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SUPERIOR COURT
THURSTON COUNTY, WA

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☐ No hearing is set

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Date: July 12, 2024 (Filing Resubmission per Judge)

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Judge/Calendar: Mary Sue Wilson

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ATTORNEY GENERALS OFFICE
REVENUE AND FINANCE DIVISION

7/30/2024

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

FIRST DATA MERCHANT SERVICES
LLC, a Florida limited liability company,

Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

No. 19-2-00789-34

AMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER AFTER BENCH TRIAL

AMENDED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 1

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1 This matter came before the Court on March 5–7, 2024, for a bench trial on First Data's
2 Tax Refund action. The issue before the Court is whether Plaintiff First Data Merchant
3 Services LLC (“First Data”) has liability during the disputed tax period for business and
4 occupation (“B&O”) tax on the Interchange Fee (also referred to as Interchange Discount)
5 paid by First Data’s customers (Merchants). This Interchange Fee is retained by payment card
6 Issuing Banks to compensate them for their services. First Data has B&O tax liability if the
7 Interchange Fees are part of First Data's gross income under RCW 82.04.080. Interchange
8 Fees are part of First Data's gross income under RCW 82.04.090 if they are “consideration ...
9 actually received or accrued” by First Data.
10

11 In September 2023, this Court granted summary judgment in favor of First Data on
12 the issue of “actually received,” ruling that First Data did not “actually receive” Interchange
13 Fees. Before the Court in this bench trial is the remaining issue: whether the Interchange Fees
14 are consideration that accrued to First Data.
15

16 Based on the Findings of Fact and Conclusions of Law set forth herein, the Court rules
17 that the Interchange Fees are not consideration that accrued to First Data under RCW
18 82.04.220, RCW 82.04.080, and RCW 82.04.090. Therefore: (1) First Data is entitled to a
19 refund of B&O tax of \$180,076.87, plus interest on such amount from the date paid by First
20 Data until the date refunded; and (2) \$283,230.67 is the amount of B&O tax due and already
21 paid for that same period.
22

23 Having completed the proceedings, the Court hereby finds and concludes as follows
24 and issues the following Order with judgment for First Data.
25

26 **FINDINGS OF FACT**

27 1. First Data is a subsidiary of First Data Corporation. Until July 2019, First Data
28 Corporation was a publicly traded or public company. In July 2019, First Data Corporation
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AMENDED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW – 2

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1 and its subsidiaries were acquired by Fiserv, Inc. which is also a publicly traded or public
2 company. First Data, as a direct or indirect subsidiary of First Data Corporation and Fiserv,
3 Inc. is part of their affiliated groups for financial statement and federal income tax reporting
4 purposes.
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9 2. On or about November 9, 2018, First Data paid B&O tax on First Data's
10 income apportioned to Washington State for the month of October 2018 in the amount of
11 \$58,230.67. First Data also paid sales and use tax of \$43,677.64, for a total tax payment of
12 \$101,908.31 with its original October 2018 Combined Excise Tax Return.
13
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17 3. On or about February 4, 2019, First Data filed an amended Combined Excise
18 Tax Return for the month of October 2018, reporting and paying additional B&O tax of
19 \$180,076.87.
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21

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23 4. On or about May 10, 2023, First Data filed a second amended Combined
24 Excise Tax Return for the month of October 2018, reporting and paying additional B&O tax
25 of \$225,000.00 for the month of October 2018.
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29 5. First Data paid a total of \$463,307.54 in B&O tax for the month of October
30 2018.
31

32 6. First Data provides payment card processing services to Merchants.
33

34 7. Participants in a typical payment card transaction are the Cardholder, the
35 Merchant, the Network, the Issuing Bank, the Acquiring Bank, and the Processor for the
36 Acquiring Bank.
37
38

39 8. A "Cardholder" is a consumer who uses a payment card to pay for goods and/or
40 services and is responsible for paying the Issuing Bank for the amounts the cardholder agrees
41 to pay the Merchant.
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1 9. A "Merchant" is a business that sells goods and/or services and accepts
2 payment cards as payment for transactions.
3

4 10. A "Payment Network" or "Network" is an electronic system, such as Visa and
5 Mastercard, through which the payment-card process occurs that allows participants to
6 process, fund and receive payment in payment-card transactions.
7

8 11. The "Issuing Bank" is the cardholder's bank that issued the payment card.
9

10 12. The Cardholder's only direct agreement (related to the payment process) is
11 with the Issuing Bank.
12

13 13. The Issuing Bank is responsible for either approving or declining a payment-
14 card transaction.
15

16 14. The "Acquiring Bank" is the bank that submits payment-card transactions to
17 the Networks on behalf of Merchants.
18

19 15. The Acquiring Bank is responsible for collecting electronic data about
20 transactions from the Merchant and submitting that data to the Networks, referred to as
21 acquiring services.
22

23 16. A "Processor" contracts with Acquiring Banks to provide acquiring services
24 on their behalf.
25

26 17. First Data is a Processor.
27

28 18. Networks charge various fees, known as "Network Fees," which represent the
29 amount that Networks receive for facilitating various aspects of payment-card transactions.
30

31 19. "Network Rules" are created by the Networks and govern many aspects of the
32 transactions submitted, including how participants in the payment-card process are
33 compensated for their respective roles in authorizing, clearing, funding, and settling payment-
34 card transactions.
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- 1 20. All parties to a payment-card transaction are subject to the Network Rules.
- 2
- 3 21. "Interchange Fee" or "Interchange Discount" is the amount the Network Rules
- 4
- 5 allow an Issuing Bank to discount from the full transaction price as part of the Issuing Bank
- 6
- 7 funding an approved payment-card transaction.
- 8
- 9 22. The Interchange Discount rate is governed by the Network.
- 10
- 11 23. Once a payment-card transaction is approved and the Issuing Bank receives
- 12
- 13 the relevant information from a "clearing" file, the Issuing Bank is responsible for funding the
- 14
- 15 transaction less the Interchange Discount.
- 16
- 17 24. Typically, regardless of the amount the Issuing Bank funds, the Issuing Bank
- 18
- 19 will bill the cardholder for the full amount the cardholder agreed to pay the Merchant and the
- 20
- 21 Issuing Bank authorized.
- 22
- 23 25. A sponsorship agreement between an Acquiring Bank and a Processor allows
- 24
- 25 the Processor to provide services on the Acquiring Bank's behalf, which results in the
- 26
- 27 Processor essentially acting as the Acquiring Bank.
- 28
- 29 26. "Sponsorship Fees" are amounts Processors pay to their Acquiring Banks for
- 30
- 31 each transaction processed in exchange for being allowed to act as the Acquiring Bank within
- 32
- 33 the payment-card system.
- 34
- 35 27. Processors, such as First Data, enter into agreements with Merchants to enable
- 36
- 37 Merchants to access the transaction funding services described herein. Merchants enter
- 38
- 39 contracts with Processors. Merchants are not parties to contracts with Issuing Banks or
- 40
- 41 Payment Networks.
- 42
- 43 28. For approved transactions, the Acquiring Bank/Processor distributes the
- 44
- 45 Issuing Banks' funds transmitted to it from the Networks and sends those funds to the
- 46
- 47 Merchants' accounts. The funds transferred by the Processor to the Merchants typically do

1 not include amounts already deducted by the Acquiring Bank/Processor for its/their services.
2
3 The funds transferred to Merchants also typically do not include amounts already withheld by
4
5 Payment Network participants, including Issuing Banks.

6
7 29. Processors and Acquiring Banks contract with Merchants through agreements
8
9 called Merchant Processing Applications and Agreements ("MPAAs").

10
11 30. Each MPAA consists of a Merchant Processing Application, a Program Guide,
12
13 and various other schedules.

14
15 31. Under First Data's agreement with Merchants, First Data agrees to "authorize,
16
17 process and settle" payment card transactions for Merchants.

18
19 32. Under First Data's agreement with Merchants, each merchant agrees that "[i]n
20
21 consideration of the Services provided by us, you shall be charged, and hereby agree to pay
22
23 us any and ^{all} ~~all~~ fees set forth in this Agreement."

24
25 33. Each MPAA incorporates the Network Rules by reference.

26
27 34. Network Rules require that all amounts deducted from approved payment-card
28
29 transactions by all payment-card transaction participants be disclosed to Merchants in the
30
31 MPAA.

32
33 35. The total fees charged by a credit card processor to a Merchant are collectively
34
35 known by several names in the credit card industry, including the "Discount Rate," the
36
37 "Merchant Discount" or "Merchant Discount Rate."

38
39 36. The Merchant Discount or Merchant Discount Rate is composed of the
40
41 Interchange Discount/Fee in addition to a discount to compensate the Processor for its costs,
42
43 expenses, fees for services, and obligations to other participants in the payment card
44
45 transaction, such as the Networks.

1 37. Under its agreements with Merchants, First Data provides Merchants access to
2 the credit network system. However, First Data does not extend credit to cardholders, fund
3 approved payment-card transactions, or control the funding services provided by Issuing
4 Banks or Networks.
5
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9 38. The "Acquiring Process" consists of three main components: (a)
10 Authorization, (b) Clearing/Processing, and (c) Settlement.
11

12
13 39. An "Authorization" involves a transfer of cardholder and payment-card
14 transaction data from the Merchant to the Processor, which then transmits that data to the
15 Network, which then transmits that data to the Issuing Bank.
16
17

18
19 40. The Issuing Bank determines whether the payment card is valid and whether
20 there is sufficient credit in the cardholder's account and then transmits either an approval or
21 decline code back through the same channels, with the Processor ultimately transmitting the
22 approval or decline code to the Merchant.
23
24

25
26 41. No funds are transmitted during the Authorization process.
27

28 42. The Authorization process happens on a transaction-by-transaction basis.
29

30 43. "Clearing" involves transmission of data through the payment-card system.
31

32 44. Typically, at the end of the day, the Merchant submits payment-card
33 transaction data for all approved transactions in bulk to the Processor (called a "Batch").
34
35

36 45. The Processor/Acquiring Bank consolidates and compiles information from all
37 the Batches received from Merchants for whom it processes, calculates the applicable
38 Interchange Discount amount for each transaction according to the Network Rules, and then
39 transmits that information to the Networks for Settlement.
40
41

42 46. The Networks then sort and transmit to each Issuing Bank via a transaction
43 record the relevant cardholder transaction information from all Processor/Acquiring Banks,
44
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1 along with the Networks' respective Interchange Discount amount computation, for each
2
3 respective Issuing Bank's cardholder transactions.

4
5 47. The "Settlement" process involves the movement of funds.

6
7 48. For each payment-card transaction, the relevant Network withdraws funds
8
9 from the Issuing Bank's account and deposits those funds into the corresponding Acquiring
10
11 Bank's account in an amount equal to the approved transaction amount less the Network-
12
13 dictated Interchange Discount amount.¹

14
15 49. The Interchange Discount is not typically part of the funds that are distributed
16
17 to First Data during Settlement.

18
19 50. First Data does not typically receive the Interchange Discount.

20
21 51. The Processor/Acquiring Bank deducts amounts due for its/their fee(s) for
22
23 services provided and for reimbursement of certain other third-party obligations pursuant to
24
25 the terms of the MPAA from the funds it receives from the Networks and deposits the
26
27 remainder into the Merchant's bank account.

28
29 52. First Data is responsible for calculating the Network-dictated Interchange
30
31 Discount amount and sending that and the other transaction data received from the Merchant
32
33 to the Networks for Clearing.

34
35 53. The statements sent by First Data to Merchants show all fees deducted during
36
37 the transaction payment process, including the Interchange Discount.

38
39 54. On its financial records (including internal books and general ledgers), First
40
41 Data records fees and charges deducted from the funds it sends to the Merchants. First Data
42

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44
45 ¹ Exhibit 501-4 describes arrangements sometimes used between First Data and merchants where First Data
46 makes full payment to a merchant who later pays all discounts at the end of the month. Evidence at trial
47 suggests this is not typical. Exhibit 501 does not appear to describe Washington-specific practice.

1 logs certain recorded fees and charges it deducts from funds received from the Networks as
2 revenue and records other fees, including Interchange Discount amounts, as contra-revenue.
3

4 55. By recording the full Merchant Discount Rate amounts as revenue and
5 Interchange Discount amounts as contra-revenue, First Data captures its view that it does not
6 actually receive or accrue the Interchange Discount amount.
7

8 56. Except for in 2018, First Data did not include the Interchange Discount amount
9 as part of its gross income for B&O tax purposes. This was because First Data determined the
10 Interchange Discount was not consideration it received or accrued.
11

12 57. The total of \$463,307.54 that First Data paid in B&O tax for the month of
13 October 2018 included \$180,076.87 representing B&O tax on the Interchange Discount
14 amount.
15

16 58. The amount of \$180,076.87 is B&O tax paid on amounts representing the
17 Interchange Discount and is the amount First Data asserts is in excess of that which First Data
18 concedes, for purposes of this lawsuit only, was properly due for the month of October 2018.
19

20 59. In this lawsuit, First Data seeks a \$180,076.87 refund for the B&O tax
21 associated with the Interchange Discount amount that First Data contends it never actually
22 received nor accrued for the month of October 2018.
23

24 60. First Data maintains its internal books and general ledger on an accrual basis.
25

26 61. First Data calculates its income for federal tax purposes on an accrual basis.
27

28 62. First Data has not included the Interchange Discount amount in revenue for
29 federal income tax purposes.
30

31 63. Fiserv and its subsidiaries, including First Data, prepare their audited financial
32 statements in accordance with U.S. Generally Accepted Accounting Principles ("GAAP").
33

64. When GAAP is used in certain settings such as SEC reporting and Federal Income Tax returns, GAAP provides the concepts, objectives, standards, and conventions that define accrual accounting and guides companies in the presentation of financial statements.

65. Public companies are required by the U.S. Securities and Exchange Commission (“SEC”) to prepare audited financial statements in accordance with GAAP, which requires accrual accounting.

66. GAAP standards are reflected in Accounting Standards Updates (“ASUs”) and codified in Accounting Standards Codification Topics (“ASCs”).

67. As a public company, First Data's parent companies and First Data are subject to GAAP for SEC reporting purposes.

68. Since at least 2006, First Data and its parent companies have not reported amounts representing the Interchange Discount as revenue on their 10-K audited financial statements for SEC reporting requirements.

69. For taxpayers who report B&O taxes on an accrual basis and follow GAAP, the Department relies on GAAP-conforming books and records to assess that taxpayer's liability.

70. For purposes of SEC reporting and Federal Tax filing, First Data uses GAAP to determine which of the component amounts from the Merchant Discount Rate First Data recognizes as part of its gross income.

71. ASC 606 specifies how companies following GAAP should recognize revenue from contracts with customers.

72. Using GAAP accounting and applying ASC 606, the Interchange Discount is not considered part of First Data's revenue or gross income.

1 73. The agreements between First Data and Merchants facilitate the Merchants'
2 access to the funding network and payment system. In these agreements, the Merchant is not
3 contractually obligated to any party other than First Data. However, the terms of these
4 agreements expressly recognize that other participants (including Issuing Banks and Payment
5 Networks) perform specific functions and receive specific payments expressly dictated by
6 Network rules.
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12 CONCLUSIONS OF LAW

13
14 1. The Court has jurisdiction over this case, the Parties, and the claims and causes
15 of action set forth in the Complaint. RCW 82.32.180.
16

17 2. Venue is proper before this Court.
18

19 3. The Department is an agency of the State of Washington responsible under
20 Chapter 82.32 of the Revised Code of Washington for administering the state B&O tax.
21

22 4. In tax refund cases, the taxpayer seeking a refund has the burden of establishing
23 the tax paid is incorrect and the taxpayer is entitled to a refund. RCW 82.32.180.
24

25 5. Washington's B&O tax is imposed upon "every person . . . for the act or
26 privilege of engaging in business activities" measured by the "gross income of the business."
27 RCW 82.04.220(1).
28

29 6. "Gross income of the business" means "the value proceeding or accruing by
30 reason of the transaction of the business engaged in and includes gross proceeds of sales,
31 compensation for the rendition of services, [and] gains realized from trading in. . . other
32 evidences of indebtedness. . . ." RCW 82.04.080(1).
33

34 7. The phrase "[v]alue proceeding or accruing" means "the consideration,
35 whether money, credits, rights, or other property expressed in terms of money, actually
36 received or accrued." RCW 82.04.090.
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1 8. Consideration is not defined in RCW 82.04.090, but has been defined in
2 caselaw as “a recompense, as for a service rendered; fee; compensation,” or “something
3 bargained for and received by a promisor from the promisee.” *Getty Images (Seattle), Inc. v.*
4 *City of Seattle*, 163 Wn. App. 590, 601-02 (2011) (referring to the definition of
5 “consideration” in Black’s Law Dictionary).
6
7

8
9
10 9. The question of whether the disputed amount is the taxpayer’s “gross income”
11 is the only issue presented in this case. First Data is not seeking a refund based on an
12 exemption or deduction argument and therefore, the Court need only determine whether the
13 Interchange Discount amount is part of First Data’s “gross income.” See *City of Seattle v.*
14 *State*, 12 Wn. App. 91, 92-97 (1974) (addressing only the question of whether certain revenue
15 was “gross income,” as taxpayer did not advance exemption or deduction arguments).
16
17

18
19 10. The terms “actually received or accrued” contained in RCW 82.04.090 are not
20 defined by the statute or the Department’s rules. See generally RCW Chapter 82.04; WAC
21 Chapter 458-20.
22
23

24 11. Here, the Department maintains that the contract between First Data and the
25 Merchant supports a conclusion that the Interchange Discount represents consideration that
26 accrued to First Data.
27
28

29 12. What a contract states a party has the right to receive or is obligated to pay
30 does not determine which amounts are taxable. See, e.g., *Ford Motor Co. v. City of Seattle*,
31 160 Wn.2d 32, 42-43 (2007); *Protective Admin. Servs., Inc. v. State Dep’t of Revenue*, 24 Wn.
32 App. 2d 319, 334-35 (2022) (rejecting the Department’s claims that certain amounts were
33 taxable because taxpayer was “legally obligated” and instead looking to the “facts of the . . .
34 sale”); *First Am. Title Ins. Co. v. State Dep’t of Revenue*, 144 Wn.2d 300, 303 (2001) (citation
35 omitted) (“Substance rather than form should be used to assess tax classifications.”).
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1 13. "An ambiguity will not be read into a contract," "where it can be reasonably
2 avoided by reading the contract as a whole. Even though some of the words may be said to be
3 ambiguous, if the terms of the contract taken as a whole are plain and unambiguous, the
4 meaning should be deduced from the language alone without resort to parol evidence."
5 *Universal/Land Const. Co. v. City of Spokane*, 49 Wn. App. 634, 637 (1987); *accord*
6 *Carlstrom v. Hanline*, 98 Wn. App. 780, 785 (2000).
7

8 14. When the parties' contract is deemed ambiguous, the Court "must look for the
9 intent of the parties by considering the subject matter and objective of the contract, the
10 circumstances surrounding its making, the subsequent acts and conduct of the parties to the
11 contract, and the reasonableness of the respective interpretations advocated by the parties."
12 *Universal/Land Const. Co.*, 49 Wn. App. at 638; *see also Mayer v. Pierce Cty. Med. Bureau,*
13 *Inc.*, 80 Wn. App. 416, 421 (1995) ("A provision, however, is not ambiguous merely because
14 the parties suggest opposing meanings.").

15 15. Under First Data's agreement with Merchants, First Data's processing services
16 include Authorization, Clearing, and Settlement.
17

18 16. First Data's agreements with Merchants recognize that other participants in the
19 payment card transaction process provide funding services and will be compensated for those
20 services.
21

22 17. First Data's agreement with Merchants incorporate Network Rules by
23 reference. Network rules require that all fees paid to participants in the payment card
24 transaction are disclosed to Merchants.
25

26 18. The fact that the Merchant contracts only with First Data in these agreements
27 does not mean that the Interchange Discount is consideration for First Data services. The
28 unique contract entered between the Merchant and First Data recognizes the roles of other
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1 participants in payment card transactions. The contract also recognizes fees that are owed to
2
3 third parties, not First Data.

4
5 19. First Data's consideration for its services of Authorization, Clearing, and
6
7 Settlement is the amount First Data takes as payment for its services. Typically, this payment
8
9 occurs when First Data deducts its fees from the amounts received from the Networks for a
10
11 transaction. The Interchange Discount is not part of this consideration, nor is it an amount
12
13 First Data typically deducts, charges, or pays.²

14
15 20. The Interchange Discount is the Issuing Bank's consideration for funding
16
17 services it performs. These services are different from any of the processing services
18
19 performed by First Data.

20
21 21. Because First Data does not provide the funding services represented by the
22
23 Interchange Discount, the Interchange Discount is not First Data's consideration. This
24
25 conclusion is consistent with the economic reality of the payment card transaction. See *First*
26
27 *Am. Title Ins. Co. v. State, Dep't of Revenue*, 144 Wn.2d 300, 303-304 (2001) (interpreting
28
29 B&O tax statute in favor of taxpayer where imposition did not match economic reality of the
30
31 sales transaction and was inconsistent with the tax statutes).

32
33 22. Applying the plain meaning of the governing statutes to the findings of fact in
34
35 this case, the Interchange Discount is not consideration that accrued to First Data under RCW
36
37 82.02.220, 82.04.220, and 82.04.090.

38
39 23. Although GAAP principles are not mandatory in determining whether there is
40
41 B&O tax liability, they are persuasive authority. For example, Washington courts have
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45 ² As set forth in footnote 1, in an a-typical scenario, a Merchant may pay, and First Data may collect the total
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47 Merchant Discount at the end of the month. In this scenario, First Data would then pass along the Interchange
Discount to the Issuing Bank.

1 recognized that, in the financial context, the present tense of “accrued” “is synonymous with
2 an ‘accrual’ under the accounting method outlined by ... GAAP[J.” *Parr v. Haseiwood Inc.*,
3 15 Wn. App. 2d 604, 614 n.5 (2020) (citing Accrue, INVESTOPEDIA, [https](https://www.investopedia.com/terms/alaccrue.asp)
4 [://www.investopedia.com/terms/alaccrue.asp](https://www.investopedia.com/terms/alaccrue.asp) (July 30, 2020)).
5
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8
9 24. This is also consistent with a Department-published determination. See Det.
10 No. 92-3 92, 12 WTD 535, 548 (“[T]he Department may not tax accounting entries. . . which
11 are not. . . recognized under the normal rules of accrual accounting.”); *see also* RCW
12 82.32.410(1) (the Department’s published determinations are “precedential”).
13
14

15
16 25. In addition, WAC 458-20-197 (“Rule 197”) provides that “[w]hen excise tax
17 returns are made upon the accrual basis, value accrues to a taxpayer at the time. . . the taxpayer
18 becomes legally entitled to receive the consideration.” Although Rule 197 pertains only to
19 determining the timing of when gross income should be recorded, it offers persuasive
20 authority on the issue of whether certain amounts qualify as gross income for reporting
21 purposes in the first place. It suggests that if a taxpayer never becomes legally entitled to
22 receive a specific payment, such payment would not qualify as gross income.
23
24

25
26 26. SEC Reporting and Federal Income Tax Requirements derive from federal
27 laws and regulations. Accounting procedures required for SEC reporting and federal tax
28 returns are not directly applicable to determining liability for Washington’s B&O Tax.
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31
32 27. However, “[a] taxpayer. . . who maintains a general ledger on an accrual basis
33 and files federal tax returns on an accrual basis must also report state tax returns on an accrual
34 basis.” WAC 458-20-199(3).
35
36

37
38 28. First Data’s approach to its business activities in other regulatory settings,
39 including its approach to accounting and reporting to the SEC and to the IRS, is helpful to
40 understanding the business activity.
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1 29. Applying the persuasive authority of accrual principles recognized under
2 GAAP to the findings of fact in this case, the Interchange Discount would not be consideration
3 that accrued to First Data. This conclusion is consistent with Conclusion 22.
4

5
6 30. While caselaw describes the B&O tax as broad in scope, intending to tax
7 “virtually all business activities carried on within the state,” *Budget Rent-A-Car of Wash.-Or.*
8 *v. Dep’t of Revenue*, 81 Wn2d 171, 173 (1972), its scope is not without limits. The B&O tax
9 scheme does not support duplicative assessments when two entities perform separate services.
10
11 *First Am. Title*, 144 Wn.2d at 606.
12

13
14 31. The Department relies heavily on the *Getty Images (Seattle), Inc. v. City of*
15 *Seattle* case. The facts here are distinguishable from those in *Getty Images*. In *Getty Images*,
16 the taxpayer’s services were valued at between \$ 25 million and \$ 98 million per year. A
17 contract with an affiliated company paid the taxpayer \$1 million per year, with the taxpayer
18 covering the balance of its costs for the services through separate fund withdrawals. The court
19 rejected Getty’s argument that its income should be limited to the \$1 million contract price
20 because the \$1 million price was nowhere near the value of the services.
21

22 32. The findings in this case are markedly different from those in *Getty Images*.
23 Here, no findings suggest that the fees paid to First Data do not reflect the value of First Data’s
24 services. The facts in this case are more similar to those in *First Am. Title Ins. Co.* where
25 separate services are performed by separate entities.
26

27 33. Because the Interchange Discount amount is not First Data’s “consideration”
28 that accrued to First Data for the October 2018 period, the Interchange Discount amount is
29 not First Data’s “gross income” for B&O tax purposes. RCW 82.04.090; RCW 82.04.220(1).
30

31 34. First Data is entitled to a refund of B&O tax of \$180,076.87, plus interest on
32 such amount from the date paid by First Data until the date refunded, which represents
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1 improperly B&O tax on the Interchange Discount amount, and \$283,230.67 is the amount of
2 B&O tax due and already paid for that same period.
3

4 **ORDER**
5

6 Now, therefore, the Court concludes that, pursuant to RCW 82.04.220, RCW
7 82.04.080, and RCW 82.04.090, the Interchange Discount amount is not First Data's
8 "consideration," First Data has not "accrued" any amounts representing the Interchange
9 Discount, and therefore, the Interchange Discount amount is not First Data's "gross income."
10

11 IT IS HEREBY ORDERED that First Data's claim for a refund of B&O tax paid in
12 the amount of \$180,076.87 paid for the period of October 2018, plus interest on such amount
13 from the date paid by First Data until the date refunded, is therefore GRANTED. Judgment is
14 entered in favor of First Data.
15

16 ORDERED this 29 day of July, 2024.
17

18 
19 THE HONORABLE MARY SUE WILSON
20 Superior Court Judge
21

1 Presented by on this 25th day of July, 2024:
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AMENDED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW – 18

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AMENDED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW – 19

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