

## Indecent Proposal: The Curious Case of Assessments in Florida

March 12, 2012 By Michael Bowen

The topic of tax procedure can be about as exciting as waiting in line at the grocery store. Yet, every once in a while an issue is raised that is so significant that we question our knowledge of the most fundamental topics. The case of *Verizon Business Purchasing, LLC v. Florida Department of Revenue*, Case No.: 2011-CA-1498, raises just such an issue. The crux of the dispute in *Verizon* relates to the legal significance of Form DR-831 – "Notice of Proposed Assessment". Specifically, the issue in dispute in *Verizon* is whether a "Notice of Proposed Assessment" is an "assessment" for statute of limitations purposes.

As a general rule, the Florida Department of Revenue (the "Department") must issue an assessment to a taxpayer within three years from the later of the date a tax return is due or filed. But, under Florida tax law, what actually is an "assessment"? Astonishingly, Florida law does not expressly define the meaning of the term "assessment" for statute of limitations purposes. Despite this lack of guidance, it has long been assumed by both taxpayers and the Department that a Notice of Proposed Assessment was an "assessment". In *Verizon*, the taxpayer argues that a Notice of Proposed Assessment is just what it says it is – a *proposal*. After all, Verizon argues, the form language on the face of the Notice of Proposed Assessment provides that it does not become a "final assessment" until sixty days from the issue date and, since a taxpayer is free to appeal the Notice of Proposed Assessment within the sixty days, the deficiency reflected on the Notice of Proposed Assessment lacks the finality of an "assessment".

The facts in *Verizon* are not unlike those experienced by most taxpayers. Verizon was audited for sales and use taxes. The audit took time to complete and Verizon and the Department entered into consent agreements to extend the statute of limitations on assessment. The final such agreement provided that the Department had until March 31, 2011 to issue an assessment to the Verizon. On February 8, 2011, the Department issued a Notice of Proposed Assessment to Verizon. As a result, by its terms, the Notice of Proposed Assessment received by Verizon did not become a final assessment for sixty days, or April 9, 2011. If, as Verizon argues, the Notice of Proposed Assessment is simply a *proposed* assessment, the Department missed the March 31, 2011 assessment deadline by nine days.

So, why is *Verizon* so important? As most Florida taxpayers know, the Department historically issues a Notice of Proposed Assessment near the end of the applicable statute of limitations deadline. Further, the Department's use of the Form DR-831 or Notice of Proposed Assessment is ubiquitous. It is used for almost every tax administered by the Department. As a result, if *Verizon* prevails in its civil action, it would not be an overstatement to suggest that countless Florida taxpayers would be affected. A hearing in trial court is scheduled for late April to decide the issue.

Now what? If you have recently received a Notice of Proposed Assessment, take note of the issue date. If the time gap between the issue date and the final day in statute of limitations period is less than sixty days, you should consider challenging the purported assessment. Likewise, if you were issued a Notice of Proposed Assessment under these circumstances and paid the tax claimed due, you should consider filing a refund claim. In sum, each taxpayer should ask themselves, is a Notice of Proposed Assessment an "assessment" or merely an indecent *proposal*.

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