



This Week in State Tax (TWIST)

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Florida: Sunshine State court sides with taxpayer in sourcing sales of services

A Florida circuit court recently granted summary judgment to a taxpayer who claimed that its sales of services should be sourced outside of Florida based on the costs to perform the services. The taxpayer, headquartered in Wisconsin, provided online bill payment services to banks and similar financial institutions by acting as an agent for its clients and processing transactions initiated by their customers. Typically, the clients' customers would submit a bill payment online using their bank account as the payment method. The requests were submitted through the taxpayer's system for payment through ACH, a third-party bank, or a paper check mailed to the payee. During the relevant period, the taxpayer maintained only 0.1 percent of its real and tangible property in Florida and had no Florida payroll. Nearly all operational activities were conducted from various hubs outside the state, with customer data processed at out-of-state datacenters and employees located outside Florida performing functions such as fraud monitoring, system maintenance, and ongoing development of the service platform.

Florida requires taxpayers to apportion income to the state for corporate tax purposes using three-factor, double-weighted sales apportionment. For the sales factor, Florida regulations identify eleven specific categories of income and how such sales should be sourced. For sales falling outside these categories, there is a "catch-all" category, which provides that gross receipts from other sales shall be attributed to Florida "if the income producing activity which gave rise to the receipts is performed wholly within Florida," or "if the income producing activity is performed within and without Florida but the greater proportion of the income producing activity is performed in Florida, based on costs of performance." Further, the regulation indicates that "income producing activity" is defined with reference to the "activities directly engaged in by the taxpayer"

The Department argued that the income producing activity occurred wholly in Florida by focusing on the activities of Florida customers of the taxpayer's clients, i.e., the individuals initiating the payment transactions. The taxpayer instead relied on the language of the rule which looks to the activities directly engaged in by the taxpayer and contended that, because its services were performed outside Florida based on costs of performance, none of the receipts should be included in the Florida sales factor numerator. The court, in agreeing with the taxpayer, first determined that the taxpayer's income producing activity was the online payment services it provided to its Florida clients (banks and financial institutions). It further determined, based on testimony, that the income producing activities were not performed wholly in Florida, and thus the court must determine where the taxpayer incurred the greater cost to perform the online payment services. The court ultimately determined the evidence was clear that the "location of [the taxpayer's] costs to perform [its services] is almost entirely – if not entirely – incurred outside Florida," and thus none of the taxpayer's receipts from online payment services should be sourced to Florida. Please contact [Greg Aughenbaugh](#) and [Danielle Fynn](#) with questions about *CheckFree Services Corp. v. Department of Revenue* (No. 2024 CA 1026) (Leon County).

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