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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

BILLMATRIX CORPORATION;
CHECKFREE SERVICES CORPORATION;
FISERV AUTOMOTIVE SOLUTIONS,
INC., ITI OF NEBRASKA, INC., XP
SYSTEMS CORPORATION, and
CARREKER CORPORATION,

CASE NO.: 2020 CA 000435

Plaintiffs,

vs.

STATE OF FLORIDA, DEPARTMENT OF
REVENUE,

Defendant.
_____/

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This matter came for hearing before the Court on February 23, 2023, on the Motion for Summary Judgment filed by Plaintiffs Billmatrix Corporation ("Billmatrix"), Checkfree Services Corporation ("Checkfree"), Fiserv Automotive Solutions, Inc. ("Fiserv Auto"), ITI of Nebraska, Inc. ("ITI"), XP Systems Corporation ("XP Systems"), and Carreker Corporation ("Carreker") (collectively, the "Plaintiffs"). The Court, having heard argument and reviewed the pleadings, the Motion, accompanying exhibits and deposition transcripts, and otherwise being fully informed in the premises, finds as follows:

BACKGROUND

This case concerns tax assessments issued by the Florida Department of Revenue (the "Department") against each of the Plaintiffs. The tax assessments relate solely to a difference in interpretation between the parties of the Department's rules for apportionment of certain of Plaintiffs' corporate income to Florida.

When companies operate in multiple states they apportion their income for tax purposes to those various states based on each respective state's method of apportionment. States recognize two general forms of apportionment: (1) the cost of performance method of apportionment, and (2) the market-based method of apportionment. The cost of performance method of apportionment attributes income to the state where the majority of the costs of performance were incurred, i.e. where the company incurred the majority of the costs to provide the services resulting in the income. The market-based method, on the other hand, attributes income to the state where the customer is located, regardless of where the costs to provide such services were incurred.

Plaintiffs consist of related out-of-state corporations that provide financial technology services to businesses across the country. For Florida corporate income tax purposes, Plaintiffs apportioned their income from the sale of services based on the cost of performance method described in Florida Administrative Code Rule 12C-1.10155(2)(1). However, the Department audited Plaintiffs' income tax returns and disagreed with Plaintiffs' apportionment methodology. While the Department did not, and does not, dispute that Rule 12C-1.10155(2)(1) applies to the service income at issue here, the Department issued tax assessments which effectively applied a market-based approach to Plaintiffs' service income instead of the cost of performance approach required by Rule 12C-1.10155(2)(1). As a result, the Department's assessments contradict Rule 12C-1.10155(2)(1), impose on Plaintiffs requirements which are not uniformly applied to other taxpayers, and fail to comply with Florida law.

FINDINGS OF FACT

1. Billmatrix is a Delaware corporation that provides electronic bill payment services. Billmatrix provides such services from locations outside of Florida, and the vast majority of the costs to provide such services are incurred outside of Florida.

2. XP Systems is a Minnesota corporation that provides banking software for credit unions. XP Systems provides such services from locations outside of Florida, and the costs to provide such services are incurred outside of Florida.

3. Checkfree is a Delaware corporation that provides electronic bill payment and presentment services to consumer service providers, direct billers, and debit card processing services. Checkfree provides such services from locations outside of Florida, and the vast majority of the costs to provide such services are incurred outside of Florida.

4. ITI is a Nebraska corporation that provides integrated software and services to financial institutions. ITI provides such services from locations outside of Florida, and the vast majority of the costs to provide such services are incurred outside of Florida.

5. Carreker is a Delaware corporation, based in Texas, that provides technology solutions and consulting services to banking institutions. Carreker provides such services from locations outside of Florida, and the vast majority of the costs to provide such services are incurred outside of Florida.

6. Fiserv Auto is a Delaware corporation that provides software technology to the automotive financing industry. Fiserv Auto provides such services from locations inside and outside of Florida, and the majority of the costs to provide such services are incurred inside of Florida.

7. As this Court recognized in its final judgment in *Target Enterprise, Inc. v. Florida Department of Revenue*, No. 2021-CA-002158 (Fla. 2d Cir. Ct. Nov. 29, 2022)

> All corporations doing business within and without Florida must apportion their federal adjusted gross income to the State. § 220.15, Florida Statutes. The general rule for Florida corporate income tax purposes is that a taxpayer apportions business income to the State by using a three-factor formula comprised of a payroll, property, and double-weighted sales factor. See§ 220.15(1), Florida Statutes. Each factor is comprised of a numerator that quantifies a taxpayer's business activity in Florida and a denominator that quantifies the taxpayer's business activity everywhere.

Target Enterprise at 4.

8. The Florida Legislature has authorized the Department to promulgate rules to administer and enforce Florida's Income Tax Code. *See* § 220.51, Fla. Stat. Pursuant to such authorization, the Department promulgated Rule 12C-1.0155, Florida Administrative Code, which details the process for determining a corporation's sales factor, as provided in § 220.15(1), Florida Statutes.

9. Rule 12C-1.0155 provides that for sales factor purposes "sales" include "all gross receipts received by the taxpayer from transactions and activities in the regular course of its trade or business." Rule 12C-1.0155(1), F.A.C. The Rule states further that "Florida sales" represent the "numerator" of the sales factor and "includes gross receipts attributed to Florida which were derived by the taxpayer from transactions and activities in the regular course of its trade or business." Rule 12C-1.0155(2), F.A.C.

10. The Rule also specifies how an entity's "Florida sales" are treated based on the type of sales at issue, for example, sales and rentals of tangible personal property, sales of real property, sales of personal services, sales of intangible property, telecommunication services, etc. *See* Rule 12C-1.10155(2)(a)-(k), F.A.C.

11. The Department and the Plaintiffs agree that the revenue generated from the Plaintiffs' sales that are the subject of the tax assessment are appropriately categorized as "other

sales in Florida," and such sales are therefore governed by Rule 12C-1.10155(2)(1). *See* Plaintiffs' Motion for Summary Judgment at Exhibits A-F. That section of the Rule states:

> 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. Also, gross receipts shall be attributed to Florida 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**.

Id. (emphasis added).

12. The Rule defines income producing activity as follows:

> The term "income producing activity" applies to each separate item of income and means **the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits.** Where independent contractors are used to complete a contract, the term "income producing activity" will include amounts paid to the independent contractors.

Id. (emphasis added).

13. The Rule provides the following definition of "costs of performance":

> The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the taxpayer's trade or business. Where independent contractors are used to complete a contract, the term "costs of performance" will include amounts paid to the independent contractors.

Id.

14. The income-producing activities of the Plaintiffs which gave rise to the sales subject to the proposed assessments are not performed wholly within Florida. Rather, the income-producing activities of Billmatrix, Checkfree, ITI, XP Systems, and Carreker occur either entirely, or almost exclusively, outside of Florida. Accordingly, the Department's auditors agreed that under the cost of performance methodology no service revenue is sourced to Florida for apportionment purposes. *See* Plaintiffs' Motion for Summary Judgment, Exh. A at 5, B at 5-

6, C at 6-7, D at 6, E at 5. The income-producing activities of Fiserv Auto, on the other hand, occur primarily in Florida.

15. Consistent with Rule 12C-1.10155(2)(1), Plaintiffs calculated their Florida taxes for the years ending December 31, 2015, December 31, 2016, and December 31, 2017 by apportioning service revenue based on the cost of performance method, i.e. apportioning revenue to the state where they incurred the majority of their costs performing their income-producing activities.

16. The Department initiated routine corporate income tax audits of the six related Plaintiff entities' corporate income tax returns for the years ending December 31, 2015, December 31, 2016, and December 31, 2017.[1] The Carreker audit was performed by a Department auditor located in the Department's Illinois satellite office. The remaining audits were performed by a Department auditor located in the Department's Pennsylvania satellite office.

17. All of the audit reports concluded that Plaintiffs' use of the cost of performance method to determine the sales factor was incorrect, but the audits applied slightly different methodologies to reach that result.

18. The audits conducted in Pennsylvania uniformly explained the appropriate sales factor approach as follows:

> In this case, the income producing activity was the taxpayer's obligation to provide various services associated with the software licensed to their customers. Pursuant to Rule 12C-1.0155(2)(l), F.A.C., the income producing activity is not viewed holistically, but is analyzed for each item of income. **When services are provided to customers, these activities occur entirely in Florida when the customer is located within Florida.** Therefore, in each tax year, audit adjustments have been made to source service revenue to Florida when the customer is located within Florida.

[1] The Department also audited Checkfree for the tax period ending in December 31, 2013. Giampaolo Dep. Ex. 18.

Giampaolo Dep. Ex. 4 at 192, Ex. 10 at 232, Ex. 14 at 260, Ex. 18 at 287, Ex. 21 at 307 (emphasis added). Accordingly, instead of applying the well-established cost of performance method, the audits interpreted Rule 12C-1.0155(2)(l) as requiring application of a market-based methodology. As a result, the following assessments were issued:

a. Billmatrix was assessed additional income tax in the amount of $75,813.00 plus interest. Giampaolo Dep. Ex. 3.

b. Checkfree was assessed additional income tax in the amount of $2,650,513.00 plus interest. Giampaolo Dep. Ex. 17.

c. XP Systems was assessed additional income tax in the amount of $44,611.00, plus interest. Giampaolo Dep. Ex. 13.

d. ITI was assessed additional income tax in the amount of $831,107.00, plus interest. Giampaolo Dep. Ex. 20.

e. Fiserv Auto was assessed an income tax *refund* in the amount of $277,042.00, plus interest. Giampaolo Dep. Ex. 9.

19. The above assessments were due entirely to the Department's different method of apportionment. *See* Plaintiffs' Motion for Summary Judgment at Exhibits A-F; Giampaolo Dep. Tr. 72:25-73:6 (regarding Billmatrix), 107:19-23 (regarding Fiserv Auto), 113:3-9 (regarding XP Systems), 115:4-6 (regarding Checkfree), 116:18-20 (regarding ITI).

20. The Carreker audit explained a slightly different interpretation of Rule 12C-1.0155(2)(l):

> The income earned from providing services in Florida should be sourced to Florida because only the activities of the Florida customers resulted in generating income from the services. Thus, only those activities qualify as "income producing activity", not in the other states in which a majority of the costs of

> performance occurred. **The income producing activities were the actual sale of services to its customers, as opposed to the costs of performing those services.**
>
> **In conclusion, the income producing activity for the taxpayer's service revenue occurs in Florida if the taxpayer's customers are located in Florida and Florida is where the transactions and activities occur.** The adjustment was done by changing the service revenue to agree with the market based amount provided by the taxpayer representative.

Sheth Dep. Ex. 4 at 128 (emphasis added).

21. As a result of the above methodology, Carreker was assessed additional income tax in the amount of $11,751 plus interest. Giampaolo Dep. Ex. 1.

22. Making clear what methodology was applied, the audit report for Carreker expressly stated that "[a]djustments were made to service revenue by using market based method for all years under audit." Plaintiffs' Motion for Summary Judgment at Exhibit E. As with the remainder of the audits, the adjustment for the Carreker audit was due entirely to the Department's different method of apportionment. *Id.*; Sheth Dep. Tr. 31:9-32:3.

CONCLUSIONS OF LAW

I. Applicable Legal Standard

Florida's summary judgment standard is to be "construed and applied in accordance with the federal summary judgment standard." *See* Fla. R. Civ. P. 1.510(a); *see also In Re: Amends. to Fla. R. of Civ. P. 1.510*, 309 So. 3d 192, 192 (Fla. 2020). Summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). In conformity with the federal rules, a moving party may discharge its burden "by 'showing'—that is, pointing out to the [] court—that there is an absence of evidence to support the nonmoving party's case." *In Re: Amends. to Fla. R. of Civ. P. 1.510*, 309 So. 3d at 193 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Accordingly, summary judgment should issue "against a party who fails

to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* (quoting *Celotex*, 477 U.S. at 322).

Additionally, the test for determining whether a dispute is "genuine" is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248 (1986)). And, "[a] party opposing summary judgment 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" *Id.* (quoting *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

II. Florida Law Requires Application of the Cost of Performance Methodology to Plaintiffs' Service Income

Here, as in *Target Enterprise, Inc. v. Florida Department of Revenue*, Second Judicial Circuit Case No. 2021-CA-002158, the dispute relates to the computation of the Plaintiffs' sales factor numerator. Likewise here, as in *Target Enterprise*, all parties agree that the Plaintiffs' revenue is from the sale of services and the sales factor is therefore derived pursuant to Florida Administrative Code Rule 12C-1.0155(2)(l) (the "COP Rule"). This Court recognized that:

> The COP Rule provides that sales revenue is attributable to Florida if the "income producing activity" responsible for generating the sales revenue is performed by the taxpayer in Florida. If the "income producing activity" is not conducted solely in Florida, the COP Rule states that the sales revenue is attributable to Florida if the "greater proportion of the income producing activity is performed in Florida, based on costs of performance."
>
> The COP Rule looks to the location where the costs were incurred to perform the relevant services. If the greater proportion of those costs were incurred outside Florida, the taxpayer has "0" sales attributable to Florida and, accordingly, the sales factor under Section 220.15, Florida Statutes, would be "0" because the numerator of the sales factor would be "0." If the greater proportion of those costs were incurred inside Florida, then 100%

> of the receipts are recorded in the numerator of the sales factor under Section 220.15, Florida Statutes.

Target Enterprise, Inc. v. Florida Department of Revenue, No. 2021-CA-002158 (Fla. 2d Cir. Ct. Nov. 29, 2022), at 6.

There was no dispute during the audit that either all, or a greater proportion, of the costs of performance for the income producing activities giving rise to the sales at issue for Billmatrix, Checkfree, ITI, XP Systems, and Carreker occurred outside of Florida. There was also no dispute during the audit that a greater proportion of the costs of performance for the income producing activities giving rise to the sales at issue for Fiserv Auto, on the other hand, occurred primarily in Florida. Further, none of the audit reports indicate that any of the Plaintiffs failed to provide documentation requested by the Department with respect to the apportionment issue. Rather, the sole dispute during the audit pertained to the appropriate interpretation of the COP Rule, and whether the location of the customer dictates where income should be attributed pursuant to the COP Rule.

While the Department asserted at the summary judgment hearing that disputed issues of material fact exist in this case, the Department did not file any written response to the Plaintiffs' Motion for Summary Judgment, did not make any of the showings required by Rule 1.510(c), and did not file any affidavit or declaration pursuant to Rule 1.510(d). Accordingly, pursuant to Rule 1.510(e)(2), the Court has considered all facts included in the Plaintiffs' Motion to be undisputed for purposes of the Motion.

a. Cost of Performance vs. Market-Based Methodologies

States have generally adopted one of two approaches to apportion income from the sale of services when a company does business in more than one state. One approach is the "cost of performance" method, and the second is the "market-based" method. *See* Sales Factor—

Sourcing of Intangibles: Cost of Performance, Market, or Other Rule, 26-JUL J. Multistate Tax'n 33, 2016 WL 3548839 at 1. The cost of performance method attributes income to states by considering where the corporation's income-producing activity takes place, based on the costs of performing the income-producing activity. *See* Michael S. Schadewald, Apportionment Using Market-Based Sourcing Rules: A State-by-State Review, THE TAX ADVISER (Nov. 1, 2012).[2] Accordingly, under a cost of performance approach, "sales are sourced to the state where actual work is performed." Kenneth Laks, Sales Allocation Methods Cost of Performance vs. Market-Based, THE CPA JOURNAL (December 2019).[3] If a "corporation performs the income-producing activity in two or more states, the income is assigned to the state in which the corporation performs a greater proportion of the income-producing activity than in any other state, based on the costs of performance." Schadewald, *supra*.

The "market-based" approach, on the other hand, "assigns sales of services to the state in which the service is received," i.e. where the customer is located. *See id.*; Sales Factor, 2016 WL 3548839 at 33; Laks, *supra* ("In the [market-based] method, sales are sourced to the state where the customer receives the benefit."). Accordingly, in contrast to the cost of performance approach, the market-based approach looks only to the location of the customer to determine where income from the sale of services should be attributed. The market-based approach allows states "to collect more tax from out-of-state companies with significant economic activity but little in the way of actual payroll or property in the state." *Id.*

b. The Plain Language of Rule 12C-1.0155(2)(l) Requires Application of Cost of Performance Methodology.

[2] Article available at https://www.thetaxadviser.com/issues/2012/nov/schadewald-nov2012.html.

[3] Article available at https://www.cpajournal.com/2019/12/06/sales-allocation-methods/.

It is well established that "[a]dministrative rules must be interpreted according to their plain language whenever possible." *Lakeview Loan Servicing, LLC v. Walcott-Barr*, 307 So. 3d 705, 709 (Fla. 4th DCA 2020) (quoting *Smith v. Sylvester*, 82 So. 3d 1159, 1161 (Fla. 1st DCA 2012)); *see also Grueiro v. Liberty Mailing, Inc.*, 43 So. 3d 826, 827–28 (Fla. 1st DCA 2010) ("Statutory construction rules require first that the statute, or the rule, as the case may be, be given its plain meaning."). Agency interpretations of administrative rules are not entitled to judicial deference. Fla. Const. art. V, § 21 ("In interpreting a state statute or rule, a state court . . . may not defer to an administrative agency's interpretation of such statute or rule.") (emphasis added). Instead, courts must interpret statutes and agency rules *de novo* and without according any deference to the agency's interpretation. *Id.*

As noted above, all parties are in agreement that the Plaintiffs' sales that are the subject of the Tax Assessments should be apportioned pursuant to the COP Rule. The sole dispute in this case is whether the COP Rule requires application of a cost of performance methodology, or a market-based methodology. The plain language of the COP Rule unambiguously directs that the income from Plaintiffs' sales be determined through use of the cost of performance method, stating:

> 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. Also, gross receipts shall be attributed to Florida 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**. The term **"income producing activity" applies to** each separate item of income and means the **transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits**.

Rule 12C-1.10155(2)(1), F.A.C. (emphasis added). This Court recognized the appropriate application of the COP Rule in *Target Enterprise*, stating:

> The COP Rule operates in two steps. First, it is necessary to determine the taxpayer's "income producing activity." Once determined, the COP Rule then requires a balancing of the costs incurred to perform that activity. If the greater proportion of the costs to perform the activity are incurred outside Florida, none of the receipts are apportioned to Florida and the numerator of the taxpayer's sales factor is "0." By contrast, if the greater proportion of the costs to perform the activity are incurred in Florida, 100% of the receipts are apportioned to Florida and included in the taxpayer's sales factor numerator.

Target Enterprise at 9.

Each of the Plaintiffs applied the plain language of the COP Rule and appropriately apportioned income to Florida. It is undisputed that the greater proportion of the direct costs incurred by Billmatrix, Checkfree, ITI, XP Systems, and Carreker to conduct the income-producing activities at issue are incurred outside of Florida. It is likewise undisputed that the greater proportion of the direct costs incurred by Fiserv Auto to conduct the income-producing activities at issue are incurred inside of Florida. Accordingly, pursuant to the plain language of the COP Rule, the gross receipts for Billmatrix, Checkfree, ITI, XP Systems, and Carreker from the activities at issue are not attributable to Florida. On the other hand, Fiserv Auto's gross receipts from the activities at issue are attributable to Florida. For these reasons, each of the tax assessments issued to the Plaintiffs violates the plain language of the COP Rule. While the correct application of the COP Rule results in a lower assessment for Checkfree, ITI, XP Systems, and Carreker, correct application of the rule also negates the Department's proposed refund to Fiserv Auto.

c. The Department's Interpretations Contradict the Plain Language of the COP Rule and Florida law

In contrast to the plain language of the COP Rule, the Department's audits detail varying interpretations of the COP Rule, each of which contradicts the rule's plain language, and instead imposes a market-based approach. The reports for the audits conducted in Pennsylvania

explained that the sales factor determinations utilized in such reports were based on the location of the Plaintiffs' customers:

> [w]hen services are provided to customers, these activities occur entirely in Florida when the customer is located within Florida. Therefore, in each tax year, **audit adjustments have been made to source service revenue to Florida when the customer is located within Florida.**

Plaintiffs' Motion for Summary Judgment, Exhs. A-D and F; Giampaolo Dep. Ex. 4 at 192, Ex. 10 at 232, Ex. 14 at 260, Ex. 18 at 287, Ex. 21 at 307 (emphasis added). Such statements do not comply with the COP Rule.

The report for the Carreker audit conducted in Illinois varied slightly from the Pennsylvania audit reports, and explained the sales factor determination utilized in the audit was based on the location of the taxpayer's customers and the location of the taxpayer's transactions and activities, stating:

> In conclusion, the income producing activity for the taxpayer's service revenue **occurs in Florida if the taxpayer's customers are located in Florida and Florida is where the transactions and activities occur. The adjustment was done by changing the service revenue to agree with the market based amount provided by the taxpayer representative.**

Plaintiffs' Motion for Summary Judgment, Exh. E; Sheth Dep. Ex. 4 at 128. (emphasis added). The workpapers for the Carreker audit repeatedly acknowledge application of a market-based approach, rather than the cost of performance approach required by the COP Rule. *See e.g, id.* ("The adjustment was done by changing the service revenue to agree with the **market based amount** provided by the taxpayer representative.") (emphasis added); Sheth Dep. Ex. 3 at 114 ("Adjustments were made to service revenue by using **market based method** for all years under audit.") (emphasis added). Deposition testimony likewise established that the apportionment methodology applied to the Plaintiffs' sales through the audits differs substantially from the plain language of the COP Rule.

The audit reports offer still more explanations for what constitutes a business's income-producing activity. The audits conducted in Pennsylvania identified Plaintiffs' income-producing activity as the taxpayer's obligation to provide various services associated with the software licensed to their customers:

> In this case, the income producing activity was **the taxpayer's obligation to provide various services associated with the software licensed to their customers.** Pursuant to Rule 12C-1.0155(2)(l), F.A.C., the income producing activity is not viewed holistically, but is analyzed for each item of income. **When services are provided to customers, these activities occur entirely in Florida when the customer is located within Florida.**

Giampaolo Dep. Ex. 4 at 192, Ex. 10 at 232, Ex. 14 at 260, Ex. 18 at 287, Ex. 21 at 307 (emphasis added).

The Carreker audit report identified "the activities of the Florida customers" as the income-producing activity it considered:

> The income earned from providing services in Florida should be sourced to Florida **because only the activities of the Florida customers resulted in generating income from the services.** Thus, only those activities qualify as "income producing activity", not in the other states in which a majority of the costs of performance occurred. **The income producing activities were the actual sale of services to its customers, as opposed to the costs of performing those services**.

Sheth Dep. Ex. 4 at 128 (emphasis added).

None of the explanations provided by the Department—whether via auditor depositions or the audit reports themselves—applies the plain language of the COP Rule. *See* Rule 12C-1.10155(2)(1), F.A.C. Rather than looking to the *customer's* activities, the rule specifically defines the term income-producing activity as meaning "the **transactions and activity directly engaged in by the taxpayer** for the ultimate purpose of obtaining gains or profits." *Id.* (emphasis added). That is, to determine the taxpayer's income-producing activity the Department must look at the transactions and activity the *taxpayer* directly engages in for the ultimate

purpose of obtaining gains or profits, rather than looking at the actions or location of the *customer*. *See id*. The Department's focus on the "location," "destination," or "actions" of customers contradicts the plain language of the rule and must be rejected.

Even if the language of the COP Rule were ambiguous, the Rule must still be construed to require application of the cost of performance method. "It is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government, and that all ambiguities or doubts are to be resolved in favor of the taxpayer." *Maas Bros. v. Dickinson*, 195 So. 2d 193, 198 (Fla. 1967); *Harbor Ventures, Inc. v. Hutches*, 366 So. 2d 1173, 1174 (Fla. 1979) ("We believe this interpretation is in compliance with our duty to construe tax statutes in favor of taxpayers where an ambiguity may exist."); *Alachua Cnty. v. Expedia, Inc.*, 110 So. 3d 941, 945 (Fla. 1st DCA 2013) (explaining the principal as "well-established law in Florida").

Finally, the Department's inconsistent interpretation of its own regulations violates Florida's Taxpayer Bill of Rights, which ensures to all Florida taxpayers the fair and consistent application of tax laws. *See* Fla. Stat. § 213.015; Fla. Const. art. I, § 25 ("By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state."). The Taxpayer's Bill of Rights ensures "that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of this state." § 213.015, Fla. Stat.. Among those rights guaranteed to Plaintiffs are "[t]he right to fair and consistent application of the tax laws of this state by the Department of Revenue." § 213.015(21), Fla. Stat. The Department's inconsistent application of its own

regulations violates section 21 of the Taxpayer's Bill of Rights, as the Department's application of the apportionment methodology in different ways to different taxpayers, and in a manner that directly contradicts its plain language, is not "fair" or "consistent." *See* § 213.015(21), Fla. Stat. The Department's auditors admitted that the confusion surrounding the Department's varying interpretations of what is actually a clear regulation could result in different auditors applying different interpretations of the rule. Sheth Dep. Tr. at 57:14-58:1; Giampaolo Dep. Tr. at 49:8-50:21. Indeed, such a result is evident here given the varying methodologies applied during the Plaintiffs' audits. More importantly, however, none of the methodologies applied are consistent with Florida law. For these reasons, the Department's assessments also violate the Taxpayer's Bill of Rights. *See* § 213.015, Fla. Stat.

Based on all of the foregoing, it is hereby, **ORDERED AND ADJUDGED**:

1. Plaintiffs' Motion for Summary Judgment is **GRANTED**.

2. The tax assessments issued to Billmatrix, Checkfree, Fiserv Auto, ITI, XP Systems, and Carreker that are the subject of this proceeding are invalidated and abated in full.

3. Final judgment will be entered via a separate order, subject to this court's ruling on Defendant's Motion for Compulsory Judicial Notice and Motion to Dismiss for Lack of Subject Matter Jurisdiction.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida on Wednesday, March 1, 2023.