



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

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floridarevenue.com

QUESTION: May a parent company be granted permission to cease filing Florida consolidated tax returns based upon changes in business circumstances?

ANSWER: The parent company was granted permission to cease filing Florida consolidated tax returns based on provisions of the Florida Administrative Code which address changes in business circumstances.

March 3, 2020

XXXXXXX XXXXX
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XXXXXX XX XXXXXX

Re: Technical Assistance Advisement 20C1-002
Corporate Income Tax
Request for Authority to Discontinue Consolidated Filing
Section (s.) 220.131, F.S.
Rule 12C-1.0131, F.A.C.
XXXXX (hereinafter "Taxpayer")

Dear XXXXXX,

This is in response to Taxpayer's request dated December 30, 2019, for a Technical Assistance Advisement ("TAA") pursuant to s. 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding permission to discontinue filing consolidated corporate income tax returns.

FACTS SUPPLIED BY TAXPAYER

Taxpayer was incorporated XXXXX. Taxpayer is a leading worldwide XXXXX. XXXXX.

Taxpayer and its subsidiaries file as part of a consolidated group for both federal and Florida tax purposes and have been filing on a consolidated basis in Florida since the taxable year ending XXXXX.

Over the last XXXXX years, significant technological advancements in the XXXXX have changed the nature of Taxpayer's business, making it more specialized. The needs of Taxpayer's customers have changed to meet technology changes, and to survive and flourish, the company has grown organically and through acquisitions. Taxpayer's organizational and technology changes, as well as its acquisition activity and international growth, have changed the Taxpayer's business considerably.

Organizational Changes

XXXXX Taxpayer had XXXXX. In 2013, Taxpayer underwent a major reorganization into XXXXX, which provided more transparency to its investors and broadened awareness of Taxpayer's competitive strengths.

Today, Taxpayer operates its business in XXXXX. XXXXX.

Technology Changes

XXXXX Taxpayer focused on the XXXXX. XXXXX.

Taxpayer has exponentially increased its investment in research and development. XXXXX.

Acquisition Activity

Over the past XXXXX, Taxpayer has engaged in significant acquisition activity in support of growing its business. XXXXX.

Today, Taxpayer's current corporate structure is significantly more complex than it was XXXXX. Accordingly, Taxpayer's tax reporting and internal accounting procedures are far more complex.

International Growth

Taxpayer's acquisitive growth has also increased its international footprint. XXXXX.

ISSUE PRESENTED

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

LEGAL AUTHORITY

Section 220.131, F.S., provides 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.

(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.

Rule 12C-1.0131(3)(b), F.A.C, provides in pertinent part:

- 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.

ANALYSIS

Taxpayer relies on Rule 12C-1.0131(3)(b)2.a., F.A.C., which permits the Executive Director to consider “[c]hanges in law or circumstances, including changes which do not affect income tax liability.”¹ Taxpayer contends that the business nature of the affiliated group has changed significantly since its fiscal year end XXXXX, the year for which Taxpayer made its consolidated filing election.

The information provided by Taxpayer demonstrates growth in the consolidated group since Taxpayer made its consolidated filing election. The acquisitions undertaken by Taxpayer have also expanded its geographic footprint considerably between XXXXX and 2019.

Taxpayer’s overall shift in business focus, along with its substantial growth, taken together, are a sufficient basis for granting Taxpayer’s request for deconsolidation.

CONCLUSION

Taxpayer has established sufficient reasonable cause for the Executive Director to grant Taxpayer permission to cease filing consolidated Florida corporate income tax returns.

Based on the following four conditions, the Department grants permission to Taxpayer to discontinue filing consolidated corporate income tax returns beginning with the tax year ending XXXXX:

¹ Taxpayer estimates that its Florida corporate income tax liability for the tax year ending XXXXX, on a separate return basis will be approximately XXXXX less than it would have been on a consolidated basis.

1. That the deconsolidation is effective for the tax year ending XXXXX.
2. That Taxpayer has no realized but unrecognized income or expense items that may be recognized at a later date.
3. That Taxpayer's group does not become part of a consolidated Florida corporate income tax return prior to the tax year ending XXXXX.
4. That any deferred gains which are realized for federal purposes, but which have not yet been recognized, must be reported in total, on the income tax return filed by Taxpayer's group for tax year ending XXXXX.

This response constitutes a Technical Assistance Advisement under section 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 section 213.22, F.S. Our response is based on those facts and specific situation summarized above. You are advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon this advice is based may subject future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

Jennifer M. Ensley

Jennifer M. Ensley
Tax Law Specialist
Technical Assistance and Dispute Resolution

Activity: 310409

Cc: XXXXX
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