

IN THE SUPREME COURT OF OHIO

CHECKFREE SERVICES)	Case No. _____
CORPORATION)	
Appellant,)	Appeal from the Ohio Board
)	of Tax Appeals
vs.)	
)	Board of Tax Appeals
PATRICIA HARRIS,)	Case No. 2019-43
TAX COMMISSIONER OF OHIO,)	
)	
Appellee.)	

NOTICE OF APPEAL OF CHECKFREE SERVICES CORPORATION

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NOTICE OF APPEAL OF APPELLANT, CHECKFREE SERVICES CORPORATION

Appellant, CheckFree Services Corporation (“CheckFree”), hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Ohio Supreme Court from the Decision and Order of the Board of Tax Appeals (“Board”) journalized on October 10, 2024 in *CheckFree Services Corp. v. Patricia Harris, Tax Commissioner of Ohio*, BTA Case No. 2019-43. A true copy of the Decision and Order of the Board being appealed is attached as **Exhibit A** (“Decision and Order”) and incorporated herein by reference.

INTRODUCTION

CheckFree provides financial services to customers primarily consisting of financial institutions, banks, and large retailers. This appeal involves two services, referred to as “Debit Authorization” and “Disbursement Authorization,” upon which CheckFree collected Ohio sales tax (“tax”) from its customers. CheckFree requested refunds of tax collected and remitted on these services for the periods July 1, 2011 through June 30, 2015. In denying CheckFree’s refund claims, the Tax Commissioner of Ohio (“Commissioner”) determined the Debit Authorization and Disbursement Authorization services were taxable automatic data processing (“ADP”) or electronic information services (“EIS”).

CheckFree’s Debit Authorization services involve transmission of a request from a point of sale system or ATM to approve a transaction or withdrawal of funds for bank customers. In response to this request, CheckFree transmits a “Yes” or “No” response from the bank to the requesting point of sale equipment or ATM. The Board described CheckFree’s Debit Authorization Services as follows:

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. Through the 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.

Decision and Order, pp. 2-3.

In addition to the per transaction charges for Debit Authorization services, CheckFree separately charges its customers for necessary components of the sale of Debit Authorization services. With respect to one such component, fraud detection charges, the Board commented: “it appears that some part of the fraud service involves the processing of data ... [that] would qualify as a taxable ADP.” Decision and Order, p. 9.

CheckFree’s Disbursement Authorization Services, also referred to as BillPay, involve transferring funds from consumers to designated payees on the date specified by the consumer.

The Board described CheckFree’s Disbursement Authorization Services as follows:

CheckFree’s bill payment platform is integrated into the bank’s website or the vendor’s website. The 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 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.

Decision and Order, p. 3.

As with Debit Authorization services, in addition to per transaction charges, CheckFree separately charged customers for components that were necessary to provide Disbursement Authorization services.

The Board correctly concluded that Debit Authorization services were not subject to tax. The Board did not reach a conclusion regarding the taxability of Disbursement Authorization services or the separately stated charges for components of CheckFree's Debit Authorization and Disbursement Authorization services. Relying upon this Court's decision in *Cincinnati Fed. S&L Co. v. McClain*, 2022-Ohio-725, the Board remanded this appeal to the Commissioner to review each separately stated service charge under the true object test to determine if they constitute taxable ADP or EIS.

Based upon the errors set forth below, Debit Authorization and Disbursement Authorization services are nontaxable under R.C. 5739.01(B), including all components of these services for which there were separate charges since they are necessary for the provision of such services. R.C. 5739.01(H).

ERRORS TO BE REVIEWED

CheckFree complains of the following errors in the Board's Decision and Order:

1. The Board erred in denying CheckFree's refund request for Disbursement Authorization services since this service is not enumerated as taxable under R.C. 5739.01(B). Ohio sales / use tax does not apply to a service unless specifically enumerated as taxable. Based upon the sufficient and uncontroverted evidence introduced before the Board, Disbursement Authorization services do not involve ADP or EIS but are nontaxable financial services, including debt collection services. R.C. 5739.01(Y).

2. The Board erred by failing to reach a conclusion concerning the taxability of Disbursement Authorization services and separately stated charges for components of CheckFree's

Debit and Disbursement Authorization services, remanding this appeal to the Commissioner for further proceedings. Based upon the sufficient and uncontroverted evidentiary record, the Board should have held that these services were not subject to Ohio sales / use tax.

3. The Board erred by concluding that separately stated charges for components of Debit Authorization and Disbursement Authorization services must be analyzed independent of the underlying authorization service to which they are related. Despite being separately stated, these component charges are integral to the underlying authorization service and must be analyzed in the context of the Debit Authorization or Disbursement Authorization service to which they relate, being a part of and necessary for them.

4. The Board erred by concluding that separately stated component charges for installation or services necessary to complete the sale were not part of the “price” of Debit Authorization or Disbursement Authorization services under R.C. 5739.01(H).

5. The Board erred by concluding that Debit Authorization and Disbursement Authorization services, including installation charges and all services necessary to complete the sale, did not constitute personal or professional services under R.C. 5739.01(Y)(2). In this context, the statutory definition of personal and professional services “means all services other than” ADP, EIS, or computer services regardless of whether the services is performed by an individual. Further, the list of examples of personal and professional services in R.C. 5739.01(Y)(2) includes some fully automated and electronic services. *See e.g.*, R.C. 5739.01(Y)(2)(i) through (l). Therefore, for purposes of R.C. 5739.01(Y), CheckFree’s Debit Authorization and Disbursement Authorization services, including all integral components thereof, are nontaxable personal and professional services.

6. The Board erred by stating that some part of separately stated fraud detection charges constitutes ADP. These charges are for necessary components of Debit Authorization

services, which the Board correctly concluded were nontaxable. Therefore, consistent with CheckFree's Objections 3 through 5 above, these component charges are nontaxable as part of the price of Debit Authorization services, which are personal and professional services under R.C. 5739.01(Y)(2).

7. To the extent any portion of CheckFree's Debit Authorization or Disbursement Authorization is found to constitute ADP or EIS, the true object of the transaction is receipt of a nontaxable personal or professional service to which the ADP or EIS is merely incidental or supplemental so that the transaction is nontaxable. R.C. 5739.01(B)(3)(e). The true object of Debit Authorization services, including all necessary and integral components thereof, is communicating the transaction request and "Yes" or "No" response from the consumer's bank to approve or deny the transaction, which the Board correctly concluded is not ADP or EIS. The true object of Disbursement Authorization services, including all necessary and integral components thereof, is the transfer of funds on the consumer's behalf on the specified date, which is a nontaxable financial service, not ADP or EIS.

8. The Board erred by incorrectly referencing "debit authorization" services as "data authorization." Decision and Order, p. 9.

CONCLUSION

For the foregoing reasons, CheckFree respectfully requests that the Decision and Order of the Board be reversed, in part, with respect to the Disbursement Authorization services and separately stated charges for components of Debit Authorization and Disbursement Authorization services. CheckFree requests that final judgement be entered in its favor granting its entire refund request since Debit Authorization and Disbursement Authorization services are not enumerated as taxable under R.C. 5739.01(B). Alternatively, if the Court does not find the evidentiary record or

the Board's factual findings sufficient, CheckFree requests that the Court remand this matter to the Board to apply the proper rules, consistent with the above objections.

Respectfully submitted,

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLC

/s/ Steven A. Dimengo

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Counsel for Appellant, CheckFree Services Corporation

IN THE SUPREME COURT OF OHIO

CHECKFREE SERVICES CORPORATION	:	Case No. _____
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Appellant,	:	Appeal from the Ohio Board of Tax Appeals
	:	Case No. 2019-43
v.	:	
	:	
PATRICIA HARRIS,	:	
TAX COMMISSIONER OF OHIO	:	
	:	
Appellee.	:	

PRAECIPE

TO THE BOARD OF TAX APPEALS:

Demand is hereby made that the Ohio Board of Tax Appeals (“Board”) prepare, transmit and file with the Supreme Court of Ohio a certified transcript of the records and proceedings of the Board pertaining to its Orders in the above-styled matter; including in said certified transcript, the Board’s Orders, the original papers in the case or a transcript thereof, and all evidence with originals or copies of all exhibits as adduced in said proceeding introduced at the evidentiary hearing before the Board or otherwise considered by the Board in making its Orders.

Respectfully submitted,

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLC

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Counsel for Appellant, CheckFree Services Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by certified mail, postage prepaid, electronic mail, and through the electronic filing system of the Board of Tax Appeals on November 8, 2024 to:

Christine Mesirow
Office of the Ohio Attorney General
Rhodes Tower, 15th Floor
30 East Broad Street
Columbus, Ohio 43215

/s/ Steven A. Dimengo _____
Steven A. Dimengo (#0037194)
Counsel for Appellant,
CheckFree Services Corporation

CERTIFICATE OF FILING

The Appellant, CheckFree Services Corporation, hereby certifies to the Ohio Supreme Court that it filed this Notice of Appeal with the Board of Tax Appeals on November 8, 2024. A copy of the Notice of Appeal filed with the Board of Tax Appeals is attached hereto.

/s/ Steven A. Dimengo _____
Steven A. Dimengo (#0037194)
Counsel for Appellant,
CheckFree Services Corporation

Linda (Smith) Johnston

To: Richard Fry
Subject: RE: [*EXTERNAL*]BTA 2019-43: Higher Court Notice of Appeal Docketed

From: no-reply@bta.ohio.gov <no-reply@bta.ohio.gov>
Sent: Friday, November 8, 2024 3:58 PM
To: Richard Fry <rfry@bdbl.com>
Subject: [*EXTERNAL*]BTA 2019-43: Higher Court Notice of Appeal Docketed



Ohio Board of Tax Appeals

Ohio Board of Tax A

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Dear RICHARD B. FRY, III:

You are receiving this email because you are a party to the subject appeal, or because you have registered your interest in this case. An action has been taken on your appeal as noted below.

An action has been taken on:

- Case number: 2019-43
- Case name: CHECKFREE SERVICES CORPORATION VS. PATRICIA HARRIS, TAX COMMISSIONER OF OHIO
- Action taken: Higher Court Notice of Appeal Docketed

Next Steps

- Please login to the [Ohio BTA Resolution Center](#)
- Please go to case [2019-43](#) and see the Timeline for a history of the actions taken

Sincerely,
Clerk of the Ohio Board of Tax Appeals

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