

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.

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.¹ 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.

¹ 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 customer² (*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

² 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

AKERMAN LLP

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Attorneys for Plaintiff



Florida Department of Revenue
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Jim Zingale
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floridarevenue.com

February 3, 2025

Ms. Lorie Fale, Esq.
Akerman LLP
98 SE 7th Street, Suite 1100
Miami, Florida 33131

Re: OptumRX, Inc.
FEI#: [REDACTED]
Bond Waiver Request
Audit# 200285934
Tax years ending 12/31/16 – 12/31/18
Tax Type: Corporate Income Tax

Dear Ms. Fale:

I am in receipt of your letter requesting a waiver of the provisions of s. 72.011(3)(b), F.S., on behalf of OptumRX, Inc. Ms. Isabel Nogues, an Assistant General Counsel with the Department, has reviewed the publicly available financial information and the executed guaranty of UnitedHealth Group Incorporated. 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 OptumRX, Inc.

A copy of this letter should 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 A



NOTICE OF PROPOSED ASSESSMENT

10/28/2021

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

FKA PACIFICARE PHARMACY CENTERS INC
OPTUMRX INC
9900 BREN RD E
MINNETONKA MN 55343-9664

Audit Number : 200285934
Business Partner : 392736
Tax : Corporate Income Tax
ID Number : XXXXXXXXXX
Audit Period : 12/31/2016, 12/31/2017, 12/31/2018

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		\$	9,356,480.00
Penalty		\$.00
Penalty - Fraud		\$.00
Penalty - Other		\$.00
Interest Through	10/28/2021	\$	2,908,795.10
Total Deficiency		\$	12,265,275.10
Less: Payment(s)		\$.00
Less: Offset(s)		\$.00
Balance Due		\$	12,265,275.10

Plus additional daily interest at \$1,794.39 per day from 10/29/2021, 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 12/27/2021, 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 12/27/2021.

If you request an **administrative hearing** or **judicial proceeding**, you must file your request no later than 02/25/2022 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

Exhibit B



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

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

FKA PACIFICARE PHARMACY CENTERS INC
OPTUMRX INC
9900 BREN RD E
MINNETONKA MN 55343-9664

Audit Number : 200285934
Business Partner : 392736
Tax : Corporate Income Tax
ID Number : XXXXXXXXXX
Audit Period : 12/31/2016, 12/31/2017, 12/31/2018

I. 12% Interest Rate		II. Market Interest		III. Combined Liability			
Applied Period		Applied Period		Combined Applied Period			
Tax	Interest Through 10/28/2021	Tax	Interest Through 10/28/2021	Tax	Penalties	Interest Through 10/28/2021	Total
\$	\$	\$	\$	\$	\$	\$	\$
0.00	0.00	9,356,480.00	2,908,795.10	9,356,480.00	0.00	2,908,795.10	12,265,275.1
					Less Payments		(0.00)
					Offsets		0.00
					Balance Due		12,265,275.1

- 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 \$1,794.39. 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 \$1,794.39. Please include additional interest accrued from 10/29/2021 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

FKA PACIFICARE PHARMACY CENTERS INC
OPTUMRX INC
9900 BREN RD E
MINNETONKA MN 55343-9664

Business Partner : 392736
Service Notification : 200285934
Period : 12/31/2016 - 12/31/2018
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

Service Center: Chicago
Business Partner: 392736
Audit Number 200285934

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

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

FKA PACIFICARE PHARMACY CENTERS INC
OPTUMRX INC
9900 BREN RD E
MINNETONKA MN 55343-9664

0600 0 20181231 0002005059 7 6200285934 0000 9

Exhibit B



Tax Audit Satisfaction Survey

The Florida Department of Revenue invites you to complete the online *Tax Audit Satisfaction Survey* to help the Department identify ways to improve service to taxpayers. This survey is an opportunity to provide feedback on your recent tax audit experience. Your input is important to us. To access the survey, place the following web address in your browser's access bar:

<https://fdor-audit.questionpro.com>

When you open the survey, you will be asked to enter the three numbers listed below. This information will enable you to complete and submit the survey.

Business Partner Number: 392736
Notification Number: 200285934
Respondent Code: 88

As you complete the survey, you will be asked to provide the following information:

Tax Audited: Corporate Income Tax
Service Center: Chicago Service Center

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

December 13, 2024

COPY

LORIE FALE
AKERMAN LLP
98 SOUTHEAST 7TH STREET, SUITE 1100
MIAMI FL 33131

Re: Notice of Decision
OPTUMRX INC ("Taxpayer")
BPN: 0000392736
Audit #: 200285934
Corporate Income Tax
Period: 12/31/2016 - 12/31/2018

Proposed Assessment Amount:	\$	12,265,275.10
Sustained Amount:	\$	12,265,275.10
Balance Due:	*	\$ 15,035,978.23

* Includes payments and updated interest through December 12, 2024. Interest continues to accrue at \$ 2,307.08 per day until the postmark date of payment. Daily interest is subject to change every January 1 and July 1.

Dear Ms. Fale:

This is the Department's response to the protest letter postmarked February 15, 2022, filed against the referenced assessment. The letter of protest, the case file, and other available information have been carefully reviewed. This reply constitutes the issuance of our Notice of Decision, pursuant to the provisions of Rule 12-6.003, Florida Administrative Code ("F.A.C."). It represents our position based on applicable law to the issues under protest.

ISSUES

Whether Taxpayer should source a portion of its service revenue to Florida.

Whether rebate income should be included in the sales factor.

FACTS

Taxpayer is incorporated in California with headquarters in Minnetonka, Minnesota. The parent company, United Health Group Incorporated files federal consolidated tax returns and Taxpayer files separate Florida tax returns. Taxpayer provides a full spectrum of pharmacy care services through its network of more than 67,000 retail pharmacies, multiple home delivery, specialty and community health pharmacies and through the provision of in-home and pharmacy infusion services. Taxpayer provides pharmacy care services to a number of health plans, including a substantial majority of United Healthcare members, large national employer plans, unions and trusts and government entities.

Tax years ending December 31, 2016, through December 31, 2018, were audited by the Department. Audit adjustments were made for special bonus depreciation and the sales factor. Taxpayer disagreed with the sales factor audit adjustments which increased the numerator to source service income attributed to Florida based on where the customers received the services.

The Notice of Proposed Assessment ("NOPA") was issued on October 28, 2021. Additional tax of \$9,356,480 and interest of \$2,908,795.10 was assessed. Taxpayer filed a timely protest dated February 14, 2022. A teleconference was held with Taxpayer's power of attorney on September 16, 2022.

TAXPAYER ARGUMENT

Taxpayer disagrees with the Department's adjustments to the sales factor numerator, which sourced its receipts from its pharmacy benefit management ("PBM") services by estimating "Florida sales" using the Taxpayer's Florida percentage of sales of tangible personal property. Taxpayer asserts that PBM receipts were properly sourced outside Florida in accordance with Rule 12C-1.0155(2)(I), F.A.C., as the income-producing activity occurs outside the state. Also, Taxpayer requests that the Department review whether Taxpayer should have included its rebate income in its sales factor on its originally filed returns for the years ended December 31, 2016, and December 31, 2017.

LAW

Section 220.15(5), F.S., provides in part:

The sales factor is a fraction the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.

Rule 12C-1.0155, F.A.C., provides in part:

(1) 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.

(2) Florida sales. The numerator of the sales factor includes gross receipts attributed to Florida which were derived by the taxpayer from transactions and activities in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incident to such gross receipts shall be included, regardless of the place where the account records are maintained or the location of the contract or other evidence of indebtedness.

(l) Other Sales in Florida. Gross receipts from other sales shall be attributed to Florida if the income producing activity which gave rise to the receipts is performed wholly within Florida. Also, gross receipts shall be attributed to Florida 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. The term “income producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits. Where independent contractors are used to complete a contract, the term “income producing activity” will include amounts paid to the independent contractors.

DISCUSSION

Sales numerator adjustments

The issue in this case is the proper sourcing of Taxpayer’s pharmacy benefit management (“PBM”) and prescription services sales in the Florida apportionment factor. A PBM is an administrator of prescription drug programs for commercial health plans (and other health plans). The PBM services Taxpayer provides clients typically include:

- establishing and maintaining retail pharmacy networks,
- operating and supporting an electronic claims processing system,
- adjudicating and processing prescription claims,
- operating a mail-order pharmacy facility,
- developing and managing prescription drug formularies,
- negotiating and collecting rebates for retail pharmacy transactions, and
- providing general administrative support.

In exchange for these services, clients pay Taxpayer negotiated fees, such as per-claim or per-member administrative fees, and various incentive payments for realizing administrative and

financial efficiencies. Clients also reimburse Taxpayer for its advances paid to retail pharmacies for covered prescription drug transactions initiated by the insured. In addition, Taxpayer received revenue from third parties, dispensing fees charged to members of retail pharmacy networks, portions of rebates negotiated with pharmaceutical companies, and the insureds' co-payments for prescription drug transactions originating from Taxpayer's mail order pharmacy facilities. Taxpayer's primary activities are performed at Taxpayer's locations in California, Kansas, and Minnesota. Taxpayer has nexus with Florida through Florida property and payroll and sourced tangible personal property from mail order sales shipped to the state.

A state is allowed by the U.S. Constitution to tax the income of a multistate corporation if the state applies a formula that fairly apportions a percentage of the corporation's income attributable to business activities inside and outside the state. Section 220.02(1), Florida Statutes ("F.S."), provides that it is the intent of the Florida Legislature to impose a corporate income tax on every taxpayer in each taxable year for the privilege of conducting business, deriving income, or being incorporated in this state.

Under Section 220.15, F.S., and Rule 12C-1.015, F.A.C., a corporation that conducts business activities occurring both within and without Florida and that, by virtue of that activity, is taxable in another state, must apportion its business income to Florida. Florida has adopted an apportionment fraction with a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction, and a payroll factor representing 25% of the fraction.

Section 220.15(5), F.S., defines the sales factor as a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period. Rule 12C-1.0155, F.A.C., describes how the receipts from several types of sales activities are computed, and then provides information on the computation of the Florida portion of those receipts. The numerator of the sales factor includes gross receipts attributed to Florida that were derived by a taxpayer from transactions and activities in the regular course of its trade or business. Rule 12C-1.0155(2)(l), F.A.C., is applicable, in this case to the sale of pharmacy benefit management services.

Pursuant to Rule 12C-1.0155(2)(l), F.A.C., sales are attributed to Florida if the income producing activity which gave rise to the gross receipt is wholly performed within Florida. "Income producing activity" is defined as "the transaction and activity directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profits" and it "applies to each separate item of income".

The Department takes the position that "item of income" means an individual exchange between a buyer and seller which results in a separate increment of income. The Department's position regarding the meaning of "item of income" is not inconsistent with the test of the rule in its context, or with the statute, or with any other source of law.

The narrow interpretation of “item of income” necessarily limits the definition of “income producing activity.” To identify the income producing activity, we must identify for each “item of income” the “transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit.” The analysis thus generally begins with each item of income—each individual sale—and determines the relevant direct transaction/activity associated with that sale. The result is an “income producing activity.”

In this case based on the best available information, 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, at least in part, of the amount of income received by the Taxpayer. To the extent that a separate income producing activity is identified to a Florida member, that income producing activity occurs exclusively in Florida.

This methodology is consistent with the sourcing of other types of sales under Rule 12C-1.0155, F.A.C. For example, under Rule 12C-1.0155(2)(a), F.A.C., tangible personal property is sourced to Florida if delivered or shipped to a Florida recipient, even if ordered from outside of Florida and despite the fact that the majority of the cost occur outside of Florida. Under Rule 12C-1.0155(2)(i), F.A.C., television and radio broadcasting gross receipts, including advertising revenue, are sourced to Florida based on the percentage of the Florida audience to total audience, regardless of where most of the cost occur or the location of the customer. They both indicate that the sales are to be sourced where goods or services are consumed based on the activity that creates the income.

What matters to the clients is the provision of PBM services to the plan members. Taxpayer’s income was dependent primarily on its status as a PBM and its ability to offer members prescription services. Therefore, the primary service of providing access to Florida members was performed in the state of Florida.

The process whereby Taxpayer earns income begins when a plan member presents a drug prescription to a network pharmacy. The network pharmacy processes the plan members order pursuant to contracts/agreements with Taxpayer to ascertain the plans member’s eligibility for the prescription and the plan member’s co-payment amount, if any. Once eligibility is confirmed for the order, the pharmacist collects the co-payment from the plan member dispenses the medication from the pharmacy’s inventory to the plan member. Two components combine to create the transactions and activity in which Taxpayer directly engages “for the ultimate purpose of obtaining gains or profits.” See Rule 12C-1.0155(2)(l), F.A.C.

Since, based on the best available information, the income producing activity is the filling and delivery of the prescription, the income generated from that activity should be sourced to the state in which the pharmacy and plan member complete the transaction. This would be the location where the income producing activity is wholly performed for each separate item of income. The methodology used by the auditor to determine this amount was based on the best

available information and Taxpayer should include the income it earns when the services are consumed in Florida.

Inclusion of rebate income in the sales factor

Taxpayer received formulary rebates from pharmaceutical manufacturers. Taxpayer asserts that these receipts were erroneously excluded from the sales factor in originally filed returns for the years ended December 31, 2016, and December 31, 2017. For presentational issues, Taxpayer reported these formulary rebates as an offset to its cost of goods sold.

In determining a taxpayer's sales factor, Florida's statute defines the word "sales" as all gross receipts of the taxpayer with certain exceptions.

Under federal income tax regulations, trade discounts reduce the invoice price and vendor allowances decrease the cost of goods sold. For financial reporting purposes, Taxpayer states that the rebate income reduces cost of goods sold.

Federal Treasury Regulation Section 1.471-3(b) provides the rules for trade discounts stating that trade discounts reduce the invoice price and Treasury Regulation Section 1.471-3(e) provides the rules for sales-based vendor allowance stating that these decrease the cost of goods sold (COGS). There are three basic scenarios that reduce cost of goods sold, those that reduce cost of goods sold, those that generate income, and those that are a contra expense. Only the scenario that generates a separate item of income would result in a "gross receipt" for Florida tax purposes.

Rebates are not a sale when calculating a taxpayer's sales factor, instead rebates are a reduction in COGS or a contra expense that offsets Taxpayer's SG&A expenses. Such receipts are not "gross receipts" for purposes of determining the sales factor.

For Taxpayer to include its rebates as a "gross receipt" in the Florida sales factor, the rebate income must be a transaction that produces business income, in which the income or loss is recognized under the Internal Revenue Code.

The facts of this case reflect that Taxpayer's receipt of "rebate income" does not generate taxable income (i.e., these amounts are not "recognized" under income tax law), they only result in an adjustment to Taxpayer's COGS or SG&A expenses. Taxpayer has other business transactions that produce recognized income that end up being reduced somewhat by these adjustments to COGS and SG&A expenses. The adjustment to COGS or SG&A expenses end up being part of the calculation to determine the amount of recognized gross income in these other income producing transactions, but the adjustment to COGS or SG&A expenses is not part of the recognized gross income.

The transactions giving rise to Taxpayer's "rebate income" themselves did not produce recognized income under the Internal Revenue Code and therefore do not meet Florida's

definition of gross receipts. As such for purposes of apportionment we find that rebate income falls outside the definition of gross receipts for purposes of the Florida sales factor.

CONCLUSION

Based on the discussion above the audit assessment is sustained.

Enclosed for your convenience is an audit remittance coupon. Payment, including interest to the postmark date of payment, should be returned in the enclosed envelope, along with the audit remittance coupon. The check should reflect the audit number.

TAXPAYER APPEAL RIGHTS

This Notice of Decision constitutes the final position of the Department unless a Petition for Reconsideration is filed on a timely basis, in which event the Notice of Reconsideration will be the Department's final position. The requirements for a Petition for Reconsideration are set forth below.

Pursuant to Section 72.011(2), F.S., and Rule Chapter 12-6, F.A.C., the assessment is final as of the date of this Notice of Decision unless you file a written Petition for Reconsideration postmarked within thirty (30) days of the date of this Notice of Decision and addressed to Technical Assistance and Dispute Resolution, Post Office Box 7443, Tallahassee, FL 32314-7443. The Petition for Reconsideration must contain new facts or arguments; otherwise, it is subject to dismissal.

Absent a timely-filed Petition for Reconsideration, the assessment reflected in the Notice of Decision is final, and you have three alternatives for further review:

1) Pursuant to Section 72.011, F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in circuit court by filing a complaint with the clerk of the court. THE COMPLAINT MUST BE RECEIVED BY THE CLERK OF THE CIRCUIT COURT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF DECISION. Section 72.011(3), F.S., provides that no circuit court action may be brought unless you pay to the Department the amount of taxes, penalties, and accrued interest assessed by the Department that are uncontested and tender or post a bond for the remaining disputed amounts unless a waiver is granted, as provided in that section. Failure to pay the uncontested amounts will result in the dismissal of the action and imposition of an additional penalty in the amount of twenty-five percent (25%) of the tax assessed. The requirements of Chapter 72, F.S., are jurisdictional;

2) Pursuant to Sections 72.011, 120.569, 120.57, and 120.80(14), F.S., and Rule Chapter 12-6, F.A.C., you may contest the assessment in an administrative forum by filing a petition for a Chapter 120 administrative hearing with the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668. THE PETITION MUST BE RECEIVED BY THE DEPARTMENT WITHIN SIXTY (60) DAYS OF THE DATE OF THIS NOTICE OF DECISION. The

petition should conform to the requirements of the Uniform Rules promulgated pursuant to Section 120.54(5), F.S. Section 120.80(14), F.S., provides that before you file a petition under Chapter 120, F.S., you must pay to the Department the amount of taxes, penalties, and accrued interest that are not being contested. Failure to pay those amounts will result in the dismissal of the petition and imposition of an additional penalty in the amount of twenty-five percent (25%) of the tax assessed. Mediation pursuant to Section 120.573, F.S., is not available. The requirements of Section 72.011(2) and (3)(a), F.S., are jurisdictional for any action contesting an assessment or refund denial under Chapter 120, F.S.; OR

3) Pursuant to Section 120.68, F.S., you may contest the assessment in the appropriate district court of appeal by filing a Notice of Appeal meeting the requirements of Rule 9.110, Florida Rules of Appellate Procedure, with i) the Clerk of the Department of Revenue, Office of General Counsel, Post Office Box 6668, Tallahassee, FL 32314-6668 and ii) with the clerk of the appropriate district court of appeal, accompanied by the applicable filing fee. THE NOTICE OF APPEAL MUST BE FILED WITH BOTH THE DISTRICT COURT OF APPEAL AND THE DEPARTMENT OF REVENUE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS NOTICE OF DECISION.

Should you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

William Roberts

William Roberts
Tax Conferee
Technical Assistance & Dispute Resolution
(850)717-7658

Enclosure: Audit Remittance Coupon

Cc: Mr. Danial Bartholet, VP of State Taxes, OptumRx Inc, 9900 Bren Road E, Minnetonka, MN 55343-9664

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

Persons needing an accommodation to participate in any proceeding before the Technical Assistance and Dispute Resolution Office should contact that office at 850-617-8346, or you may also call via the Florida Relay System at 800-955-8770, at least five working days before such proceeding.



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 200285934

Respondent code: 44

Tax type: Corporate Income Tax

Correspondence type: Informal Protest

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.



DR-839
N. 05/04

Audit Remittance Coupon

December 12, 2024

C/O LORIE FALE
OPTUMRX INC
98 SE 7TH ST STE 1100
MIAMI FL 33131-3525

Business Partner: 392736
Audit Number : 200285934
Audit Period : 12/31/2016, 12/31/2017,
12/31/2018
Tax Type : Corporate Income Tax

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

If additional interest is applicable, please refer to the additional interest instructions on the enclosed correspondence.

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

DR-839
N. 05/04

Detach For Processing

Audit Remittance Coupon

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

Service Center Chicago Service Center
Business Partner 392736
Audit Number 200285934

Check Number
Tax Type Corporate Income Tax
Remittance Total .

C/O LORIE FALE
OPTUMRX INC
98 SE 7TH ST STE 1100
MIAMI FL 33131-3525

0600 0 20181231 0002005059 7 6200285934 0000 9

Exhibit C