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NEW YORK TAX INSIGHTS

Volume 6, Issue 3, March 2015

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KEY PROPOSALS IN GOVERNOR CUOMO'S 2015-16 EXECUTIVE BUDGET

By Irwin M. Slomka

As we discussed in last month's issue of *New York Tax Insights*, Governor Cuomo has released his proposed 2015-16 Executive Budget (Senate Bill No. S2009, Assembly Bill No. A3009), which includes several new and potentially far-reaching tax proposals, some of which are discussed below.

- *Expands sales tax collection obligation to "marketplace providers."* In a proposal that is reminiscent in scope of the State's controversial "Amazon tax" legislation in 2008, the Governor has proposed that, beginning March 1, 2016, a "marketplace provider" would be required to collect sales tax on behalf of a "marketplace seller" where the provider "facilitates" sales to New York customers. "Facilitation" is defined to include the collection of sales receipts from the customer, where the provider either (i) "provides the forum" for making sales (including an Internet website) on behalf of a seller or (ii) "arranges for the exchange of information or messages or information" between the seller and customer. This proposal raises potential nexus concerns, although the Memorandum in Support states that it would not expand the rules regarding sales tax nexus. It would also have the effect of shifting sales tax collection responsibilities from the marketplace seller who has in-State nexus to the marketplace provider.

- *Closes certain sales and use tax "avoidance strategies."* Couched as a proposal to curb various sales tax avoidance strategies, this broad proposal would: (i) disallow the existing exemption from use tax for tangible personal property ("TPP") used in New York that has been purchased outside the State by a nonresident business unless the business has been operating for at least six months before using the TPP in the State; (ii) deem a single-member LLC and its member to be one person for sales tax purposes, to address the claimed abusive practice of the single member LLC avoiding sales tax by purchasing TPP for resale to its sole member; (iii) for leases of TPP between related corporations, require that sales tax be paid at the outset of the lease on all payments due under the lease for leases of more than one year to address the alleged abusive practice of claiming nontaxable resale treatment on purchases and entering into lengthy related party leases for insufficient rental charges to defer sales tax on the leases; and (iv) most sweeping of all, impose sales tax on most intercompany transfers of TPP, while allowing a credit for sales or use tax paid to

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New York or another state by the seller on the same property. The proposed changes would undoubtedly have the effect of reaching bona fide transactions having nothing to do with tax avoidance.

- *Makes technical changes to last year's State corporate tax reform legislation*. Proposed as "technical changes" to last year's New York State corporate tax reform legislation, the proposed changes primarily relate to what qualifies as investment capital, some of which may properly be viewed as substantive changes. For instance, one proposed change is that, in order for stock to qualify as investment capital, it must *never* have been used by the taxpayer in the regular course of its business.
- *Conforms New York City corporate tax to the New York State corporate reform legislation*. As most taxpayers have been hoping, this proposal would substantially conform the New York City taxation of general business corporations and banks to most of the State corporate tax reform proposals that went into effect for tax years beginning on or after January 1, 2015, through the establishment of a new "Subchapter 3-A tax." This conformity would include the merger of the City bank tax and corporate taxes, adoption of economic nexus, water's edge unitary combined filing, and market-based sourcing. Unlike the State corporate tax, however, the revised tax would not phase out the alternative tax on capital, but would actually increase the alternative tax cap to $10 million annually. The existing general corporation and bank taxes would be retained to apply only to S corporations. If enacted, the changes would be effective retroactive to tax years beginning on or after January 1, 2015, consistent with the effective date of the State tax reform legislation.

The Executive Budget must be enacted by April 1, 2015. It is unclear whether recent upheavals in the New York State Assembly leadership will have any effect on the timely enactment of the bill.

ALJ HOLDS THAT ONLINE RESERVATION RECEIPTS ARE NOT SOURCED TO NEW YORK

By Hollis L. Hyans

A New York State Administrative Law Judge has upheld the position of Expedia, Inc. that its receipts from travel reservations arise from the performance of services and are properly sourced outside of New York to where the services are performed. *Matters of Expedia, Inc. and Expedia, Inc. (Delaware Company)*, DTA Nos. 825025 & 825026 (N.Y.S. Div. of Tax App., Feb. 5, 2015). The ALJ also agreed with the claims by Expedia's parent, Expedia, Inc. (Delaware Company) ("Expedia Del"), that the advertising receipts earned by its subsidiary TripAdvisor Business Trust ("TripAdvisor") similarly arose from the performance of services and were sourced to where those services were performed.

Facts. Expedia, based in Bellevue, Washington, operated the well-known travel reservation facilitation business, directly and through subsidiaries and affiliates. It collected information from airlines and cruise ships, hotels and resorts, and car rental companies (referred to as "Travel Service Providers"), provided that information to customers, and negotiated with the Travel Service Providers to obtain special rates and availability. It operated under two business models. Under the merchant model, which, for example, was used with hotels, Expedia acted as the merchant of record, charged the customer's credit card for the reservation and its fee, and conveyed the information to the hotel. After the accommodations were provided, the hotel invoiced Expedia, which remitted payment. Under the agency model, customers directly paid the Travel Service Providers, typically airlines, rental car companies, and cruise lines, which then paid a commission to Expedia. Expedia maintained customer service call centers, all outside New York, and all of its administrative and corporate functions related to the operation of the business occurred outside New York.

TripAdvisor operated an online travel search engine and directory that compiled user reviews, opinions, photos, and articles regarding various travel destinations, hotels, and activities. It derived revenue from advertisers and other third parties who placed ads on TripAdvisor's website. All procurement and management of the advertisements was done by employees located in Massachusetts, and all administrative activities were done in Washington and Massachusetts.

Issue. For 2005 and 2006, Expedia treated its travel reservation facilitation receipts as arising from the performance of services and, since no services were performed in New York, reported a New York State receipts factor of zero. Similarly, for 2007, TripAdvisor reported no receipts in New York and a New York State receipts factor of zero. On audit, the Department determined that Expedia's receipts were not from services, but rather were "other business receipts" under Tax Law § 210(3)(a)(2)(D), sourced to where they were "earned," which the Department contended

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was the location of the customers, some of whom were in New York. It similarly determined that receipts from advertising on TripAdvisor were "other business receipts" and should be sourced to the customer's modem, apparently arguing that TripAdvisor's "customers" were the individuals who accessed the site rather than the advertisers. Since information was not provided on audit regarding travel reservations generated by consumers on computers located in New York, the Department allocated TripAdvisor's receipts to New York based on an estimate derived from information on Expedia Del's Form 10-K and U.S. census population data.

ALJ Decision. The ALJ agreed with Expedia that it was providing services, and indeed found the conclusion "inexorable." He found that all of Expedia's activities, including providing information to its customers, compiling summaries facilitating travel arrangements, providing support and customer assistance, and maintaining the reservation information, were the performance of services.

The ALJ rejected [the Department's] position as an "impermissible expansion" of Tax Law § 210(3)(a)(2)(B), and found that the statute by its plain meaning did not require human interaction at the moment of sale.

Relying on a regulation, 20 NYCRR 4-4.3[a], that provided that receipts from services are allocated to New York whether performed by employees, agents, or subcontractors, the Department was arguing that there must be human involvement by an employee, agent, or subcontractor at the precise moment the transaction occurred. The ALJ rejected this position as an "impermissible expansion" of Tax Law § 210(3)(a)(2)(B), and found that the statute by its plain meaning did not require human interaction at the moment of sale. The ALJ also found that the Department's interpretation of the regulation—which he said was merely intended to make it clear that services performed by agents or subcontractors were covered, as well as those performed by employees—ignored the substantial human involvement of approximately 6,600 employees, which even under "the [Department's] stretched reading of the regulation" qualified as human involvement.

The ALJ also rejected the Department's attempt to rely on several of its advisory opinions, in which it claimed to have consistently found that services performed over the Internet or by electronic transmission should be classified as other business receipts, finding that advisory opinions are not precedential or binding, and also that the cited opinions involved significantly different business models.

Once having found that the receipts arose from the performance of services, the ALJ readily concluded that those services, including the provision of information, booking of arrangements, compilation of information, and programming and maintenance of servers, all occurred outside New York. He found "instructive" the decision in *Siemens Corp. v. Tax Appeals Tribunal*, 89 N.Y.2d 1020 (N.Y. 1997), in which the Court of Appeals held that, to the extent interest income from loans arose from work performed in New York, such receipts were sourced to New York. While noting that the court in *Siemens* decided that the interest income was "other business receipts" under N.Y. Tax Law § 210(3)(a)(2)(D), rather than receipts from services under § 210(3)(a)(2)(B), the ALJ followed the *Siemens* court direction that the loan receipts were sourced to New York "to the extent that the work done to establish and maintain such loans is done in New York, without regard to the situs of the obligor." The ALJ also observed that last year the New York Legislature amended the Tax Law to change the sourcing of service receipts from the place of performance to the location of customers, effective for years beginning after January 1, 2015, which would have been unnecessary if the Department's interpretation of the former statute were correct.

Similarly, the ALJ found that TripAdvisor's advertising receipts were from the performance of services, and that there was no basis for the Department's position that Tax Law § 210(3)(a)(2)(B)(i) applies to Trip Advisor. This statute provides a special rule to source advertising receipts earned by taxpayers in the business of publishing newspapers or periodicals to where the newspapers and periodicals were delivered, but TripAdvisor did not publish newspapers or periodicals or perform any similar activity. Again, the ALJ rejected the Department's reliance on one of its advisory opinions, *WTAS LLC*, TSB-A-09(5)C (N.Y.S. Dep't of Taxation & Fin. Mar. 9, 2009), which had found that advertising receipts earned by a business that operated a social networking site for subscribers should be sourced based on the location of its subscribers, as being unrelated to TripAdvisor's business.

Finally, the ALJ also rejected the Department's argument that Expedia and Expedia Del had failed to meet their burden of proof because no witnesses testified, holding that the affidavits that had been introduced provided sufficient evidence, even when the affiants were not employed during the years in issue, since they detailed review of records to

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demonstrate familiarity with the facts. Also, the relevant statements had not been materially contradicted by the Department, which offered only "anecdotal statements" based on personal use of the website.

Additional Insights

The position taken by the Department in this case has frequently been raised on audit, particularly when a business involves use of the Internet or computer access. While some years ago the Department agreed that services performed electronically were sourced where performed, *see*, *e.g.*, *Peach Tree Bancard Corp.*, Advisory Opinion TSB-A-95(13)C (N.Y.S. Dep't of Taxation & Fin., Aug. 4, 1995) (finding that credit card processing fees were receipts from services allocated to the place where the services were performed), the Department has since changed its position and, in *Advisory Opinion*, TSB-A-11(1)C (N.Y.S. Dep't of Taxation & Fin., Dec. 28, 2010), expressly revoked the *Peach Tree* Advisory Opinion. Without any modification to the statute or regulations, the Department now regularly takes the position on audit, and has found in several advisory opinions, that services provided electronically are "other business receipts" that are sourced to the location of the customers. This sourcing determination is inconsistent with the holding in *Siemens*, in which the Court of Appeals held that other business receipts arising from loans were sourced to where the work was done on the loans, and not to the location of the borrowers, which the Department has ignored on audit, concluding that *Siemens* did not apply to electronically delivered products, and citing for support only the Department's own advisory opinions.

Since the *Expedia* ALJ decision is not precedential, it may not have yet resolved this battle. However, given how often and how strenuously the Department has taken a position on audit similar to the one it took in *Expedia*, the Department will very likely appeal the ALJ decision to the Tax Appeals Tribunal.

ALJ RULES TAXPAYER IS NOT REQUIRED TO USE NOLS IN YEARS WHEN IT CALCULATES BANK TAX ON A NON-INCOME BASE

By Michael J. Hilkin

In *Matter of TD Holdings II, Inc.*, DTA No. 825329 (N.Y.S. Div. of Tax App., Jan. 22, 2015), a New York State Administrative Law Judge concluded that a banking corporation franchise taxpayer was not required to use a net operating loss ("NOL") carryforward deduction to decrease its entire net income calculation in a year in which its tax liability was measured by a tax base other than the entire net income base.

Background. During the fiscal years 2005 through 2007, TD Holdings II, Inc. ("TD Holdings") was subject to the New York banking corporation franchise tax ("bank tax") under Article 32 and filed New York bank tax returns. In 2005, TD Holdings reported a loss of approximately $11.7 million for federal income tax purposes (as calculated on a pro forma return because TD Holdings was included in consolidated federal income tax returns). TD Holdings also reported a loss of approximately $9.2 million for New York bank tax purposes in 2005. It appears that none of the 2005 losses were required to be carried back to prior years. In 2006, TD Holdings claimed approximately $3.7 million of its 2005 federal NOL carryforward on its federal return. However, TD Holdings chose not to claim any of its 2005 New York NOL carryforward on its 2006 New York bank tax return, even though it reported New York entire net income for that year. TD Holdings made this choice because its 2006 entire net income prior to NOL subtractions was low enough that it was instead required to calculate its tax due based on its taxable assets, so the use of New York NOLs in 2006 would not have provided any benefit to the company. In 2007, TD Holdings claimed approximately $8 million of its 2005 federal NOL carryforward on its federal return, and claimed the entirety of its 2005 New York NOL carryforward on its New York bank tax return.

On audit, the Department concluded that, in 2006, TD Holdings was required to use the same amount of New York NOLs as the federal NOLs it had claimed on its federal return. The Department's basis for this position was that a taxpayer could use a lower amount of New York NOLs than federal NOLs only as explicitly allowed by New York statutes, and there was no explicit allowance covering this situation.

The law. During the years at issue, the New York bank tax was calculated on alternate bases, including on an entire net income base and a taxable assets base, and was imposed on the base that resulted in the highest tax. Tax Law § 1455. The allowable New York NOL deduction was "presumably the same" as the federal NOL deduction claimed in the same year, and the New York NOL deduction specifically could not exceed the maximum federal NOL deduction allowed for the same year. Tax Law § 1453(k-1).

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The decision. Concluding that "a taxpayer's New York NOL deduction may differ from its federal NOL deduction," the ALJ ruled that TD Holdings "was not required by the plain language" of the Tax Law "to hypothetically apply the 2005 New York NOL to an entire net income [base] that was already sufficiently low enough to cause use of an alternative tax base."

In reaching his conclusion, the ALJ relied on a Tax Appeals Tribunal decision concerning the Article 9-A tax, reasoning that the NOL deduction statute applicable to the corporate franchise tax is "nearly identical" to the NOL deduction statute applicable to the bank tax. *Matter of Brooke-Bond Group (U.S.), Inc.*, DTA No. 810951 (N.Y.S. Tax App. Trib., Dec. 28, 1995) (analyzing Tax Law § 208(9)(f)(3)). In that case, the Tribunal concluded that the Article 9-A NOL statute placed a ceiling on New York NOL deductions equal to allowable federal NOL deductions, but did not state that a New York NOL deduction "can never be *less than* the [f]ederal deduction." *Id.* (Emphasis in original). The Tribunal justified its conclusion on the basis that requiring a taxpayer to lose an NOL deduction "simply to achieve conformity with the amount of the [f]ederal deduction" was "at odds with the fundamental purpose for which" the Article 9-A NOL statute was adopted.

However, for the 2007 year, TD Holdings conceded, and the ALJ agreed, that its New York NOL deduction must be limited to the amount of its federal NOL deduction. Thus, TD Holdings' 2007 New York NOL deduction had to be adjusted downward because, in 2007, TD Holdings claimed the entirety of its $9.2 million in New York NOLs accumulated from 2005, but was allowed only $8 million in federal NOL deductions.

Additional Insights

Comprehensive New York State corporate tax reform legislation, effective for taxable years beginning on or after January 1, 2015, repealed the bank tax and subjects banks to Article 9-A. The same reform legislation amended the New York NOL deduction statutes to, among other things: (1) place limitations on the use of and provide separate calculations for NOLs incurred in tax years beginning before January 1, 2015; and (2) expressly limit the maximum allowable deduction of NOLs accrued in tax years beginning on or after January 1, 2015 to "the amount that reduces the taxpayer's tax" on its "business income base" to the higher of the other potentially applicable bases. As such, the issue raised in this case has been clearly addressed by statute in a generally taxpayer-friendly fashion for purposes of calculating NOLs accrued in 2015 and future years.

Nonetheless, the issue in this case may be of importance for taxpayers that had New York NOLs in previous years, or that will be using pre-2015 NOLs in post-2015 years as permitted under the new statute. As acknowledged by the ALJ, the NOL deduction statute applicable to the bank tax was "nearly identical" to the NOL deduction statute applicable to Article 9-A prior to the reforms effective in 2015, so the principles outlined in this case should be applicable to Article 9-A taxpayers. Although the decision may be appealed, taxpayers that used NOLs in years when their pre-NOL entire net income tax base was lower than an alternate base not dependent upon an entire net income calculation should consider filing amended returns for open years, claiming New York NOL deductions and carryforwards consistent with the principles outlined in this case.

PRICING INFORMATION DOES NOT QUALIFY AS "PERSONAL AND INDIVIDUAL" INFORMATION FOR SALES TAX PURPOSES

By Irwin M. Slomka

Two recent Administrative Law Judge decisions involving the taxability of information services address the scope of the exclusion from sales tax for information that is "personal and individual in nature." Both decisions hold that, because the source of the information being furnished was readily accessible to the general public, the "personal and individual" exclusion did not apply. *Matter of RetailData, LLC*, DTA No. 825334 (N.Y.S. Div. of Tax App., Jan. 22, 2015); *Matter of Wegmans Food Markets, Inc.*, DTA No. 825347 (N.Y.S. Div. of Tax App., Feb. 19, 2015).

RetailData decision. RetailData, LLC provides price-checking services for grocery and retail establishments throughout the United States, including New York State. Among its New York clients is the Wegmans supermarket chain. RetailData conducts what are known as "competitive price audits" for its clients. This involves collecting pricing information of specified retail products – usually, comparable private-label products – sold in a competitor's stores at specified locations. RetailData obtains this data either by having its employees visit the competitor's stores and use a UPC scanner to collect pricing information (with the store's permission), or sometimes more discretely by using a smart phone (without the store's permission).

The pricing data is then validated and transmitted to clients electronically or in printed form. This data is used by RetailData's clients to tailor their own pricing and marketing strategies. The pricing reports furnished to one client were never sold to another client, although

on rare occasions RetailData sold historical pricing data containing pricing information obtained for other clients. There was no dispute that the information provided by RetailData was obtained from publicly available sources, *i.e.*, the goods on display on sales floors and shelves in competitors' stores.

RetailData did not collect New York sales tax on its charges for its services. After an audit, the Department assessed sales tax against RetailData for failing to collect and remit sales tax for the period June 1, 2005 through May 31, 2011, on the grounds that the company was providing a taxable information service.

There was no dispute that RetailData was providing an information service. However, an information service is not taxable if it (i) is personal and individual in nature to each client and (ii) may not be substantially incorporated into reports furnished to other clients. Tax Law § 1105(c)(1). RetailData claimed that the information furnished to clients was not taxable under this provision. The ALJ held, however, that RetailData was furnishing a taxable information service, and that the information was not "personal and individual in nature."

RetailData claimed that the reports it furnished to clients were tailored for each client and were never sold to other clients. It also argued that it was not furnishing information derived from a common or published database, a relevant factor that has been cited in other decisions involving information services. For example, in *Rich Products Corp. v. Chu*, 132 A.D.2d 175 (3d Dep't 1987), *appeal denied*, 72 N.Y.2d 802 (1988), the Appellate Division held that the provision of customized marketing data derived from *one* widely accessible database and used for all reports for clients did not qualify as "personal and individual" and thus was taxable.

The ALJ rejected RetailData's argument and emphasized that it is the *source* of the information that determines whether the information qualifies as personal and individual. According to the ALJ, the information being furnished was "compiled from a widely available public source, stores open to the public," and therefore could not be considered personal and individual, even if the reports themselves were not actually resold to others. The ALJ distinguished RetailData's facts from those in other cases where the information was found to be personal and individual in nature. These included cases where the information was obtained from a confidential field investigation (*Westwood Pharmaceuticals, Inc. v. Chu*, 164 A.D. 2d 462 (1990)) or from a confidential character report from a licensed detective agency taken from field interviews by detectives (*New York Life Insurance v. State Tax Comm'n*, 80 A.D. 2d 675 (3d Dep't 1981), *aff'd*, *Metropolitan Life Insurance Co. v. State Tax Comm'n*, 55 N.Y.2d 758). In contrast, the source of RetailData's information was the publicly available prices appearing on grocery store shelves, which was found to be neither uniquely personal nor individual in nature.

Wegmans decision. In a separate case involving the same information services, but decided by a different ALJ, Wegmans Food Markets, Inc. ("Wegmans"), the largest of RetailData's New York customers, brought its own challenge to a sales tax assessment for the overlapping period June 1, 2007 through February 28, 2010. Wegmans, which made arguments that were substantially similar to RetailData's, did not contest that it was purchasing "information," and the only issue was whether the purchased information was "personal or individual in nature."

The ALJ . . . emphasized that it is the source of the information that determines whether the information qualifies as personal and individual.

The ALJ in *Wegmans* reached the same conclusion as the ALJ did in *RetailData*, holding that the information reports were taxable. Focusing on the source of the data, the ALJ described the pricing data in the reports as being "culled from one general source, competitors' stores . . . [which pricing data] was widely accessible and not confidential." The fact that the information was customized based on Wegmans' specific needs "did not transform the general information to something personal or individual in nature." As for Wegmans' claim that the information was not taken from a "common database," but was instead manually collected at the stores, the ALJ held that the term "database" – which does not appear in the sales tax law – is broad enough to cover "a specific pool of information from which information is extracted." Therefore, according to the ALJ, the pricing data was taken from a publicly available database, the retail stores of Wegmans' competitors.

Additional Insights

Interestingly, both ALJs ruled against the taxpayer despite agreeing with the taxpayer that the "personal and individual" provision in Tax Law § 1105(c)(1) is a tax "exclusion," which must be strictly construed in favor of the taxpayer. The decisions emphasize that whether information is "personal and individual" depends on whether the *source* of the information is publicly available, regardless of whether the information being furnished would ever be furnished to another client. Although there is considerable case law holding that the provision of information obtained from a publicly

accessible common database does not qualify as personal and individual, these two decisions, if upheld, would extend the disqualifying publicly accessible database criteria to include *any* source of publicly available information (in this case, the retail stores from which the prices are obtained).

Procedurally, it is notable that the Department assessed tax against both RetailData (the vendor) and Wegmans (its customer) on the same transactions, which resulted in two separately litigated cases involving different ALJs, who nonetheless reached the same conclusion. If the decisions are upheld, the Department would only be entitled to collect the sales tax from either RetailData or Wegmans, but not both of them.

RetailData has filed an appeal with the Tax Appeals Tribunal. The time for Wegmans to appeal had not yet expired as we went to press.

INSIGHTS IN BRIEF

Late-Filed Petition Permitted Where Department Did Not Mail Notice to Correct Address

In *Matter of George Wright*, DTA No. 826397 (N.Y.S. Div. of Tax App., Feb. 12, 2015), a New York State Administrative Law Judge held that, although filed more than 90 days after the issuance of a conciliation order, a petition in a personal income tax matter would not be dismissed as untimely because the Department had mailed the conciliation order to Mr. Wright at 22327 Cypress Avenue, Apt. 6H, rather than 223-27 Cypress Avenue, Apt. 6H, which was the address he had used in his request for conciliation conference. This was found to be an error "of an essential element" of the address, not harmless error, and therefore the Department had failed to establish timely mailing. In the absence of evidence of actual delivery or receipt of the conciliation order, or of Mr. Wright's actual notice of the order, the ALJ found insufficient evidence to support a dismissal of the petition as untimely, and directed the Department to file an answer.

NYS Advisory Opinion Reaches Mixed Result on Taxability of Online Marketing Services

The Department of Taxation and Finance has issued an Advisory Opinion concluding that the "Core Offering" of an online marketing service, which allows its clients to capture, display, and analyze customer feedback about the clients' brands, products or services, is not a taxable information service under Tax Law § 1105(c)(1) because the Core Offering qualifies for the advertising exclusion. *Advisory Opinion*, TSB-A-15(1)S (N.Y.S. Dep't of Taxation and Fin., Jan. 15, 2015). The Department concluded that by capturing customer feedback, screening it, and transmitting it to sites where it will promote the clients' products, the Core Offering is performing the placement of advertisements with the media. However, with regard to the company's "Customer Intelligence" product, the Department concluded that the primary aspect of the product was the accessing of software tools, which the Department determined was the sale of prewritten computer software, finding that there is a transfer of possession of the software "if there is actual or constructive possession, or... a transfer of 'the right to use, or control, or direct the use'" of the software.

Tribunal Remands Case on Whether SUNY Professor's Distribution From His Rollover IRA Qualified for State Pension Exclusion

The Tax Appeals Tribunal has remanded to the Administrative Law Judge a case in which the ALJ held that a retired SUNY professor's distribution from a rollover IRA did not qualify for the 100% exclusion for pensions paid to State employees under the personal income tax, because the distribution represented accumulated earnings not attributable to the professor's retirement plan. The Tribunal found that the ALJ did not adequately address the question of how the rollover of an otherwise qualifying SUNY pension into an IRA fundamentally changed the nature of the taxpayer's pension so that it was no longer considered related to his State employment. Accordingly, the Tribunal remanded the case to the ALJ for a supplemental determination on that question, after which the case would then be allowed to proceed to the Tribunal. *Matter of Peter and Marguerite Kane*, DTA No. 824767 (N.Y.S. Tax App. Trib., Jan. 29, 2015).

ABB v. Missouri
Albany International Corp. v. Wisconsin
Allied-Signal, Inc. v. New Jersey
AE Outfitters Retail v. Indiana
American Power Conversion Corp. v. Rhode Island
Astoria Financial v. New York City
Citicorp v. California
Citicorp v. Maryland
Clorox v. New Jersey
Colgate Palmolive Co. v. California
Consolidated Freightways v. California
Container Corp. v. California
Crestron v. New Jersey
Current, Inc. v. California
Deluxe Corp. v. California
DIRECTV, Inc. v. Indiana
DIRECTV, Inc. v. New Jersey
Dow Chemical Company v. Illinois
DuPont v. Michigan
EchoStar v. New York
Express, Inc. v. New York
Farmer Bros. v. California
General Motors v. Denver
GMRI, Inc. (Red Lobster, Olive Garden) v. California
GTE v. Kentucky
Hair Club of America v. New York
Hallmark v. New York
Hercules Inc. v. Illinois
Hercules Inc. v. Kansas
Hercules Inc. v. Maryland
Hercules Inc. v. Minnesota
Hoechst Celanese v. California
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McGraw-Hill, Inc. v. New York
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Osram v. Pennsylvania
Panhandle Eastern Pipeline Co. v. Kansas
Pier 39 v. San Francisco
Powerex Corp. v. Oregon
Rent-A-Center v. Oregon
Reynolds Metals Company v. Michigan
Reynolds Metals Company v. New York
R.J. Reynolds Tobacco Co. v. New York
San Francisco Giants v. San Francisco
Science Applications International Corporation v. Maryland
Scioto Insurance Company v. Oklahoma
Sears, Roebuck and Co. v. New York
Shell Oil Company v. California
Sherwin-Williams v. Massachusetts
Sparks Nuggett v. Nevada
Sprint/Boost v. Los Angeles
Tate & Lyle v. Alabama
Thomson Reuters v. Michigan
Toys "R" Us-NYTEX, Inc. v. New York City
Union Carbide Corp. v. North Carolina
United States Tobacco v. California
UPS v. New Jersey
USV Pharmaceutical Corp. v. New York
USX Corp. v. Kentucky
Verizon Yellow Pages v. New York
Wendy's International v. Illinois
Wendy's International v. Virginia
Whirlpool Properties v. New Jersey
W.R. Grace & Co.—Conn. v. Massachusetts
W.R. Grace & Co. v. Michigan
W.R. Grace & Co. v. New York
W.R. Grace & Co. v. Wisconsin

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