

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

CASE NO.: 2025 CA 000188

DIVISION:

OPTUMRX, INC., a foreign  
corporation,

Plaintiff,

v.

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

Defendant.

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### **COMPLAINT**

Plaintiff, OptumRx, Inc. ("OptumRx"), by and through counsel, sues the State of Florida, Department of Revenue (the "Department"), and alleges as follows:

### **PARTIES**

1. OptumRx is a California corporation domiciled in Minnesota and is authorized to conduct business in the State of Florida.
2. Defendant, the Florida Department of Revenue (the "Department"), is an agency established under the laws of the State of Florida.

### **JURISDICTION AND VENUE**

3. This is an action to contest the Department's assessment of corporate income tax and interest against OptumRx.

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)(a), Florida Statutes, OptumRx has paid to the Department the amount of the tax, penalty, and accrued interest assessed by the Department in the Notice of Proposed Assessment dated October 28, 2021 (the "NOPA") which is not being contested. All remaining tax, penalty and accrued interest assessed in the NOPA is being contested.

7. OptumRx has obtained a waiver of the security requirement of section 72.011(3)(b)1, Florida Statutes, from the Department. The Department's letter memorializing the waiver is attached hereto as **Exhibit A**.

8. 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.

#### **STATEMENT OF THE CASE**

9. This action seeks to contest an assessment issued by the Department to OptumRx for additional corporate income taxes under Chapter 220, Florida Statutes, for the tax years 2016 – 2018 (the "Period").

10. The Department audited OptumRx's Florida corporate income tax returns for the Period.

11. Following the audit of OptumRx for corporate income taxes for the Period, the Department issued the NOPA assessing additional corporate income tax and accrued interest in the amount of \$12,265,275.10 (the "Assessment"). A copy of the NOPA is attached hereto as **Exhibit B**.

12. Following the audit, OptumRx timely filed an administrative appeal of the Assessment in which it argued that the auditor (1) improperly included certain sales in the numerator of the Florida sales factor, and (2) had not properly included favorable adjustments to OptumRx's apportionment factors. Application of these favorable adjustments, OptumRx contended, would have resulted in a substantial reduction in the Assessment reflected in the NOPA.

13. OptumRx timely filed an administrative appeal of the NOPA.

14. By letter dated December 13, 2024, the Department issued a Notice of Decision (the "NOD") affirming the NOPA. A copy of the NOD is attached hereto as **Exhibit C**. This appeal followed.

#### **FACTUAL AND LEGAL ALLEGATIONS**

15. All factual allegations below are true and correct for the Period.

16. OptumRx is a California corporation with its principal place of business in Minnesota.

17. For all periods relevant to this action, OptumRx was a subchapter "C" corporation for both federal and Florida income tax purposes.

18. For all periods relevant to this action, OptumRx files its Florida income tax return on a separate company basis in accordance with Section 220.13, Florida Statutes.

19. This case involves two legal issues related to the determination of OptumRx's Florida corporate income tax liability for the Period.

- a. Whether the receipts earned by OptumRx from providing Pharmacy Benefit Management ("PBM") services to its customers (the "Health Plans") should be included in OptumRx's Florida sales factor numerator for apportionment purposes.
- b. Whether receipts earned by OptumRx from pharmacy rebates should be included in OptumRx's Florida sales factor numerator and denominator for apportionment purposes.

#### **ISSUE #1**

##### **PROPER SOURCING OF RECEIPTS FROM PBM SERVICES**

20. Section 220.15, Florida Statutes, provides that corporations that are doing business both within and outside Florida are required to apportion their federal adjusted gross income to the state.

21. OptumRx was required to apportion its federal adjusted gross income to Florida under section 220.15, Florida Statutes, because OptumRx was doing business both within and outside Florida.

22. Corporations are generally required to apportion their federal adjusted gross income to Florida in accordance with the three-factor apportionment formula outlined in section 220.15, Florida Statutes. The apportionment formula provided by

section 220.15(1), Florida Statutes, is comprised of a sales factor, a property factor, and a payroll factor.

23. OptumRx was required to apportion its federal adjusted gross income to Florida in accordance with the three-factor apportionment formula referenced in section 220.15(1).

24. OptumRx's customers are Health Plans that offer prescription drug plans to their members (the "Plan Members"). Plan Members pay premiums to the Health Plans for their prescription drug plans.

25. During the Period, the Health Plans outsourced the management and operation of their prescription drug program to OptumRx.

26. The PBM services provided by OptumRx to the Health Plans during the Period included, but were not limited to: helping Health Plans comply with regulatory obligations, including requirements imposed by the Centers for Medicare & Medicaid Services ("CMS"); assisting Health Plans with CMS audits; conducting financial and other strategic analysis for the Health Plans; providing reporting services to the Health Plans; establishing and maintaining retail and mail order pharmacy networks for the Health Plans' prescription drug plans, including negotiating pricing with pharmacies and auditing pharmacies; operating and maintaining an electronic claims adjudication platform for the Health Plans; designing and managing formularies for the Health Plans' prescription drug plans; negotiating pharmaceutical manufacturer rebates for the Health Plans; assisting Health Plans with drug plan designs; and

providing the Health Plans with administrative support (collectively, the “PBM Services”).

27. The greater proportion of income producing activity directly engaged in by OptumRx relating to the performance of the PBM Services occurred, based on OptumRx’s costs of performance, outside Florida.

28. When, as in the case of the PBM Services provided by OptumRx to the Health Plans, a taxpayer makes sales other than sales of tangible personal property, the composition of the sales factor is determined by Fla. Admin. Code Ann. 12C-1.0155(2) (titled "Florida sales"). The relevant provision for sourcing the sale of PBM Services is Fla. Admin. Code Ann. 12C-1.0155(2)(l) (the "COP Rule").

29. Under the COP Rule, sales are attributed to Florida if the income producing activity responsible for generating the sales revenue is performed by the taxpayer wholly within this state. If the income producing activity is performed both within and outside Florida, the COP Rule states that the sales will be attributed to Florida only if the greater proportion of the income producing activity is performed in Florida. For purposes of the COP Rule, an “income producing activity” is defined by reference to its “costs of performance.”

30. OptumRx is required to follow the COP Rule for purposes of apportioning OptumRx's receipts from the Health Plans for providing the PBM Services.

31. OptumRx’s application of the COP Rule to source receipts from OptumRx’s PBM Services outside Florida is supported by two recent decisions of this

Court—*Target Enterprises, Inc. v. Department*, 2021-CA-002158 (Nov. 28, 2022) and *Billmatrix Corporation v. Department*, 2020-CA-000435 (Mar. 1, 2023).

32. Instead of applying the sourcing method required by the COP Rule, the Assessment sourced a portion of OptumRx’s receipts from the PBM Services to the numerator of OptumRx’s Florida sales factor based on the Department’s estimated “market” for OptumRx’s services.<sup>1</sup> The NOD states “the income producing activity is sourced to the plan members location because the services are consumed by the members and the members are the basis of the amount of income received by the Taxpayer.”

33. The result of the Department’s application of an incorrect sourcing methodology is an increase in OptumRx’s Florida taxable income and resulting Florida corporate income tax liability for the Period as reflected in the NOPA.

34. OptumRx contends that the Department’s application of Fla. Admin. Code Ann. 12C-1.0155(2)(l) to source the receipts from OptumRx’s sales of PBM Services to Florida is improper and that the Assessment must be revised to reflect the correct sourcing methodology.

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<sup>1</sup> The Department estimated the sales of PBM Services attributed to Florida by multiplying the total sales of PBM Services by OptumRx’s percentage of tangible personal property sales to Florida. Presumably, this estimating methodology results in sales of PBM Services being attributed based on the location of the Health Plan’s customers instead of the location of OptumRx’s customers (the Health Plans).

## ISSUE #2

### INCLUSION OF FORMULARY REBATES IN SALES FACTOR

35. OptumRx receives formulary rebates for services it provides to third party pharmaceutical manufacturers.

36. These receipts are sales as that term is defined by section 220.15(5)(a), Florida Statutes, which defines "sales" as *all* gross receipts of the taxpayer except interest, dividends, rents, royalties, and gross receipts from the sale, exchange, maturity, redemption, or other disposition of securities. *See also* Florida Admin. Code r. 12C-1.0155(1).

37. These formulary rebates were erroneously excluded from OptumRx's originally filed returns and they should now be included in the sales factor.

### COUNT ONE

#### THE DEPARTMENT UTILIZED AN INCORRECT APPORTIONMENT METHODOLOGY TO SOURCE THE PBM SERVICE RECEIPTS

38. OptumRx realleges and reincorporates the allegations of paragraphs 1 through 37 as if fully set forth herein.

39. No Florida statute or Department regulation provides for "market-based" sourcing of the sales of PBM Services for purposes of section 220.15, Florida Statutes.

40. The COP Rule provides the general rule for apportioning income received by a taxpayer for the performance of services partly within and outside Florida.

41. OptumRx and the Department are required to follow the COP Rule for purposes of apportioning receipts from PBM Services.



42. The COP Rule states that income producing activity applies to each separate item of income and specifically defines the term income-producing activity as meaning “the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits.”

43. The transactions and activity that OptumRx directly engages in to earn revenue from the PBM Services occurs within and without Florida. Accordingly, the COP Rule attributes OptumRx’s receipts from the PBM Services to the location where the greater proportion of income producing activity occurs, based on OptumRx’s costs of performance.

44. The Department’s position ignores the transactions and activities directly engaged in by OptumRx and instead attributes receipts from the PBM Services to Florida based solely on the activity of OptumRx’s customer’s customer<sup>2</sup> (i.e., the Plan Members) and third-party pharmacies. It should be noted that OptumRx receives no payments from the customer's customer.

45. The Department’s focus on the “location,” “destination,” or “actions” of third parties contradicts the plain language of the COP Rule and must be rejected.

46. The Department’s approach for determining OptumRx’s sales factor is tethered to the Department’s erroneous belief that (1) the COP Rule’s phrase “each separate item of income” as it relates to OptumRx’s service income necessarily requires that the phrase “income producing activity” captures only the sale of a drug

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<sup>2</sup> OptumRx’s customers are the Health Plans. The Plan Members are the Health Plans’ customers.

by a third-party pharmacy to a Plan Member, and (2) that activity wholly occurs within the state in which the Plan Member is located. Under any fact pattern, this approach results in a determination that “income producing activity” can never occur in multiple states, thus rendering the COP Rule language “if the income producing activity is performed within and without Florida but the greater proportion of the income producing activity is performed in Florida, based on costs of performance” moot.

47. The Department’s application of the COP Rule to the PBM Services erroneously focuses on the measurement of the fees paid by the Health Plans to OptumRx and ignores most, if not all, of the income producing activities in which OptumRx actually engages to earn its fees from the provision of the PBM Services.

48. To earn its receipts from the PBM Services, OptumRx must, among other activities: help Health Plans comply with regulatory obligations; assist Health Plans with CMS audits, conduct financial and other strategic analysis for the Health Plans; provide reporting services to the Health Plans; establish and maintain retail and mail order pharmacy networks for the Health Plans’ prescription drug plans; operate and maintain an electronic claims adjudication platform for the Health Plans; design and manage formularies for the Health Plans’ prescription drug plans; negotiate pharmaceutical manufacturer rebates for the Health Plans; assist the Health Plans with drug plan design; and provide the Health Plans with administrative support.

49. The greater proportion of the income producing activity relating to the performance of the PBM Services directly engaged in by OptumRx occurred—based

on OptumRx's costs of performance—outside Florida and accordingly, OptumRx correctly sourced this revenue outside Florida.

50. For the foregoing reasons, OptumRx's Florida sales factor should properly reflect that the receipts from the sales of the PBM Services should be sourced outside Florida thereby decreasing the Assessment for all tax years in the Period.

### COUNT TWO

#### **THE DEPARTMENT ERRONEOUSLY OMITTS FORMULARY REBATES FROM OPTUMRX'S SALES FACTOR**

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

52. In addition to receipts from the provision of the PBM Services, OptumRx earned receipts from pharmaceutical manufacturers. OptumRx contracts with the pharmaceutical manufacturers to provide services – neither the Health Plans nor the pharmacies are parties to this contract. OptumRx's services include preparation of administrative reports on the drug sales, negotiating inclusion of the drugs in the Health Plans' formularies (including getting the drug identified as preferred or unrestricted on the formulary), monitoring the dispensing of drugs, billing and audit support, and managing retail prices for drugs.

53. Section 220.15(5) states "as used in this subsection, the term 'sales' means all gross receipts of the taxpayer except interest, dividends, rents, royalties, and gross receipts from the sale, exchange, maturity, redemption, or other disposition of securities."

54. Fla. Admin. Code r. 12C-1.0155(1) states "For the purposes of the sales factor, the term 'sales' means all gross receipts received by the taxpayer from transactions and activities in the regular course of its trade or business."

55. The pharmaceutical rebates are gross receipts received by the taxpayer from transactions and activities in the regular course of OptumRx trade or business and thus, are included in OptumRx's sales factor.

56. OptumRx erroneously excluded the pharmaceutical rebates from its sales factor on its 2016 and 2017 Florida income tax returns and upon review, requested the Department to correct this omission.

57. The Department did not include these receipts in OptumRx's sales factor on the basis that OptumRx reports these formulary rebates as an offset to its costs of goods sold and by mischaracterizing these receipts as trade discounts.

58. OptumRx is contractually obligated to pay the pharmacies for the cost of the dispensed drug (less any member co-pay), and thus, it presents the rebate receipts from the manufacturer as an offset to this cost. However, these receipts cannot be deemed merely a reduction of the cost of the drugs for OptumRx, because OptumRx does not sell the drugs at issue here. The drugs are sold by the pharmaceutical manufacturer to the pharmacies, who in turn sell them to Health Plan members.

59. The pharmaceutical rebates are clearly receipts from the pharmaceutical manufacturers under the contract between OptumRx and the manufacturer. Therefore, they should be included in the Florida sales factor for apportionment purposes.

60. OptumRx disputes the Department's exclusion of pharmaceutical rebates from the numerator and denominator of the sales factor because they represent gross receipts received by OptumRx from transactions and activities in the regular course of its trade or business per Section 220.15(5), Florida Statutes, and Fla. Admin. Code Ann. 12C-1.0155(1).

61. Inclusion of the pharmaceutical rebates in the sales factor results in a partial refund of OptumRx's 2017 and 2018 Florida corporate income tax.

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

- (1) revising the Assessment for the Period to reflect the fact that the Department used an improper sourcing methodology to apportion OptumRx's receipts from PBM Services;
- (5) revising the Assessment reflected in the NOPA for the Period to include pharmaceutical rebates in the sales factor; and
- (6) granting such other relief as is just and equitable.

DATED this 7th day of February 2025

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