The South Carolina Court of Appeals

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Re: Mastercard International Inc. v. SCDOR
Appellate Case No. 2024-001252

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jasmine D. Smith, Deputy

CLERK

cc: The Honorable Deborah Brooks Durden
The Honorable Milton G. Kimpson

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Mastercard International Incorporated, Appellant,

v.

South Carolina Department of Revenue, Respondent.

Appellate Case No. 2024-001252

Appeal From The Administrative Law Court
Milton G. Kimpson, Administrative Law Judge
Deborah Brooks Durden, Administrative Law Judge

Opinion No. 6167
Heard May 6, 2026 – Filed October 21, 2026

AFFIRMED

John C. Von Lehe, Jr. and Bryson Moore Geer, both of Nelson Mullins Riley & Scarborough, LLP, of Charleston; Michael J. Kerman, of Washington, D.C.; and Leah Robinson, of New York, New York, all for Appellant.

Robert Merrel Cook, II and Wayne Allen Myrick, Jr., of the South Carolina Department of Revenue, of Columbia; and Sean Gordon Ryan, of Camden, all for Respondent.

VINSON, J.: In this appeal from the administrative law court (ALC), Mastercard International Inc. appeals the ALC's decision upholding the South Carolina Department of Revenue's assessment of corporate income taxes, license fees,

penalties, and interest for tax years 2007 through 2016.[1] Mastercard raises three issues on appeal. First, Mastercard argues the ALC erred in determining it had income-producing activity in this state. Specifically, Mastercard argues the ALC erred by disregarding its "final act" of delivering its processing services to its paying customers and instead identifying its income-producing activity as the provision of an overall network. Second, Mastercard argues the ALC erred by allowing the Department's proffered expert, Jim Hawkins, to testify and by relying on his testimony to support its decision. And third, Mastercard argues the ALC erred by upholding the Department's imposition of penalties for failure to file returns under section 12-54-43(C) of the South Carolina Code (2014).

The central issue in this case is whether and to what extent Mastercard, as a corporate taxpayer, has income-producing activity in this state under section 12-6-2295(A)(5) of the South Carolina Code (2014 & Supp. 2025) and the holding of *DIRECTV, Inc. & Subsidiaries v. South Carolina Department of Revenue*, 421 S.C. 59, 804 S.E.2d 633 (Ct. App. 2017). Section 12-6-2295(A)(5) applies to taxpayers engaged in providing services and requires that in apportioning income earned from services for purposes of calculating corporate income tax, a multi-state corporation's "sales are attributable to this State to the extent the income-producing activity is performed within this State." This court interpreted section 12-6-2295 in *DIRECTV*. *See* 421 S.C. at 73, 804 S.E.2d at 640 ("Giving the statutory language its plain and ordinary meaning, we find section 12-6-2295(A)(5) establishes that if a corporation generates revenue or income from activity performed exclusively within South Carolina, then its gross receipts must include that income in the numerator of the gross receipts ratio. However, if a corporation, acting on a multistate level, derives its revenue from activities occurring both inside and outside of South Carolina, then the revenue generated from its services performed within South Carolina are its gross receipts from South Carolina, and thus, must be included in the numerator of the gross receipts ratio."). In that case, this court upheld the ALC's finding that DIRECTV's income-producing activity was its delivery of its signal to its customers nationwide and that therefore the delivery of its signal to South Carolina customers "represented by 100% of its South Carolina subscription receipts." *Id.* at 75, 804 S.E.2d at 641.

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[1] Administrative Law Judge Milton G. Kimpson heard and decided the case, but the case was reassigned to Judge Durden after Judge Kimpson's election to the circuit court bench.

Here, the Department determined Mastercard has income-producing activity occurring in this state through its provision of a payment network that facilitates cashless transactions between cardholders and merchants at points of sale throughout the United States, including in South Carolina. Mastercard maintains it has no income-producing activity in this state because all of its payment processing and related services are performed outside of South Carolina and its customers are the respective financial institutions of the cardholders and merchants, rather than the cardholders and merchants themselves. Mastercard asserts that none of its gross receipts should be sourced to South Carolina. Alternatively, Mastercard offers that to the extent it has any income-producing activity in this state, such activity should be sourced only to the fees it earned from its South Carolina bank customers. We affirm the ALC's determination that Mastercard has income-producing activity in South Carolina through its provision of an overall network in this state because it generates income when a cardholder uses a Mastercard-branded card or device to purchase goods or services from merchants in this state.

FACTS

A. Mastercard's Business Operations

We begin our discussion as we did in the *DIRECTV* opinion by providing an overview of Mastercard's business operations. We will then detail the Department's determination and the proceedings before the ALC.

Mastercard is incorporated in Delaware with its headquarters in Purchase, New York. The physical components of the Mastercard network, which include its two data centers located in Missouri and the Mastercard Interface Processors (MIPs)[2] located at its customers' facilities or processing centers, are all located outside of South Carolina. In its annual reports,[3] Mastercard described itself as

> a global payments and technology company that connects billions of consumers, thousands of financial institutions,

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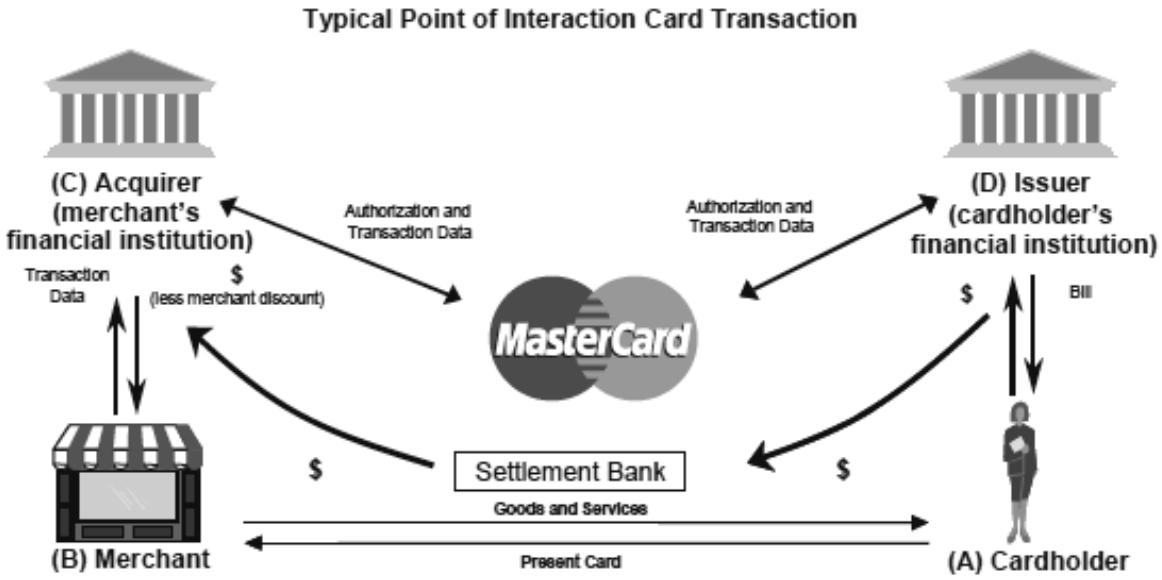
[2] MIP is the branded name for a Mastercard server that runs Mastercard's proprietary software that facilitates transaction authorization. The primary function of the MIP is to send and receive transaction request and response messages. Mastercard owns the MIPs and leases them to its customers.

[3] The record includes Mastercard's Annual Reports on Form 10-K for 2008 through 2016.

> millions of merchants, governments and businesses worldwide, enabling them to use electronic forms of payment instead of cash and checks. . . . [Mastercard] use[s its] technology and expertise to make payments more convenient, secure and efficient to enable consumers to meet their needs and to provide value to all stakeholders in the payments system.

Mastercard operates what it refers to as a "payment network" called the "Mastercard Worldwide Network" to "facilitate the processing of transactions." This payment network, which is referred to as a "'four-party' payment system," "involves four participants in addition to [Mastercard]: (1) the cardholder, (2) the merchant, (3) the merchant's financial institution (the 'acquirer'), and (4) the cardholder's financial institution (the 'issuer')."[4] Mastercard illustrated this system using this diagram in each of its annual reports from 2008 to 2013:



Mastercard does not issue cards, extend credit to cardholders, or determine any applicable interest rates or other fees charged to cardholders. Nor does it have direct contractual relationships with merchants or cardholders. Instead, Mastercard's customers are the financial institutions that act as issuers and acquirers in the four-party system.

[4] Mastercard provided these descriptions in its annual reports.

In the same annual reports, Mastercard has stated that "[its] gross revenue is generated by assessing [its] customers *based primarily on the dollar volume of activity on the cards and other devices that carry* [*its*] *brands and from the fees that* [*it*] *charge*[*s its*] *customers* for providing transaction processing and other payment-related products and services." Mastercard reported that its income is therefore "impacted both by the number of transactions that [it] process[es] and by the use of cards carrying [its] brands." It categorizes its income into five revenue streams[5]: (1) "domestic assessments," (2) "cross-border volume fees," (3) transaction processing, (4) "other fees," and (5) rebates and incentives.[6] However, it stated that it "receives the overwhelming majority of its income from three revenue streams": (1) authorization, clearing, and settlement (collectively referred to as "switching");[7] (2) network membership fees (referred to as "assessment fees"); and (3) other fees.

Switching is part of Mastercard's transaction processing. The first step in the switching process (authorization) is the "approval or decline of a request for a payment transaction" that takes place when a cardholder uses a Mastercard-branded credit or debit card to purchase goods or services. Authorization occurs almost instantaneously: Mastercard reported an average network response time of 130 milliseconds in 2011. The second step (clearing) is the process through which Mastercard determines the net positions of the issuer and acquirer banks at the end of a cycle—in other words, the amount the issuer owes or is owed by the acquirer and vice versa. The final step of the switching process (settlement) is the process through which funds are exchanged between the issuers and acquirers based upon the clearing information after the transaction has been authorized and cleared. Mastercard computes final settlement amounts and sends transfer funds orders to its settlement bank. Mastercard facilitates the exchange of funds between the parties using a settlement bank of the customers' choosing (which Mastercard must also approve) and a settlement bank of Mastercard's choosing.

Assessment fees consist of both domestic assessments and cross-border volume fees, but they are fees charged for the same services—the difference depends on

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[5] In 2016, Mastercard reported its total net revenue from these five sources was $10.7 billion, with a net income (after taxes) of $4 billion.

[6] Rebates and incentives are contra-revenue, meaning they are deducted from revenue.

[7] We will refer to this process as "authorization, clearing, and settlement" and "switching" interchangeably in this opinion.

whether the financial institutions are both located in the United States or if one is in a different country. These fees are charged to member financial institutions for the (1) maintenance of the safety and integrity of the "physical network" or infrastructure and development of software to enhance the network; (2) enforcement of Mastercard's rules; (3) marketing and advertising; and (4) detection and prevention of fraud and cyberattacks.[8]

Other fees consist of "other payment-related products and services," including "safety and security services fees" for the prevention, detection, and response to fraud to ensure the safety of the transactions made on Mastercard products and "loyalty and rewards solutions fees" charged to issuers for benefits provided to consumers with Mastercard-branded cards. Mastercard describes the other fees category as "the smaller category of [its] revenue streams."

As detailed in Mastercard's annual reporting, Mastercard charges fees for transaction processing (which includes switching) based primarily upon the number of transactions processed. It charges its customers assessment fees based primarily on the gross dollar volume of activity (i.e., the total dollar amount of a transaction) on cards and other devices that carry Mastercard's brands. Revenue from the other fees category is not incurred on a per-transaction basis.

B. The Department's Assessment and the ALC Proceedings

In December 2019, the Department issued a final agency determination assessing Mastercard $6,041,666 in income tax and $84,476 in license fees, plus penalties and interest[9] for the 2007 to 2016 tax period. The Department identified Mastercard's income-producing activity as the provision of a payment network that provides the ability to complete transactions for goods and services without the use of cash or checks and determined this network produces income only when a cardholder uses a card to complete a transaction. The Department stated, "It is [the] accessing of the network by a cardholder—the income producing activity—

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[8] Mastercard's witnesses elaborated that before Mastercard became a for-profit company, it assessed these fees to member financial institutions for these costs, which it divided among the members according to their proportionate use of the network (based upon dollar volume). Assessment fees still cover the same costs, but now Mastercard structures the fees so that it also earns a profit.

[9] As of January 2020, the amounts assessed for penalties and interest were $2,941,224 and $1,560,722, respectively.

[that] produces the revenue generated when merchants accept [c]ards to complete transactions."

Mastercard requested a contested case hearing before the ALC to challenge the Department's determination. Mastercard argued that the primary services it provided to its customers were authorization, clearing, and settlement. It contended it had no income-producing activity in this state because all of the switching processes were performed elsewhere and thus the income-producing activity related to switching fees, assessment fees, and other fees occurred outside of South Carolina.

The ALC heard the case March 8 through 11, 2022. The ALC admitted thirty-seven joint exhibits, including several versions of the Mastercard Rules, the Mastercard Authorization Manual, the Mastercard Settlement Manual, and Mastercard's Annual Reports on Form 10-K for 2008 through 2016.[10] The ALC also admitted Petitioner's Exhibits 1 and 2, which were documents showing Mastercard's proposed alternate calculations of its South Carolina gross receipts and income tax liability based on its bank customers with South Carolina billing addresses, and Respondent's Exhibit 1, which was the Department's calculation of South Carolina gross receipts and income tax liability.

During the hearing, Mastercard presented the testimony of three witnesses: Ruby Naskiewicz, Kenneth Cavallo, and Joe Buelher, all of whom were employees of Mastercard. The Department presented the testimony of its auditor, Orville Sharpe, and expert witnesses John Swain and—over Mastercard's objection—Jim Hawkins.

Naskiewicz, vice president of federal tax for Mastercard, testified Mastercard's "primary business[] is transaction processing and related services," which "includes authorization, clearing[,] and settlement." Naskiewicz testified Mastercard's "network" refers to its relationships with the acquirer and issuer banks as well as its physical network, which includes its hardware, software, and data centers. She explained Mastercard's data center in Missouri contained many MIPs and MIPs were also located at the acquirers' and issuers' processing facilities. Naskiewicz testified Mastercard maintained that its income-producing activity takes place either in Missouri or New York because it "look[ed] to where the cost is incurred." She then clarified that "it's also where [the] MIPs are located." She

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[10] *See* 15 U.S.C. § 78m (requiring issuers of securities to file periodical reports with the U.S. Securities and Exchange Commission).

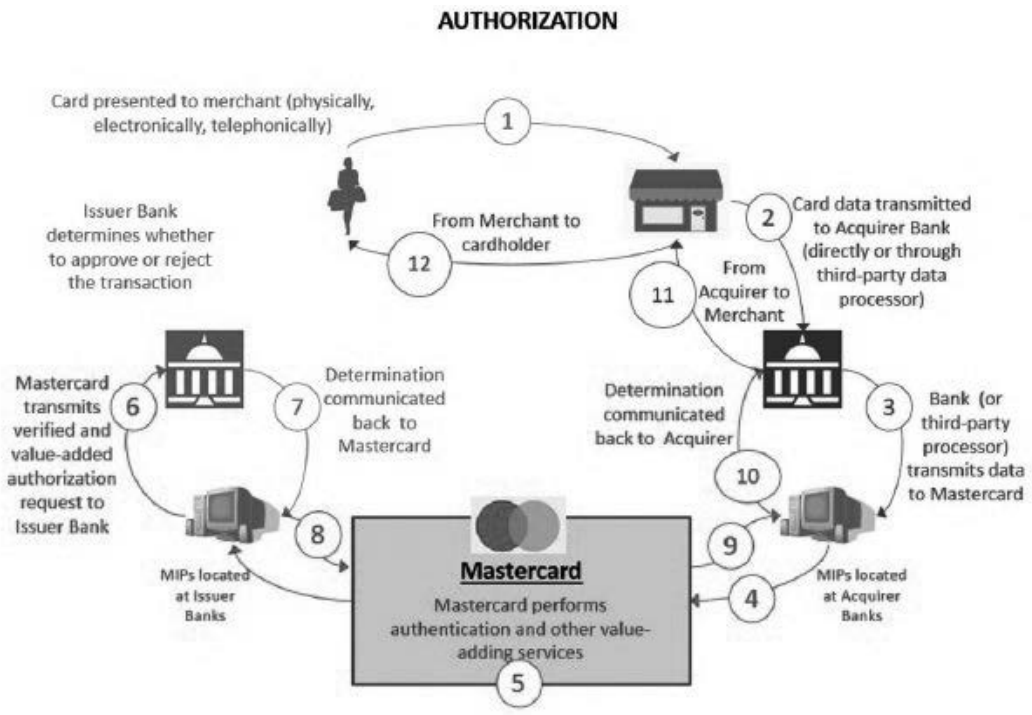
noted that prior to 2014, if a bank customer did not request that Mastercard perform "value added services," "the transaction flow would go [only] between the acquirer MIP and the issuer MIP without having to go [through the] Missouri data center." She clarified that "beginning in 2014, all transactions have to go . . . [through] the data center in Missouri."

Naskiewicz agreed 185 million Mastercard transactions occurred in South Carolina in 2016 alone. She explained the Mastercard Rules require acquirers to enforce rules over their customers (merchants) to ensure the parties involved in the payment transaction follow guidelines to help prevent fraudulent acts, thus benefiting all the parties involved in the transaction.

Cavallo, senior operations engineer with Mastercard, described authorization as "the process of taking a transaction request all the way from the point of sale to the issuing bank," generating an authorization request and response, and "delivering that response back to the point of sale, so that the . . . transaction can either proceed or not proceed." He explained that from Mastercard's perspective, Mastercard's part in the process is "only a clear[ly] defined segment" of this process, which "begins at the acquirer MIP," routes to the issuing MIP, stops at the issuer system, restarts once the issuer MIP has received the transaction response, then proceeds to deliver the response back to the acquirer MIP, at which point Mastercard's part of the authorization is complete. In other words, its involvement did not include delivery of the transaction response directly to the merchant. Cavallo explained the MIPs are referred to as "endpoints," which are access points to a network "that allows a computer to connect to the network without actually being a part of the network." He stated Mastercard's network "extends as far as the MIPs" and that it "d[id] not extend into South Carolina whatsoever" because no MIPs are located within the state.

Buehler, senior vice president of Mastercard technology risk, detailed the clearing and settlement processes. Buehler testified no clearing or settlement processes were triggered from a cardholder swipe and that he viewed clearing and settlement as "very distinct service[s] from authorization."

Mastercard provided the chart below to illustrate its view of its role in the authorization process to support its contention that its network does not extend to the cardholder or merchant. It contended its involvement in a merchant-cardholder transaction using Mastercard-branded cards or devices is confined to steps six through ten.



Sharpe, a foreign audit corporate supervisor with the Department, testified he was employed as an auditor in the Department's foreign income tax division when it audited Mastercard and was the lead auditor of the audit. Sharpe testified he applied the gross-receipts apportionment method in making the assessment. He explained that based upon Mastercard's Annual Reports on Form 10-K, he determined that a portion of Mastercard's income-producing activity occurred in South Carolina. He stated Mastercard generated income in South Carolina through fees based upon the gross dollar volume and number of transactions initiated in the state. Sharpe testified that Mastercard provided reports detailing the total Mastercard-branded transactions in South Carolina and the United States for the audit periods and a breakdown of the revenue it generated for its five revenue streams in the United States. He stated he used this information to determine the gross receipts that should have been sourced to South Carolina based upon what the Department considered to be Mastercard's income-producing activity in South Carolina. Sharpe detailed how he determined the ratio and amount of income tax Mastercard owed for each of the five streams of revenue. He testified Mastercard provided the data he used to make his calculations. This data is also included in the record and is separated into two tables for each of the audit years: one for signature (credit card) transactions and one for PIN (debit card) transactions. On

appeal, Mastercard challenges only the Department's sourcing methodology and does not challenge the Department's computations.[11]

Sharpe stated "Mastercard's income-producing activity is the provision of a credit card network that allows the merchant and the consumer or cardholder to consummate purchases in South Carolina." He averred Mastercard's "fees are

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[11] Sharpe explained the calculations he used to determine the ratio for each revenue stream. He determined the ratio for domestic assessment fees by first determining the total dollar amount of Mastercard-branded transactions in South Carolina by adding the dollar amounts of signature-based and PIN transactions together. Sharpe then divided this total dollar amount of Mastercard-branded transactions that occurred in South Carolina by the dollar amount of all Mastercard-branded transactions that occurred in the United States for each year of the audit period. He then multiplied this percentage by the "total U.S. domestic assessment fees" to determine South Carolina gross receipts received from domestic assessment fees. Sharpe repeated this process to determine the percentage and calculate the South Carolina portion for the cross-border fees. He explained he used a different percentage for transaction fees because they are based on the *number*—instead of the *volume*—of transactions. In computing this percentage, Sharpe used the *number* of South Carolina Mastercard-branded transactions and divided it by the total number of U.S. Mastercard-branded transactions. He then used this percentage to multiply by the total amount of U.S. transaction processing fees that Mastercard earned. To calculate the South Carolina receipts for the other fees category, Sharpe first added the South Carolina dollar amount of Mastercard domestic assessment fees, cross-border fees, and transaction processing fees, and divided that number by the total dollar amount of U.S. Mastercard assessment fees, cross border fees, and transaction processing fees to determine a percentage. He then multiplied this percentage by the total amount of Mastercard's U.S. other revenue to determine South Carolina receipts. Sharpe testified he repeated these formulas for each revenue stream for every year of the audit period.

Sharpe agreed that income from rebates and incentives are contra-receipts, which the Department subtracted from the rest of the calculations. To do this, Sharpe added the South Carolina dollar amount of South Carolina domestic assessment fees, cross-border fees, and transaction processing fees and divided this total by the U.S. dollar amount of such fees to produce a percentage. He then multiplied the percentage by the total U.S. rebates and incentives to determine the South Carolina gross receipts for rebates and incentives, which was a negative amount.

earned and the income is produced when [a] . . . cardholder swipes their card at a merchant's location in South Carolina."

Sharpe conceded that the sourcing method reflected in the Department's calculations uses Mastercard's "customer's customer's" location. He also acknowledged the Department had not provided any guidance, other than that contained in South Carolina case law, to help a taxpayer distinguish between income-anticipatory and income-producing activities. However, he stated that a taxpayer that does not know how to source its income to South Carolina could request guidance from the Department's policy division and Mastercard did not do so. Sharpe averred that even if Mastercard correctly interpreted *DIRECTV* to mean that its income-producing activity was its delivery of messages to its MIPs, it would still owe South Carolina income tax based on imbedded royalties that it charged the issuers and acquirers. Sharpe averred that Mastercard's interpretation was not reasonable because the transactions at issue are Mastercard-branded transactions and he believed Mastercard knew what its income-producing activity was and should have known to source its receipts to South Carolina based on where the income was produced.

Professor John Swain testified as an expert in state and local tax policy. Swain explained that, historically, based upon the Uniform Division of Income for Tax Purposes Act (UDITPA), which was adopted in 1957, states determined corporate income tax by applying three factors: a property factor, a payroll factor, and a sales factor. He testified states recently began moving towards a "single sales factor apportionment and receipts attribution to that sales factor based on . . . the market that generated those receipts." Swain explained the purpose of a sales factor was "to reflect the contribution of the market state to the taxpayer's income." Swain clarified that he referred to this concept as both the "sales" factor and the "gross receipts" factor but that in discussing apportionment in South Carolina, he referred to the gross receipts factor. He explained that "in South Carolina, the sales factor [applies to the] sale of tangible personal property, while . . . we apply [the] gross receipts factor [to services]." Swain testified Mastercard's receipts consisted of the fees it earned from processing credit card transactions.

Swain explained that in terms of taxation, market-based sourcing is "a set of rules" and that many states had adopted express market-based sourcing rules for receipts from services. He testified that "South Carolina['s] rule . . . is [to tax based upon] where the income producing activity occurs." Swain stated that in this case, the South Carolina rule reached the same result as a pure market-based sourcing rule would and he believed this reflected good tax policy.

Swain testified he believed the Department's determination was good tax policy for four reasons. First, "it attribute[d] Mastercard's receipts to the state that provide[d] the demand for Mastercard services, the market for Mastercard services," and "the purpose of the gross receipts factor [was] to reflect the market state's contribution to a taxpayer's income." He explained that South Carolina created the demand for South Carolina-based credit card transactions. Second, "[it was] consistent with the manner in which South Carolina attributes the receipts from the sales of tangible personal property and intangibles, which is on a destination basis and where . . . the product is used" and there was "no principle[d] reason why the . . . rule should be different for services, as opposed to tangible or intangible property." Third, it was consistent with the legislative intent and policy to solely tax the market for the taxpayer's services by attributing receipts to South Carolina based only on the gross receipts or sales factor, rather than payroll and property investments in the state, which would discourage people from locating property and payroll in this state. Fourth, it discouraged tax planning and other tax avoidance behaviors.

Swain testified he would describe Mastercard as a "remote" service provider because, like the taxpayer in *DIRECTV*, although Mastercard's infrastructure was located out of state and its income-anticipatory activities occurred out of state, it delivered services within the state. Swain averred this case did not involve "look through" sourcing because the "customer's customers" (cardholders and merchants) and the "customers" (the acquirers and issuers) were in the same place because "the issuing bank is extending credit in South Carolina" and "the acquiring bank is in a sense agreeing to buy the merchant's receivable in South Carolina at the point of sale." He explained the issuers and acquirers were thus banking in South Carolina and therefore the customers were in South Carolina.

The Department also sought to admit Professor Jim Hawkins as an expert witness in consumer credit markets. Mastercard objected to Hawkins testifying as an expert regarding credit card networks, arguing that he was not qualified because he defined consumer credit markets to mean businesses that extend credit to consumers and Mastercard was not in the business of extending credit. The ALC allowed Hawkins to offer expert testimony in the area of "consumer credit markets" over Mastercard's objection.

Mastercard asked Hawkins to identify "the topics that [he] believe[d] f[e]ll within [his] area of expertise in consumer credit markets." Hawkins testified, "[I]t's a broad term that includes businesses lending to people and related activities. And

so, one related activity, of course, is operation of payment networks that facilitate businesses lending to people." Hawkins stated he believed that "facilitating payment transactions, especially where credit cards are involved, is something like extending credit to people." He further testified,

> There's no one I know who's an academic, who thinks that credit card networks are unrelated to extending credit to people. And I understand Mastercard, their technical function is not to directly extend credit to individuals, but the idea that they're not -- that they're somehow outside . . . what everyone calls a credit card company, has nothing to do with credit, it -- to me, it's just an unrealistic view of what these terms mean.

Hawkins ultimately acknowledged Mastercard does not "extend credit" in the literal sense but maintained that it "facilitate[s] the parties in this credit card business."

Hawkins testified he had formed three opinions in this matter: (1) "Mastercard generates revenue by providing a network for cardholders and merchants to transact" through its actions of "licensing logos, advertising to merchants and cardholders," "creating and enforcing rules" that the parties using the system must obey, and "transmitting information and funds . . . between parties"; (2) Mastercard "solved the problem of . . . a two-sided market by creating the network"; and (3) "Mastercard generates revenue because a cardholder uses a card at a merchant."

Hawkins testified Mastercard's rules penalize acquirers for noncompliance if they do not force their merchants to obey the rules. He stated the Mastercard Authorization Manual shows Mastercard's involvement in the entire system because it allocates risks among the participants in the network. Hawkins testified that Mastercard's rules also mandate what acquirers have to include in their agreements with merchants. He stated the rules require merchants to display acceptance marks at the point of interaction. Hawkins averred that Mastercard provides some direct services to cardholders and advertises to potential cardholders. He explained that Mastercard advertises to potential customers because the more cardholders that use their Mastercard-branded cards, the more money Mastercard earns. He stated Mastercard designed benefits that flow to the cardholder through the issuer. He testified these benefits include spending control, ATM locators, and "merchant data cleansing" (which makes data easier for cardholders to see on billing statements). He noted Mastercard also charges its

customers "cardholder service fees." Hawkins averred that cardholders indirectly pay fees to Mastercard because merchants increase the costs of their goods and services to cover the fees the acquirer charges the merchant to cover the fees that Mastercard charges the acquirer. Hawkins opined that all four parties within the four-party model do in fact have a relationship with Mastercard. He stated Mastercard's fees are directly related to the relationship between the cardholder and merchant.

After the hearing, Mastercard filed a motion to supplement the record with (1) a printed webpage taken from the law firm of Daniels & Tredennick PPLC's website, containing a short biography of Hawkins and identifying him as "of counsel" to the firm and (2) two printed posts from the firm's social media account about Hawkins. Both documents indicated Hawkins was employed with the law firm at the time he was deposed and during the hearing before the ALC. Mastercard asserted Hawkins failed to disclose this employment before or during trial and requested the ALC admit this exhibit so that it would have a complete record and consider Hawkins's omission of relevant employment from his curriculum vitae (CV) and updated CV in assessing his credibility and weighing his testimony. The Department opposed the motion but did not dispute that Hawkins was employed as of counsel with a private law firm or that this information was excluded from his CVs. The ALC found the Department "judicially admitted" to Hawkins's of-counsel employment but denied Mastercard's request to admit the documents into evidence. However, the ALC noted Hawkins's omission of this employment information may have some bearing on his credibility and potential for bias and allowed Mastercard to reference Hawkins's of-counsel position in its proposed order "for whatever purpose it believe[d] this information [wa]s useful."

The ALC issued a final order on June 3, 2024, upholding the Department's determination regarding Mastercard's income-producing activity. The ALC found Mastercard's income is "generated by the transaction between the [m]erchant and [c]ardholder when they utilize the Mastercard Network." The ALC further found that Mastercard's income-producing activity consists of "providing [n]etwork access to [c]ardholders, [m]erchants, and banks" and that this "activity occurs, in part, in South Carolina" and Mastercard thus owed income taxes to the state under sections 12-6-2290[12] and 12-6-2295(A)(5). The ALC concluded Mastercard failed

[12] S.C. Code Ann. § 12-6-2290 (2014) (requiring apportionment of "income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during

to meet its burden of proving by a preponderance of the evidence that the Department's calculation was incorrect. The ALC further held the preponderance of the evidence did not support Mastercard's claim that its network did not exist in South Carolina.

The ALC rejected Mastercard's argument that its true income-producing activity is the delivery of approval and denial messages between the issuers' and acquirers' respective MIPs and that none of its income should be sourced to this state because none of the MIPs are located here. It also rejected Mastercard's alternative argument that any income attributable to South Carolina should be sourced based upon its customers with South Carolina billing addresses rather than the transactions occurring here. The ALC found "the overwhelming evidence in the [r]ecord" showed that the "actual source of Mastercard's fees and thus, its income, are the transactions between [m]erchants and [c]ardholders." The ALC concluded Mastercard generates revenue by charging fees based upon both the number and dollar amount of credit and debit transactions that use Mastercard-branded cards. The ALC found these transactions are initiated when cardholders present cards to accepting merchants to pay for goods or services and that such transactions are possible only because Mastercard created a payment system that connects cardholders and merchants with their respective issuing and acquiring banks "so that the exchange of goods and services is acceptable to all parties without simultaneous payment by cash or check."

The ALC concluded this payment system—the Mastercard network—is present and operating in South Carolina. It found that contrary to Cavallo's testimony, according to Mastercard's authorization manual, the Mastercard network extends to the point of interaction where the merchant and cardholder are located and the sale occurs. The ALC found Mastercard does business and generates revenue in this state "through the presence of its network and the transactional activity that its presence facilitates." The ALC rejected Mastercard's contention that cardholders and merchants were not also its customers. It acknowledged Mastercard does not contract directly with merchants and cardholders but found that "through the Mastercard [r]ules, Mastercard exercises its control and orchestrates every aspect of the Mastercard [n]etwork, to include the activities at the point of sale between [m]erchants and [c]ardholders."

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the taxable year" and that "[f]or purposes of this section, items included in gross receipts are as provided in Section 12-6-2295").

The ALC found Hawkins was qualified to testify as an expert in the field of consumer credit markets. The ALC noted that in preparing for his trial testimony, Hawkins reviewed Mastercard's submissions, including its annual reports. The ALC concluded that Mastercard's documents showed it operates within the consumer credit market and therefore Hawkins's expertise included "Mastercard's operations as a credit/debit card payment [n]etwork." The ALC noted this was "subject to some concerns going to the weight of his testimony." The ALC reaffirmed its decision to allow Hawkins to testify as an expert in consumer credit markets over Mastercard's objections but noted that given his "limited knowledge of Mastercard's operations prior to this case and the omission of his of[-]counsel employment," it would "pay particular attention to evidence in the record which supports his testimony and opinions." It further held that the record supported Hawkins's opinions.

Finally, the ALC upheld the Department's imposition of penalties for Mastercard's failure to file corporate income tax returns and its failure to pay license fees. However, the ALC waived the penalties for Mastercard's failure to pay corporate income taxes due to its good faith belief that its income tax position was consistent with the holding in *DIRECTV*.

Mastercard filed a motion to reconsider, which the ALC denied. This appeal followed.

ISSUES ON APPEAL

I. Did the ALC err by finding that under section 12-6-2295 and *DIRECTV*, Mastercard's income-producing activity was the provision of an overall network?

II. Did the ALC abuse its discretion by allowing Hawkins to testify as an expert?

III. Did the ALC err by upholding the Department's imposition of penalties for failure to file returns under section 12-54-43(C)?

STANDARD OF REVIEW

According to the Administrative Procedures Act (APA), which governs our review of the ALC's order,

> [Appellate] review of the [ALC's] order must be confined to the record. Th[is] court may not substitute its

> judgment for the judgment of the [ALC] as to the weight of the evidence on questions of fact. [This court] may affirm the decision[,] . . . remand the case for further proceedings[,] or[] it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2025); *see also DIRECTV*, 421 S.C. at 68-69, 804 S.E.2d at 638.

"[Q]uestions of statutory interpretation are questions of law, which [the appellate court is] free to decide without any deference to the court below." *DIRECTV*, 421 S.C. at 69, 804 S.E.2d at 638 (quoting *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013)).

LAW AND ANALYSIS

I. Corporate Income Tax Sourcing

Mastercard argues the ALC adopted an impermissibly broad view of its income-producing activity in applying section 12-6-2295 and that its holding contradicts this court's decision in *DIRECTV*. Mastercard contends that under *DIRECTV*, the service provider's income-producing activity is "the last step it perform[s] in its process entitling it to revenue: delivering its service to paying customers." Mastercard asserts that its delivery of its authorization service to the MIPs located at each financial institution's processing facility is equivalent to DIRECTV's delivery of its signal to customers' set-top boxes. Mastercard therefore maintains that its income-producing activity occurs only where it delivers its services (the authorization messages) to the MIPs and because no MIPs are located in South Carolina, it has no income-producing activity in this state.

Mastercard additionally argues the Department has applied a "customer's customer" approach to sourcing in this case whereas *DIRECTV* required the taxpayer to source its receipts to where it delivered its services—in other words, the location of its paying customers. We disagree.

We conclude the ALC's determination of Mastercard's income-producing activity was consistent with the holdings of *DIRECTV* and the plain and ordinary meaning of the statutory language of section 12-6-2295.

A corporation having income within this state is taxed at a rate of five percent for that income. *See* S.C. Code Ann. § 12-6-530 (2014) ("An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation . . . transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms 'transacting', 'conducting', and 'doing business' include transacting or engaging in any activity for the purpose of financial profit or gain.").

"If a taxpayer is transacting or conducting business partly within and partly without this State, the South Carolina income tax is imposed upon a base which *reasonably represents* the proportion of the trade or business carried on within this State." S.C. Code Ann. § 12-6-2210(B) (2014) (emphasis added).

> If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2252[13] or Section 12-6-2310,[14] the taxpayer shall apportion its remaining net income using a fraction *in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere* during the taxable year. For purposes of this section,

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[13] S.C. Code Ann. § 12-6-2252(A) (2014) ("A taxpayer whose principal business in this State is (i) manufacturing or a form of collecting, buying, assembling, or processing goods and materials within this State, or (ii) selling, distributing, or dealing in tangible personal property within this State, shall make returns and pay annually an income tax that includes its income apportioned to this State.").

[14] Section 12-6-2310 of the South Carolina Code (2014) applies only to railroad companies, motor carriers, telephone service companies, pipeline companies, airline companies, and shipping lines.

> items included in gross receipts are as provided in Section 12-6-2295.

§ 12-6-2290 (emphasis added).

> The term[] . . . "gross receipts" as used in Section 12-6-2290 include[s], but [is] not limited to, the following items if they have not been separately allocated:
> . . . .
>
> (5) receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, *sales are attributable to this State to the extent the income-producing activity is performed within this State*; . . .

S.C. Code Ann. § 12-6-2295(A) (emphasis added).

> Giving the statutory language its plain and ordinary meaning, we find section 12-6-2295(A)(5) establishes that if a corporation generates revenue or income from activity performed exclusively within South Carolina, then its gross receipts must include that income in the numerator of the gross receipts ratio. However, if a corporation, acting on a multistate level, *derives its revenue from activities occurring* both inside and outside of South Carolina, *then the revenue generated from its services performed within South Carolina are its gross receipts* from South Carolina, and thus, must be included in the numerator of the gross receipts ratio.

DIRECTV, 421 S.C. at 73, 804 S.E.2d at 640 (emphases added).

This court reviews questions of law de novo, and it did so in *DIRECTV* when it interpreted section 12-6-2295. *See id.* at 72, 804 S.E.2d at 640. However, when reviewing the ALC's finding that DIRECTV's income-producing activity was the delivery of its signal to its customers nationwide, this court concluded "substantial evidence support[ed] the ALC's finding." *Id.* at 75, 804 S.E.2d at 641. Thus, the

ALC's determination of a taxpayer's income-producing activity is a question of fact. When reviewing findings of fact, our review is limited to whether such findings are "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." § 1-23-610(B)(e). We hold the ALC's finding that Mastercard's income-producing activity is the provision of a payment network that connects cardholders and merchants with their respective financial institutions and allows them to complete transactions for the purchase of goods or services without cash or checks was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

In *DIRECTV*, this court rejected DIRECTV's argument that the activities it engaged in "for the production of its programming and marketing" were the activities that generated its income. 421 S.C. at 77, 804 S.E.2d at 643. This court held these activities were instead preparatory activities that were conducted "'in anticipation' of customers signing up for DIRECTV's services" and were therefore income-anticipatory rather than income-producing activities. *Id.* at 77-78, 804 S.E.2d at 643. This court instead held DIRECTV's primary income-*producing* activity was "the delivery of the signal to the customer *because this activity actually generates income for DIRECTV*." *Id.* at 78, 804 S.E.2d at 643 (emphasis added).

The *DIRECTV* decision does not specifically refer to a "final act" to define the income-producing activity. *Id.* Rather, the court analyzed what activity actually generated income for the company. *See id.* at 75-76, 804 S.E.2d at 642 ("DIRECTV's source of income does not derive from its engineers, but rather from subscriptions to its programming packages."). In *DIRECTV*, the income-producing activity was the delivery of the signal to its customers because that was the service that allowed the customers to enjoy the digital entertainment for which they paid. *See id.* at 75, 804 S.E.2d at 641-42 ("DIRECTV's customers are paying DIRECTV for . . . the delivery of the signal that allows customers to enjoy the digital entertainment for which they pay DIRECTV.").

Neither section 12-6-2295(A)(5) nor *DIRECTV* require that the income-producing activity be based solely on who pays for the service. *See* § 12-6-2295 ("If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income-producing activity is performed within this State."); *see also DIRECTV*, 421 S.C. at 72, 804 S.E.2d at 640 ("When examining the apportionment statutes, 'the statutory policy is designed to apportion to South Carolina a fraction of the taxpayer's total income *reasonably attributable* to its business activity in this State.'" (quoting *Duke Energy Corp. v.*

S.C. Dep't of Revenue, 415 S.C. 351, 356, 782 S.E.2d 590, 592 (2016))). The court must instead identify the nature of the business, regardless of who pays for the service. *See DIRECTV*, 421 S.C. at 71, 804 S.E.2d at 639 ("In South Carolina, the nature of the taxpayer's business in the state determines the method of apportionment a taxpayer must use.").

Based on our review of the record, we hold substantial evidence supports the ALC's finding that Mastercard's income-producing activity is the provision of its payment network, which connects cardholders and merchants with their respective financial institutions and allows them to complete transactions for the purchase of goods or services without cash or checks. *See DIRECTV*, 421 S.C. at 75, 804 S.E.2d at 641 (applying an abuse of discretion standard of review to the ALC's identification of DIRECTV's income-producing activity). According to the testimony of Mastercard's vice president of federal tax, Mastercard's "primary business[] is transaction processing and related services," which "includes authorization, clearing[,] and settlement." The exhibits in the record consist mainly of Mastercard's own reports, rules, and manuals. In its annual reporting, Mastercard stated, "We operate the MasterCard Worldwide Network, which links issuers and acquirers around the globe for transaction processing services and, through them, permits MasterCard cardholders to use their cards at millions of merchants worldwide." It also consistently represented that it "generate[s] revenue by charging fees to issuers, acquirers[,] and other stakeholders for providing transaction processing and other payment-related products and services," and "by assessing customers *based primarily on the dollar volume of activity, or gross dollar volume ('GDV'), on the cards and other devices that carry* [*its*] *brands*." (emphasis added). Mastercard observed that its revenues were therefore "impacted by the number of transactions that [it] process[es] and by the use of cards carrying [its] brands." Mastercard noted that "as part of managing [its] brands, [it] also establish[es] and enforce[s] rules and standards surrounding the use of [its] payment card network."

Although Mastercard disclaims any physical or remote presence in South Carolina in providing its payment processing services, this view overlooks the true nature of its business, which is the operation of the network that allows cardholders to purchase goods and services from merchants without using cash or checks.[15] We

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[15] As other jurisdictions have observed, "While a physical location can be assigned for some services, such as a haircut, many services in today's economy do not exist in a physical location . . . ." *Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846, 877 (Pa. 2023). "While many [s]tates have adopted sourcing methods that can

acknowledge Mastercard's proprietary software and hardware (its MIPs and data processing center) are not physically located within this state; however, Mastercard still performs income-producing activity in this state because its processing is essential for a transaction to occur and for it to charge its customers and therefore earn income from the fees its customers pay.

Notwithstanding Mastercard's fee structure, which distinguishes among authorization, settlement, and clearing as discrete services, substantial evidence in the record supports the ALC's ruling that Mastercard primarily derives its revenues from a single, income-producing activity, which is the provision of the network that facilitates cashless and checkless payments for goods and services. Authorization, settlement, and clearing are all necessary components of the transaction processing service, but none of these services is triggered unless the transaction occurs in the first place. The fees that Mastercard charges the financial institutions are generated when a cardholder and merchant complete a transaction because, as set forth in Mastercard's annual reports and rules, the fees are based upon the dollar amount of the transactions and the number of transactions.

In other words, the financial institutions pay for the service, but it is the actual transaction between a merchant and a cardholder that generates Mastercard's income. Thus, Mastercard derives income not from its technical relay of messaging between the issuer and acquirer, but from its facilitation of the overall transaction—its provision of the network that allows the transaction to be completed. *See DIRECTV*, 421 S.C. at 65, 804 S.E.2d at 636 ("Although DIRECTV established its four primary value drivers through testimony, [it] primarily derives its revenue from 'fees paid by its [approximately 20 million] customers for rentals of set-top boxes and subscriptions to its programming services.'"); *see, e.g.*, Adam J. Levitin, *Private Disordering? Payment Card Fraud Liability Rules*, 5 Brook. J. Corp. Fin. & Com. L. 1, 10 (2010) ("Payment card transactions all involve multi-party networks of financial institutions, consumers, and merchants. Transmission of a payment from a consumer to a merchant to pay for goods or services is conducted through at least three financial institutions: the consumer's bank (the issuer bank), the merchant's bank (the acquirer bank), and the

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be described as market based, these methods are far from uniform and often differ substantially." *Corp. Exec. Bd. Co. v. Va. Dep't of Tax'n*, 822 S.E.2d 918, 928 (Va. 2019). "Broadly speaking, [s]tates that have shifted to market sourcing have adopted three approaches, with some taxing services where the benefit is received, others where the service is delivered, and still others where the receipts are derived." *Id.*

card network association (MasterCard, Visa, Amex, Discover, or PIN debit network) *that intermediates between the banks and sets the rules governing their transactions*. Thus, a payment card transaction involves at least five parties, . . . although in the case of American Express and Discover, the card network is often also the card issuer and the acquirer." (emphasis added) (footnote omitted)). Based on the foregoing, we conclude substantial evidence in the record supports the ALC's determination that when a cardholder uses a Mastercard-branded card or device to purchase goods or services from a South Carolina merchant, that transaction is the activity that generates income for Mastercard. Accordingly, we hold the ALC did not err in determining the fees generated based upon Mastercard's processing of transactions that occur in South Carolina is income that is attributable to South Carolina, even though the technical processing occurs elsewhere.

Mastercard additionally argues that the ALC erred in determining it had a single income-producing activity even though Mastercard categorizes its income into five revenue streams. We hold *Mercury Motor Express, Inc. v. South Carolina Tax Commission* supports the ALC's finding that Mastercard has a single income-producing activity and that it performs this activity in part in South Carolina. 244 S.C. 134, 135 S.E.2d 756 (1964). In *Mercury Motor*, our supreme court concluded that a motor carrier of freight was engaged in income-producing activity in South Carolina when its trucks moved "along, through[,] and over the highways" of this state. *Id.* at 141, 135 S.E.2d at 759. The supreme court noted that although its income was derived from a series of transactions, consisting of the solicitation of, picking up, hauling, and delivering freight and collecting charges for those services, "the transaction [that] primarily earn[ed] the income [wa]s the hauling of the freight." *Id.* Like the service provider in *Mercury Motor*, Mastercard provides an array of payment-related services to its customers; however, the fees Mastercard charges its customers are based primarily upon the number and dollar volume of the transactions that it processes over its network. As Mastercard itself observed, "[its] gross revenue is generated by assessing [its] customers *based primarily on the dollar volume of activity on the cards and other devices that carry* [*its*] *brands and from the fees that* [*it*] *charge*[*s its*] *customers* for providing transaction processing and other payment-related products and services." (emphasis added). Mastercard stated that its income is therefore "impacted both by the number of transactions that [it] process[es] and by the use of cards carrying [its] brands." Thus, the *Mercury Motor* decision provides additional support for the ALC's finding that the activity that primarily earns Mastercard income is the processing of transactions over its network.

Mastercard further argues the ALC erred in allowing the Department to use a proxy to calculate its income tax and offers that, instead, its income-producing activity can be measured by the banks' billing addresses (rather than the location of the MIPs). Mastercard concedes this method would cause some of its receipts to be sourced to South Carolina. We reject this argument. As we stated, the ALC did not err by concluding Mastercard derives its income from debit and credit card transactions initiated in South Carolina. Mastercard did not provide evidence of the actual income it earned from such transactions. Thus, the Department developed a proxy to determine its South Carolina receipts by using the sum of the South Carolina portion of the five income streams for each year of the audit period to determine the numerator of the apportionment ratio. It then calculated the denominator by using the sum of Mastercard's U.S. transactions. Depending upon the type of fee, the Department used either the number of transactions or the dollar amount of those transactions to calculate the numerator.[16] Using Mastercard's South Carolina customers' billing addresses as Mastercard proposes would not be a reasonable approximation of its South Carolina receipts because this would not reasonably represent the income generated by transactions that occur in South Carolina. *See* § 12-6-2210(B) ("If a taxpayer is transacting or conducting business partly within and partly without this State, the South Carolina income tax is imposed upon a base which *reasonably represents the proportion of the trade or business carried on within this State*." (emphasis added)). According to Mastercard, it has only twelve customers with South Carolina billing addresses. As Mastercard's witnesses acknowledged, out-of-state cardholders can use a Mastercard-branded card to make purchase in this state. Thus, calculating Mastercard's South Carolina receipts using billing information from only these twelve institutions would represent only a fraction of the income Mastercard generated from South Carolina transactions out of the nearly 1.4 billion total credit and debit transactions that occurred in this state during the audit period. We hold the ALC did not err in determining that the Department's sourcing methodology represents a reasonable approximation of Mastercard's income-producing activity in this state, given Mastercard did not provide evidence showing the actual income it earned.[17]

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[16] These calculations are described in more detail above.

[17] Mastercard argues that if this court determines *DIRECTV* does not apply, we should rely on *Lockwood Greene Engineers, Inc. v. South Carolina Tax Commission*, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987). Because we hold the ALC did not err in applying *DIRECTV*, we need not address this argument. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d

For the foregoing reasons, we affirm the ALC's decision upholding the Department's determination.[18]

II. Admission of Hawkins's Expert Testimony

Mastercard argues the ALC erred by admitting and relying upon Hawkins's expert testimony. Mastercard argues that although the ALC acknowledged the requirements of Rule 702, SCRE, and determined Hawkins satisfied them, it misapplied the rule. Mastercard avers that although there is no clear formula for determining whether nonscientific testimony is reliable, Hawkins's testimony was not reliable under any formula. Additionally, Mastercard argues the admission of his testimony was presumptively prejudicial because it had probative value on material issues and was the only support in the record for the ALC's conclusion that merchants and cardholders were Mastercard's customers, despite any direct contractual relationship.

We hold the ALC did not err by admitting Hawkins's expert testimony, and even if it did, such error does not warrant reversal because his testimony did not prejudice Mastercard. *See Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 37, 691 S.E.2d 135, 142 (2010) ("Reversal of a trial [court]'s qualification of an expert witness requires the complaining party to prove both an abuse of discretion and prejudice."). "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. "Under Rule 702, SCRE, a witness can be qualified as an expert if the witness has 'specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue.'" *Maybank v. BB&T Corp.*, 416 S.C. 541, 567, 787 S.E.2d 498, 511 (2016); *see also Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 623, 891 S.E.2d 682, 692 (Ct. App. 2023) ("To be competent to testify as an expert, 'a

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591, 598 (1999) (holding the appellate court need not address the appellant's remaining issues when the disposition of a prior issue is dispositive).

[18] Mastercard additionally contends the record does not support the ALC's conclusion that merchants and cardholders were Mastercard's customers. To the extent the ALC found cardholders and merchants are also Mastercard's customers, the record does not support this finding; however, such finding does not require reversal because this does not affect our analysis as to Mastercard's income-producing activity.

witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the [finder of fact] to form an opinion on the particular subject of his testimony.'" (quoting *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997))). "In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather should make a broad inquiry." *Maybank*, 416 S.C. at 567, 787 S.E.2d at 511. "The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject." *Id.* (quoting *Wilson v. Rivers*, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004)).

"Reliability is a central feature of Rule 702 admissibility, and our jurisprudence is in complete accord." *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). "The familiar tenet of evidence law that a continuing challenge to evidence goes to 'weight, not admissibility' has never been intended to supplant the gatekeeping role of the trial court in the first instance in assessing the admissibility of expert testimony, including the threshold determination of reliability." *Id.* at 273, 676 S.E.2d at 688. "Nonscientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter." *Id.* "The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach . . . ." *Id.* at 274, 676 S.E.2d at 688. "Yet the trial court in the discharge of its gatekeeping role in determining admissibility must initially answer the always present threshold questions of qualification and reliability." *Id.* at 274, 676 S.E.2d at 688-89.

In *Maybank*, our supreme court affirmed the trial court's decision to allow the expert witness to testify about "prepaids" (a type of alternative investment strategy) even though the expert conceded his actual experience with prepaids was limited in that he had never advised a client about one or taught any courses or written any training materials or articles about prepaids. 416 S.C. at 566, 787 S.E.2d at 511. In that case, the respondent offered the witness as an "expert in the field of finance to testify as to the proper conduct for financial advisors, planning professionals, and trustees," and the witness testified he had served as "an investment advisor, a securities arbitrator, and a law school professor teaching on securities regulation, corporations, agency, and white collar crime." *Id.* at 567, 787 S.E.2d at 511. During voir dire, the witness stated "that in preparing to give his opinions about investment products, he had conducted his own research by reading articles on [p]repaids[and] reviewing sales literature." *Id.* The court found the trial court did not abuse its discretion in admitting the testimony because the witness "had experience with securities and alternative investments strategies, of which

[p]repaids [we]re a type." *Id.* at 568, 787 S.E.2d at 512. The court further concluded that even if the trial court erred in admitting his testimony, such error did not warrant reversal. *Id.* at 568 n.11, 787 S.E.2d at 512 n.11. The court reasoned that his testimony did not prejudice the appellants because they extensively cross-examined him on his qualifications and his testimony was cumulative to that of another witness. *Id.*

During trial, Hawkins testified that consumer credit markets was "a broad term that includes businesses lending to people and related activities." He averred that "one related activity, of course, is operation of payment networks that facilitate businesses lending to people." Regarding his qualifications, Hawkins testified he had worked as a law professor for about fourteen years and had studied credit markets, including credit cards, for most of that time. He stated he taught two seminars involving credit cards and included issues that consumers face with credit cards and networks, such as the history of credit card networks, interchange fees, and surcharge rules. He explained he had also taught classes on consumer law, including debt collection. Hawkins testified that during this time, he had written several book chapters that had a significant focus on credit cards and many published articles on topics including payday lending and earned wage access, as well as one article that discussed "platforms that bring two sides of a market together," such as a credit card network. He stated he studied and wrote about credit card networks during his entire career.

As to the reliability of the subject matter, Hawkins testified that in preparing to offer his expert opinions, he relied on "things produced in the litigation by Mastercard," peer-reviewed sources that he "did research about," Mastercard's websites, and "some other websites." He averred the sources he consulted were reliable. Although he testified he did not believe he had read any contracts between credit card companies and their issuers and acquirers before his involvement in this case, he stated this was because such contracts were proprietary and therefore not accessible.

We hold the ALC did not abuse its discretion in admitting Hawkins's testimony. Even though Hawkins did not have extensive knowledge of the business operations specific to Mastercard, he testified he had fourteen years of experience researching, writing, and teaching on the topic of consumer credit markets. He testified this included credit cards, and he testified he had taught at least one seminar that included issues pertaining to credit card networks. Thus, we hold the ALC did not err by determining he was qualified to offer his expert testimony in consumer credit markets.

Hawkins's testimony assisted the ALC to understand the evidence largely by pointing out aspects of Mastercard's business that are interspersed throughout thousands of pages of its rules and manuals. Further, such testimony was cumulative to other evidence contained within Mastercard's own documents. *See Austin*, 387 S.C. at 41, 691 S.E.2d at 145 (holding the defendant was not prejudiced by the admission of an expert witness's testimony in a jury trial when the defendant thoroughly cross-examined the witness regarding his lack of experience and qualifications and the witness's testimony "was cumulative to other testimony"). Moreover, as we stated, we disagree with the ALC's finding that merchants and cardholders are Mastercard's actual customers, but we need not affirm this finding to affirm the ALC's decision. Thus, to the extent Hawkins's testimony improperly influenced the ALC to find that merchants and cardholders are Mastercard's actual customers, Mastercard has failed to establish prejudice. *See id.* at 37, 691 S.E.2d at 142 (noting the appellant must prove both abuse of discretion and prejudice to warrant reversal); *see also State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) ("It is well-established that it is a near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence.").

Regarding Hawkins's of-counsel employment, although neither party asked Hawkins a direct question during the deposition or trial about whether he was currently employed in private practice, we agree that Hawkins's failure to disclose his of-counsel employment with a law firm seemed deliberate. However, this does not disqualify him or require reversal of the ALC's decision. *See Gooding*, 326 S.C. at 253, 487 S.E.2d at 598 ("Defects in an expert witness'[s] education and experience go to the weight, rather than the admissibility, of the expert's testimony."). For these reasons, we hold the ALC did not abuse its discretion in admitting Hawkins's expert testimony, and even if it did, Mastercard was not prejudiced.

III. Penalties

Mastercard argues the ALC erred by upholding the Department's imposition of penalties for failure to file corporate income tax returns during the audit period.[19] We affirm.

[19] Mastercard does not challenge the upholding of the imposition of license fees.

Corporate taxpayers must file an income tax return with the Department on or before the fifteenth day of the third month following the taxable year. S.C. Code Ann. § 12-6-4970(B) (2014 & Supp. 2025).

> (A) Except as otherwise provided, the civil penalties imposed by this penalty section apply to every revenue or tax law of the State that provides for the filing with the department of a return or statement of the tax or the amount taxable.
>
> (B) The penalties described in this section *must be added to* and become a part of and collected as the tax imposed by the revenue or tax laws of this State.
>
> (C)(1) In the case of failure to file a return on or before the date prescribed by law, determined with regard to any extension of time for filing, *there must be added* to the amount required to be shown as tax on the return, *a penalty* of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43 (2014) (emphases added). "Unless otherwise specifically prohibited, the department may waive, dismiss, or reduce penalties provided for in this chapter." S.C. Code Ann. § 12-54-160 (2014).

We hold the ALC did not abuse its discretion by upholding the Department's imposition of penalties against Mastercard for failing to file corporate income tax returns for the audit period. The decision to waive, dismiss, or reduce penalties is discretionary. *See id.* This court similarly upheld the Department's imposition of understatement penalties in *DIRECTV*, rejecting the taxpayer's argument that it had a good-faith basis for its sourcing position. 421 S.C. at 83, 804 S.E.2d at 645-46. Mastercard does not dispute that it did not file any corporate tax returns during the audit period. Mastercard initially argued to the ALC that it had no income-tax nexus with South Carolina. It later conceded that it had a nexus with this state and began filing returns in 2017. Because Mastercard conceded that it had a sufficient nexus with South Carolina to be subject to a filing requirement in South Carolina, we hold the ALC did not err by finding it should have filed income tax returns in

this state, even though it disputed that it earned income in South Carolina. Accordingly, we affirm the ALC's ruling upholding the Department's imposition of penalties for failure to file.

CONCLUSION

Applying our standard of review under section 1-23-610(B), we hold the ALC did not abuse its discretion in determining that Mastercard had income-producing activity in this state. Substantial evidence in the record supports the ALC's finding that under section 12-6-2295(A)(5), Mastercard generates income in this state when a cardholder uses a Mastercard-branded credit or debit card to purchase goods or services from a South Carolina merchant because Mastercard charges its customers based primarily upon the number of transactions and dollar volume of activity on its cards. Thus, Mastercard should have sourced to South Carolina the portion of the gross receipts that it earned from fees generated by transactions that occurred in this state. Next, we hold the ALC did not abuse its discretion by admitting Hawkins's expert testimony because even if it erred, the admission of his testimony did not prejudice Mastercard. Finally, we hold the ALC did not err by upholding the Department's imposition of penalties for its failure to file corporate income-tax returns for the audit period.

AFFIRMED.

WILLIAMS, C.J., and KONDUROS, J., concur.