

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

OPTUMRX, INC., a foreign corporation,

Plaintiff,

Case No.: 2025 CA 000188

v.

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

Defendant.

_____ /

DEFENDANT'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSE

Defendant, the State of Florida Department of Revenue, (the "Department"), by and through undersigned counsel, answers the Complaint and raises an affirmative defense as follows:

1. Admitted in part with the remainder denied. It is admitted that Plaintiff ("OptumRx") is incorporated in the state of California and has headquarters in Minnesota. As to the remainder, the Department lacks knowledge, denies the remaining allegations, and requests proof thereof.

2. Admitted.

3. Admitted.

4. Admitted that pursuant to § 72.011, Florida Statutes, the Court has jurisdiction of OptumRx's contest of the Department's assessment of corporate income tax and interest, under Chapter 220, Florida Statutes, for tax years 2016-2018, (Audit# 200285934) as stated in the Notice of Proposed Assessment

(“NOPA”) dated October 28, 2021, that was sustained in the Notice of Decision (“NOD”) dated December 13, 2024. Denied as to all other claims.

5. Admitted.

6. It is admitted that on or about February 6, 2025, UnitedHealth Group paid \$19,710.00 of the assessment. The remainder is denied because the Department is without knowledge sufficient to determine whether or not OptumRx has complied with section 72.011(3)(a), Florida statutes.

7. It is admitted that UnitedHealth Group Incorporated executed a guaranty agreement with the Department providing an absolute and continuing guaranty of payment in connection with the filing by OptumRx. Based upon available financial information and after receiving the executed guaranty, the Department issued a letter waving the security requirement of § 72.011(3)(b)1., Florida Statutes. It is acknowledged that the Department’s letter granting approval of this waiver dated February 3, 2025, is attached as Exhibit “A” to the Complaint.

8. It is admitted that the Complaint is timely filed and that the Department issued a letter waving the security requirement under § 72.011(3)(b)1., Florida Statutes, re: the contested assessment complained of. The remainder is denied because the Department is without knowledge and the statements are overbroad.

9. Admitted that OptumRx is contesting the Department’s assessment of corporate income tax and interest under Chapter 220, Florida Statutes, for tax years 2016-2018, (Audit# 200285934) as stated in the Notice of Proposed

Assessment dated October 28, 2021, that was sustained in the NOD dated December 13, 2024.

10. Admitted that the Department audited OptumRx's Florida Corporate Income Tax Returns for tax years 2016, 2017, and 2018.

11. Admitted. It is also acknowledged that the Department's NOPA, dated October 28, 2021, is attached as Exhibit "B" to the Complaint.

12. It is admitted that OptumRx timely informally protested the Department's NOPA. The informal protest letter speaks for itself. The Department denies that OptumRx is entitled to the adjustments claimed in the informal protest letter. The remainder is denied because the statements are overbroad.

13. Admitted that OptumRx timely filed an informal protest to the Assessment that is reflected in the NOPA.

14. Admitted that the Department's NOD was issued and is attached as Exhibit "C" to the Complaint. The NOD speaks for itself.

15. Denied. The Department's answers contained in paragraphs 1 through 14 are incorporated by reference as if fully set forth herein.

16. Admitted. See answer to paragraph 1.

17. Admitted.

18. Admitted that for 2016, 2017 and 2018 OptumRx filed Florida Corporate Income Tax Returns separate from its affiliated company UnitedHealth Group Incorporated. The Department is without knowledge sufficient to admit or deny whether OptumRx filed its tax returns in accordance with section 220.13, Florida Statutes, and requests proof thereof. Section 220.13, Florida Statutes,

speaks for itself. The remainder is denied as the reference to section 220.13, Florida Statutes, is overbroad and confusing as presented.

19. The Department is without knowledge sufficient to admit or deny the claims made in this paragraph, including the subparts, and requests proof thereof. These statements are claims for relief and overbroad.

ISSUE #1

20. Section 220.15, Florida Statutes, speaks for itself, and the Department denies OptumRx's representations fully describe the operation and effect of the statute. The Department is without knowledge sufficient to admit or deny the remainder of this paragraph and requests proof thereof.

21. Section 220.15, Florida Statutes, speaks for itself. The remainder of the paragraph is denied.

22. Section 220.15, Florida Statutes, speaks for itself, and the Department denies OptumRx's representations fully describe the operation and effect of the statutes.

23. Section 220.15, Florida Statutes, speak for itself, and the Department denies OptumRx's representations fully describe the operation and effect of the statutes.

24. Denied. The Department is without knowledge of these allegations, denies the allegations and requests proof thereof.

25. Denied. The Department is without knowledge of these allegations, denies the allegations and requests proof thereof.

26. Denied. The Department is without knowledge of these allegations,

denies the allegations and requests proof thereof. OptumRx's representations are vague, unclear, and overly broad. Moreover, complaint paragraph 26 violates the pleading requirements of Florida Rule of Civil Procedure 1.110(b)(2) that requires pleadings in the complaint to contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."

27. Denied. The Department is without knowledge of these allegations, denies the allegations and requests proof thereof. The Department denies OptumRx's representations fully describe the operation and effect of the statutes.

28. Denied. Rule 12C-1.0155(2), Florida Statutes, speaks for itself. The Department is without knowledge of these allegations, denies the allegations and requests proof thereof. The Department denies OptumRx's representations fully describe the operation and effect of the statutes and rules.

29. Denied. The Department denies that an "income producing activity" is defined by reference to its "costs of performance" and the Department denies OptumRx's representations fully describe the operation and effect of the statutes and rules.

30. Denied. Florida statutes and rules speak for themselves, and the Department denies OptumRx's representations fully describe the operation and effect of the statutes and rules.

31. Denied. The *Target Enterprises, Inc. v. Department*, 2021-CA-002158 (Nov. 28, 2022) and *Billmatrix Corporation v. Department*, 2020-CA-000435 (Mar. 1, 2023) trial court final judgments cited by OptumRx are factually and legally distinguishable from this case.

32. The Department's NOD and audit workpapers explain the basis for the assessment. The remainder of the paragraph is denied. The footnote is denied. Moreover, complaint paragraph 32 and footnote #1 violate the pleading requirements of Florida Rule of Civil Procedure 1.110(b)(2) that requires pleadings in the complaint to contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."

33. Denied. The Department's NOD and audit workpapers explain the basis for the assessment. The Department denies the allegations made in this paragraph.

34. Denied. Florida statutes and rules speak for themselves, and the Department denies OptumRx's representations fully describe the operation and effect of the statutes and rules. The Department denies the allegations made in this paragraph.

ISSUE #2

35. The Department is without knowledge of these allegations, denies the allegations and requests proof thereof.

36. Denied. Florida statutes and rules speak for themselves, and the Department denies OptumRx's representations fully describe the operation and effect of the statutes and rules. The Department denies the allegations made in this paragraph.

37. Denied. Complaint paragraph 37 is a claim for relief and overbroad. The Department denies the allegations that are made in this paragraph.

COUNT ONE (Allegations in Subheading are Denied.)

38. The Department's answers contained in paragraphs 1 through 37 are incorporated by reference as if fully set forth herein.

39. Denied. OptumRx's representations are vague, unclear, and overly broad. Florida statutes and rules speak for themselves.

40. Denied. OptumRx's representations are vague, unclear, and overly broad. Florida statutes and rules speak for themselves.

41. Denied. Florida statutes and rules speak for themselves, and the Department denies OptumRx's representations fully describe the operation and effect of the statutes and rules. OptumRx's representations are vague, unclear, and overly broad.

42. Denied. OptumRx's representations are vague, unclear, and overly broad. Florida statutes and rules speak for themselves.

43. Denied. OptumRx's representations are vague, unclear, and overly broad. Florida statutes and rules speak for themselves. The Department denies the allegations made in this paragraph.

44. Denied. The Department's NOD and audit workpapers explain the basis for the assessment. OptumRx's representations are a misrepresentation of case facts, Florida statutes and rules. See the NOD for detail. The Department is without knowledge sufficient to admit or deny the allegations made in footnote #2 and requests proof thereof.

45. Denied. The Department's NOD and audit workpapers explain the basis for the assessment. OptumRx's representations are a misrepresentation of

case facts, Florida statutes, Florida rules and case law. *See* the NOD for detail.

46. Denied. The Department's NOD and audit workpapers explain the basis for the assessment. OptumRx's representations are a misrepresentation of case facts, Florida statutes, Florida rules and case law. *See* the NOD for detail. Moreover, complaint paragraph 46 violates the pleading requirements of Florida Rule of Civil Procedure 1.110(b)(2) that requires pleadings in the complaint to contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."

47. Denied. The Department denies the allegations made in this paragraph. The Department's NOD and audit workpapers explain the basis for the assessment. OptumRx's representations are a misrepresentation of case facts, Florida statutes, Florida rules and case law. *See* the NOD for detail.

48. Denied. The Department is without knowledge of these allegations and requests proof thereof. Moreover, complaint paragraph 48 violates the pleading requirements of Florida Rule of Civil Procedure 1.110(b)(2) that requires pleadings in the complaint to contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."

49. Denied. The Department denies the allegations made in this paragraph. The Department's NOD and audit workpapers explain the basis for the assessment. OptumRx's representations are a misrepresentation of case facts, Florida statutes, Florida rules and case law. *See* the NOD for detail.

50. Denied. The Department denies the allegations made in this paragraph. The Department's NOD and audit workpapers explain the basis for

the assessment. OptumRx's representations are a misrepresentation of case facts, Florida statutes, Florida rules and case law. *See* the NOD for detail. Complaint paragraph 50 is a claim for relief and overbroad.

COUNT TWO (Allegations in the Subheading are Denied.)

51. The Department's answers contained in paragraphs 1 through 50 are incorporated by reference as if fully set forth herein.

52. Denied. The Department is without knowledge of these allegations and requests proof thereof. Moreover, complaint paragraph 52 violates the pleading requirements of Florida Rule of Civil Procedure 1.110(b)(2) that requires pleadings in the complaint to contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."

53. Denied. Florida statutes speak for themselves, and the Department denies OptumRx's representations fully describe the operation and effect of the statutes.

54. Denied. Florida rules speak for themselves, and the Department denies OptumRx's representations fully describe the operation and effect of the rules.

55. Denied. The Department is without knowledge sufficient to admit or deny the allegations made in this paragraph and requests proof thereof.

56. Denied. The Department denies that the pharmaceutical rebates should be included in the sales factor on OptumRx's 2016 and 2017 Florida income tax return. The Department is without knowledge sufficient to admit or deny the remaining allegations in this paragraph and requests proof thereof. The

Department's NOD and audit workpapers explain the basis for the assessment.

57. Denied. The Department denies the allegations made in this paragraph. The Department's NOD and audit workpapers explain the basis for the assessment.

58. Denied. The Department is without knowledge sufficient to admit or deny these allegations and requests proof thereof. Moreover, complaint paragraph 58 violates the pleading requirements of Florida Rule of Civil Procedure 1.110(b)(2) that requires pleadings in the complaint to contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief."

59. Denied. The Department is without knowledge sufficient to admit or deny these allegations and requests proof thereof.

60. Denied. OptumRx's representations are vague, unclear, and overly broad. Florida statutes and rules speak for themselves. The Department's NOD and audit workpapers explain the basis for the assessment. Complaint paragraph 60 is a claim for relief and overbroad.

61. Denied. The Department's NOD and audit workpapers explain the basis for the assessment. The Department is without knowledge sufficient to admit or deny these allegations and requests proof thereof. Complaint paragraph 61 is a claim for relief and overbroad.

62. The prayer for relief and all allegations not otherwise specifically addressed herein are denied.

AFFIRMATIVE DEFENSE

The Department, by and through the undersigned counsel and pursuant to Florida Rules of Civil Procedure 1.140(b), asserts the following affirmative defense:

First Defense Lack of Jurisdiction Over the Subject Matter

Section 72.011(3)(a), Florida Statutes, requires that in any action filed in the circuit court challenging the legality of any tax, penalty and accrued interest assessed, the protester must pay the Department the full amount of the tax, penalties and accrued interest, which is uncontested . . .” “Failure to pay the uncontested amount as required in paragraph (a) shall result in the dismissal of the action and imposition of an additional penalty in the amount of 25 percent of the tax assessed.” *Id.* These requirements are jurisdictional and the failure to comply with these requirements at the time of filing the complaint is a jurisdictional bar which precludes the trial court from exercising jurisdiction over the matter. § 72.011(5), Fla. Stat.; *Mirabal v Dep’t of Revenue*, 553 So. 2d 1297, 1298 (Fla. 3rd DCA 1989) (emphasizing that the “statutory requirements [of § 72.011(3)(b)1] must be met when the complaint is *filed*”). The jurisdictional requirements of section 72.011(3) apply to *any* action contesting an assessment of tax, penalties, and accrued interest, even an action for declaratory relief. *See Dep’t of Revenue v. Ray Construction*, 667 So.2d 859, 861 (Fla. 1st DCA 1996) (a claim for declaratory relief is still subject to the jurisdictional provisions of 72.011).

Paragraph 6 of the Complaint alleges that “OptumRx has paid to the Department the amount of the tax, penalty and accrued interest . . . which is not being contested.” Absent from the complaint is any evidence that proves OptumRx has complied with the requirements of section 72.011(3)(a). While the Department acknowledges that on or about February 2025 it received a payment in the sum of \$19,710.00 from UnitedHealth Group, which it designated as a partial payment of the Assessment, Plaintiff has failed to prove that it met the jurisdictional requirements of section 72.011(3)(a). More specifically, Plaintiff has not disclosed the part of the assessment which is uncontested, nor has it paid the full sum of accrued interest that was due on the part of the assessment related to special bonus depreciation.

WHEREFORE, the Department respectfully requests that this Court deny all relief requested by OptumRx, dismiss the complaint with prejudice, grant the Department’s affirmative defense, enter judgment in the Department’s favor, and grant any other relief it deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March 2025 a true and correct copy of the foregoing has been furnished via the Florida Courts E-Filing Portal to the parties designated below.

/s/ Shannon R. Kelley
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