

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

COMENITY CAPITAL BANK,

Plaintiff,

Case No. 2025 CA 001938

v.

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

Defendant.

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**COMPLAINT**

Plaintiff, Comenity Capital Bank, by and through its undersigned attorneys, sues Defendant, Florida Department of Revenue, an agency of the State of Florida and alleges:

**The Parties**

1. Plaintiff, Comenity Capital Bank ("Comenity") is a commercial bank chartered under the laws of Utah and headquartered in Draper, Utah. Comenity is authorized to and does business throughout 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, which is legally responsible for administering and collecting sales and use taxes pursuant to the Florida Statutes throughout the State of Florida. The Department is the party defendant in this action pursuant to §72.031(1), Fla. Stat.

**Jurisdiction and Venue**

3. This is an action for refund of sales tax pursuant to §§ 72.011, 212.17, 212.26, Fla. Stat. This Court has subject matter jurisdiction pursuant to § 72.011, Fla. Stat.

4. The Department denied Comenity the relief sought in this Complaint by issuing a Notice of Reconsideration of Refund Denial (the “Notice of Reconsideration”) relating to Comenity’s claim for refund of sales tax. A true and correct copy of the Notice of Reconsideration is attached hereto as **Exhibit A** and incorporated herein by reference.

5. All conditions precedent to the commencement of this action have been performed or have occurred.

6. The Department’s Notice of Reconsideration constitutes final agency action. Comenity has exhausted all administrative remedies and an actual and justifiable case or controversy exists.

7. Venue is proper in this Court pursuant to § 72.011(4).

#### **Nature of the Controversy**

8. This action seeks to resolve a current controversy between Comenity and the Department concerning the Department’s denial of Comenity’s claim for refund of Florida sales tax in the amount of \$850,205.04<sup>1</sup> (the “Refund Claim”).

9. Through this Complaint, Plaintiff seeks a judgment from this Court (a) declaring that the Department erroneously interpreted the provisions of Chapter 212 and acted contrary to Florida law in issuing the Refund Denial, (b) reversing the Department’s Refund Denial in its entirety, and (c) granting Comenity a refund of Florida sales tax in the amount of \$951,815.49 plus interest.

#### **Factual and Legal Allegations**

10. Comenity is a financial services company that offers private label credit cards and card services to consumers through various retailers located nationwide.

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<sup>1</sup> Comenity filed the Refund Claim with an estimated amount but subsequently determined the actual amount of the refund to which it is entitled is \$951,815.49.

11. Comenity's private label credit cards are charge card or credit cards that carry, refer to or are branded with the name or logo of a retailer and can be used for purchases from the retailer whose name or logo appears on the card or for purchases from the retailer or its affiliates or franchisees.

12. In order to make financing available to customers, certain retailers doing business in Florida (the "Retailers") entered into agreements with Comenity to finance the sale of tangible personal property to their customers (the "Customers").

13. The agreements between Comenity and the Retailers provided for Comenity to issue private label credit cards to the Retailers' Customers.

14. Consequently, the Retailers offered their Customers the opportunity to obtain private label credit cards (the "PLCC"), and Comenity issued these cards to the customers of the Retailers.

15. The Retailers made sales of tangible personal property to Customers, which were subject to Florida sales tax.

16. The Customers financed these purchases, including the sales tax charged for each sale, using the PLCC issued by Comenity.

17. At the time of each credit sale, Comenity paid each Retailer an amount equal to the purchase price of the tangible personal property plus applicable sales tax, and the Retailer's Customers agreed to repay these amounts to Comenity.

18. At or about the time of each credit card sale, the Retailers remitted the full amount of sales tax due on the transaction to the Department.

19. However, in connection with some of these PLCC sales, some Customers failed to pay Comenity the full amount due on the Customer's account.

20. Comenity subsequently determined that some accounts were worthless and uncollectible and constituted bad debt pursuant to Section 166 of the Internal Revenue Code. Comenity wrote off such bad debts on its books and claimed such bad debts as a deduction on its federal income tax return.

21. The Retailers assigned all right, title or interest in the accounts, including any sales tax refunds or credits, to Comenity.

22. On or about December 28, 2023, Comenity filed a claim for refund with the Department in the amount of \$850,205.04 for sales tax paid to the Department on accounts that subsequently became bad debts which were written off during the period of January 1, 2022 through December 31, 2022.

23. On February 9, 2024, the Department issued a Notice of Proposed Refund Denial (“NOPA”) denying the Refund Claim in full.

24. On April 8, 2024, Comenity filed a protest of the NOPA with the Department.

25. On May 21, 2025, the Department’s conferee issued a Notice of Decision of Refund Denial (“NDOR”) sustaining the NOPA in full based on the ineligibility for the refund of sales tax related to bad debts written off by Comenity. A copy of the NDOR is attached hereto as **Exhibit B** and incorporated herein by reference.

26. On or about June 18, 2025, Comenity filed a Petition for Reconsideration of the NDOR.

27. The Notice of Reconsideration was issued on August 8, 2025 and constitutes final agency action.

**COUNT I**  
**(Refund of Sales Tax Paid on Bad Debts)**

28. Comenity realleges and reasserts the allegations of paragraphs 1 through 27, inclusive, as though fully set forth herein.

29. The Department erred in denying Comenity's claim for refund of sales tax.

30. Fla. Stat. § 212.17(4) provides as follows:

(4) With respect to the payment of taxes on purchases made through a private-label credit card program:

(a) If consumer accounts or receivables are found to be worthless or uncollectible, the dealer may claim a credit for, or obtain a refund of, the tax remitted by the dealer on the unpaid balance due if:

1. The accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2014;

2. A credit was not previously claimed and a refund was not previously allowed on any portion of the accounts or receivables; and

3. The credit or refund is claimed within 12 months after the month in which the bad debt has been charged off by the lender for federal income tax purposes.

31. Pursuant to Fla. Stat. § 212.17(4)(h)(2), the term "lender" means:

A person who owns or has owned a private-label credit card account or an interest in a private-label credit card receivable that:

a. The person purchased directly from a dealer who remitted the tax imposed under this chapter or from the dealer's affiliates, or that was transferred from a third party;

b. The person originated pursuant to that person's contract with a dealer who remitted the tax imposed under this chapter or with the dealer's affiliates; or

c. Is affiliated in the manner described under 26 U.S.C. s. 1504, regardless of whether the different entities are corporations, with a person described in sub-subparagraph a. or sub-subparagraph b. or with an assignee or other transferee of such person.

32. Pursuant to Fla. Stat. § 212.17(4)(h)(3), the term “private-label credit card” means “a charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from the dealer’s affiliates or franchisees.”

33. The purchases at issue were private label credit card purchases, the Retailers that made the sales were “dealers” under § 212.06, Fla. Stat. and Comenity is a “lender” under § 212.17(4)(h)(2), Fla. Stat.

34. For example, one of Comenity’s agreements with a Retailer provides that Comenity shall own all of the “Accounts” and defines “Accounts as “an individual open-ended revolving line of credit which is (i) established by Bank for a Customer pursuant to the terms of a Credit Card Agreement, and (ii) marketed with a Company Mark.”

35. The example agreement with the Retailer also specifically provides as follows:

Effective upon the delivery of each charge slip by Company to Bank and payment to Company by Bank pursuant to Section 3.3(a), Company shall be deemed to have transferred, conveyed, assigned and surrendered to Bank all right, title or interest in all such charge slips and in all other rights and writings evidencing such Purchases, if any.

“Purchase” shall mean a purchase of Goods and/or Services, including without limitation all applicable taxes and shipping costs, with a specific extension of credit by Bank to a Cardholder using an Account as provided for under this Agreement

“Transaction Record” shall mean the following, with respect to each Purchase or with respect to a credit or return related to a Purchase (as applicable), and each payment received by Company from a Cardholder on Bank's behalf: (a) the charge slip or credit slip corresponding to the Purchase, credit or return; or (b) a computer readable tape/cartridge or electronic transmission containing the following information: the Account number of the Cardholder, identification of the Company's Sales Channel (location) where the Purchase credit or return was made (if applicable), the total of (i) the Purchase price of Goods or Services purchased or amount of the credit, as applicable, plus (ii) the date of the transaction, a

description of the Goods or Services purchased, credited or returned and the authorization code, if any, obtained by Company prior to completing the transaction; or (c) electronic record whereby Company or one of its Sales Channels electronically transmits the information described in subsection (b) hereof to a network provider (selected by Company at its expense), which in turn transmits such information to Bank by a computer tape/cartridge or electronic tape or transmission.

36. The Retailers broadly assigned all rights, title and interest in its retail sales transactions to Comenity, including “all applicable taxes,” and as such, have designated Comenity as the party entitled to seek any sales tax refunds related to bad debts.

37. Section 215.26, Florida Statutes (emphasis added) states in relevant part that.

(1) The Chief Financial Officer may refund to the person who paid same, or his or her heirs, personal representatives, **or assigns**, any moneys paid into the State Treasury which constitute:

- (a) An overpayment of any tax, license, or account due;
- (b) A payment where no tax, license, or account is due; and
- (c) Any payment made into the State Treasury in error;

\* \* \*

(4) This section is the exclusive procedure and remedy for refund claims between individual funds and accounts in the State Treasury.

38. The plain language of § 215.26, Fla. Stat. allows assignees to obtain refunds of sales taxes. Subsection (4) of the statute states that all tax refunds are governed by the procedures of § 215.26, and provides that all tax refunds are assignable.

39. Comenity is also separately entitled to a sales tax refund for the accounts that it charged off for federal income tax purposes under § 212.17(4), Fla. Stat. by assignment from the Retailers because this statute creates a specific refund right for retailers/dealers and Comenity may assert that refund right as assignee of the Retailers.

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

- a. reversing the Department's denial and granting the Refund Claim in its entirety, plus interest;
- b. awarding Comenity Capital Bank a refund of tax in the amount of \$951,815.49 for sales tax paid on bad debts, plus interest; and
- c. awarding Comenity Capital Bank such other and further relief as this Court deems just and proper.

DATED this 6th day of October, 2025.

AKERMAN LLP

By: /s/ Raye C. Elliott

Raye C. Elliott  
Florida Bar No. 018732  
Email: raye.elliott@akerman.com  
401 E. Jackson Street, Suite 1700  
Tampa, Florida 33602-5250  
Telephone: (813) 223-7333  
Facsimile: (813) 223-2837

and

Peter O. Larsen  
Florida Bar No. 0849146  
Email: peter.larsen@akerman.com  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202  
Telephone: (904) 798-3700  
Facsimile: (904) 798-3730

Attorneys for Comenity Capital Bank



**Florida Department of Revenue**  
*Informal Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

floridarevenue.com

August 8<sup>th</sup>, 2025

PETER LARSEN, AKERMAN LLP  
50 N. LAURA ST., SUITE 3100  
JACKSONVILLE, FLORIDA 32202

PETER.LARSEN@AKERMAN.COM  
MARIA.CARANTZAS@AKERMAN.COM

**Re: Notice of Reconsideration of Refund Denial**

Taxpayer: Comenity Capital Bank FKA World Financial Capital Bank ("Taxpayer")

Tax Type: Sales and Use Tax  
BPN: 2216696  
RCN: 5000314230  
Period: 01/01/2022 - 12/31/2022

Proposed Refund Denial:	\$ 850,205.04
Refund Allowed:	\$ 0.00

Dear Mr. Larsen:

This is the Department's response to the petition for reconsideration dated June 16, 2025, filed against the referenced refund denial. The petition for reconsideration, the case file, and other available information have been carefully reviewed. This reply constitutes the issuance of our Notice of Reconsideration of Refund Denial, pursuant to the provisions of Rule Chapter 12-6, Florida Administrative Code (F.A.C.). It represents our position based on applicable law to the issues under protest.

**ISSUE**

Whether Taxpayer is entitled to a refund of sales tax related to bad debts written off during the period beginning January 1, 2022, and ending December 31, 2022.

**Exhibit A**

## **FACTS**

Taxpayer, who is not a registered or active dealer with the Florida Department of Revenue (the “Department”), is a financial service company that offers “private label” and “co-branded” credit cards to consumers through various retailers located nationwide. In connection with these private label credit card sales, some customers failed to pay Taxpayer the full amount due on the customer’s account. Taxpayer subsequently determined that some accounts were uncollectible and constituted bad debts pursuant to Section 166 of the Internal Revenue Code. Consequently, Taxpayer wrote off such bad debts on its books and claimed such bad debts as a deduction on its 2022 U.S. Corporate Income Tax Return.

On or about December 28, 2023, Taxpayer applied for a refund in the amount of \$850,205.04, for tax paid related to bad debts written off during the period of January 01, 2022, and ending December 31, 2022. Taxpayer failed to provide any documentation to support the refund.

On January 10, 2024, the Department issued a Notice of Intent to Make Refund Claim Changes (“DR-1200R”) indicating that only the dealer who paid the tax on the sales of tangible personal property or services is eligible for a refund under Section 212.17(3), Florida Statutes (“F.S.”) not assignees as in 215.26, F.S. The DR-1200R also specified a list of documentation to provide for further consideration. No information and/or documentation was provided. On February 09, 2024, the Department issued the Notice of Proposed Refund Denial (“DR-832R”).

Taxpayer disagreed with the refund denial and filed a written protest (“Protest”) on April 08, 2024. Conferee was assigned and contacted the Power of Attorney (“POA”) on March 04, 2025, and requested documentation to support the protested refund denial. The POA provided the following information on March 14, 2025:

- Protest Letter- Addendum
- 2022 Federal Income Tax Returns
- 2022 Bad Debt Account Calculation File

The Notice of Decision of Refund Denial (“NODR”) was issued on May 21, 2025, sustaining the refund denial in full based on the ineligibility for the refund of sales tax related to bad debts written off by Taxpayer. Taxpayer disagreed with the NODR and filed a timely Petition for Reconsideration (“PFR”) of the NODR. Conferee was assigned and contacted the POA on July 09, 2025, and requested additional facts or arguments per Rule 12-6.032(4)(a)2., F.A.C., to be provided prior to July 24, 2025.

On July 23, 2025, the POA provided additional facts and arguments, and a spreadsheet summary of the contracts between Taxpayer and Retailers. A teleconference was not held.

### **TAXPAYER ARGUMENT**

Taxpayer disagrees with the NODR argues the following additional arguments:

- The NODR did not fully address the primary legal bases for the claim per Section 212.17(4).
- The NODR erroneously concluded that Taxpayer is not entitled to the refund because it is not the dealer that paid the tax, and that Section 215.26(1) F.S., does not apply. Subsection (4) of the Statute states that all tax refunds are governed by the procedures of Section 215.26 F.S.
- Section 212.17(4) provides a specific refund right to the dealer that made the sale, and that right is vested once the account balance is worthless and charged off, and therefore is freely assignable to the Taxpayers.
- Nowhere in Section 212.17(4) does the statute require that the Taxpayers were required to retain a security interest in the goods sold.
- The Department may accept refund claims not filed by the dealer if such claims are accompanied by an assignment of the dealer's right as shown in TAA No. 99A-013.
- The Department concluded in the NOD that Taxpayer has not provided sufficient information and/or documentation to demonstrate that it is entitled to a refund a sales tax related to bad debts written off during the Audit Period.

### **LAW & DISCUSSION**

Generally, Florida law imposes a state sale or use tax, at the rate of six percent (6%),<sup>1</sup> on the privilege of engaging in the retail sale of any tangible personal property in this state... or furnishes any of the things or services taxable under this chapter. See Sections 212.05(1) and 212.06(1)(a), F.S. Pursuant to Section 212.02(15)(a), F.S., the term "sale" includes any transfer of title of tangible personal property for consideration. Section 212.05(2), F.S., states that the tax shall be collected by the dealer and remitted to the State of Florida.

The POA argues that the NOD erroneously concluded that Taxpayer is not entitled to the refund because it is not the dealer that paid the tax, and that Section 215.26(1) F.S., does not apply. Taxpayer asserts that subsection (4) of the Statute states that all tax refunds are governed by the procedures of Section 215.26 F.S. However, Section 215.26(1), F.S., specifies that this

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<sup>1</sup> Discretionary county sales surtax may also be owed if the six percent (6%) Florida state sales tax applies. See Section 212.054, F.S. The surtax applies only to the first \$5,000 of the sales amount on any item of tangible personal property. See Section 212.054(2)(b), F.S.

section provides for the procedure and remedy for refund claims on monies paid into the State Treasury that meet one of the following:

- a) An overpayment of any tax, license, or account due;
- b) A payment where no tax, license, or account is due; and
- c) Any payment made into the State Treasury in error;

The refund requested for the monies paid do not meet Section 215.26 F.S., (a), (b), or (c). Therefore, the assignment of rights does not apply to Taxpayer per Section 215.26 F.S. Taxpayer's refund request would fall under Section 212.17(4) F.S. which provides the guidelines specifically for the refund on the payment of taxes on purchases made through a private-label credit card program. This argument was previously addressed with the issuance of the NODR.

Taxpayer asserts that the Department may accept refund claims not filed by the dealer if such claims are accompanied by an assignment of the dealer's right as shown in TAA No. 99A-013. Again, in TAA No. 99A-013, the carrier overpaid the taxes to the vendor. Therefore, the refund falls under Section 215.26 F.S., not Section 212.17(4) F.S. Taxpayer did not overpay sales tax at the time of the original sale. This issue was previously addressed with the issuance of the NODR.

Taxpayer argues that Section 212.17(4) F.S., provides a specific refund right to the dealer that made the sale, and that right is vested once the account balance is worthless and charged off, and therefore is freely assignable to the Taxpayers. Taxpayer argues that nowhere in Section 212.17(4) does the statute state that the Taxpayers were required to retain a security interest in the goods sold. Section 212.17(2) F.S., specifies that a dealer who has paid the tax imposed by this chapter on tangible personal property sold under a retained title, conditional sale, or similar contract, or under a contract in which the dealer retains a security interest in the property pursuant to chapter 679, may take credit or obtain a refund for the tax paid by the dealer on the unpaid balance. In this case, the dealer/Retailer did not retain nor possess a security interest in the accounts at the time of the sale or assignment. Therefore, the dealer/Retailer could not *assign* a right to receive a sales tax refund. Again, this argument was address with the issuance of the NODR.

### **CONCLUSION**

As discussed above, the refund denial remains sustained based on the ineligibility for refund of sales tax related to bad debts written off by Taxpayer.

### **TAXPAYER APPEAL RIGHTS**

You are notified that this Notice of Reconsideration of Refund Denial constitutes the final position of this Department, prior to court action or administrative proceeding, regarding the refund denial you have protested. Pursuant to Sections 72.011(2) and 120.80(14), F.S., and Rule Chapter 12-26, F.A.C., as of the date of this Notice of Reconsideration of Refund Denial, the refund denial is final for purposes of court action or administrative proceeding. Pursuant to Sections 72.011(2) and 120.80(14), F.S., and Rule Chapter 12-26, F.A.C., no court action or administrative proceeding may be brought to contest the refund denial after sixty (60) days from the date of this Notice of Reconsideration of Refund Denial.

The refund denial reflected in the Notice of Reconsideration of Refund Denial 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 refund denial 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 RECONSIDERATION. 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., you may contest the refund denial 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 RECONSIDERATION OF REFUND DENIAL. The petition should conform to the requirements of the Uniform Rules promulgated pursuant to Section 120.54(5), F.S. 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 refund denial 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 RECONSIDERATION OF REFUND DENIAL.

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

Sincerely,

*Carrie Zabaldo*

Carrie Zabaldo  
Tax Conferee  
Informal Dispute Resolution  
(850)717-7757  
Carrie.Zabaldo@FloridaRevenue.com

CC: COMENITY BANK ONE RIGHTER PARKWAY, SUITE 100 WILMINGTON, DE 19803

CC: ALBERT BABBITT 39 PANORAMA CREST AVE LAS VEGAS, NV 89135 ABABBITT@STSLLC.NET  
JBILZ@STSLLC.NET

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT**

Persons needing an accommodation to participate in any proceeding before the Informal 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.

CC:

Ref# 7001496567

### Informal Dispute Resolution Satisfaction Survey

The Florida Department of Revenue invites you to complete the online Informal Dispute Resolution 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 Informal Dispute Resolution. 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: 7001496567

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Informal Protest

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.



**Florida Department of Revenue**  
*Informal Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

floridarevenue.com

May 21<sup>st</sup>, 2025

PETER LARSEN, AKERMAN LLP  
50 N. LAURA ST., SUITE 3100  
JACKSONVILLE, FLORIDA 32202  
PETER.LARSEN@AKERMAN.COM  
MARIA.CARANTZAS@AKERMAN.COM

**Re: Notice of Decision of Refund Denial**

COMENITY CAPITAL BANK FKA WORLD FINANCIAL CAPITAL BANK ("Taxpayer")  
Sales and Use Tax  
BPN: 2216696  
RCN: 5000314230

Period: 01/01/2022 - 12/31/2022

Proposed Refund Denial:	\$ 850,205.04
Refund Allowed:	\$ 0.00

Dear Mr. Larsen:

This is the Department's response to the protest letter dated April 08, 2024, filed against the referenced refund denial. 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 of Refund Denial, pursuant to the provisions of Rule Chapter 12-6, Florida Administrative Code ("F.A.C."). It represents our position based on applicable law to the issues under protest.

**ISSUE**

Whether Taxpayer has provided sufficient information and/or documentation to demonstrate it is entitled to a refund of sales tax related to bad debts written off during the period beginning January 1, 2022, and ending December 31, 2022.

**Exhibit B**

## **FACTS**

Taxpayer, who is not a registered or active dealer with the Department, is a financial service company that offers “private label” and “co-branded” credit cards to consumers through various retailers located nationwide. In connection with these private label credit card sales, some customers failed to pay Taxpayer the full amount due on the customer’s account. Taxpayer subsequently determined that some accounts were uncollectible and constituted bad debts pursuant to Section 166 of the Internal Revenue Code. Consequently, Taxpayer wrote off such bad debts on its books and claimed such bad debts as a deduction on its 2022 U.S. Corporate Income Tax Return.

On or about December 28, 2023, Taxpayer applied for a refund in the amount of \$850,205.04, for tax paid related to bad debts written off during the period of January 01, 2022, and ending December 31, 2022. Taxpayer failed to provide any documentation to support the refund.

On January 10, 2024, the Department issued a Notice of Intent to Make Refund Claim Changes (“DR-1200R”) indicating that only the dealer who paid the tax on the sales of tangible personal property or services is eligible for a refund under Section 212.17(3), F.S. not assignees as in 215.26, F.S. The DR-1200R also specified a list of documentation to provide for further consideration. No information and/or documentation was provided. On February 09, 2024, the Department issued the Notice of Proposed Refund Denial (“DR-832R”).

Taxpayer disagreed with the refund denial and filed a written protest (“Protest”) on April 08, 2024. Conferee was assigned and contacted the Power of Attorney (“POA”) on March 04, 2025, and requested documentation to support the protested refund denial. The POA provided the following information on March 14, 2025:

Protest Letter- Addendum  
2022 Federal Income Tax Returns  
2022 Bad Debt Account Calculation File

## **TAXPAYER ARGUMENT**

Taxpayer disagrees with the refund denial and argues the following:

Taxpayer asserts that they are entitled to a refund of sales tax erroneously paid on consumer accounts related to bad debt pursuant to Section 212.17, Florida Statutes. (“F.S.”)

1. Taxpayer issued private label credit cards to the Retailers’ customers, which are credit cards branded with the name or logo of a retailer and that can only be used for purchases from that particular retailer.

2. Taxpayer is considered a “lender” pursuant to Section 212.17(4)(h)(2), F.S., which provides that a “lender” includes “a person who owns or has owned a private-label credit card account or an interest in a private-label credit card receivable that the person originated pursuant to that person’s contract with a dealer who remitted the tax imposed under this chapter or with the dealer’s affiliates.
3. The Private Label Credit Card Program Agreements between Taxpayer and the Retailers indicates that the Retailer has broadly assigned all rights, title and interest in its retail sales transactions to Taxpayer, including “all applicable taxes,” and as such, has effectively designated Taxpayer as the party entitled to seek any sales tax refunds related to bad debt. Taxpayer has provided a Private Label Credit Card Program Agreement example, with Overstock.com

Taxpayer asserts that they are entitled to a refund as they have met the following conditions required pursuant to Section 212.17(4)(a), F.S.:

1. The accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2014. Taxpayer attests that the uncollectible accounts have been determined to be worthless and written off as bad debt on its books and records for the period January 1, 2022, through December 31, 2022.
2. A credit was not previously claimed, and a refund was not previously allowed on any portion of the accounts or receivables.
3. The credit or refund is claimed within 12 months after the month in which the bad debt has been charged off by the lender for federal income tax purposes. Taxpayer seeks a refund for the period January 1, 2022, through December 31, 2022, which is the 12-month period after the bad debt was charged off by Taxpayer for federal income tax purposes.

Taxpayer states that as required by Section 212.17(4)(g), F.S., the amount of refund that is claimed by Taxpayer is limited to 64.4% of the tax paid to the Department which is attributable to bad debt. Therefore, Taxpayer seeks a refund of sales tax in the amount of \$850,205.04, which represents 64.4% of the tax erroneously paid to the State of Florida attributable to bad debt during the period January 1, 2022, through December 31, 2022.

Taxpayer further argues that Section 212.17 F.S., does not address the assignment of the right to a bad debt refund, much less limit or prohibit the assignment of such right. However, the Department has clear statutory authority to issue a sales tax refund pursuant to an assignment of the right to the refund.

Section 215.26(1), F.S., provides that “the Chief Financial Officer may refund to the person who paid same, or his or her heirs, personal representatives, or assigns, any moneys paid into the State Treasury” which constitute (1) an overpayment of any tax, license, or account due; (2) a payment where no tax, license, or account is due; and (3) any payment made into the State Treasury in error.

Taxpayer references Technical Assistance Advisement (“TAA”) No. 99A-013 (3/24/1999): which states that in some cases, dealers are unwilling to make refunds because they do not want to accept the risk of the Department auditing their credits or refund application and determining that the purchaser was not entitled to a refund. In such cases, the Department will accept a refund claim from the purchaser on Form DR-26, Application for Refund, if accompanied by an assignment of the dealer's right to the refund and other documentation necessary to substantiate the right to and amount of the refund. The Department is authorized to make refunds to such assignees by Section 215.26 F.S.

Taxpayer also asserts that the Florida Court of Appeals has stated that Florida law recognizes the general right to assign common law and statutory rights, unless there is an express prohibition in a statute, or a showing that an assignment would clearly offend an identifiable public policy. Furthermore, where a statute is silent on the issue of assignment, it is settled that courts fill in the inevitable statutory gaps by relying on the common law. Taxpayer asserts that a dealer may properly assign its right to a bad debt refund pursuant to Section 212.17 F.S., to a third party.

### **LAW & DISCUSSION**

Generally, Florida law imposes a state sale or use tax, at the rate of six percent (6%),<sup>1</sup> on the privilege of engaging in the retail sale of any tangible personal property in this state... or furnishes any of the things or services taxable under this chapter. See Sections 212.05(1) and 212.06(1)(a), F.S.

Pursuant to Section 212.02(15)(a), F.S., the term “sale” includes any transfer of title of tangible personal property for consideration. Section 212.05(2), F.S., states that the tax shall be collected by the dealer and remitted to the State of Florida.

Section 212.17(3), F.S., relating to bad debts, states that “a dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts within twelve months following the month in which the bad debt has been charged off for federal income tax purposes.

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<sup>1</sup> Discretionary county sales surtax may also be owed if the six percent (6%) Florida state sales tax applies. See Section 212.054, F.S. The surtax applies only to the first \$5,000 of the sales amount on any item of tangible personal property. See Section 212.054(2)(b), F.S.

If any accounts so charged off for which a credit or refund has been obtained are thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.”

Furthermore, Section 212.17(4)(f), F.S., provides that “[t]he credit or refund for tax on bad debt may be claimed on any return filed by an entity related by a direct or indirect common ownership of 50 percent or more.”

Taxpayer asserts that they are entitled to a refund as they have met the following conditions required pursuant to Section 212.17(4)(a), F.S. However, Section 212.17(4)(a), F.S., states clearly and unambiguously that the dealer may take a credit or tax refund on the tax remitted by the dealer on the unpaid balance due. In this case, the Retailer is registered as a dealer and remits the sales tax to the Department. Taxpayer is not a dealer and is not related to the Retailer (dealer) by a direct or indirect common ownership of 50 percent or more per Section 212.17(4)(f), F.S. In the instant case, Taxpayer has not met the requirements set forth in Section 212.17 F.S.

Taxpayer further argues that Section 212.17 F.S., does not address the assignment of the right to a bad debt refund and asserts that the Department has clear statutory authority to issue a sales tax refund pursuant to an assignment of the right to the refund per Section 215.26(1), F.S.

Section 215.26(1), F.S., specifies that tax paid into the State Treasury that is determined to be an *overpayment*, a *payment where no tax is due*, or a *payment made in error* is eligible for refund, provided the customer paid the tax directly to the Department or the customer has secured an assignment from the selling dealer to whom the tax was paid. An assignment of rights protects the Department against potential refunding tax revenues to both parties of a transaction where tax was paid and eligible for a refund.

Taxpayer requests a refund of sales tax in the amount of \$850,205.04, which Taxpayer argues was erroneously paid to the State of Florida. The term “erroneously” is defined as a being wrong or inaccurate. Normally refunds and credits apply when no tax was due, or when there was an overpayment, or tax was paid in error. Taxpayer also referenced TAA No. 99A-013 (3/24/1999) and stated that the Department is authorized to make refunds to such assignees by Section 215.26 F.S. However, in TAA No. 99A-013, the Carrier *overpaid taxes* on purchases made from a Florida vendor. Therefore, was eligible for refund per Section 215.26 F.S. if all other conditions were met. Since the sales tax is a tax on the privilege of doing business, the taxes at issue here were fully due and payable at the moment of the sale on the full amount of the sales price per Sections 212.05 and 212.06(1)(a), F.S. Therefore, the sales tax was not erroneously paid to the State of Florida and Taxpayer does not meet the specifications of Section 215.26(1), F.S.

Taxpayer also asserts that the Florida Court of Appeals has stated that Florida law recognizes the general right to assign common law and statutory rights and argues that Statutory rights may be assigned unless there is an express prohibition in a Statute, or a showing that an assignment would clearly offend an identifiable public policy. Where the Statute is silent with respect to the question of the assignee's rights, the courts must look to the common law to fill the statutory gap.

In *Department of Revenue v. Bank of America, N.A.*, 752 So.2d 637, 25 Fla. L. Weekly D118 (Fla. App. 1 Dist. 2000), the District Court of Appeal held that the dealer's assignment to the bank of rights in an installment contract did not include assignment of right to sales tax refund if buyer subsequently defaulted on installment contract. The District Court of Appeal found that the dealer cannot assign a right to receive a sales tax refund which the dealer does not possess at the time of the assignment. Only dealers who retain a security interest in the installment contracts are entitled to a refund of the uncollected portion of sales tax paid at the time of the sale.

Taxpayer argues that the Private Label Credit Card Program Agreement indicates that the Retailer (Overstock.com) has broadly assigned all rights, title and interest in its retail sales transactions to Taxpayer, including "all applicable taxes," and as such, has effectively designated Taxpayer as being entitled to seek any sales tax refunds related to bad debt. In this case, the Retailer did not retain nor possess a security interest in the accounts at the time of the sale or assignment. Therefore, the Retailer/dealer cannot assign a right to receive a sales tax refund.

### **CONCLUSION**

As discussed above, the refund denial is sustained based on the ineligibility for refund of sales tax related to bad debts written off by Taxpayer.

### **TAXPAYER APPEAL RIGHTS**

This Notice of Decision of Refund Denial constitutes the final position of the Department unless a Petition for Reconsideration of Refund Denial is filed on a timely basis, in which event the Notice of Reconsideration of Refund Denial will be the Department's final position. The requirements for a Petition for Reconsideration of Refund Denial 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 of Refund Denial unless you file a written Petition for Reconsideration of Refund Denial postmarked within thirty (30) days of the date of this Notice of Decision of Refund Denial and addressed to Informal Dispute Resolution, Post Office Box 7443, Tallahassee, FL 32314-7443. The Petition for Reconsideration of Refund Denial must contain new facts or arguments; otherwise, it is subject to dismissal.

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

1) Pursuant to Section 72.011, F.S., you may contest the refund denial 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 OF REFUND DENIAL. 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., you may contest the refund denial 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 OF REFUND DENIAL. 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 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 refund denial 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 OF REFUND DENIAL.

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

Sincerely,



Carrie Zabaldo

Tax Conferee

Informal Dispute Resolution

(850)717-7757

Carrie.Zabaldo@FloridaRevenue.com

CC: COMENITY BANK ONE RIGHTER PARKWAY, SUITE 100 WILMINGTON, DE 19803

CC: ALBERT BABBITT 39 PANORAMA CREST AVE LAS VEGAS, NV 89135 ABABBITT@STSLLC.NET  
JBILZ@STSLLC.NET

**NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT**

Persons needing an accommodation to participate in any proceeding before the Informal 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.

Ref# 7001351241

### Informal Dispute Resolution Satisfaction Survey

The Florida Department of Revenue invites you to complete the online Informal Dispute Resolution 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 Informal Dispute Resolution. 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: 7001351241

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Informal Protest

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.