

OHIO BOARD OF TAX APPEALS

CINCINNATI FEDERAL SAVINGS)	
& LOAN, (et al.),)	
Appellant(s),)	CASE NO(S). 2018-2247
vs.)	
)	(SALES AND USE)
PATRICIA HARRIS, TAX)	
COMMISSIONER OF OHIO, (et al.),)	DECISION AND ORDER
Appellee(s).)	

APPEARANCES:

For the Appellant(s) - CINCINNATI FEDERAL SAVINGS & LOAN
Represented by:
MARK A. LOYD
BINGHAM GREENBAUM DOLL LLP
3500 PNC TOWER
101 SOUTH FIFTH STREET
LOUISVILLE, KY 40202

For the Appellee(s) - PATRICIA HARRIS, TAX COMMISSIONER OF OHIO
Represented by:
DANIEL W. FAUSEY
SECTION CHIEF
OFFICE OF OHIO ATTORNEY GENERAL()
30 EAST BROAD STREET, 25TH FLOOR
COLUMBUS, OH 43215-3428

Entered Monday, May 11, 2026

Ms. Clements and Ms. Allison concur. Mr. Seitz not participating.

BACKGROUND AND PROCEDURAL POSTURE

The present case is before the BTA on remand from the Ohio Supreme Court. The Ohio Supreme Court affirmed the BTA’s conclusion that Cincinnati Federal failed to prove that Fiserv provided nontaxable accounting services under R.C. 5739.01(Y)(2)(a). *Cincinnati Fed. S. & L. Co. v. McClain*, 2022-Ohio-725, ¶ 42.

The Ohio Supreme Court held that R.C. 5739.39.01(Y)(2)(a) regarding professional services does not trigger the need to perform the true object test. *Id.* at ¶ 37. The Ohio Supreme

Court held that even though the BTA erred by treating R.C. 5739.01(Y)(2)(a) as a tax exemption, the Ohio Supreme Court affirmed the BTA's conclusion that Cincinnati Federal failed to prove it had purchased nontaxable accounting services. *Id.* at ¶ 39.

However, the Ohio Supreme Court held that the BTA erred by treating Cincinnati Federal's claim for a tax exemption under R.C. 5739.01(Y)(2)(e) regarding automatic data processing ("ADP") and electronic information services ("EIS") and by failing to apply the true object test required by statute. *Id.* at ¶ 19 -28

The Supreme Court therefore directed the BTA on this remand to apply the true object test in a more refined analysis pursuant to R.C. 5739.01(Y)(2)(e) to the service charges at issue. *Id.* at ¶ 46.

STANDARD OF REVIEW

In an appeal of the Commissioner's final determination, 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.

LAW AND ANALYSIS

The Ohio Supreme Court has held that the true object test requires a determination of "the essential reason the buyer enters the transaction." *Emery v. Industries, Inc. v. Limbach*, 43 Ohio St.3d 134, 139 (1989). A determination of the true object of a transaction is primarily factual, and appellate courts affirm a true object finding when it is reasonable. *Amerestate, Inc. v. Tracy*, 72 Ohio St.3d 222, 223-224 (1995).

In *ComTech Sys., Inc. v. Limbach*, 59 Ohio St.3d 96, 98-99 (1991), the Ohio Supreme Court held that when ADP or EIS is involved in a transaction, that transaction is presumed

taxable, subject to rebuttal by the taxpayer. In this case, the Ohio Supreme Court directed that “Cincinnati Federal should be permitted to argue that it has rebutted the presumption with respect to some of the service charges it paid.” *Id.* at ¶ 28. Based on this instruction, we must apply the true-object test to determine the taxability of the service charges at issue based upon the evidentiary record.

The clear directive of R.C. 5739.01(B)(3)(e) requires the determination of whether the true object of the subject transactions is related to obtaining customization of software, as opposed to receiving ADP and/or EIS. *Cincinnati Fed.*, 2022-Ohio-725, ¶ 26-27 (citing *Epic Aviation, L.L.C. v Testa*, 2016-Ohio-3392, which rejected an all-or-nothing approach and held that the taxability of an aviation company’s fuel purchases should be determined according to whether each fuel purchase related to the taxpayer’s exempt common-carrier service or its taxable chartered service).

R.C. 5739.01(B)(3)(e) provides in relevant part:

(B) “Sale” and “selling” include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(3) All transactions by which:

(e) 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(Y)(2)(e) defines non-taxable “personal or professional services” as:

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced,

formatted, processed, controlled, and reported so that it will be meaningful to management.”

R.C. 5739.01(Y) defines taxable ADP and EIS as follows:

(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.

(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.

At the proceedings of this case, the Appellant presented four witnesses. Appellant’s first witness, Richard Cunningham, an experienced CPA, prepared the refund claims for 2013, 2014, and 2015, the subject of this case. Mr. Cunningham testified regarding the Master Agreement and ASP Services to the Master Agreement filed as Exhibit 3 the two invoices received by Appellant each month from Fiserv which were included in Exhibits 4 for refund claim year 2013, Exhibit 5 for refund claim year 2014, Exhibit 6 for refund year 2015 and summarized in Exhibit 7 for refund claim year 2013, Exhibit 8 for refund claim year 2014, Exhibit 9 for refund year 2015 as well as a summary spreadsheet which was identified as Exhibit 16 and Revised Summary Spreadsheet identified as Exhibit 16A. Mr. Cunningham testified that Fiserv customized the software for approximately three to six months before the refund claim period. Hearing Record (“H.R.”) at 45-46. No Fiserv employee cognitively reviews the real-time automated data processing by Fiserv that allows Mr. Burke at Cincinnati Federal to access the Cincinnati Federal general ledger and financial records daily. H.R. at 48-49.

Mr. Cunningham testified that the “system is correcting itself” entirely “within the system” and “doing automatically” allowing an “automatic entry” to be made to the general ledger, which provides Cincinnati Federal executives with immediate access to its data stored at Fiserv in real time without personal professional involvement. H.R. at 49-51

Mr. Cunningham’s testimony that Fiserv’s daily real-time automatic data processing without cognitive involvement of personal or professional services meets the R.C. 5739.01(Y)(2)(e) definition of taxable automatic data processing.

Appellant’s second hearing witness, Maria Ventre, was Appellant’s Vice President and Chief Deposit Officer and earned a degree in IT. H.R. at 62 and 89. Ms. Ventre testified that, in her opinion, the Fiserv system was customized when she chose what Fiserv services to buy from Fiserv. H.R. at 75. Ms. Ventre testified that after the claim refund years, Cincinnati Federal merged with Kentucky Federal. At the time of the merger, after the refund claim period, Ms. Ventre testified that Fiserv performed programming to allow Kentucky Federal customers to continue using their checks after the merger was complete. H.R. at 86. Ms. Ventre defined “customization” as “something that’s specific to Cincinnati Federal,” “so we would customize or ‘tweak the app’ to look or feel however we wanted to.” H.R. at 89. This included parameter updates of the application software. H.R. at 89-90

Ms. Ventre identified a “mobility implementation fee” of \$2500 in gross sales, which she believed demonstrated Fiserv’s customization in Exhibit 10 at CF 489. H.R. at 88-92. Ms. Ventre could not identify any other Fiserv charges or invoices in Exhibits 5-9 CF 86-256 or Fiserv invoice summary Exhibit 10, CF 489-491, as a part of the refund claim that she could “tie to or that reflect charges for the implementation of the programs” Cincinnati Federal purchased from Fiserv. H.R. at 91, line 20 to H.R. at 92, line 10. Ms. Ventre testified that the bank does not store any of its data but has access to its own data maintained by Fiserv on a daily, real-time basis through telecommunication lines. H.R. at 95.

Ms. Ventre's testimony described that the true object of the transactions, including the incidental "tweaking the app," was Fiserv's daily real-time services, Cincinnati Federal's access to its data stored by Fiserv via telecommunications. Ms. Ventre's description of the true object of the transactions meets the R.C. 5739.01(Y)(1)(c) definition of taxable EIS. H.R. at 95.

Cincinnati Federal's third witness, Scott Deters, is a CPA who opined that providing a general ledger through Fiserv's automated data system without cognitive personal professional involvement constitutes the provision of non-taxable accounting services. Mr. Deters testimony appeared to be primarily focused on Appellant's prior argument, rejected by the Ohio Supreme Court, that the transactions involved nontaxable professional accounting services under R.C. 5739.01(Y)(2)(a). *Cincinnati Fed.*, 2022-Ohio-725, ¶ 42-45.

Mr. Cunningham testified that the benefit to Cincinnati Federal of the Fiserv transactions at issue was the daily, immediate, real-time access provided by Fiserv's automatic data processing service. H.R. at 113. Mr. Deters testified that Cincinnati Federal hires its own accounting firm licensed to certify its financial statements and that Fiserv's system is not licensed to provide such professional accounting service. H.R. at 119-120. Mr. Cunningham's testimony does not support a finding that the true object of the transactions was "personal or professional services," which R.C. 5739.01(Y)(2)(e) defines as:

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management."

Deter's testimony supports the finding that the true object of the Cincinnati Federal of the transactions at issue was the benefit of daily real-time access to the data stored by Fiserv, meeting the statutory definition of EIS under R.C. 5739.01(Y)(1)(c). H.R. at 113.

Cincinnati Federal's fourth and final witness, Joseph Burke, is the President of Cincinnati

Federal. HC 124. Mr. Burke testified that the benefit of Cincinnati Federal's contract with Fiserv was the accounting service, which provides Cincinnati Federal with immediate access on an ongoing, real-time basis to the general ledger of all transactions that Fiserv maintains at Fiserv's facility in Wisconsin. H.R. at 124-125. Because of the real-time access to all transactions provided by the Fiserv contract, Mr. Burke testified that the Fiserv contract is very helpful to him as CEO of Cincinnati Federal because, in the morning when he arrives, he can know, for instance, if the bank is losing deposits, "maybe our rates aren't good." H.R. at 126.

Mr. Burke emphasized that the benefit of the Fiserv contract to him when he is making executive decisions is the provision of daily, real-time, immediate access to data automatically provided by Fiserv's services for every Cincinnati Federal customer transaction in real-time and automatically stored in the Fiserv system. H.R. at 132. Mr. Burke confirmed that it is important for Cincinnati Federal to have immediate access via telecommunication equipment to the information stored by Fiserv. H.R. at 134. Cincinnati Federal inputs the information; it goes to Fiserv via telecom lines, Fiserv stores it, and then the bank can immediately access it in real time. H.R. at 135.

Mr. Burke's testimony supports the finding that the true object of the buyer, Cincinnati Federal, of the Fiserv services under the Master Agreement CF 257-264 and invoice exhibits 5-9, CF 86-256 at issue in the refund claim period was ADP and EIS, consisting of the daily real-time access via telecommunication equipment to data stored by Fiserv. H.R. at 124-125; 132-135.

CONCLUSION

The Ohio Supreme Court reasoned that "a transaction is taxable only when the consumer's true object is to obtain the work performed by computer systems – ADP or EIS – rather than to obtain personal or professional services that are coupled with the work that is performed by computer services." *Cincinnati Fed.*, 2022-Ohio-725, ¶ 24.

Based upon the hearing testimony transcript record of Appellant's four witnesses discussed

above, Master Agreement at CF 257-264, ASP Services Exhibit to Master Agreement at CF 265-371, invoices Exhibits 5-9 CF 86-256 and Fiserv invoice summaries Exhibit 10, CF 489-491, the “true object” of transactions in the refund claim years was taxable automatic data processing and taxable electronic information services. The true object of the subject transactions during the relevant refund period meets the statutory definitions in R.C. 5739.01(Y)(1)(a) of taxable ADP and/or R.C. 5739.01(Y)(1)(c) definition of taxable EIS.

For the foregoing reasons, the Commissioner’s decision is hereby affirmed.

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