

OHIO STATE BAR ASSOCIATION TAXATION COMMITTEE
Sales/Use Tax Subcommittee Report
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I. NON-TAXABLE SERVICES

A. Personal / Professional Services:

Checkfree Services Corp. v. Harris, Ohio BTA Case No. 2019-43 (October 10, 2024) on appeal before Ohio Supreme Court (Case No. 2024-1569). The BTA held that certain financial authorization services (Debit Authorization) were not taxable automatic data processing (“ADP”) or electronic information services (“EIS”). They did not involve the service provider (CheckFree Services Corp.) processing or accessing any information from the consumer’s financial institution. Rather, CheckFree simply conveyed a transaction request from a vendor’s point-of-sale system or bank ATM to the consumer’s bank and relayed the “Yes” or “No” response from the consumer’s bank back to the requesting equipment to authorize or deny the transaction. This service verifies whether a consumer’s account has sufficient funds to complete an ATM or vendor transaction using a debit card.

Checkfree also provided Disbursement Authorization services. This service is a bill-payment service which allows a bank’s customers to pay their bills automatically using CheckFree’s proprietary service. Based on a consumer’s requests through CheckFree’s online portal, CheckFree advances the consumer’s bill payments to the applicable vendor, and reimburses itself from the customer’s account, creating a seamless way for customer’s to pay their bills on time.

The charges for both services include many different line-item charges necessary and integral to providing the services, such as charges for fraud detection, maintenance fees, enrollment fees, and other service fees.

The Board held that Debit Authorization charges are nontaxable based upon the holding in *Marc Glassman, Inc. v. Levin*, 2008-Ohio-3819 where the Court held that providing a response to an authorization request is nontaxable as long as the service provider is not processing or accessing the customer’s data to formulate the response. However, the BTA held that other related charges must be analyzed under the “true object” test to determine whether the true object of each was for nontaxable Debit Authorization Services or taxable ADP or EIS.

The BTA further held Disbursement Authorization services did not constitute personal or professional services due to their automated nature, but that each pre-transaction charge must be separately analyzed to determine taxability.

II. PROCEDURE

A. Responsible Party Liability:

Biskind v. Harris, Ohio Ct. App., Dkt. Nos. 23AP-563 and 23AP-564 (October 22, 2024). A company's effective sole owner and one of multiple officers was found liable for unpaid sales taxes even though he was not involved in the company's day-to-day operations since he resided in New Zealand. Consistent with substantial precedent, a responsible party may not delegate responsibilities and avoid tax. He had control over persons actually filing the business tax returns (even though such individuals were dishonest concerning the company's finances). Interestingly, the Court distinguished prior favorable cases on the basis that the alleged responsible party was not an owner. Moreover, this is one of the few cases that explicitly applies Ohio Admin. Code 5703-9-49 to make an officer liable.

B. Assessment against restaurant utilizing estimated carryout ratio upheld when primary records not maintained for entire audit period:

Lalibla, LLC v. Harris, Ohio Ct. App. 10th Dist. Dkt No. 24AP-265, 2024 WL 5196579 (Dec. 23, 2024). Restaurant operator asserted sales tax assessment was overstated due to exempt carryout / catering sales. Based upon review of z-tapes for part of the audit period, the auditor applied 17-18% nontaxable ratio to gross sales determined by review of bank statements, Forms 1099-K (credit card receipts), and cash receipts from z-tapes. The auditor excluded catering sales for which order forms or invoices were produced, although taxpayer did not have records of all such sales. The taxpayer presented an alternative calculation from its accountant which was not adopted by the auditor. Affirming the BTA's decision, the Court upheld the Tax Commissioner's assessment because the taxpayer failed to provide evidence of additional catering sales. There is no obligation to rely upon taxpayer's statements concerning catering sales when primary records were not obtained. Further, the accountant's alternative method was not competent, probative evidence demonstrating error in the Department's assessment. Finally, after abatement request was reviewed by the Department's Penalty Imposition Group, the Tax Commissioner did not abuse her discretion by imposing 50% penalty since the taxpayer admitted tax was collected but not remitted.

III. LEGISLATION

None

IV. OHIO ADMINISTRATIVE CODE

A. **Ohio Admin. Code 5703-9-21(C)(13) (eff. 12/12/24)**: Clarifies that things used in a manufacturing operation includes equipment and supplies used as part of a continuous manufacturing operation to produce food. Previously limited to dairy production.

B. **Ohio Admin. Code 5703-9-60**: Rescinded rule regarding consumer's use tax amnesty payment plan.

C. Ohio Admin. Code 5703-9-64 (eff. 12/12/24): New regulation defining “sleeping accommodations” and “transient guests” for Ohio sales tax purposes.

1. “Sleeping accommodations” can include “a cabin, house, or other stand-alone structure... if it is rented in its entirety.” Five or more of such structures will be treated as a “hotel” for sales tax purposes.
2. “Transient guest” includes individuals and entities that rent sleeping accommodations for less than 30 days. “If a transient guest rents a room for more than thirty consecutive days, those rentals are not subject to [Ohio sales tax] if the rooms are actually and continuously occupied for that time, or the rooms have been purchased and there is a right to continuously occupy the rooms for that time.”

4931-8768-0278, v. 1