OHIO BOARD OF TAX APPEALS

ADS ALLIANCE DATA SYSTEMS, INC., (et al.), Appellant(s), vs. PATRICIA HARRIS, TAX COMMISSIONER OF OHIO, (et al.), Appellee(s).	)	CASE NO(S). 2022-2 (SALES TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, November 23, 2026

Ms. Clements, Ms. Allison, and Mr. Seitz concur.

INTRODUCTION

ADS Alliance Data Systems, Inc. appeals a final determination of the Tax Commissioner that denied ADS' sales tax refund claim connected to purchases from Fujitsu America, Inc., for the period January 1, 2024-December 31, 2017. ADS advances two main arguments. First, it maintains that the purchases were not subject to tax because ADS purchased nontaxable services. Second, ADS argues that, to the extent the purchases are taxable, they should be sourced largely

outside Ohio. The Commissioner disputes both contentions. She argues that ADS failed to substantiate its arguments below and presented no new evidence to this Board to substantiate the arguments at this stage. For the reasons that follow, we affirm the final determination.

FACTS

During the refund period, ADS provided services to manage credit card operations for banks. These activities include processing credit card applications and transactions, maintaining account information, billing customers, processing payments, and providing technical support.

In 2013, ADS, through an affiliate, entered into a master professional services agreement ("MPSA") with Fujitsu. Under that agreement, Fujitsu provided various services including mainframe services, application services, managed network services, and end-user support. Fujitsu performed services through facilities located in Columbus, Ohio, and Dallas, Texas. Fujitsu invoiced ADS for the services provided under the MPSA, separately identifying charges attributable to Ohio and Texas. ADS paid the invoices, including the Ohio sales tax charged on services attributed to the Columbus facility.

ADS subsequently sought a refund of $420,366.37 in Ohio sales tax. It asserted that the services were used to support credit card operations involving account holders throughout the United States and that only approximately 4.38% of those account holders were located in Ohio. ADS therefore maintained that Ohio sales tax should not have been imposed on the entire amount of the charges attributed to Fujitsu's Ohio facility.

The Department denied the refund request, and the Commissioner affirmed the denial. ADS appealed to this Board but did not present new evidence.

LAW AND ANALYSIS

The appellant bears the burden of proving that the Commissioner's findings were incorrect. *Accel, Inc. v. Testa*, 2017-Ohio-8798. Those findings are presumed valid subject to rebuttal. *Id.* In

applying the law, our task 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. When no hearing is requested, we confine our review to the statutory transcript certified by the Commissioner.

Ohio imposes sales tax upon retail sales made in this state. R.C. 5739.02(A). Among the transactions subject to tax are sales of automatic data processing, computer services, and electronic information services when provided for use in business. R.C. 5739.01(B)(3)(e). The terms are defined in R.C. 5739.01(Y), and Adm.Code 5703-9-46 further describes the services within those classifications.

ADS first argues that the services provided were actually not taxable under R.C. 5739.01(Y). The Commissioner argues that the issue was waived because ADS failed to raise it below. *See generally CNG Dev. Co. v. Limbach*, 63 Ohio St.3d 28 (1992). We agree. We have not located a place in the record where the issue was raised, nor does ADS' brief point to any place in the record where that argument was made. That omission is consistent with the final determination, which is silent on the question. Accordingly, we reject the argument as waived.

ADS next argues that the purchases should have been sourced to the account holder's location, rather than proportionally divided between Ohio and Texas based on where Fujitsu provided the services. The Commissioner responds that ADS, rather than its account holders, is the purchaser and consumer of Fujitsu's services and that the services were properly sourced to Ohio. We agree with the Commissioner.

R.C. 5739.033 governs the sourcing of sales for purposes of Ohio's sales tax. Division (D) permits a qualifying business consumer purchasing certain services that will be concurrently available for use in more than one taxing jurisdiction to apportion the tax due under specified conditions. Here, the relevant transaction is ADS's purchase of taxable services from Fujitsu. The

MPSA identifies ADS as the customer and establishes the contractual relationship under which Fujitsu provides the services. The invoices identify the facilities from which the services are provided and the locations at which the services may be received.

ADS's credit card account holders are not parties to the MPSA. Nor does the fact that those account holders receive downstream benefits of ADS's credit card operations establish that they receive or use the particular services purchased from Fujitsu. The distinction is significant. The services ADS provides in conducting its business are not necessarily the same services that ADS purchases to support that business. ADS emphasizes that its credit card operations depend upon the infrastructure and technical services supplied by Fujitsu. But the fact that a business uses purchased services to provide products or services to customers throughout the country does not, standing alone, establish that the purchased services are concurrently available for use in every jurisdiction in which those customers reside.

ADS relies heavily on our decision in *Richfield Prop. v. Limbach*, 87-A-271 (June 29, 1990), a use tax case. There, the Board considered imposing a use tax on computerized ticket services for a venue in Ohio. ADS argues that the decision supports looking beyond the service provider's location. *Richfield Properties* does not compel the result ADS seeks. There, the Board determined that the purchaser realized the benefit of the services in Ohio, notwithstanding that the computer equipment used to perform them was located outside the state. The decision illustrates that the physical location of computer equipment is not necessarily dispositive of where the purchaser realizes the benefit of a service. It does not, however, establish that the benefit of services purchased by a business must be attributed to the locations of the business's ultimate customers. Nor does it eliminate the distinction between sales tax sourcing and the imposition of use tax.

ADS also relies on situsing provisions for the commercial activity tax ("CAT"). We agree with the Commissioner that CAT situsing rules are of limited value because Ohio's sales tax has

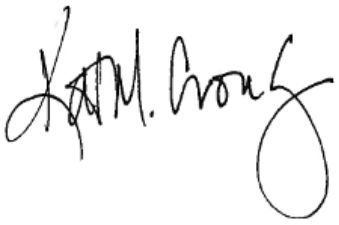
independent sourcing rules, including the multiple points of use statute. We therefore reject the argument.

CONCLUSION

Because we find ADS has not carried its burden, the final determination is affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Ms. Clements		
Ms. Allison		
Mr. Seitz		

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