

OHIO BOARD OF TAX APPEALS

CHECKFREE SERVICES CORPORATION, (et. al.),)	
)	
Appellant(s),)	CASE NO(S). 2019-43
)	
vs.)	
)	(SALES TAX)
PATRICIA HARRIS, TAX COMMISSIONER OF OHIO, (et. al.),)	DECISION AND ORDER
)	
Appellee(s).)	

APPEARANCES:

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Entered Thursday, October 10, 2024

Ms. Clements and Ms. Allison concur.

The appellant taxpayer, CheckFree Services Corporation (“CheckFree”), appeals a final determination of the Tax Commissioner denying CheckFree’s application for a sales tax refund.

This matter is now considered upon the notice of appeal, the transcript certified by the Commissioner (“S.T.”), the record of this Board’s hearing (“H.R.”), and the parties’ written argument.

BACKGROUND AND PROCEDURAL HISTORY

CheckFree is a subsidiary of Fiserv Inc., which offers a variety of financial service products. Most of Fiserv’s customers are banks that enter service agreements for a suite of financial services. These financial services may be provided by Fiserv affiliates or subsidiaries, such as CheckFree. Fiserv collects and remits any applicable sales tax, most of which is not disputed. The present appeal relates to two services provided by CheckFree: debit authorization and disbursement authorization, though they may go by other names.

CheckFree’s debit authorization service involves four parties: the consumer (the person attempting to make the transaction), the vendor or ATM where the consumer is attempting to access funds from their bank, the consumer’s bank, and CheckFree acting as an intermediary. The debit authorization service allows a consumer to have instantaneous access to funds in their account because CheckFree acts as an intermediary between the vendor or ATM and the consumer’s bank. Disbursement authorization service involves the transfer of funds from the consumer’s bank account to a specified vendor through either the consumer’s bank or the vendor’s website. At issue in this appeal is whether these services are taxable automatic data processing (“ADP”), electronic information services (“EIS”), or computer services.

CheckFree’s debit authorization service verifies whether a consumer’s account has sufficient funds to complete a transaction at an ATM or purchase from a vendor. The vendor or ATM sends a transaction request to CheckFree, which then relays that request to the consumer’s bank. The bank replies by indicating either yes, the funds are available, or no, the funds are not. CheckFree forwards this response to the vendor or ATM, which will then complete or deny the transaction. Throughout this process, each party can only access its own data to formulate the

communication or complete the transaction. Only “yes” or “no” answers are communicated, and CheckFree does not receive any additional data. Banks pay a fee per transaction to CheckFree. As part of this service, CheckFree also uses advanced technology fraud detection services to monitor and analyze transactions for fraud. It also provides other related services necessary to deliver the debit authorization services, such as system maintenance.

CheckFree contracts with both banks and with some large vendors for its disbursement authorization service, or bill payment service. CheckFree’s bill payment platform is integrated into the bank’s website or the vendor’s website. This bill-payment platform allows consumers to automatically pay bills and deliver funds on the due date. CheckFree’s disbursement authorization service begins in a similar manner to the debit authorization. First, a consumer makes a transaction request. Unlike debit authorization, however, consumers directly interact with CheckFree’s online banking platform through their bank’s website or the vendor’s website. On the specified due date, CheckFree performs a risk analysis to prevent fraud and then initiates two simultaneous transactions through either the automated clearing house (“ACH”) or paper checks: (1) fund transfer from CheckFree to the payee on behalf of the consumer, and (2) fund reimbursement from the consumer to CheckFree. Because the consumer’s funds will not be available immediately, CheckFree assumes the risk that the debit may subsequently bounce for insufficient funds and may ultimately pursue the consumer through collections.

CheckFree’s Refund Claim

CheckFree filed an application for a sales/use tax refund that was paid for the period of July 1, 2011, through June 30, 2015, in the amount of \$2,126,358.43. CheckFree stated that its refund was justified because “Electronic Payment Authorization and Bill Payment Services are not specifically enumerated as taxable services within OH sales/use tax regulations. This is consistent with our OH auditor guidance given in audit case number 131043934.” S.T. at 47. After review, the Department of Taxation (“Department”) denied the request, citing a failure to establish an

exception or exemption for the services claimed for refund. CheckFree requested a hearing and provided additional documentation. It provided information about the debit transaction process, its role in the electronic bill payment process, and signed letters from its clients asserting that they had not already filed refund claims. CheckFree also submitted schedules for the amount of the refund claim, copies of customer invoices, a sample contract, employee accreditations/affiliations, and legal precedent to support its claim.

Following a hearing on the application, the Commissioner issued a final determination that denied CheckFree's application. The Commissioner found that CheckFree failed to provide sufficient evidence to demonstrate that the transactions were for personal or professional service and not taxable ADP or EIS.

Appeal to This Board

CheckFree appealed to this Board. The Board convened a hearing, at which the parties presented evidence related to CheckFree's services and its billing of those services. Following the hearing, the Board provided the parties with the opportunity to submit written argument.

CheckFree argues that the debit authorization and bill payment services it provides are not taxable because they are not ADP, EIS, or computer services. CheckFree maintains that ADP and EIS require access to another person's data or computer equipment. It claims that when performing debit authorization services, it merely routes transaction requests and responses and does not access any third-party data. CheckFree asserts that the complimentary services performed as an integral part of the debit authorization services cannot be purchased independently and that a bank would not purchase the debit authorization without fraud detection, financial risk management, and chargeback services.

CheckFree likewise argues that the disbursement authorization services are nontaxable personal and professional services because it analyzes, alters and adjusts the payment information provided by consumers. It contends that the disbursement authorization service is also a

nontaxable debt collection service because CheckFree collects payments from consumers. CheckFree claims that the true object of the disbursement authorization service is the financial service involved in the transfer of funds to the designated payee.

The Commissioner argues that CheckFree is not entitled to a refund of the sales tax it collected because the services constitute ADP. She asserts that each line item must be considered because the transactions include separable components and that it is the true object of each component that must be analyzed. The Commissioner also maintains that the definition of ADP is broad and includes the “processing of others’ data,” which she claims would encompass the bill payment services provided by CheckFree. The Commissioner asserts that most of the services provided under the bill payment umbrella are automatic and constitute ADP. She further argues that CheckFree failed to establish that it extends credit to the bank’s customers as the term relates to financial transactions. With respect to the debit authorization services, the Commissioner claims that some line items, such as the ATM solutions, are taxable ADP services.

STANDARD OF REVIEW

This Board reviews the Commissioner’s findings de novo, and those findings are presumptively valid, subject to rebuttal. *Accel, Inc. v. Testa*, 152 Ohio St.3d 262, 2017-Ohio-8798, 95 N.E.3d 345, ¶ 14 (finding the taxpayer’s burden for rebutting findings “is simply to prove that the findings were incorrect.”). As we consider the law, our role is “to provide a fair reading of what the legislature has enacted: one that is based on the plain language of the enactment and not slanted toward one side or the other.” *Stingray Pressure Pumping, L.L.C. v. Harris*, 2023-Ohio-2598, ¶ 22.

ANALYSIS

Sales Tax on ADP, Computer Services, and EIS

Generally, excise taxes are imposed upon all retail sales made in Ohio (sales tax), in addition to any storage, use, or consumption in this state of any tangible personal property and

taxable services (use tax), unless the transaction is specifically exempted. R.C. 5739.02; 5741.02.

In pertinent part, a taxable sale includes:

Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental.

R.C. 5739.01(B)(3)(e). Automatic data processing, computer services, or electronic information services are defined in R.C. 5739.01(Y)(1):

(a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

“Electronic information services” does not include electronic publishing.

(d) “Automatic data processing, computer services, or electronic information services” shall not include personal or professional services.

Nontaxable “personal and professional services” are likewise defined in R.C. 5739.01(Y)(2). While the list in R.C. 5739.01(Y)(2) is non-exhaustive, the Supreme Court has explained that personal and professional services “constitute services performed by individuals, often ‘professionals,’ not by computer systems.” *Cincinnati Fed. S. & L. Co. v. McClain*, 2022-Ohio-725, ¶ 25. Personal and professional services are distinct from ADP, EIS, and computer services but may be bundled with such services in a given transaction. *Id.* at ¶ 24. In such cases, the Board must apply the true-object test.

While the Court found that this Board erred in *Cincinnati Fed.* by failing to apply the true-object test to relevant service charges, it expressly rejected an all-or-nothing approach. “But the record in this case both permits and requires a more refined analysis: there is extensive evidence in this record regarding the charges and the services from Fiserv, and that evidence may support the conclusion that some charges relate primarily to the provision of ADP and EIS while others relate primarily to the customization of software.” *Cincinnati Fed.*, at ¶ 27, citing *Epic Aviation, L.L.C. v. Testa*, 2016-Ohio-3392, ¶ 31-33. Thus, when parties contract regarding a bundle of services, to the extent that the record contains separately stated charges, the true object of *each item* should be considered and not merely the true object of the contract as a whole. *Id.*; Adm.Code 5703-9-46.

True Object Test

CheckFree urges this Board to adopt a wide approach to the true object test, looking at the mechanics of the primary service rather than each itemized item or the bundle of services as a whole. Likewise, in her Final Determination, the Commissioner treated the entire transaction as taxable and CheckFree’s claims as exemptions rather than considering the taxability of each

service. Both approaches were rejected by the Court in *Cincinnati Fed.* Based on the record, as described below, it appears that at least some of the transactions are not taxable ADP, EIS, or computer services. However, it is less clear whether the purported ancillary services, which are separately invoiced, are taxable. Because the Final Determination was issued before the Court decided *Cincinnati Fed.*, we find that the matter is best remanded to the Commissioner to first consider the taxability of each item.

CheckFree's Debit Authorization Service

CheckFree's debit authorization service verifies whether a consumer's account has sufficient funds to complete a transaction at an ATM or purchase from a vendor. CheckFree maintains that the true object of this service is simply to relay the communications between the ATM or vendor and the consumer's bank. We find that the Court's decision in *Marc Glassman, Inc. v. Levin*, 2008-Ohio-3819, is instructive. In *Marc Glassman*, the taxpayer sought a refund for tax paid on a service relaying whether a patient was covered by an insurance provider. In that case, the taxpayer store entered information into a computer terminal that would relay the information to the service provider, which would seek an authorization response from the insurance company. The insurance company would respond with whether the request was approved, the amount of the copay, and the reimbursement authorization number. The service provider would then transmit this response to the computer terminal at the store. The Court found that the taxpayer did not gain access to the insurance company's data, but simply a conclusion formulated by the insurer. As such, the Court concluded that it did not qualify as taxable ADP, EIS, or computer services.

In this case, the rationale from *Marc Glassman* applies to the debit authorization services. Much like in *Marc Glassman*, none of the parties gains access to another party's data. The vendor or ATM sends a transaction request to CheckFree, which then relays that request to the consumer's bank. The bank replies by indicating either yes, the funds are available, or no, the funds are not. CheckFree forwards this response to the vendor or ATM, which will then complete

or deny the transaction. As such, we find that when the true object of the service is data authorization, the transaction is not taxable. However, this only applies to those line items where the true object is data authorization.

The record shows that there are several additional services that are offered alongside the data authorization service. These include fraud detection, financial risk management, system maintenance, and ATM solutions, among others. CheckFree claims that the true object of the separately billed components that are included in the invoice should not be considered separately because they are essential and complimentary as part of the debit authorization services and are not separately provided. Regardless of whether such services would be offered independently, because they are invoiced as a separate charge, the true object for each must be considered.

For instance, it appears that some part of the fraud service involves the processing of the data provided by the vendor through CheckFree's data system which includes the data of other banking customers, to report back that a transaction may be fraudulent and cause a transaction to be declined. This service would qualify as a taxable ADP. Accordingly, on remand, the Commissioner should review each itemized service contested by CheckFree to determine whether it meets the definition of a taxable ADP, EIS, or computer service.

CheckFree's Disbursement Authorization Service

The disbursement authorization service shares similarities with the debit authorization. For instance, multiple services are separately invoiced but included under the disbursement authorization umbrella. Additionally, these services are automated and utilize CheckFree's (Fiserv's) platform and information from its network of customers. At the outset, we reject the contention that these automated services are personal or professional services. As noted above, nontaxable personal or professional services are performed by people, and these automated

services do not qualify under any service set forth in R.C. 5739.01(Y)(2). Additionally, each component of the disbursement authorization service and its related services should be reviewed when they are separately invoiced.

CONCLUSION

For these reasons, we vacate the final determination and remand this appeal to the Commissioner to determine the true object of each item and whether any tax refund is due.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Ms. Clements	<i>AC</i>	
Ms. Allison	<i>KLA</i>	

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary