite the tribunal's decision acknowledging its consistent position that the primary function test did not apply to mixed bundles of tangible personal property and services, it performed a primary function analysis — it just did not apply that label. The tribunal evaluated the taxpayer's bundled offering and concluded that although the platform and the services were "sold as one integrated 'service,' the customer contracts and record demonstrate that [the platform] was the central element of those contracts."[16]

On appeal, the appellate division upheld the tribunal's taxability determination in *Matter of Beeline*, noting that the tribunal's "historical use of the primary function test arises in cases that involve the classification, and taxable nature, of certain types of services, rather than the 'mixed bundle' that is present here."[17] The appellate division identified the method of analysis the tribunal actually applied, despite its statement to the contrary: "However, despite [Beeline's] insistence that the Tribunal eschewed a primary function analysis, it is clear from its determination that it engaged in its functional equivalent by thoroughly assessing whether the license

[10] *Matter of Strata Skin*, DTA No. 828704, *aff'd*, 225 A.D.3d 953.

[11] *Matter of Strata Skin*, DTA No. 828704.

[12] *Matter of Strata Skin*, 225 A.D.3d at 956.

[13] *In the Matter of FacilitySource LLC*, DTA Nos. 829500 and 829501 (N.Y. Tax App. Trib. Sept. 18, 2025) (emphasis added).

[14] *In the Matter of Beeline.com Inc.*, DTA No. 829516 (N.Y. Tax App. Trib. May 2, 2024).

[15] *Id.*

[16] *Id.*

[17] *Matter of Beeline.com Inc. v. N.Y. State Tax Appeals Tribunal*, No. CV-24-1494 (N.Y. App. Div. Jan. 15, 2026).

provided to [Beeline's] clients to use the [platform] 'is incidental to the services rendered.'"[18] In this passage, the appellate division's use of "functional equivalent" recognizes the tension in the tribunal's decision: The tribunal stated that the primary function test does not apply to mixed bundles, yet the tribunal essentially applied the primary function test in performing a facts and circumstances analysis to determine the taxability of Beeline's services.

Appellate Division's Decision: 'Functional Equivalent'

The appellate division's decision not to disturb the tribunal's use of the primary function test in evaluating the taxability of Beeline's mixed bundle endorses what taxpayers have advocated for years — apply the primary function test to mixed bundles of tangible personal property and services. Taxpayers have consistently been presenting this argument to the department, the Division of Tax Appeals, and the tribunal, yet the department has argued, and the tribunal has held, that the primary function test applies only to characterizing certain types of services (primarily information services) and bundles of services, but not to determining the taxability of mixed bundles of tangible personal property and services.

The appellate division's decision in *Matter of Beeline* invites New York taxpayers to apply the primary function test (or its "functional equivalent") when determining the taxability of mixed bundles of tangible personal property and service offerings. It would behoove taxpayers to evaluate their contracts and agreements with customers to ensure they are positioned to capitalize on this development and on the appellate division's extension of the primary function analysis to mixed bundles. ■

[18] *Id.*