



**Florida Department of Revenue**  
*Technical Assistance and Dispute Resolution*

**Jim Zingale**  
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

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.

August 7, 2020

XXXXX  
XXXXX  
XXXXX  
XXXXX

Re: Technical Assistance Advise ment 20C1-008  
Corporate Income Tax  
Request for Authority to Discontinue Consolidated Filing  
Section (s.) 220.131, F.S.  
Rule 12C-1.0131, F.A.C.  
XXXXX (FEIN XXXXX) ("Taxpayer")  
XXXXX (FEIN XXXXX) ("Holdings")  
XXXXX (FEIN XXXXX) ("Parent")

Dear XXXXX,

This is in response to your request dated March 12, 2020, for a Technical Assistance Advise ment ("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 is a C corporation domiciled in Ohio. It manufactures and sells XXXXX. Taxpayer has been filing consolidated Florida corporate income tax returns based on a 52/53-week fiscal year since 2004. Taxpayer owns several other entities, none of which have Florida nexus. Taxpayer does not have any deferred gains.

On XXXXX, Holdings was formed as a Delaware C corporation and owned Parent, which is also a Delaware C corporation. Parent was formed on XXXXX and had no activity until XXXXX, when Parent acquired 100% of the issued and outstanding stock of Taxpayer.

Taxpayer and subsidiaries filed federal and Florida consolidated returns for the tax period XXXXX. Then as of XXXXX, Taxpayer was no longer the parent of the consolidated group and did not meet the requirements to file a Florida consolidated return pursuant to section 220.13, F.S. Therefore, Taxpayer filed a separate Florida return for the tax period XXXXX.

Taxpayer states Holdings does not have nexus in Florida and cannot file a Florida consolidated return. Therefore, since Taxpayer is no longer the parent of the group and the new parent corporation does not have nexus in Florida, Taxpayer can no longer file a consolidated Florida corporate income tax return.

### **ISSUE PRESENTED**

Whether good cause exists for the Executive Director to grant Taxpayer permission to discontinue filing consolidated Florida corporate income tax returns?

### **LEGAL AUTHORITY**

Section 220.131, F.S., states in 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. (Emphasis Supplied)

\*\*\*

Rule 12C-1.0131, F.A.C, states in 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.

\*\*\*

(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.

\* \* \*

(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.

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.

### DISCUSSION

Florida law provides that once a taxpayer makes an election to file a corporate income tax return on a consolidated basis, that taxpayer must continue to file on a consolidated basis in future years.<sup>1</sup> 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. It also lists the conditions to be met for an affiliated group of corporations to stop filing a consolidated corporate income tax return. Rule 12C-1.0131, F.A.C., provides 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:

(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.

Rule 12C-1.0131(3)(b)1., F.A.C., requires that the request to cease filing consolidated Florida corporate income tax returns be filed no later than the 90<sup>th</sup> day **before** the due date, or extended due date if an extension was filed, for the filing of the consolidated return. As Taxpayer's request to deconsolidate is dated and postmarked XXXXX, this requirement is not satisfied for the tax year ended XXXXX return, for which the due date is XXXXX. Taxpayer did not file an extension of time to file its return. Therefore, the request for deconsolidation cannot be granted for tax year ended

---

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

XXXXX. However, Taxpayer's request for deconsolidation can be considered for Taxpayer's tax year beginning XXXXX.

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>2</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>3</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 remains the common parent and at least one subsidiary remain affiliated with each other.

Effective XXXXX, Parent acquired Taxpayer and Taxpayer's subsidiaries. Taxpayer was no longer the common parent. Taxpayer's affiliated group (consisting of Taxpayer and Taxpayer's subsidiaries) ceased to exist on XXXXX, and Taxpayer and its subsidiaries became part of Parent's affiliated group (with Holdings as the common parent).

Therefore, good cause has been established for the Executive Director to grant Taxpayer permission to discontinue filing consolidated Florida corporate income tax returns.

### **CONCLUSION**

On XXXXX, Taxpayer's affiliated group ceased to exist, and Taxpayer was no longer the parent corporation of an affiliated group. As a result, Taxpayer and Taxpayer's subsidiaries are not eligible to file Florida consolidated corporate income tax returns for tax years ending after XXXXX. Taxpayer did not make a timely request for deconsolidation; therefore, it cannot file a separate return for tax year ended XXXXX. However, its request for deconsolidation has been approved for tax year beginning XXXXX. For subsequent years, Taxpayer and Taxpayer's subsidiaries will file separate returns for Florida tax purposes.

Based on the discussion above, the Department grants permission to Taxpayer to discontinue filing consolidated corporate income tax returns based on the following conditions:

1. That the deconsolidation is effective for the tax year beginning on or after XXXXX,

---

<sup>2</sup> See s. 220.131(3), F.S.

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

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, and
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,

*Susan Coxwell*

Susan Coxwell  
Tax Law Specialist  
Technical Assistance and Dispute Resolution