

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

CASE NO.:

DIVISION:

JETBLUE AIRWAYS CORPORATION &
SUBSIDIARIES, foreign corporations,

Plaintiff,

v.

STATE OF FLORIDA DEPARTMENT OF
REVENUE, an agency of the State of Florida,

Defendant.

COMPLAINT

Plaintiff, JetBlue Airways Corporation & Subsidiaries (“JetBlue”), by and through counsel, sues the State of Florida Department of Revenue and alleges as follows:

PARTIES

1. JetBlue is a Delaware corporation with its principal place of business in New York, New York.

2. Defendant, the Florida Department of Revenue (the “Department”), is the statutorily designated agency of the State of Florida responsible for, among other things, administration and enforcement of the Florida Income Tax Code, chapter 220, Florida Statutes.

JURISDICTION AND VENUE

3. JetBlue files this action within the jurisdictional sixty (60) day time frame provided under section 72.011, Florida Statutes.

4. This Court has jurisdiction over this matter pursuant to section 72.011, Florida Statutes.

5. Venue is proper in Leon County pursuant to section 72.011(4)(b), Florida Statutes.

6. In compliance with section 72.011(3)(b), Florida Statutes, JetBlue has obtained a waiver of the bond requirement from the Department. The Department's letter memorializing the waiver is attached hereto as Exhibit A.

7. This Complaint is timely-filed and any and all jurisdictional requirements have been met. All conditions precedent to this action have been performed or waived.

NATURE OF THE CONTROVERSY

8. This is an action to contest an assessment issued by the Department to JetBlue for additional corporate income taxes under chapter 220, Florida Statutes.

9. JetBlue contests the entire amount of the additional corporate income tax for the years 2019 through 2021 (the "Period") assessed and shown on the Notice of Proposed Assessment (the "NOPA"), dated March 27, 2024. The amount of additional corporate income tax assessed and shown on the NOPA, including interest, is \$631,632.11. A copy of the NOPA is attached hereto as Exhibit B.

10. JetBlue has satisfied all applicable prerequisites to filing this action.

JETBLUE'S BUSINESS OPERATIONS IN FLORIDA

11. All factual allegations below, unless otherwise specified, are true and correct for the Period.

12. JetBlue is a commercial airline serving over 100 destinations across the United States, the Caribbean, Latin America, Canada, and Europe.

13. JetBlue operates flights originating from and/or terminating at several Florida-based commercial airports.

14. JetBlue is a subchapter "C" corporation for both federal and Florida income tax purposes.

15. JetBlue is the corporate parent of an affiliated group which files a consolidated return for Florida corporate income tax purposes pursuant to chapter 220, Florida Statutes.

THE AUDIT AND ASSESSMENT

16. In filing its Florida corporate income tax returns for the Period, JetBlue apportioned its income to Florida in accordance with section 220.151(2), Florida Statutes, which requires corporations engaged in transportation other than by pipeline to use a one-factor apportionment formula consisting of revenue miles in Florida divided by revenue miles everywhere. For a commercial airline, a revenue mile is defined as the transportation of one passenger the distance of one mile for consideration.

17. Section 220.151(2)(c), Florida Statutes, states that taxpayers engaged in air or sea transportation must count as revenue miles in Florida all miles within a defined geographical area:

[T]he “revenue miles in this state” shall include all miles traversed within the area bounded on the west by the meridian of longitude 87° 30’ west from Greenwich, bounded on the north by the northern land border of this state or the parallel of latitude 31° north from the equator, bounded on the east by the meridian of longitude 80° west from Greenwich, and bounded on the south by the parallel of latitude 23° 30’ north from the equator as the case may be. The “revenue miles in this state” shall also include all miles traversed between points in this state, even though the route of travel is not wholly over the land mass of the state.

The area so defined is illustrated on Exhibit C attached hereto and will be referred to herein as "the box."

18. The geographical boundaries of the Florida coast extend nine nautical miles from the shore into the Gulf of Mexico, and three nautical miles from the shore into the Atlantic. *See* Art. II, Sec. 1(a), Fla. Const., defining the border of Florida as three leagues from the coastline on the Gulf side, and three miles from the coastline on the Atlantic side.

19. By contrast, substantial portions of the area encapsulated by the box are in international waters and fall outside the boundaries of both Florida and the United States. For example, the western boundary of the box extends approximately 280 miles beyond Indian Shores Beach outside St. Petersburg, Florida, and the box extends approximately 110 miles beyond Atlantic Beach outside Jacksonville on the

eastern side. In addition, area contained within the box includes portions of the states of Alabama and Georgia.

20. During the Period, JetBlue operated flights that originated from and/or terminated at Florida commercial airports that traveled outside the geographical boundaries of the state of Florida, but within the box as defined by section 220.151(2)(c), Florida Statutes.

21. JetBlue computed its Florida apportionment for the Period by counting in the numerator of the apportionment formula revenue miles of flights originating or terminating in the state of Florida while those flights were within the geographical boundaries of the state of Florida. JetBlue excluded from the numerator of the apportionment formula revenue miles of flights originating or terminating in the state of Florida while those flights were outside the geographical boundaries of the state of Florida, but within the box.

22. JetBlue included in the denominator of the apportionment formula for the Period the revenue miles of all flights. In all of its calculations, JetBlue used statute miles, converting nautical miles and leagues to statute miles as necessary.

23. The entire amount of the tax at issue in the NOPA relates to revenue miles added to the numerators of JetBlue's apportionment factors for the Period for miles flown outside the geographic boundaries of the state of Florida, but within the box as defined by section 220.151(2)(c), Florida Statutes.

24. The assessed tax in the NOPA does not include "flyover miles." Flyover miles relate to JetBlue flights that fly over the geographical boundaries of the state of Florida, but neither originate or terminate in the state.

25. The dispute in this case relates solely to the inclusion of revenue miles in the numerator of JetBlue's apportionment formula for flights originating or terminating in Florida where such flights travel outside the geographical boundaries of Florida, but within the box as defined by Section 220.151(2)(c), Florida Statutes.

PROCEDURAL HISTORY

26. The Department conducted an audit of JetBlue's filed corporate income tax returns relating to the Period.

27. At the conclusion of the audit, the Department issued the NOPA to JetBlue dated March 27, 2024.

28. In the NOPA, the Department proposed only one adjustment to JetBlue's returns for the Period. The adjustment was to change the calculation of the numerator of the apportionment formula reported by JetBlue under section 220.151(2)(c), Florida Statutes, by adding to the numerator of the apportionment formula additional revenue miles that were not flown within the geographical boundaries of the state of Florida, but were within the box as defined by section 220.151(2)(c), Florida Statutes.

29. In the NOPA, the Department did not assess tax relating to JetBlue's "flyover miles."

30. The NOPA assesses a tax liability of \$631,632.11 consisting of \$483,827.00 in additional corporate income tax and \$147,805.11 in accrued interest through March 27, 2024.

APPLICABLE LAW

31. Article II, Sec. 1(a) of the Florida Constitution defines the boundaries of the state. It generally provides that the land boundaries are defined by the middle of the Perdido, Chattahoochee, Flint, and St. Marys rivers, with the Perdido and Chattahoochee river boundaries being connected along the southern border of Alabama by a straight line at Latitude 31°00.00.' It then defines the border along the Atlantic coast as three miles from the coastline and on the Gulf side as three leagues from the coastline.

32. A league is three nautical miles. A nautical mile is 6,076 feet, or about 115% of a statute mile. Three nautical miles is 18,288 feet or about 3.45 statute miles. Three leagues is therefore about 10.36 statute miles.

33. Federal law generally defines the territory of the United States to include the territorial waters of the United States, and that is defined to include an area that is either three nautical miles or twelve nautical miles wide depending on the application. *See* 33 C.F.R. §2.22. Under 33 C.F.R. §2.22, the territorial waters of the United States extend no farther than three nautical miles unless otherwise specified.

COUNT ONE

FLORIDA CONSTITUTION

34. JetBlue realleges and reincorporates the allegations of paragraphs 1 through 33 as if fully set forth herein.

35. The boundaries of the state of Florida are defined by the Florida Constitution, Article II, Section I, to include an area extending generally no more than three miles or three leagues from the coastline of Florida. The box, as defined by section 220.151(2)(c), Florida Statutes, includes an area that exceeds these territorial limits. Accordingly, the method of apportionment imposed by the NOPA exceeds the territorial jurisdiction of the state of Florida and violates Article II, Section I, of the Constitution of the state of Florida.

COUNT TWO

FEDERAL SUPREMACY CLAUSE

36. JetBlue realleges and reincorporates the allegations of paragraphs 1 through 35 as if fully set forth herein.

37. The Supremacy Clause, Article VI, Section 2, of the United States Constitution forbids Florida from extending its jurisdiction outside the territory of the United States. The boundaries of the United States generally extend to three miles from the Florida coastline.

38. The area defined by section 220.151(2)(c), Florida Statutes, lies largely outside the United States. As a result, the method apportionment imposed by the NOPA exceeds the territorial jurisdiction of the state of Florida and violates Article VI, Section 2, of the United States Constitution.

COUNT THREE

COMMERCE CLAUSE – SUBSTANTIAL NEXUS

39. JetBlue realleges and reincorporates the allegations of paragraphs 1 through 38 as if fully set forth herein.

40. The Commerce Clause, Article I, Section 8, of the United States Constitution requires, *inter alia*, that a state tax affecting interstate or foreign commerce must be applied to an activity having a substantial nexus with the taxing state. *See e.g., Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

41. Aircraft flying outside the geographic boundaries of the state of Florida are not engaged in an activity having the requisite substantial nexus with the state of Florida. Thus, the method of apportionment imposed by the NOPA violates the Commerce Clause of the United States Constitution.

COUNT FOUR

COMMERCE CLAUSE – FAIR APPORTIONMENT – INTERNAL CONSISTENCY TEST

42. JetBlue realleges and reincorporates the allegations of paragraphs 1 through 41 as if fully set forth herein.

43. The Commerce Clause, Article I, Section 8, of the United States Constitution requires, *inter alia*, that a state tax affecting interstate or foreign commerce must be fairly apportioned. *See e.g., Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

44. Under the Commerce Clause, a state tax is fairly apportioned if it is internally consistent. For a state tax to be internally consistent, the tax must be

structured so that if every state were to impose an identical tax, no multiple taxation would result. *See Goldberg v. Sweet*, 488 U.S. 252 (1989).

45. The apportionment imposed by the NOPA adopts a revenue miles methodology to attribute a taxpayer's income to Florida based on geography. The box used to determine revenue miles in Florida includes revenue miles not only in Florida, but also in portions of Alabama, Georgia and non U.S. waters. Thus, the revenue miles included in the NOPA exceed the geographical borders of Florida. If every state determined the portion of federal taxable income attributed to it by adopting a revenue miles methodology that exceeded the state's geographical borders, a taxpayer would be subject to state income tax on more than 100% of its income.

46. Therefore, the method of apportionment imposed by the NOPA violates the Commerce Clause of the United States Constitution because it fails the internal consistency test.

COUNT FIVE

COMMERCE CLAUSE – FAIR APPORTIONMENT – EXTERNAL CONSISTENCY TEST

47. Jetblue realleges and reincorporates the allegations of paragraphs 1 through 46 as if fully set forth herein.

48. The Commerce Clause, Article I, Section 8, of the United States Constitution requires, *inter alia*, that a state tax affecting interstate or foreign commerce must be fairly apportioned. *See e.g., Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

49. Under the Commerce Clause, a state tax is fairly apportioned if it is externally consistent. Externally consistency provides that a state is only permitted to tax that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed. *See Goldberg v. Sweet*, 488 U.S. 252 (1989).

50. The method of apportionment imposed by the NOPA violates the Commerce Clause of the United States Constitution because it fails the external consistency test. This is so because Florida seeks to tax that portion of the revenues earned with respect to air travel outside the geographical border of the state of Florida. The taxation of this interstate activity is outside the scope of the in-state activity conducted by JetBlue.

COUNT SIX

COMMERCE CLAUSE – FAIRLY RELATED

51. Jetblue realleges and reincorporates the allegations of paragraphs 1 through 50 as if fully set forth herein.

52. The Commerce Clause, Article I, Section 8, of the United States Constitution requires, *inter alia*, that a state tax affecting interstate or foreign commerce must be fairly related to the services provided by the taxing state. *See e.g., Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

53. Florida provides no services to aircraft flying outside the geographical border of the state of Florida. Thus, the method of apportionment imposed by the NOPA violates the Commerce Clause of the U.S. Constitution.

COUNT SEVEN

COMMERCE CLAUSE – FOREIGN COMMERCE CLAUSE

54. JetBlue realleges and reincorporates the allegations of paragraphs 1 through 53 as if fully set forth herein.

55. The Commerce Clause, Article I, Section 8, of the United States Constitution gives Congress the power "to regulate commerce with foreign nations[.]" This clause is referred to as the Foreign Commerce Clause.

56. A state tax violates the Foreign Commerce Clause if, *inter alia*, it prevents the federal government from speaking with "one voice." *See Japan Lines, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979).

57. The method of apportionment imposed by the NOPA violates the Foreign Commerce Clause of the United States Constitution because it seeks to regulate (tax) flights over international waters outside the geographical boundaries of Florida. Such state regulation prevents the federal government from speaking with "one voice" as required by the Foreign Commerce Clause.

COUNT EIGHT

DUE PROCESS CLAUSE

58. JetBlue realleges and reincorporates the allegations of paragraphs 1 through 57 as if fully set forth herein.

59. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that "nor shall any State deprive and person of ... property, without due process of law." The Due Process Clause "requires some definite link, some minimum connection, between a state and the person, property,

or transaction it seeks to tax." *Quill Corp. v. North Dakota*, 504 U.S. 298, 306 (internal citation omitted).

60. The method of apportionment imposed by the NOPA violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution because there exists no constitutionally significant "definite link" or "minimum connection" to aircraft flying outside the geographical border of the state of Florida.

WHEREFORE, Jetblue respectfully requests that judgment be entered against the Department and in favor of JetBlue:

(1) invalidating the assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their face and as applied to JetBlue extend beyond the boundaries of the state of Florida as defined by Article II, Section 1, of the Florida Constitution; or

(2) invalidating the assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their face and as applied to JetBlue violate the Supremacy Clause of Article VI, Section 2, of the United States Constitution; or

(3) invalidating the Assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their face and as applied to JetBlue seek to tax activity lacking a substantial nexus with Florida as required by the Commerce Clause of Article I, Section 8, of the United States Constitution; or

(4) invalidating the Assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their face and as applied to JetBlue fail the internal consistency test required for fair apportionment under the Commerce Clause of Article I, Section 8, of the United States Constitution; or

(5) invalidating the Assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their face and as applied to JetBlue fail the external consistency test required for fair apportionment under the Commerce Clause of Article I, Section 8, of the United States Constitution; or

(6) invalidating the Assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their face and as applied to JetBlue impose tax on activity that is not fairly related to services provided by Florida as required by the Commerce Clause of Article I, Section 8, of the United States Constitution; or

(7) invalidating the Assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their face and as applied to JetBlue violate the Foreign Commerce Clause of Article I, Section 8, of the United States Constitution; or

(8) invalidating the Assessment because the geographical boundary provisions of section 220.151(2)(c), Florida Statutes, on their

face and as applied to JetBlue violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and

(9) granting such other relief as is just and equitable.

DATED this 19th day of July, 2024

AKERMAN LLP

By: /s/ Michael J. Bowen

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*Attorneys for JetBlue Airways Corporation
& Subsidiaries*

Exhibit A



Florida Department of Revenue
Office of General Counsel

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

May 20, 2024

Mr. Michael Bowen, Esq.
Akerman LLP
50 North Laura Street, Suite 3100
Jacksonville, Florida 32202

Re: JetBlue Airways Corporation and Subsidiaries
FEI#: [REDACTED]
Bond Waiver Request
Audit# [REDACTED]
Tax years ending 12/31/19 – 12/31/21
Tax Type: Corporate Income Tax

Dear Mr. Bowen:

I am in receipt of your letter requesting a waiver of the provisions of s. 72.011(3)(b), F.S., on behalf of JetBlue Airways Corporation and Subsidiaries. Ms. Isabel Nogues, an Assistant General Counsel with the Department, has reviewed the publicly available financial information of JetBlue Airways Corporation and Subsidiaries. Based on that review and Isabel's recommendation, the Department is willing to waive the requirements of s. 72.011(3)(b), F.S., with respect to an action by JetBlue Airways Corporation and Subsidiaries.

A copy of this letter should be attached to your complaint that is filed with the circuit court.

Should you have any questions, please give Isabel or me a call.

Sincerely,

Mark S. Hamilton
General Counsel

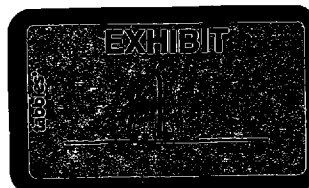


Exhibit B



NOTICE OF PROPOSED ASSESSMENT

03/27/2024

DR-831
R.01/13
Page 1 of 2

ATTN LORIE FALE, AKERMAN LLP
JETBLUE AIRWAYS CORPORATION AND SUBSIDIAR
98 SE 7TH ST STE 1100
MIAMI FL 33131-3525

Audit Number
Business Partner
Tax : Corporate Income Tax
ID Number
Audit Period : 12/31/2019, 12/31/2020, 12/31/2021

The Notice of Proposed Assessment ("Notice") identifies the deficiency resulting from an audit of your books and records for the audit period indicated. The Department has previously provided you with schedules of the various transactions supporting the basis for the proposed assessment.

Assessment Authority: Chapter 220, F.S.

Table with 2 columns: Description and Amount. Rows include Tax (\$483,827.00), Penalty (.00), Interest Through 03/27/2024 (\$147,805.11), Total Deficiency (\$631,632.11), Less: Payment(s) (.00), Less: Offset(s) (.00), and Balance Due (\$631,632.11).

Plus additional daily interest at \$158.63 per day from 03/28/2024, through the payment date. See Page 2, "Addendum to Notice of Proposed Assessment" for explanation of interest rates (if applicable).

If you do not agree with the proposed assessment, you may request a review through one of the following:

- informal protest
administrative hearing
judicial proceeding

The enclosed brochure provides you with the procedures for requesting a review.

If you file an informal written protest, you must file it with the Department no later than 05/28/2024, unless you request and receive an extension prior to this date. If you fail to file an informal written protest, the proposed assessment will become a FINAL ASSESSMENT on 05/28/2024.

If you request an administrative hearing or judicial proceeding, you must file your request no later than 07/29/2024 or 60 days from the date the assessment becomes a Final Assessment. Florida Statutes mandate this time limit and the Department cannot extend it. You must file the petition for an administrative hearing with the Department of Revenue. For judicial proceedings, you must file a complaint with the appropriate Clerk of the Court.

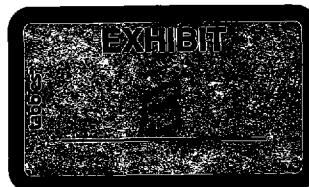
If a balance is due and you agree with the proposed assessment, please pay the balance due within 60 days from the notice date. Please return your payment in the enclosed envelope and include the NOPA remittance coupon.

The amount shown on this notice may not include: credits, payments, notices of tax action, delinquency notices or other billings previously issued by the Department.

NOTE: If you are protected by Federal Bankruptcy Law, you are not required to pay except as provided by Title 11 United States Code (U.S. Bankruptcy Code).

Refer questions and correspondence to:

Phone: Fax:





Addendum to Notice of Proposed Assessment
Schedule of Tax, Penalty and/or interest

ATTN LORIE FALE, AKERMAN LLP
JETBLUE AIRWAYS CORPORATION AND SUBSIDIAR
98 SE 7TH ST STE 1100
MIAMI FL 33131-3525

Audit Number : [REDACTED]
Business Partner : [REDACTED]
Tax : Corporate Income Tax
ID Number : [REDACTED]
Audit Period : 12/31/2019, 12/31/2020,
12/31/2021

I. 12% Interest Rate		II. Market Interest		III. Combined Liability			
Applied Period		Applied Period		Combined Applied Period			
Tax	Interest Through 03/27/2024	Tax	Interest Through 03/27/2024	Tax	Penalties	Interest Through 03/27/2024	Total
\$	\$	\$	\$	\$	\$	\$	\$
0.00	0.00	483,827.00	147,805.11	483,827.00	0.00	147,805.11	631,632.11
Less Payments							(0.00)
Offsets							0.00
Balance Due							631,632.11

- I. Twelve (12) Percent Interest Rate: For taxes due on or before December 31, 1999, an interest rate of 12% per annum applies, except for Corporate Income and Emergency Excise Taxes. The additional daily interest amount for this portion of the liability is \$0.00
- II. Market Interest Rate: For taxes due on or after January 1, 2000, a floating interest rate applies. This rate will be updated January 1 and July 1 of each year. The additional daily interest amount for this portion of the liability is \$158.63. Current and prior interest rates are posted on our Internet site at: www.floridarevenue.com or you can contact Taxpayer Services at 850-488-6800 and select Information on Taxes from the option menu.
- III. Combined Liability: This column combines columns I and II and represents the total tax, penalties and interest assessed. The combined daily interest amount is \$158.63. Please include additional interest accrued from 03/28/2024 through the date your payment is postmarked.

Refer questions and correspondence to.

Florida Department of Revenue

Phone: Fax:



Enforcement Remittance Coupon
NOPA Remittance Coupon

ATTN LORIE FALE, AKERMAN LLP
JETBLUE AIRWAYS CORPORATION AND SUBSIDIAR
98 SE 7TH ST STE 1100
MIAMI FL 33131-3525

Business Partner : [REDACTED]
Service Notification : 200322475
Period : 12/31/2019 - 12/31/2021
Tax Type : Corporate Income Tax

To ensure proper credit, please detach and include the preprinted remittance coupon below when submitting payments.

The amount of interest owed has been calculated through the Interest Through date shown on the NOPA. When submitting your payment, please remember to include the additional interest amount accrued since that date.

To calculate the additional interest amount, multiply the number of days since the Interest through date times the daily interest amount. The daily interest amount is also shown on the NOPA.

You can pay bills online for many taxes using your credit card or the ACH-Debit method at www.floridarevenue.com.

DR-839
N.10/03

Detach For processing

NOPA Remittance Coupon

Make check or money order payable to:
Florida Department of Revenue
5050 West Tennessee Street
Tallahassee, Florida 32399-0100

Service Center: Atlanta
Business Partner 169343
Audit Number [REDACTED]

Check Number:
Tax Type: Corporate Income Tax
Remittance Total:

ATTN LORIE FALE, AKERMAN LLP
JETBLUE AIRWAYS CORPORATION AND SUBSIDIAR
98 SE 7TH ST STE 1100
MIAMI FL 33131-3525

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Exhibit C

Exhibit C

