**[Letterhead]**

**[Date]**

Via Certified Mail and Electronic Mail (DOR\_CorpTax@delaware.gov)

Director of Revenue
Delaware Division of Revenue
P.O. Box 2044
Wilmington, DE 19801-2044

**Re:**  **Claim for Refund**

To the Division:

Through this letter [Taxpayer] (EIN No. \_\_\_\_) (“Petitioner”) is filing a claim for refund of corporate income tax paid for its tax year[s] ending \_\_\_\_\_. Petitioner is entitled to a refund of $\_\_\_\_. [Optional: An Amended Delaware Corporation Income Tax Return, Form 1100X, is enclosed.]

# Petitioner is seeking a refund because it is entitled to compute its net operating loss deduction without regard to the consolidated NOL of the federal consolidated group of which it was a member. 30 *Del. C.* § 1903(a); IRC § 172; *Dir. of Revenue v. Verisign, Inc.*, No. 18, 2021, 2021 Del. LEXIS 375 (Del. 2021).

# For tax years before 30 *Del. C.* § 1903(a)(2)i. is effective, the Division has no authority to limit Petitioner’s NOL deduction to the consolidated NOL. *Id.* For tax years after 30 *Del. C.* § 1903(a)(2)i. is effective, the limitation is contrary to Delaware law. For example, the limitation violates the Uniformity Clause of the Delaware Constitution. *See* Del. Const. art. VIII, § 1; *Verisign, Inc. v. Dir. of Revenue*, C.A. No. N19C-08-093 JRJ, 2020 Del. Super. LEXIS 3011 (Del. Super. 2020).

# Alternatively, Petitioner is entitled to compute its NOL and consolidated NOL limitation without regard to certain foreign dividends. To the extent the NOL or consolidated NOL limitation was diminished by dividends from foreign subsidiaries, but would not have been diminished by dividends from similarly situated domestic subsidiaries, the computation of the NOL or consolidated NOL limitation treats dividends from foreign subsidiaries less favorably than dividends from domestic subsidiaries. That unequal treatment violates the Foreign Commerce Clause of the United States Constitution. *See Kraft Gen. Foods v. Iowa Dep’t of Revenue and Fin.*, 505 U.S. 71 (1992).

# Petitioner is also seeking a refund for the following, among other, reasons:

# Petitioner is entitled to properly compute its corporate income tax in accordance with 30 *Del. C.* § 1901 *et seq.*

# Petitioner is entitled to properly compute its entire net income. 30 *Del. C.* § 1903(a). Petitioner participated in filing a consolidated federal income tax return. Petitioner’s entire net income should have been based on the federal taxable income that Petitioner would have reported as if it had filed its own, separate income tax return with the federal government. 30 *Del. C.* §§ 1901–1903; *see, e.g.,* Del. Form 1100i (2016).

# Petitioner’s entire net income must be adjusted to exclude income that was earned by Petitioner’s affiliates.

# Petitioner is entitled to properly compute the increases to, and eliminations from, its entire net income. 30 *Del. C.* § 1903(a).

# Petitioner is entitled to properly compute the portion of its entire net income allocated and apportioned to Delaware. 30 *Del. C.* § 1903(b).

# The application of the allocation or apportionment provisions result in an unfair or inequitable proportion of the taxpayer’s entire net income being assigned to Delaware. Petitioner is entitled to exclude or alternatively weight the factors in the apportionment formula, or to use separate accounting or another method to produce a fair and equitable result. 30 *Del. C.* § 1903(c).

# The tax imposed on Petitioner violates the Uniformity Clause of the Delaware Constitution because it resulted in a tax that was not “uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” Del. Const., Art. 8, § 1.

# The tax imposed on Petitioner violates the Commerce Clause of the United States Constitution because it is imposed: (1) on activity without a substantial nexus to Delaware; (2) in a manner that is not fairly apportioned; (3) in a manner that discriminates against interstate commerce; and (4) in a manner that is not fairly related to services provided by Delaware. *See* *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

# Petitioner is entitled to exclude income from non-unitary business operations. *See* *Allied-Signal, Inc. v. Director*, 504 U.S. 768 (1992).

# The tax imposed on Petitioner violates the Equal Protection and Due Process Clauses of the United States Constitution. For example: Petitioner’s tax is computed at a higher effective rate than other similarly situated taxpayers; and Petitioner’s taxable income is apportioned to Delaware in a greater concentration than other similarly situated taxpayers.

# The tax imposed on Petitioner reflects such a high effective tax rate that it violates Petitioner’s due process rights and amounts to a taking of property without compensation in violation of the Takings Clause of the United States Constitution.

# Any penalties should be abated because they were not properly imposed or computed under the provisions of the Delaware Code, and because Petitioner acted in good faith and without negligence or disregard of rules and regulations.

Please contact me with questions.

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