

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

CASE NO.: 2025 CA 000407

DIVISION:

APPLE INC., a foreign corporation,

Plaintiff,

v.

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

Defendant.

COMPLAINT

Plaintiff, Apple Inc. (“Apple”), by and through counsel, sues the State of Florida, Department of Revenue, and alleges as follows:

PARTIES

1. Apple is a foreign corporation formed in California and it 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 an assessment issued by the Department against Apple for corporate income taxes and interest made pursuant to Chapter 220, Florida Statutes.

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

5. Venue is proper in Leon County pursuant to Section 72.011(4)(b), Florida Statutes.

6. In compliance with Section 72.011(3)(b), Florida Statutes, Apple has obtained a waiver of the security requirement from the Department. The Department's letter memorializing the waiver is attached hereto as **Exhibit A**.

7. In compliance with Section 72.011(3)(a), Florida Statutes, Apple has paid to the state of Florida the portion of the amount of the tax, penalty, and accrued interest assessed by the Department which is not being contested by Apple.¹ Apple contests remaining tax, penalty and accrued interest included in the Assessment.

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.

NATURE OF THE CONTROVERSY

9. This action seeks to contest an assessment issued by the Department to Apple for additional corporate income taxes under Chapter 220, Florida Statutes.

10. Apple contests the portion of assessed corporate income tax and interest that was not paid on March 12, 2025 for Apple's fiscal years ending September 26,

¹ Apple made a payment on March 12, 2025 of \$803,800, which is comprised of \$649,401 in tax plus \$154,399 of interest. The conceded tax and interest is related to the auditor's adjustment to sales of tangible personal property shipped or delivered to Florida.

2020, September 25, 2021, and September 24, 2022 (the "Audit Period") as shown on the Notice of Proposed Assessment (the "NOPA"), dated November 20, 2024. The amount of additional corporate income tax assessed and shown on the NOPA, including interest accrued through November 20, 2024 is \$26,290,023.89. A copy of the NOPA is attached hereto as **Exhibit B**.

11. Apple did not request an administrative appeal of the NOPA, and as such, the assessment became a final assessment on January 19, 2025. This appeal followed.

FACTUAL AND LEGAL ALLEGATIONS

12. All factual allegations below are true and correct for the Audit Period.

13. For all periods relevant to this action, Apple was a subchapter "C" corporation for both federal and Florida income tax purposes.

14. Section 220.15, Florida Statutes, provides that all corporations that are doing business both within and outside Florida are required to apportion their federal adjusted gross income to the state.

15. Apple was required to apportion its federal adjusted gross income to Florida under Section 220.15, Florida, Statutes, because it was doing business both within and outside Florida.

16. 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.

17. Apple was required to apportion its federal adjusted gross income to Florida in accordance with the three-factor apportionment formula referenced in Section 220.15(1), Florida Statutes.

18. The legal issue to be resolved in this dispute is whether in determining Apple's sales factor in the apportionment formula referenced in Section 220.15(1), Florida Statutes, whether certain digital services revenue received by Apple should be sourced to Florida and therefore, be included in its sales factor numerator.

**SOURCING OF APPLE SALES FOR FLORIDA SALES FACTOR
NUMERATOR**

19. Apple designs, manufactures and markets smartphones, personal computers, tablets, wearables and accessories, and sells a variety of related services.

20. Apple included its sales of tangible personal property shipped/delivered to Florida customers in the numerator of its originally filed income tax returns. These sourcing of these sales are not at issue in the Audit Period.

21. The Digital Services relevant to the Department's assertions can be classified into three groups: the "iTunes" category; the "Apps and iBooks" category; and the "Content Subscriptions" category (collectively, all three categories are referred to as "Digital Services").

22. The "iTunes" category includes sales and rentals of movies, television shows, and other video content delivered in digital format and downloadable music

purchased as individual songs or albums. Apple owns or licenses the content at issue in the "iTunes" category.

23. The "Apps and iBooks" category includes: electronic book downloads (eBooks) and application downloads (APPs). With respect to sales in this category, Apple does not generally own or license the content at issue, and contracts with publishers of eBooks and developers of APPs as an agent. Notably, the publishers and developers are principals in all sales to customers that Apple facilitates through its "AppStore" or "Book Store" online marketplaces. Apple's receipts sales are commissions paid by publishers and developers for facilitating sales.

24. The "Content Subscriptions" category is comprised of recurring subscriptions allowing users to access various streaming content libraries (i.e. Apple TV+, Apple Music, Apple Arcade, etc.) or receive certain services (iCloud, Fitness+, etc.). Subscriptions can be purchased individually or in an "AppleOne" bundle.

25. Apple also receives revenues from third party licensing arrangements and Apple's own advertising platforms (the "Licensing Revenue"). The majority of Apple's Licensing Revenue is related to licensing agreements between Apple and various third parties, in which Apple is entitled to fees when users access third parties' services via Apple devices which have been set by the user or by default settings to access those third parties' services.

26. When, as in this case, there are sales other than sales of tangible property (i.e., the Digital Services Revenue and Licensing Revenue), the composition of the sales factor is determined by Fla. Admin. Code Ann. 12C-1.0155(2).

27. The only provision in Fla. Admin. Code Ann. 12C-1.0155(2) that is applicable to Apple's sales at issue herein is subparagraph (l), the "COP Regulation."

28. Under the COP Regulation, sales are attributed to Florida if the income producing activity responsible for generating the sales revenue is performed by the taxpayer in this state. If the income producing activity is performed both within and outside Florida, the COP Regulation 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 Regulation, the "income producing activity" is defined by reference to the "costs of performance."

29. Apple was required to follow the COP Regulation for purposes of apportioning its Digital Services Revenue and Licensing Revenue.

30. Apple's reliance on the COP Regulation to source receipts from its Digital Services Revenue and Licensing Revenue 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).

31. The Department classifies Apple's Digital Services Revenue and Licensing Revenue as "Florida sales" and, therefore, included these items in Apple's sales factor numerator using a method that is commonly referred to "market sourcing" because it sources the revenue based on the perceived market for Apple's services.

32. Apple disputes the Assessment because, *inter alia*, the greater proportion of the income producing activity for Digital Services Revenue and Licensing Revenue based on costs of performance occurs outside Florida.

33. Apple contends that the Department improperly applies market based sourcing to Digital Services Revenue and Licensing Revenue, that the Assessment is incorrect, and that the Assessment must be abated.

COUNT ONE

THE DEPARTMENT UTILIZED AN INCORRECT APPORTIONMENT METHODOLOGY TO SOURCE APPLE'S SALES REVENUE FOR PURPOSES OF APPLE'S SALES FACTOR NUMERATOR

34. Apple realleges and reincorporates the allegations of paragraphs 1 through 33 as if fully set forth herein.

35. The COP Regulation provides the general rule for apportioning income received by a taxpayer for sales not otherwise addressed in the regulation.

36. With respect to the Audit Period, there existed no Florida statute or Department administrative rule that expressly provided for the market sourcing of the Digital Services Revenue or Licensing Revenue for purposes of Section 220.15, Florida Statutes.

37. Apple was required to follow the COP Regulation for purposes of apportioning the Digital Services Revenue and Licensing Revenue.

38. The COP Regulation attributes Apple's Digital Services Revenue and Licensing Revenue to the location where the greater proportion of income producing activity occurs, based on the costs of performance. Fla. Admin. Code Ann. 12C-1.0155(1) states that 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."

39. The greater proportion of income producing activity directly engaged in by Apple relating to its receipt of the Digital Services Revenue and Licensing Revenue occurred (based on Apple's costs of performance) outside Florida and, accordingly, Apple correctly sourced this revenue outside Florida.

40. The Department's "market sourcing" apportionment approach for determining Apple's sales factor must be rejected. The Department's position is tethered to its erroneous belief that sourcing provisions for either communications services (Fla. Admin. Code Ann. 12C-1.0155(2)(g)) or computer related sales (Fla. Admin. Code Ann. 12C-1.0155(2)(h)) apply to Apple's sales, and that these sourcing provisions would source some of Apple's sales to Florida.

41. The Department alternatively states that "the transactions and activities exist simultaneously in Florida," and thus, "the income producing activity is performed entirely in Florida since the taxpayer's customer is located in Florida." The Department, incorrectly and without any factual basis or support, contends that Apple conducts income producing activities at customer locations without describing what activities Apple engages in at individual customer locations or what costs of performance are incurred by Apple in those instances and at locations from which customers make purchases or are billed recurring subscription fees.

42. The Department's position, which focuses solely on the activity of the customer, results in a "market sourcing" approach for the apportionment

methodology, and renders moot much of the language in its own administrative rule.

For this reason, the Assessment must be abated in full.

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

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

DATED this 13th day of March, 2025.

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