

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

**VERIZON COMMUNICATIONS, INC. &
AFFILIATES, foreign corporations,**

Plaintiff,

Case No: 2025 CA 001008

vs.

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

Defendant.

_____ /

COMPLAINT

Plaintiff, Verizon Communications, Inc. & Affiliates¹ ("Verizon" or "Plaintiff"), by and through its undersigned counsel, sues the State of Florida, Department of Revenue ("Department" or "Defendant"), to contest the determination made in the Notice of Decision dated April 4, 2025, which is related to Audit 200301261 for the corporate income tax years 2018 through 2020 (the "NOD"). A true and correct copy of the NOD is attached hereto as **Exhibit A**. Through the NOD, the Department (1) confirmed Verizon's claim for a corporate income tax refund for the 2019 tax year (the "2019 Tax Period"), but failed to include accrued statutory interest and (2) failed to

¹ Note that the Florida corporate income tax returns at issue in this matter are filed using the name Verizon Communications, Inc. & Affiliated Companies. This name represents the same affiliated group of taxpayers as the name used by the Department of Revenue on its Notice of Proposed Assessment and other audit related documents.

refund interest that Verizon paid with its 2018 and 2020 amended returns filed on or about September 22, 2022.

THE PARTIES

1. Plaintiff, Verizon, is a Delaware corporation authorized to do business in Florida.

2. The Defendant, Department, is an agency of the State of Florida.

JURISDICTION AND VENUE

3. This is an action to contest the Department's denial of statutory interest on Verizon's corporate income tax refund for the 2019 Tax Period, and the Department's failure to refund to Verizon interest paid in with its 2018 and 2020 amended returns.

4. This Court has jurisdiction over this matter pursuant to section 72.011, Florida Statutes.

5. There exists no uncontested tax, interest, or penalties requiring Verizon to comply with the prepayment requirements outlined in section 72.011(3)(a), Florida Statutes.

6. 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

ISSUE #1: REFUND INTEREST FOR THE 2019 TAX PERIOD

7. The first issue in this action is the Department's failure to include accrued interest in the NOD relating to Verizon's approved refund claim for corporate income taxes for the 2019 Tax Period.

8. The legal authority supporting Verizon's claim for relief is easy to understand. Section 213.255, Florida Statutes, provides that where certain conditions are met "[i]nterest *shall* be paid" by the Department on refund claims (emphasis added). The conditions were met with respect to the refund claim filed by Verizon for the 2019 Tax Period and, as such, the Department is statutorily obligated to make payment of accrued interest to Verizon.

9. On September 22, 2022, Verizon filed an amended 2019 Florida corporate income tax return on Form F-1120X to increase the amount of its Florida net operating loss deduction (the "Refund Claim"). Through the Refund Claim, Verizon sought a refund of overpaid tax for the 2019 Tax Period in the amount of \$9,405,837.00.

10. The Refund Claim was filed in conjunction with the ongoing litigation that resulted in the holding in *Florida Department of Revenue v. Verizon Communications Inc. & Affiliates*, 380 So. 3d 541 (Fla. 1st DCA 2024), in which the court determined that section 220.13, Florida Statutes, requires a taxpayer to deduct its acquired Florida NOLs utilizing the same IRC 382 limitation that applies for federal income tax purposes.

11. Within thirty days after filing the Refund Claim, Verizon was not notified by the Department of any apparent errors or omissions in the Refund Claim, nor did the Department request any additional information from Verizon and thus, the Refund Claim was "complete" as that term is defined under Florida law.

12. The Department considered the Refund Claim in conjunction with its ongoing corporate income tax audit of Verizon for the tax years 2018-2020 (Audit 200301261, the "Audit"). As a result, the Department incorporated its review of the Refund Claim into the NOD that was issued at the close of the Audit.

13. On April 4, 2025, the Department issued the NOD in which it acknowledged that the Refund Claim was correct in its application of the IRC 382 limitations to its acquired Florida NOLs, and it approved \$8,350,570.00 of the Refund Claim.

14. The Department did not pay the Refund Claim within 90 days of its complete filing.

15. As of the date of filing this action, Verizon has yet to receive payment of any amount relating to the Refund Claim.

16. By this action, Verizon challenges the Department's failure to include statutory interest in the NOD with respect to the Refund Claim.

ISSUE #2: INTEREST PAID WITH 2018 AND 2020 AMENDED RETURNS

17. The second issue addresses the Department's failure to refund interest that Verizon paid with amended returns it filed for tax years 2018 and 2020 (which are included in the Audit and thus, addressed in the NOD).

18. At the time it filed the amended 2018 return, Verizon determined it owed tax and therefore, interest. Verizon paid the tax plus \$140,308.00 in interest with the amended return. However, as shown in the NOD, Verizon was overpaid on its 2019 tax in an amount greater than the underpayment on its 2018 amended return and therefore, its 2018 tax was fully paid as of May 1, 2020. As such, Verizon should owe interest only on the period it was underpaid (from May 1, 2019 to May 1, 2020), which is \$15,013.00, and it should recoup the \$125,295.00 of excess interest it paid with that 2018 amended return ("2018 Excess Interest Paid").

19. At the time it filed the amended 2020 return, Verizon determined it owed tax and therefore, interest. Verizon paid the tax plus \$183,332.00 in interest with the amended return ("2020 Interest Paid"). However, as shown in the NOD, Verizon was overpaid on its 2019 tax in an amount greater than the underpayments on its 2018 and 2020 amended returns and therefore, its 2020 tax was fully and timely paid. As such, Verizon should recoup the \$183,332.00 in interest it paid in with the 2020 amended return.

20. Section 213.34(4), Florida Statutes requires the Department to offset the overpayment of any tax during an audit period against a deficiency of any tax, penalty or interest determined to be due during the same audit period.

21. Verizon's 2018, 2019 and 2020 Tax Periods are in the same audit period and as such, the Department must offset the 2018 and 2020 deficiencies by the 2019 overpayment.

22. By this action, Verizon challenges the Department's failure to include in its NOD a refund of the 2018 Excess Interest Paid of \$125,295.00 and the 2020 Interest Paid of \$183,332.00 to Verizon.

MATERIAL FACTS

ISSUE #1: REFUND INTEREST FOR THE 2019 TAX PERIOD

23. On September 22, 2022, Verizon filed the Refund Claim seeking a refund of overpaid corporate income tax for the 2019 Tax Period in the amount of \$9,405,837.00. The Refund Claim was signed by an officer of Verizon.

24. Verizon filed the Refund Claim with the Department by submitting the completed application to the Department via US Mail using the address provided within the application.

25. The Refund Claim was based on a recalculation of the IRC 382 limitation on Verizon's originally claimed net operating loss deduction in order to be consistent with the decision in *Florida Department of Revenue v. Verizon Communications Inc. & Affiliates*, 380 So. 3d 541 (Fla. 1st DCA 2024).

26. The Refund Claim contained:

- a. Verizon's name, address, identifying number and signature;

- b. Sufficient information to permit mathematical verification of the amount of the refund;
- c. The amount claimed;
- d. The specific grounds upon which the refund was claimed; and
- e. The taxable year involved (2019).

27. The Department reviewed and considered the Refund Claim in conjunction with the Audit.

28. During the Audit, the Department had access to Verizon's relevant NOL and other financial data needed to verify the amount of the 2019 refund claim due.

29. Verizon and the Department did not mutually agree that an audit or verification was necessary in order to determine Verizon's entitlement to the claimed refund in the Refund Claim.

30. Verizon and the Department did not complete and sign a Department Form DR-370026 (Agreement to Audit Refund Claim) with respect to the Department's review of the Refund Claim during the Audit.

ISSUE #2: INTEREST PAID WITH 2018 AND 2020 AMENDED RETURNS

31. The Department audited the 2018-2020 tax years in Audit 200301261, and the NOD at issue herein addresses this audit period.

32. On September 22, 2022, Verizon filed an amended 2018 Florida corporate income tax return to report additional tax due related to the recalculation of its Florida NOL deduction under IRC 382 and Florida law. On that amended return, Verizon reported and paid additional tax due of \$621,357.00

plus \$140,308.00 in interest (for a total amount paid to the Department of \$761,665.00).

33. On September 22, 2022, Verizon filed an amended 2020 Florida corporate income tax return to report additional tax due related to the recalculation of its Florida NOL deduction under IRC 382 and Florida law. On that amended return, Verizon reported and paid additional tax due of \$2,941,366.00 plus the 2020 Interest Paid of \$183,332.00 (for a total amount paid to the Department of \$3,124,698.00).

34. In Audit 200301261, the Department agreed that Verizon had been overpaid on its 2019 Tax Period by \$8,350,570.00 since at least November 1, 2020.²

35. The 2019 Tax Period overpayment fully offsets the 2020 additional tax reportable with that amended return. In fact, with the exception of a small balance due for 2018, Verizon had on deposit with the Department sufficient funds to cover its corporate income tax for the Audit Period, as demonstrated below:

	Tax Due Per NOD (Tax Paid)	Cumulative balance due to state
2018 Tax (due 5/1/2019)	\$ 26,128,609	
Tax paid 5/1/2019	\$ (25,961,801)	\$ 166,808
2019 Tax (due 5/1/2020)	\$ 17,686,479	
Tax paid 5/1/2020	\$ (26,037,049)	\$ (8,183,762)
2020 Tax (due 5/1/2021)	\$ 25,490,842	
Tax paid 5/1/2021	\$ (22,815,333)	\$ (5,508,253)
Tax paid 9/22/2022	\$ (621,357)	\$ (6,129,610)
Tax paid 9/22/2022	\$ (2,941,366)	\$ (9,070,976)
Tax refund issued	\$ 326,074	\$ (8,744,902)

² The difference between the amount of the refund claim (\$9,405,837) and the amount to be refunded per the NOD (\$8,350,570) is a result of the DOR offsetting the refund claim by its 2019 audit adjustments, which are also included in the NOD.

36. Ultimately, Verizon was deemed to be only \$166,808.00 underpaid on its 2018 corporate income tax liability from the period May 1, 2019 (the original due date of the 2018 tax return) until April 30, 2020 (the date 2019 payments were deemed "paid" per Florida Statute).

37. The interest rate applicable to May 1, 2019 through May 1, 2020 was 9% and as such, Verizon owed \$15,013.00 in interest.

38. The Department did not offset the 2019 Tax Period overpayment against the 2018 or 2020 additional tax for purposes of calculating the interest that Verizon should have paid.

39. The Department has not otherwise refunded any of the 2018 Excess Interest Paid or the 2020 Interest Paid.

APPLICABLE LAW

40. Section 213.255, Florida Statutes, requires interest to be paid on overpayments of taxes, payment of taxes not due, or taxes paid in error, so long as (1) a refund application is timely filed in accordance with section 215.26(1); and (2) the refund application is complete. Interest commences ninety (90) days after a complete refund has been filed and the amount of overpayment has not been refunded to the taxpayer or applied as a credit to the taxpayer's account.

41. Section 213.255(2), Florida Statutes, states that a refund application is "complete" if it is filed on a permitted form and contains:

- (a) The taxpayer's name, address, identifying number, and signature.

- (b) Sufficient information, whether on the application or attachments, to permit mathematical verification of the amount of the refund.
- (c) The amount claimed.
- (d) The specific grounds upon which the refund is claimed.
- (e) The taxable years or periods involved.

42. Fla. Admin. Code r. 12-26.003(4) adds the requirement that a complete refund application must contain "information and documentation that will enable the Department to determine eligibility for the refund and the amount of the refund claim due," as well as the signature of the payee, or an officer of the firm or corporation listed as payee.

43. Section 213.255(3), Florida Statutes, requires that within thirty (30) days after receipt of the refund application, the Department shall examine the refund application and notify the applicant of any apparent errors or omissions and request any additional information the Department is permitted by law to require. Similarly, Fla. Admin. Code r. 12-26.003(4) states that the Department will notify the applicant of the incomplete application and the necessary actions, corrections, or information needed to complete it within thirty (30) consecutive calendar days of receiving the incomplete application.

44. Section 213.255(4), Florida Statutes, states that an application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified, or when the time for such notification has expired, whichever is later.

45. The rate of interest on refund claims is the adjusted rate established pursuant to section 213.235, Florida Statutes, except that the annual rate of interest shall never be greater than 11 percent.

46. As noted in section 213.255(8), Florida Statutes, the requirement to pay the refund within ninety (90) days of a complete refund claim being filed does not alter the Department's right to audit or verify refund claims either before or after they are paid.

47. Fla. Admin. Code r. 12C-26.004 requires that the Department shall review *the completed application for refund*, and then determine the amount due, if any, under the applicable laws and rules governing the particular tax.

48. Fla. Admin. Code r. 12-26-004(2)(c) states that the ninety (90) consecutive calendar day period and the requirement to pay interest on refund amounts not timely paid or credited to a taxpayer will be tolled if:

- a. Both the taxpayer and the Department agree that an audit or other verification process is necessary to validate the taxpayer's refund request, and;
- b. Both parties complete and sign Department Form DR-370026 (Agreement to Audit Refund Claim), incorporated by reference in rule 12-26.008, F.A.C.

49. Section 213.34(4), Florida Statutes require the Department to offset the overpayment of any tax during an audit period against a deficiency of any tax, penalty or interest determined to be due during the same audit period.

COUNT I

STATUTORY INTEREST IS DUE ON VERIZON'S 2019 CORPORATE INCOME TAX REFUND CLAIM

50. Verizon realleges and reincorporates the allegations of paragraphs 1 through 49 as if fully set forth herein.

51. Verizon's Refund Claim met the requirements of section 213.255(2), Florida Statutes, because it was filed within the time established by section 215.26, Florida Statutes, it was submitted on the required Department form, and it was signed by an officer of the corporation.

52. Verizon's Refund Claim met the requirements of section 213.255(2), Florida Statutes, because it contained:

- (a) Verizon's name, address, identifying number, and signature;
- (b) Sufficient information, whether on the application or attachments, to permit mathematical verification of the amount of the refund;
- (c) The amount claimed;
- (d) The specific grounds upon which the refund is claimed; and
- (e) The taxable years or periods involved.

53. The Department had sufficient information and documentation in its possession from both the ongoing Audit and the litigation in *Florida Department of Revenue v. Verizon Communications Inc. & Affiliates*, 380 So. 3d 541 (Fla. 1st DCA 2024), to enable the Department to determine Verizon's eligibility for the refund and the amount due.

54. The Department did not notify Verizon with respect to any necessary actions, corrections, or information needed to complete the Refund Claim within thirty (30) consecutive calendar days of its receipt on September 22, 2022. Therefore, in accordance with section 213.255(4), Florida Statutes, the Refund Claim was deemed "complete" as of October 22, 2022.

55. In accordance with Fla. Admin. Code r. 12C-26.004, the Department reviewed the Refund Claim – a *completed application for refund* – during the Audit and determined the amount due under the applicable laws and rules governing the Florida Corporate Income Tax. The Department issued the NOD (attached hereto as **Exhibit A**) showing a corporate income tax refund for the Period in the amount of \$8,350,570.00.

56. The requirement to pay interest on the Refund Claim was not tolled because: (1) Verizon and the Department did not mutually agree that an audit or verification of the Refund Claim was necessary in order to determine Verizon's entitlement to the refund, and (2) Verizon and the Department did not complete and sign Department Form DR-370026 (Agreement to Audit Refund Claim) with respect to the Refund Claim.

57. Interest commences ninety (90) days after a complete refund has been filed and the amount of overpayment has not been refunded to the taxpayer or applied as a credit to the taxpayer's account. As of the date of this Complaint, the amount of overpayment relating to the Refund Claim has not been refunded to Verizon or applied as a credit to its account. The amount of refund interest due

Verizon relating to the Refund Claim – through May 29, 2025 – is calculated as follows:³

Interest calculated through	5/29/2025	Rate	Refund	Days outst.	Interest
9/22/2022	12/20/2022	7%	8,350,570	90	-
12/21/2022	12/31/2022	7%	8,350,570	11	17,616
1/1/2023	6/30/2023	9%	8,350,570	181	372,687
7/1/2023	12/31/2023	11%	8,350,570	184	463,056
1/1/2024	5/29/2025	11%	8,350,570	515	1,296,054
				891	2,149,414

58. Therefore, section 213.255, Florida Statutes, requires interest to be paid on the \$8,350,570.00 overpayment of taxes for the Refund Claim as reflected in the NOD. The Department's obligation to pay interest on this overpayment of taxes commenced ninety (90) days after the filing of the complete Refund Claim, which was December 21, 2022. Verizon is due refund interest in the amount of \$2,149,414.00 calculated through May 29, 2025, with additional daily accrued interest through the date of payment of the Refund Claim.

COUNT II

THE DEPARTMENT FAILED TO REFUND INTEREST THAT VERIZON OVERPAID FOR ITS 2018 AND 2020 CORPORATE INCOME TAX YEARS

59. Verizon realleges and reincorporates the allegations of paragraphs 1 through 58 as if fully set forth herein.

60. On September 22, 2022, Verizon filed an amended 2018 Florida corporate income tax return to report additional tax due related to the recalculation of its Florida NOL deduction under IRC 382 and Florida law. On

³ Interest continues to accrue on daily basis until the Refund Claim is paid to Verizon.

that amended return, Verizon reported and paid additional tax due of \$621,357.00 plus \$140,308.00 in interest (for a total amount paid to the Department of \$761,665.00).

61. On September 22, 2022, Verizon filed an amended 2020 Florida corporate income tax return to report additional tax due related to the recalculation of its Florida NOL deduction under Florida law. On that amended 2020 return, Verizon reported and paid additional tax due of \$2,941,366.00 plus \$183,332.00 in interest (for a total amount paid to the Department of \$3,124,698.00).⁴

62. In the NOD related to Audit 200301261, the Department confirmed that (1) Verizon had been overpaid on its 2019 Tax Period by \$8,350,570.00, and (2) the 2019 Tax Period overpayment exceeds the additional tax reported on Verizon's 2018 and 2020 amended returns.

	Tax Due Per NOD (Tax Paid)	Cumulative balance due to state
2018 Tax (due 5/1/2019)	\$ 26,128,609	
Tax paid 5/1/2019	\$ (25,961,801)	\$ 166,808
2019 Tax (due 5/1/2020)	\$ 17,686,479	
Tax paid 5/1/2020	\$ (26,037,049)	\$ (8,183,762)
2020 Tax (due 5/1/2021)	\$ 25,490,842	
Tax paid 5/1/2021	\$ (22,815,333)	\$ (5,508,253)
Interest paid for 2018		
Interest paid for 2020		
Tax paid 9/22/2022	\$ (621,357)	\$ (6,129,610)
Tax paid 9/22/2022	\$ (2,941,366)	\$ (9,070,976)
Tax refund issued	\$ 326,074	\$ (8,744,902)

⁴ In the NOD related to Audit 200301261, the Department reduced the total additional tax that Verizon should have been reported with the 2020 amended return by \$265,857 and agreed to refund that overpaid amount.

63. Section 213.34(4), Florida Statutes requires the Department to offset the overpayment of any tax during an audit period against a deficiency of any tax, penalty or interest determined to be due during the same audit period.

64. There is no provision in Florida law that changes this offset requirement in the event that the taxpayer makes a payment of the deficiency of tax prior to the issuance of the NOD, as Verizon did here.

65. As such, the Department is required to offset the 2019 Tax Period overpayment (\$8,350,570.00) during the Audit Period against the deficiency of 2018 and 2020 tax that was ultimately determined to be due, resulting in interest being calculated as if (1) Verizon's 2018 liability was satisfied on May 1, 2020, and (2) Verizon's 2020 tax liability was satisfied as of the original due date of May 1, 2021. Thus, Verizon owes interest on the 2018 deficiency only through May 1, 2020 and Verizon does not owe interest for its 2020 Tax Year.

66. As such, Verizon is entitled to a refund of the 2018 Excess Interest Paid (\$125,295.00) and the 2020 Interest Paid (\$183,332.00).

67. In its NOD, the Department failed to offset the 2019 Tax Period overpayment (\$8,350,570.00) during the Audit Period against the deficiency of 2018 and 2020 tax that was determined to be due for purposes of calculating the interest that Verizon should have paid. The Department has not otherwise refunded any of the 2018 Excess Interest Paid or the 2020 Interest Paid.

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

(1) ordering the Department to pay Verizon interest on the Refund Claim in accordance with section 213.255, Florida Statutes, in the amount of \$2,148,414.00 plus additional accrued interest as provided by Florida law calculated through the date the Department makes payment of the Refund Claim;

(2) ordering the Department to refund the 2018 Excess Interest Paid (\$125,295.00) and the 2020 Interest Paid (\$183,332.00); and

(3) granting such other relief as is just and equitable.

DATED this 29th day of May, 2025.

AKERMAN LLP

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Florida Department of Revenue
Informal Dispute Resolution

Jim Zingale
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April 4th, 2025

COPY

LORIE FALE
AKERMAN LLP
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MIAMI, FL. 33131

Re: Notice of Decision
VERIZON COMMUNICATIONS INC & AFFILIATES ("Taxpayer")
BPN: 0000443310
Audit #: 200301261
Corporate Income Tax
Period: 12/31/2013 - 12/31/2020

Proposed Assessment Amount:	\$	326,074.00-
Sustained Amount:	\$	9,170,698.65-
Balance Due:	*	\$ 9,170,698.65-

* Includes payments and updated interest through April 03, 2025. Interest continues to accrue at \$0.00 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 July 24, 2024, 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 the Florida limitation for acquired net operating losses ("NOLs") pursuant to Section 382, Internal Revenue Code ("IRC"), were calculated properly?

Whether tax year December 31, 2014, is within the statute of non-claim for a refund?

Exhibit A

FACTS

Taxpayer is a holding company for various subsidiaries that are a leading provider of communication, information and entertainment products. Taxpayer files a consolidated federal and Florida corporate income tax return.

Taxpayer's tax years ended December 31, 2018, through December 31, 2020, were audited by the Department. The auditor adjusted the state tax addback, sales factor, revised the utilization of NOLs based on a prior audit determination, and recaptured a portion of the automatic refund issued pursuant to Section 220.1105, Florida Statutes ("F.S."). Additionally, corporate income tax amended returns for tax years ended December 31, 2013, and December 31, 2014, were included in the audit, but no adjustments were made to those years.

Taxpayer was issued a Notice of Proposed Assessment ("NOPA") on April 24, 2024. The NOPA reflected an overpayment of tax in the amount of \$326,074.00. Taxpayer was issued the overpayment on June 25, 2024. Taxpayer disagreed with the audit determination and filed a timely protest.

On multiple occasions, the Department and Taxpayer's Power of Attorney ("POA") met to discuss the protested issues and pending litigation, Florida Department of Revenue v. Verizon Communications Inc. & Affiliates, 386 So. 3d 599 (Fla. Dist. Ct. App. 2024). POA has provided documentation requested by this conferee.

TAXPAYER'S ARGUMENT

In its protest letter dated July 23, 2024, Taxpayer disagrees with the Department's calculation of the Florida Section 382, IRC, limitation for acquired NOLs. Taxpayer states it has applied the proper limitation to the acquired Florida NOLs and no adjustment is necessary.

Following the decision of the court, Taxpayer's POA provided a worksheet which redistributed the NOLs utilized by Taxpayer for tax years ended December 31, 2013, through December 31, 2020. This resulted in a net overpayment with the majority of the overpayment coming from tax year ended December 31, 2014.

LAW

Section 220.02(3), Florida Statutes, ("F.S."), states in part:

- (3) It is the intent of the Legislature that the income tax imposed by this code utilize, to the greatest extent possible, concepts of law which have been developed in connection with the income tax laws of the United States, in order to: ...
Section 220.03(2)(c), F.S., provides in the "definitional rules" that:

Any term used in this code shall have the same meaning as when used in a comparable context in the Internal Revenue Code and other statutes of the United States relating to federal income taxes . . .

Section 220.13(1), F.S., states in part:

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxable as provided in s. 220.131, for the taxable year, adjusted as follows:

(b) Subtractions.—

1. There shall be subtracted from such taxable income:

a. The net operating loss deduction allowable for federal income tax purposes under s. 172 of the Internal Revenue Code for the taxable year, except that any net operating loss that is transferred pursuant to s. 220.194(6) may not be deducted by the seller,

However, a net operating loss . . . shall never be carried back as a deduction to a prior taxable year, but all deductions attributable to such losses shall be deemed net operating loss carryovers . . . and treated in the same manner, to the same extent, and for the same time periods as are prescribed for such carryovers in ss. 172 . . . of the Internal Revenue Code.

Section 220.13(2), F.S., provides in part:

(2) For purposes of this section, a taxpayer's taxable income for the taxable year means taxable income as defined in s. 63 of the Internal Revenue Code and properly reportable for federal income tax purposes for the taxable year, but subject to the limitations set forth in paragraph (1)(b) with respect to the deductions provided by ss. 172 (relating to net operating losses) . . . of the Internal Revenue Code

Rule 12C-1.013, F.A.C., states in part:

(13) A subtraction from taxable income is provided by Section 220.13(1)(b)1., F.S., for the net operating loss deduction allowable for federal income tax purposes under s. 172, I.R.C., the net capital loss allowable for federal purposes under s. 1212, I.R.C., the excess charitable contribution deduction allowable for federal income tax purposes under s. 170(d)(2), I.R.C., and the excess contributions deductions allowable for federal tax purposes under s. 404, I.R.C. Form F-1120, the corporate income tax return, provides for an addback of these amounts subtracted for federal purposes and then a subtraction for these amounts for Florida purposes. The two-step process is for computational ease because the amounts allowed for federal and Florida purposes may be different. Differences may occur because of the apportionment ratio in the year of the loss or the use of the loss when either federal or Florida income was greater than the other.

(15) Net Operating Losses.

(a) Generally, Florida law follows the Internal Revenue Code with respect to the computation and handling of a net operating loss (NOL). However, under Section 220.13(1)(b)1., F.S., a net operating loss may not be allowed as a carryback to years prior to the year of the loss. It may be allowed only as a carryover (NOLCO) and is treated in the same manner and for the same period of time as allowed in s. 172, I.R.C.

(b) In all cases, the NOLCO allowable for a taxable year will be applied after the apportionment factor for the current year has been applied against current year activities.

(c) The Florida portion of a federal loss is determined by the Florida apportionment factor in effect for the year the loss occurred.

(d) A Florida addition or subtraction under Section 220.13(1), F.S., never creates an NOL or increases the amount of a federal NOL. However, adjustments to federal taxable income such as the adjustment for long-term contracts and the adjustment for Election B required under the provisions of Section 220.03(5)(c), F.S., impact the net operating loss and therefore, the carryover for Florida purposes. While a Florida addition or subtraction may never increase the amount of the net operating loss carryover over the federal amount, an adjustment may increase or decrease the net operating loss carryover for Florida purposes.

(e) Paragraph 220.13(1)(d), F.S., provides that no deduction for a NOL will be allowed in a tax year if in a prior tax year the losses have been allowed for Florida tax purposes, notwithstanding the fact that such deduction may not have been fully utilized for federal tax purposes. Therefore, a Florida addition may decrease the amount of NOL carryover the taxpayer has available for Florida purposes.

(f) Only the excess of Florida additions over Florida subtractions will dilute the amount of net operating loss carryover available to the following tax year. Example: A corporation's taxable income for 1991 was \$(200,000). The taxpayer was required pursuant to Section 220.13(1)(a)2., F.S., to addback \$100,000 exempt interest. A subtraction of \$50,000 was provided by Section 220.13(1)(b)2.b., F.S., for the gross-up of income required by s. 78, I.R.C. The net operating loss carryover will be diluted for Florida tax purposes only by the excess of Florida additions over Florida subtractions. The net operating loss carryover to 1992 will be calculated as $$(200,000) - ($100,000 - $50,000)$. Therefore, the net operating loss carryover available for Florida tax purposes will be \$150,000.

(h) In the event of a corporate reorganization in which the tax attributes are carried over for federal tax purposes (for example, as provided in s. 381, I.R.C., which is incorporated by reference in Rule 12C-1.0511, F.A.C.), the net operating losses will be carried over for Florida purposes.

(i) Net operating losses carried over into unitary reporting years are limited by the separate return limitation year (SRLY) rules promulgated under the I.R.C. For taxable years beginning on or after September 1, 1982, and before September 1, 1984, the unitary reporting concepts must be used by members of a unitary business group. A net

operating loss incurred during a unitary reporting year, determined before application of the NOLCO from any prior year, is attributed to each unitary group member based on its share of the unitary group's combined net operating loss for that year. A member's share of the unitary NOL is determined by multiplying the combined NOL by a factor which consists of that member's own Florida numerators over the group's combined denominators. In a tax year subsequent to the unitary years, the use of the attributable share of this NOLCO is limited by the member's adjusted federal income or share thereof, determined before subtraction of the NOLCO, apportioned to Florida for the subsequent tax year.

(j) Section 382, I.R.C., generally limits on an annual basis the use of a net operating loss carryforward of an acquired corporation to the equity value of the acquired corporation at the time of acquisition multiplied by a defined interest rate factor. Florida piggybacks the federal provisions in s. 382, I.R.C., which is incorporated by reference in Rule 12C-1.0511, F.A.C., concerning the limitation on the use of any NOL carryforward of an acquired corporation. In computing the Florida corporate income tax, a deduction for the NOL carryover will be allowed to the extent of the amount allowed for federal purposes, provided that the deduction does not exceed the total amount of the Florida NOL carryover available in such taxable year.

DISCUSSION

Florida limitation on Section 382, NOLs

The computation of the Florida corporate income tax starts with line 30 of the federal income tax return. Line 30 of the federal corporate income tax return includes deductions for federal NOL carryovers. Since separate Florida NOL carryovers may be created in the tax year that the federal carryovers were originally created, Florida requires the amounts deducted federally to be added back on the Florida corporate income tax return.¹ The effect of these additions is to reverse the federal deductions for NOL carryovers so that the separate Florida NOL carryovers can be applied. The Florida NOL carryovers are then subtracted, subject to limitation, in computing a taxpayer's Florida taxable income. *See Florida Forms F-1120 and F-1120N and Rule 12C-1.013, F.A.C.*

Federal NOLs survive corporate acquisitions (e.g., reorganizations) under the circumstances specified in Section 381, IRC² and are subject to limitations on their use following an "ownership change" (generally 50 percent) per Section 382, IRC. The IRS created Sections 269 and 382, IRC, to deter acquisitions of companies with substantial NOLs solely motivated by tax avoidance objectives, without any valid business purpose.

¹ Rule 12C-1.013(13), F.A.C.

² Florida implicitly adopts Section 381, IRC, by adopting the federal net operating loss deductions under IRC Section 172, which cross references Section 381, IRC.

To accomplish this, Section 382, IRC, severely restricts the buyer's use of acquired NOLs following a change in ownership by limiting annual use of such NOL to a percentage of the value of the loss corporation on the date of the acquisition equal to the return that federal long-term bonds could be expected to yield if their interest were exempt from tax (i.e., Purchase price of target's stock times IRS long-term tax-exempt rate).

Florida allows the transfer of NOLs from one corporation to another in certain acquisitions in the same manner as does the federal law. Florida also applies the Section 382, IRC, limitation under the federal consolidated return regulations limiting NOL deductions of corporations that join the state consolidated return.

Rule 12C-1.013(15)(j), F.A.C., provides any NOL that is carried over from an ownership change will be allowed to the extent of the amount allowed for federal purposes.³ Taxpayer litigated the Department's interpretation of this rule. The court determined the annual limitation for state tax purposes is the same amount as under federal law. The assessment has been revised to reflect the court's decision.

December 31, 2014

Section 215.26(2), F.S., states that "[a]pplication for refunds as provided by this section must be filed with the Chief Financial Officer, except as otherwise provided in this subsection, within 3 years after the right to the refund has accrued or else the right is barred." A request for a refund must be filed within three years of the date the tax was paid (the later of the date the tax is due, without regard to extensions, or the date the tax is paid). Section 220.727(1)(b), F.S., provides that for purposes of filing a claim for refund, estimated payments are considered paid on the due date of the return, determined with regard to extensions of time to file.

Taxpayer's redistribution of its NOLs resulted in an overpayment for tax year ended December 31, 2014 ("tax year 2014"). The tax year 2014 return was filed on September 25, 2015. The extended due date of the return was October 1, 2015. The estimated payments for tax year 2014 are deemed to have been paid as of October 1, 2015. Pursuant to Section 215.26(2), F.S., a request for refund should have been filed by October 1, 2018. Therefore, any refund determined for tax year 2014, is outside of the statute of non-claim for refund.

CONCLUSION

The audit assessment has been revised to reflect the court's decision. Pursuant to Section 215.26(2), F.S., the refund determined for tax year 2014, is outside of the statute for non-claim for refund.

³ Additionally, Florida law specifically states that the NOL deduction can not exceed the total amount of the Florida NOL carryover available in such taxable year.

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 Informal 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,

Susan Coxwell

Susan Coxwell
Revenue Program Administrator
Informal Dispute Resolution
(850)717-6478

Enclosure: Audit Remittance Coupon
CC: Verizon Communications Inc. & Affiliates, PO Box 627, Basking Ridge, NJ.

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.



Florida Department of Revenue
Informal Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

floridarevenue.com

IDR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online IDR 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 (IDR). 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: 200301261

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.