

Polsinelli Secures Landmark Washington Tax Victory for First Data in Interchange Fee Dispute

(July 8, 2026) Polsinelli recently represented First Data Merchant Services LLC (First Data), a wholly owned subsidiary of Fiserv, in a landmark Washington State tax dispute involving the application of Washington's Business & Occupation (B&O) tax to interchange fees generated through credit and debit card transactions. First Data sought a declaration that interchange fees retained by issuing banks should not be attributed to acquiring institutions or payment processors for purposes of calculating taxable revenue. Following a full bench trial in Thurston County Superior Court in March 2024, the court ruled entirely in First Data's favor. The court found that interchange fees are discounts retained by issuing banks before funding cardholder transactions, that First Data never receives those amounts, and that the fees do not accrue to First Data under generally accepted accounting principles. The decision carried nationwide significance for the payment processing industry and implicated billions of dollars in transaction volume.

The State appealed, and in February 2026 Division III of the Washington State Court of Appeals unanimously affirmed the trial court's judgment. The Court of Appeals held that, regardless of contractual language between processors and merchants, First Data was never legally entitled to receive interchange fees from merchants and therefore those amounts could not be included in its taxable gross income. The court further recognized that issuing banks are separate legal entities that provide the funding services for which interchange fees are paid, making those fees consideration to the issuing banks and not consideration for any service processors provide.

Importantly, on June 3, 2026, the Washington Supreme Court denied the Department of Revenue's petition for review, leaving the unanimous Court of Appeals decision intact and bringing the matter to a successful conclusion for First Data. The published appellate opinion represents a significant precedent for the payment processing industry and provides important guidance regarding the treatment of interchange fees under Washington tax law.

Shareholder John Peterson led the litigation team serving as lead trial counsel and also presented oral argument before the Court of Appeals. He was supported by Shareholder Matthew S. Knoop and Associate Julia Roberts.

About Polsinelli

Polsinelli is an Am Law 100 firm with more than 1,200 attorneys in over 25 offices nationwide. Recognized as one of the top firms for excellent client service and client relationships, Polsinelli is committed to meeting our clients' expectations of what a law firm should be. Our attorneys provide value through practical legal counsel infused with business insight, offering comprehensive corporate, transactional, litigation and regulatory services with a focus on health care, real estate, finance, technology, private equity and life sciences. Polsinelli PC, Polsinelli LLP in California, Polsinelli PC (Inc) in Florida.