



**FLORIDA**

Executive  
Director

Leon M. Biegalski

**QUESTIONS:** MAY THE TAXPAYER BE GRANTED PERMISSION TO CEASE FILING FLORIDA CONSOLIDATED TAX RETURNS BASED UPON CHANGES IN BUSINESS CIRCUMSTANCES?

**ANSWER:** THE TAXPAYER'S AFFILIATED GROUP CEASED TO EXIST BY OPERATION OF LAW AND THEREFORE WAS GRANTED PERMISSION TO CEASE FILING FLORIDA CONSOLIDATED TAX RETURNS.

July 3, 2017

XXXXX  
XXXXX  
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Re: Technical Assistance Advisement 17C1-006  
Corporate Income Tax  
Request for Authority to Discontinue Consolidated Filing  
Section: 220.131, F.S.  
Rule: 12C-1.0131, F.A.C.  
XXXXX (FEIN: XXXXX) (hereinafter "taxpayer")  
XXXXX (FEIN: XXXXX) (hereinafter "parent corporation")

Dear XXXXX:

This is in response to your request dated XXXXX, for a Technical Assistance Advisement (TAA) pursuant to section 213.22, Florida Statutes (F.S.), and Rule Chapter 12-11, Florida Administrative Code (F.A.C.), regarding the taxpayer's request to discontinue filing consolidated Florida corporate income tax returns for the 2016 tax year. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Florida Department of Revenue (hereinafter "the Department") is hereby granting your request for a TAA.

### **FACTS SUPPLIED BY TAXPAYER**

On XXXXX, the taxpayer and its affiliates were acquired by a new parent corporation. Prior to the acquisition, the taxpayer and the new parent corporation were completely unrelated entities. The new parent corporation will file a federal consolidated income tax return for the XXXXX through XXXXX, period, that will include the taxpayer and its subsidiaries. The taxpayer filed federal and Florida corporate income tax returns for the short period ended XXXXX. The parent corporation is incorporated in XXXXX and does not have Florida nexus.

The taxpayer is requesting permission to deconsolidate its return for Florida corporate income tax filing purposes.

### **LEGAL AUTHORITY**

Section 220.131, F.S., lists the conditions to be met for an affiliated group of corporations to file a consolidated Florida corporate income tax return. Section 220.131, F.S., also lists the conditions to be met for an affiliated group of corporations to stop filing a consolidated corporate income tax return. Specifically, s. 220.131, F.S., states, in pertinent part:

(1) Notwithstanding any prior election made with respect to consolidated returns, and subject to subsection (5), for taxable years beginning on or after September 1, 1984, any corporation subject to tax under this code which corporation is the parent company of an affiliated group of corporations may elect, not later than the due date for filing its return for the taxable year, including any extensions thereof, to consolidate its taxable income with that of all other members of the group, regardless of whether such member is subject to tax under this code, and to return such consolidated taxable income hereunder, in which case all such other members must consent thereto in such manner as the department may by rule prescribe, provided:

(a) Each member of the group consents to such filing by specific written authorization at the time the consolidated return is filed;

(b) The affiliated group so filing under this code has filed a consolidated return for federal income tax purposes for the same taxable year; and

(c) The affiliated group so filing under this code is composed of the identical component members as those which have consolidated their taxable incomes in such federal return.

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(3) The filing of a consolidated return for any taxable year shall require the filing of consolidated returns for all subsequent taxable years so long as the filing taxpayers remain members of the affiliated group or, in the case of a group having component members not subject to tax under this code, so long as a consolidated return is filed by such group for federal income tax purposes, unless the director consents to the filing of separate returns. (Emphasis Supplied)

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Rule 12C-1.0131, F.A.C., provides further information on when an affiliated group of corporations may stop filing a consolidated corporate income tax return. Specifically, Rule 12C-1.0131, F.A.C., provides, in pertinent part:

(1) Unless otherwise distinctly expressed, the terms used in this section shall have the same meaning as when used in a comparable context in the federal income tax regulations for consolidated returns. The term “common parent” as used in the federal regulations shall have the same meaning for Florida corporate tax purposes, and all references to the “Commissioner” or “District Director” in the federal regulations shall be construed to mean “the Executive Director or the Executive Director’s designee” for purposes of these rules.

(a)1. An affiliated group of corporations, as defined in these rules, which did not file a Florida consolidated return for the immediately preceding taxable year, may file a consolidated return in lieu of separate returns for the taxable year, provided the common parent is subject to the Florida Income Tax Code and each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents, in the manner provided in paragraph (e) of this subsection, to be bound by the provisions of these requirements and all applicable sections of the federal consolidated returns regulations.

2. A subgroup of the affiliated group may not file a consolidated return.

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(3)(b)1. Notwithstanding that a consolidated return is required for a taxable year, the Executive Director or the Executive Director’s designee is authorized to grant permission to a group to discontinue filing consolidated returns. Any such application shall be made to Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443, and shall be made not later than the 90th day before the due date for the filing of the consolidated return, including extensions of time. Permission to revoke will be contingent upon an agreement between the taxpayer and the Executive Director or the Executive Director’s designee to the terms, conditions, and adjustment under which the change will be effected.

2. The Executive Director or the Executive Director’s designee is authorized to grant permission to a group to discontinue filing consolidated returns if the net result of all amendments to the Florida Income Tax Code or the Internal Revenue Code or regulations with effective dates commencing within the taxable year has a substantial adverse effect on the consolidated tax liability of the group for such year relative to what the aggregate tax liability would be if the members of the group filed separate returns for such year. Other factors which will be taken into account in determining whether good cause exists for granting permission to discontinue filing consolidated returns beginning with the taxable year include:

a. Changes in law or circumstances, including changes which do not affect income tax liability;

b. Changes in law which are first effective in the taxable year and which result in a substantial reduction in the consolidated net operating loss for such year relative to what the aggregate net operating losses would be if the members of the group filed separate returns for such year; and

c. Changes in the Florida Income Tax Code or the Internal Revenue Code or regulations which are effective prior to the taxable year but which first have a substantial adverse effect on the filing of a consolidated return relative to the filing of separate returns by members of the group in such year.

3. Permission to revoke may be contingent upon an agreement between the taxpayer and the Executive Director or the Executive Director's designee to the terms, conditions, and adjustment under which the change will be effected.

(c) The Executive Director or the Executive Director's designee may grant all groups or a particular class of groups permission to discontinue filing consolidated returns if any provision of the Florida Income Tax Code or the Internal Revenue Code or regulations has been amended and such amendment is of the type which could have a substantial adverse effect on the filing of consolidated returns by substantially all groups or all such groups, as the case may be, relative to the filing of separate returns. Ordinarily, the permission to discontinue shall apply to the taxable year which includes the effective date of such amendment.

(d) If a group has permission under paragraph (b) or (c) of this subsection to discontinue filing consolidated returns for any taxable year and such group wishes to exercise such election, then the common parent must file a separate return for such year on or before the last day prescribed by law including extensions of time for the filing of the consolidated return for such year.

(e) A group shall be considered as remaining in existence, for the purposes of these rules, in accordance with the rules prescribed in s. 1.1502-75(d) of the Federal Income Tax Regulations.

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(h) The taxable year of members of the group, including rules for changing to the parent's taxable year, income to be included in the consolidated return, income to be included in and the time for making separate returns for periods not included in a consolidated return for the purposes of these rules shall be in accordance with the rules prescribed in the federal income tax regulations. (Emphasis Supplied)

Treasury Reg. s. 1.1502-75(d)(1), provides:

General rule. A group remains in existence for a tax year if the common parent remains as the common parent and at least one subsidiary that was affiliated with it at the end of the prior year remains affiliated with it at the beginning of the year, whether or not one or more corporations have ceased to be subsidiaries at any time after the group was formed. Thus, for example, assume that corporation P acquires the sole outstanding share of stock of S on January 1, year 1, and that P and S file a consolidated return for the year 1 calendar year. On May 1, year 2, P acquires the sole outstanding share of stock of S1 and, on July 1, year 2, P sells the S share. The group (consisting originally of P and S) remains in existence in year 2 because P remained the common parent and, S, a subsidiary that was affiliated with P at the end of year 1, remained affiliated with P at the beginning of year 2.

### **ISSUE PRESENTED**

Has sufficient reasonable cause been established for the Executive Director to grant the Taxpayer permission to stop filing consolidated Florida corporate income tax returns?

### **DISCUSSION AND ANALYSIS**

Florida law provides that once a taxpayer makes an election to file a corporate income tax return on a consolidated basis, that the taxpayer must continue to file on a consolidated basis in future years.<sup>1</sup> However, s. 220.131(3), F.S., goes on to provide that such election shall remain in effect “so long as the filing taxpayers remain members of the affiliated group or, in the case of a group having component members not subject to tax under this code, so long as a consolidated return is filed by such group for federal income tax purposes, unless the director consents to the filing of separate returns.”

Rule 12C-1.0131(3)(b)1., F.A.C., and Rule 12C-1.0131(3)(e), F.A.C., reflect this exception from the requirement to continue filing on a consolidated basis. They provide that the Florida consolidated filing requirement is eliminated if the taxpayer is no longer considered to remain in existence under the rules described in s. 1.1502-75(d) of the Treasury Regulations.

Florida follows federal tax concepts in the interpretation and administration of its corporate income tax.<sup>2</sup> Under Treasury Regulation s. 1.1502-75(d)(1), a consolidated group is deemed to remain in existence only so long as the common parent and at least one subsidiary remain affiliated with each other. Treasury Regulation s. 1.1502-76(b)(5), and the examples thereunder, provide that the acquisition of a consolidated group by an unrelated entity filing on a separate return basis causes the termination of that consolidated group.<sup>3</sup>

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<sup>1</sup> See s. 220.131(3), F.S.

<sup>2</sup> See s. 220.02(3), F.S.

<sup>3</sup> See Rev. Rul. 69-163, 1969-1 CB 217.

Effective XXXXX, the parent corporation acquired the taxpayer and the taxpayer's subsidiaries. Prior to this acquisition, the parent corporation and the taxpayer were unrelated and the parent corporation did not meet the 80 percent voting control requirement of I.R.C. s. 1504(a)(2). Under s. 1.1502-75(d)(1) of the Treasury Regulations, the taxpayer's affiliated group (consisting of the taxpayer and the taxpayer's subsidiaries) ceased to exist on XXXXX, and the taxpayer and its subsidiaries became part of the parent corporation's affiliated group (with the parent corporation as the common parent).

The taxpayer and its affiliated group filed a consolidated federal income tax return and a consolidated Florida corporate income tax return for the short tax year ending XXXXX. Through that date, the taxpayer was the parent of its own affiliated group that consisted of the taxpayer and the taxpayer's subsidiaries. On XXXXX, the taxpayer and the taxpayer's subsidiaries were acquired and became part of the parent corporation's affiliated group. The taxpayer's affiliated group ceased to exist, and the taxpayer was no longer the parent corporation of an affiliated group. At that time, the taxpayer became bound by the filing election of the new parent company, the parent corporation, whose election is to file separate income tax returns for those entities within the parent corporation's affiliated group that have nexus in Florida. As a result, the taxpayer and the taxpayer's subsidiaries (a subgroup of the parent corporation's affiliated group) were not eligible to file Florida consolidated corporate income tax returns for tax years ending XXXXX, and later tax years.

### **CONCLUSION**

The taxpayer and its subsidiaries filed a corporate income tax return in Florida for the tax year ending XXXXX. The taxpayer filed a separate Florida corporate income tax return for the tax year ending XXXXX. The Department recognizes that the taxpayer's affiliated group ceased to exist on XXXXX, and that the taxpayer and its subsidiaries could no longer file consolidated corporate income tax returns as an affiliated group for tax years beginning on or after XXXXX. Any deferred gains which are realized for Federal tax purposes, but which have not yet been recognized, were required to be reported in total, on the income tax return filed by the taxpayer, for the period ending XXXXX. In addition, if the taxpayer group has intercompany items realized, but not recognized, or any deferred income or expenses that would normally be reported on a consolidated basis, but would not be included in separately filed corporate income tax returns, the taxpayer must recognize the income for these items on the income tax return filed by the taxpayer for the period ending XXXXX.

Rule 12C-1.0131(3)(b)1., F.A.C., requires taxpayers to submit requests to deconsolidate "not later than the 90<sup>th</sup> day before the due date for the filing of the consolidated return, including extensions of time." Although the taxpayer did not submit its request for permission to deconsolidate its XXXXX, Florida corporate income tax return within the time the rule allows, the operation of law nullified its consolidated filing election for that short tax year, such that the taxpayer and its affiliates were ineligible to file on a consolidated basis, and were ineligible to make a new consolidated filing election. Under those conditions, and provided the requirements addressed in the previous paragraph are met, the taxpayer's request to file its Florida tax return on a separate basis for the short year ended XXXXX, and all subsequent tax years, is granted.

This response constitutes a Technical Assistance Advisement under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related documents are public records under chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details, which might lead to identification of the taxpayer, must be deleted before disclosure. In an effort to protect the confidentiality of such information, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, backup material and response within fifteen days of the date of this advisement.

Sincerely,

Suzanne C. Paul  
Tax Law Specialist  
Technical Assistance and Dispute Resolution  
(850) 717-6794

cc: XXXXX  
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XXXXX  
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Record ID: 213288