



# This Week in State Tax (TWIST)

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## Florida: Important Sales Factor Litigation May Not be Over Yet

Several taxpayers have asked a Florida appeals court to reverse the dismissal of a case that occurred last year at the request of the Department of Revenue. Recall, in *Billmatrix Corp. v. Department of Revenue*, the taxpayers were providers of financial technology services that sourced their income under Fla. Admin. Code Ann. 12C-1.0155(2)(l). This rule provides that “other” receipts, including receipts from the sale of services, are sourced to Florida if the income-producing activity giving rise to the receipts is performed wholly within Florida or if a greater proportion of the income-producing activity is performed in Florida, based on the costs of performance (IPA/COP rule). Application of the IPA/COP rule resulted in the taxpayers’ receipts being sourced to the states where most of their costs to provide the services to customers were incurred, which was not Florida. The taxpayers were subsequently audited; while the auditors interpreted the IPA/COP rule somewhat differently, they generally took the position that the relevant income producing activity associated with the sale of services occurred at the location of the customer, meaning that the income producing activity occurred in Florida when the taxpayer’s customer was in Florida. Applying this “market-based” approach resulted in assessments for the out-of-state taxpayers, as well as a refund for one Florida-based company. The taxpayers protested, as did the Department with respect to one Florida company that received a refund. The trial court concluded that under the plain language of Florida’s IPA/COP rule, receipts are sourced focusing on the transactions and activities of the taxpayer, not of the taxpayer’s customer. The court also found that the Department’s inconsistent interpretation of its own rule would likely violate Florida’s Taxpayer Bill of Rights. This decision was significant because it reinforced the same court’s ruling in *Target Enterprise, Inc.* that the IPA/COP rule should be applied in a manner that focuses on where the taxpayer’s costs to perform the services occurred. *Target*, however, fundamentally addressed whether the Department could require the taxpayer to use an alternative apportionment method. *Billmatrix* more broadly addressed the application of the IPA/COP test to a service provider’s receipts.

After the decision was released, the Department asserted that the taxpayers failed to comply with certain statutory security requirements that, if not adhered to, deprived the court of subject matter jurisdiction over the suit. The court recognized that dismissal would be a harsh result given that the Department did not raise this issue until more than three years after the case was filed. Nevertheless, the trial court dismissed the case with respect to all taxpayers other than the taxpayer who sued for a refund. The taxpayers have now filed a complaint with an appeals court challenging the lower court’s dismissal due to lack of subject matter jurisdiction. Notably, the taxpayers allege that the Department moved to dismiss the proceedings after (1) the Department’s counsel expressly waived the “jurisdictional” requirements that the Department asserts were not complied with, (2) the Department admitted in its written answer to Appellants’ complaint that the trial court had jurisdiction in the proceeding, (3) the Department actively litigated the case for more than three years, and (4) the Department repeatedly requested affirmative relief and a ruling on the merits. Please stay tuned to TWIST for future updates on this case.

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