

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

CASE NO.: 2024 CA 001026

DIVISION:

CHECKFREE SERVICES CORPORATION,
a foreign corporation,

Plaintiff,

v.

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

Defendant.

_____ /

COMPLAINT

Plaintiff, Checkfree Services Corporation (“Checkfree”), by and through counsel, sues the State of Florida Department of Revenue and alleges as follows:

PARTIES

1. Checkfree is a Delaware corporation which primarily provides electronic bill payment and presentment services to consumer service providers, direct billers, and debit card processing services across the United States.

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. Checkfree 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, Checkfree has obtained a waiver of the security 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 Checkfree for additional corporate income taxes under chapter 220, Florida Statutes.

9. Checkfree contests the entire amount of the additional corporate income tax for the years 2018 through 2020 (the "Period") assessed and shown on the Notice of Proposed Assessment (the "NOPA"), dated April 25, 2024. The amount of additional corporate income tax assessed and shown on the NOPA, including interest accrued through April 25, 2024, is \$3,396,471.61. A copy of the NOPA is attached hereto as Exhibit B.

FACTUAL AND LEGAL ALLEGATIONS

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

11. Checkfree is a subsidiary of Fiserv, Inc., a publicly traded company.

12. Checkfree primarily derives revenue from the facilitation of online bill payment services through payment processing networks such as the ACH network in which Checkfree is a participant (the "Services").

13. Checkfree's customers are primarily banks, credit unions, and other similar financial institutions.

14. Checkfree acts as an agent for its customers in its provision of the Services.

15. Checkfree is not a financial institution, but is approved to facilitate financial transactions on behalf of its financial institution customers.

16. Checkfree provides the Services to its customers predominantly from locations outside Florida.

17. The vast majority of the costs to perform the Services are incurred by Checkfree outside Florida.

THE AUDIT AND ASSESSMENT

18. The Department initiated a routine corporate income tax audit of Checkfree for the Period.

19. The sole disputed issue raised by the audit relates to the proper sourcing of Checkfree's receipts from providing the Services.

20. On its filed Florida corporate income tax returns for the Period, Checkfree sourced its receipts from providing the Services based on the location of where the costs were incurred to perform the Services in accordance with Rule 12C-1.0155(2)(l), F.A.C. (the "COP Regulation").

21. The Department disagreed with Checkfree's reliance on the COP Regulation and, relying on Rule 12C-1.0155(2)(h), F.A.C. (the "Database Regulation"), asserted that the receipts earned by Checkfree for providing the Services were properly sourced to Florida because Florida residents initiated the transactions that ultimately generated the receipts earned by Checkfree.

22. Checkfree provided sufficient documentation to the Department during the audit for the Period to establish that the vast majority of the costs to perform the Services were incurred by Checkfree outside Florida.

23. The Department rejected Checkfree's use of the COP Regulation and sourced Checkfree's receipts from the Services under the Database Regulation. The Department's audit adjustments resulted in an increase in Checkfree's Florida corporate income tax liability for the Period.

24. At the conclusion of the Department's audit, the NOPA was issued to Checkfree for additional corporate income taxes. The NOPA became a final assessment on June 24, 2024 (the "Assessment").

APPLICABLE LAW

25. 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.

26. 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.

27. When, as in this case, there are sales of services, the composition of the sales factor is determined by the COP Regulation. Under the COP Regulation, sales are attributed to Florida if the "income producing activity" responsible for generating the sales revenue is performed by the taxpayer in this state. If the income producing activity is performed within and outside Florida, the COP Regulation states that the sales will be attributed to this state only if the greater proportion of the income producing activity is performed in Florida. For purposes of the COP Regulation, the "income producing activity" is defined by reference to the "costs of performance."

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

29. Checkfree 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), Florida Statutes.

30. Checkfree was required to follow the COP Regulation for purposes of apportioning the revenue it received from providing the Services.

31. Checkfree's reliance on the COP Regulation to source receipts from the Services 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. The Department asserts that the Database Regulation applies to the facts of this case and not the COP Regulation because Checkfree earns receipts from customers for providing access to an online "interactive network."

33. The Database Regulation addresses the sourcing of receipts where a taxpayer provides interactive access to databases.

34. Checkfree maintains that the Database Regulation does not apply because Checkfree did not charge its customers for interactive access to a database. To the contrary, Checkfree uses hosted applications to provide critical financial transaction processing services, including moving money between parties – the Services – to its customers.

COUNT ONE

THE COP REGULATION IS THE CORRECT SOURCING RULE TO APPORTION THE RECEIPTS EARNED BY CHECKFREE FROM PERFORMING THE PROCESSING SERVICES

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

36. Rule 12C-1.0155(2), F.A.C., defines the term "Florida sale" for purposes of the sales factor numerator of the apportionment formula provided by section 220.15(1), Florida Statutes.

37. Rule 12C-1.0155(2)(a) – (k), F.A.C., outlines eleven specific categories of income and explains what it means to have a "Florida sale" with respect to each such category of income.

38. The COP Regulation is a catch-all category for "other sales" falling outside the income categories of Rule 12C-1.0155(2)(a) – (k), F.A.C.

39. The receipts earned by Checkfree from performing the Services for its customers during the Period are not described by the categories of income defined in Rule 12C-1.0155(2)(a) – (k), F.A.C.

40. Because the receipts earned by Checkfree from performing the Services for its customers during the Period are not described by the categories of income defined in Rule 12C-1.0155(2)(a) – (k), F.A.C., the COP Regulation contains the correct sourcing rule.

41. Checkfree correctly used the COP Regulation on its filed Florida corporate income tax returns for the Period to source its receipts from performing the

Services, and the Department's assertion that the Database Regulation applies to the facts of this case is incorrect.

42. Because Checkfree correctly used the COP Regulation on its filed Florida corporate income tax returns for the Period to source its receipts from performing the Services, the Assessment is invalid and must be abated in full.

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

- (1) invalidating the Assessment because Checkfree correctly employed the COP Regulation to derive its sales factor for apportionment purposes on its Florida corporate income tax returns for the Period; and
- (2) granting such other relief as is just and equitable.

DATED this 25th day of June, 2024

AKERMAN LLP

By: /s/ Michael J. Bowen

Michael J. Bowen
Florida Bar No. 0071527
50 North Laura St., Ste 3100
Jacksonville, FL 32202
Phone: (904) 798-3700
Fax: (904) 798-3730
Michael.Bowen@akerman.com

and

Lorie A. Fale
Florida Bar No. 0164569
98 Southeast Seventh St., Ste. 1100
Miami, FL 33131
Phone: (305) 982-5550
Fax: (305) 374-5095
Lorie.Fale@akerman.com

Attorneys for Checkfree Services Corporation

Exhibit A



Florida Department of Revenue
Office of General Counsel

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

June 3, 2024

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

Re: Checkfree Services Corporation
FEI#: [REDACTED]
Bond Waiver Request
Audit# [REDACTED]
Tax years ending 12/31/18 – 12/31/20
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 Checkfree Services Corporation. Ms. Isabel Nogues, an Assistant General Counsel with the Department, has reviewed the publicly available financial information and the executed guaranty of Fiserv, Inc. 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 Checkfree Services Corporation.

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

04/25/2024

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

C/O MICHAEL BOWEN, AKERMAN LLP
CHECKFREE SERVICES CORPORATION
50 N LAURA ST STE 3100
JACKSONVILLE FL 32202-3659

Audit Number : [REDACTED]
Business Partner : [REDACTED]
Tax : Corporate Income Tax
ID Number : [REDACTED]
Audit Period : 12/31/2018, 12/31/2019,
12/31/2020

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.

Tax		\$	2,512,134.00
Penalty		\$.00
Penalty - Fraud		\$.00
Penalty - Other		\$.00
Interest Through	04/25/2024	\$	884,337.61
Total Deficiency		\$	3,396,471.61
Less: Payment(s)		\$.00
Less: Offset(s)		\$.00
Balance Due		\$	3,396,471.61

Plus additional daily interest at \$823.65 per day from 04/26/2024, 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 06/24/2024, 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 06/24/2024.

If you request an **administrative hearing** or **judicial proceeding**, you must file your request no later than 08/23/2024 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:

Compliance Standards Process
P.O. BOX 5139
Tallahassee, FL 32314-5139
Phone: (850) 617-8565 | Fax: (850) 245-5981



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

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

C/O MICHAEL BOWEN, AKERMAN LLP
CHECKFREE SERVICES CORPORATION
50 N LAURA ST STE 3100
JACKSONVILLE FL 32202-3659

Audit Number : [REDACTED]
Business Partner : [REDACTED]
Tax : Corporate Income Tax
ID Number : [REDACTED]
Audit Period : 12/31/2018, 12/31/2019,
12/31/2020

I. 12% Interest Rate		II. Market Interest		III. Combined Liability			
Applied Period		Applied Period		Combined Applied Period			
Tax	Interest Through 04/25/2024	Tax	Interest Through 04/25/2024	Tax	Penalties	Interest Through 04/25/2024	Total
\$	\$	\$	\$	\$	\$	\$	\$
0.00	0.00	2,512,134.00	884,337.61	2,512,134.00	0.00	884,337.61	3,396,471.61
						Less Payments	(0.00)
						Offsets	0.00
						Balance Due	3,396,471.61

- 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 \$823.65. 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 \$823.65. Please include additional interest accrued from 04/26/2024 through the date your payment is postmarked.

Refer questions and correspondence to.

Compliance Standards Process
Florida Department of Revenue
P.O. BOX 5139
Tallahassee, FL 32314-5139
Phone: (850) 617-8565 Fax: (850) 245-5981



Enforcement Remittance Coupon
NOPA Remittance Coupon

C/O MICHAEL BOWEN, AKERMAN LLP
CHECKFREE SERVICES CORPORATION
50 N LAURA ST STE 3100
JACKSONVILLE FL 32202-3659

Business Partner : [REDACTED]
Service Notification : [REDACTED]
Period : 12/31/2018 - 12/31/2020
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: Pittsburgh
Business Partner: [REDACTED]
Audit Number [REDACTED]

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

C/O MICHAEL BOWEN, AKERMAN LLP
CHECKFREE SERVICES CORPORATION
50 N LAURA ST STE 3100
JACKSONVILLE FL 32202-3659

0600 0 20201231 0002005059 0 6200296764 0000 2