



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

**Jim Zingale**  
Executive Director

5050 West Tennessee Street Tallahassee FL 32399

floridarevenue.com

**QUESTION:** Taxpayer requests an amended written agreement between themselves and the Florida Department of Revenue, concerning the method by which income generated by or arising out of a “qualified capital investment project” shall be determined for purposes of the Florida Capital Investment Tax Credit under s. 220.191, F.S.

**ANSWER:** When filing their consolidated Florida corporate income tax return, it shall be necessary for the Taxpayer to use a pro-forma format to determine the project’s annual taxable income. Taxpayer will apply its Florida apportionment fraction to the Project’s annual taxable income, and apply the applicable Florida corporate income rate for the determination of the Project’s Florida taxable income, and associated Capital Investment Tax Credit.

September 11, 2020

XXXXX  
XXXXX  
XXXXX  
XXXXX

Re: Technical Assistance Advisement: 20C1-009  
Request for Amended Written Agreement for Determination of Income  
Sections 220.11, 220.13, 220.15, 220.191, Florida Statutes (“F.S.”)  
Rule 12C-1.0191, Florida Administrative Code (“F.A.C.”)  
XXXXX (“Taxpayer”)  
FEIN: XXXXX  
Project ID: XXXXX  
Florida Department of Economic Opportunity (“DEO”)  
Enterprise Florida, Inc. (“EFI”)

Dear XXXXX:

This is in response to your request received August 21, 2020, for a Technical Assistance Advisement (“TAA”) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding your request for an amended agreement concerning how the method by which income

generated by or arising out of Taxpayer's qualified capital investment project shall be determined for purposes of applying the Capital Investment Tax Credit ("CITC").

Section 220.191(5), F.S., addresses applications for CITC. That statute provides:

Applications shall be reviewed and certified pursuant to s. 288.061. The Department of Economic Opportunity, upon recommendation by Enterprise Florida, Inc., shall first certify a business as eligible to receive tax credits pursuant to this section prior to the commencement of operations of a qualifying project, and such certification shall be transmitted to the Department of Revenue. Upon receipt of the certification, the Department of Revenue shall enter into a written agreement with the qualifying business specifying, at a minimum, the method by which income generated by or arising out of the qualifying project will be determined.

Pursuant to Rule 12C-1.0191, F.A.C., the Department of Revenue ("Department") has adopted TAAs as the method for entering into such written agreements.

On XXXXX, DEO certified Taxpayer as eligible to receive tax credits under s. 220.191, F.S. The Department of Revenue, having received said certification, examined your letter and established that you complied with the statutory and regulatory requirements for issuance of a TAA, therefore, the Department issued XXXXX on XXXXX. The Department of Revenue has reviewed your new request and is hereby granting your request for a revised TAA. The Department of Revenue, in issuing this TAA, has relied on the representations of Taxpayer and the certification of the Department of Economic Opportunity. This TAA specifies the amended method by which income generated by or arising out of the qualifying project will be determined based on the facts as represented to the Department of Revenue. This response to your request constitutes a Technical Assistance Advisement under Chapter 12-11, F.A.C., and is issued to you under authority of s. 213.22, F.S.

#### **FACTS SUPPLIED BY TAXPAYER**

The facts supplied for the agreement under XXXXX remain the same. However, due to an update in software, Taxpayer now has the capability to separately compute revenues generated by XXXXX. Taxpayer is requesting a revision to the method by which income generated by or arising from the project is determined.

Taxpayer proposes calculating its separate Florida corporate income tax then multiplying it by the percentage of the project's revenues to total revenues to determine the Florida tax liability directly related to the qualifying project. Taxpayer's percentage of revenues will be determined by dividing revenues generated from the XXXXX (qualifying project) by total Taxpayer revenues for the tax year.

Taxpayer would determine its separate company Florida taxable income and then use the standard apportionment factor as provided by s. 220.15, F.S. The apportionment factor will be determined as if it were a separate company with nexus in all states. Property and payroll would be 100% Florida with sales in all states. Taxpayer will multiply the apportionment factor by the company's separate company taxable income to determine its Florida taxable income. Taxpayer will then multiply the Florida taxable income by the applicable Florida income tax rate to determine its Florida tax liability. Taxpayer's separate Florida tax liability will then be multiplied by the qualifying project's percentage of revenues. The resulting project's share of Florida tax liability will then be multiplied by the annual credit utilization percentage (based on the level of investment) allowed by statute (s. 220.191(2)(a), F.S.).

### **ISSUE PRESENTED**

In its letter received on August 21, 2020, Taxpayer requests a revision to the method by which the qualifying project's income would be computed as provided in XXXXX.

### **LEGAL AUTHORITY**

Section 220.11, F.S., states in part:

(1) A tax measured by net income is hereby imposed on every taxpayer for each taxable year commencing on or after January 1, 1972, and for each taxable year which begins before and ends after January 1, 1972, for the privilege of conducting business, earning or receiving income in this state, or being a resident or citizen of this state. Such tax shall be in addition to all other occupation, excise, privilege, and property taxes imposed by this state or by any political subdivision thereof, including any municipality or other district, jurisdiction, or authority of this state....

Section 220.13, F.S., states in part:

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows: ...

Section 220.15, F.S., states in part:

(1) Except as provided in ss. 220.151, 220.152, and 220.153, adjusted federal income as defined in s. 220.13 shall be apportioned to this state by taxpayers doing business within and without this state by multiplying it by an apportionment fraction composed of a sales factor representing 50 percent of the fraction, a property factor representing 25 percent of the fraction, and a payroll factor representing 25 percent of the fraction. ...

Section 220.191, F.S., states in part:

(1) DEFINITIONS. —For purposes of this section:

(a) “Commencement of operations” means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed.

(b) “Cumulative capital investment” means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations.

(c) “Eligible capital costs” means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including, but not limited to: ...

(d) “Income generated by or arising out of the qualifying project” means the qualifying project’s annual taxable income as determined by generally accepted accounting principles and under s. 220.13.

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(f) “Qualifying business” means a business which establishes a qualifying project in this state and which is certified by the Department of Economic Opportunity to receive tax credits pursuant to this section.

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(2)(a) An annual credit against the tax imposed by this chapter shall be granted to any qualifying business in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project, for a period not to exceed 20 years beginning with the commencement of operations of the project. ...The annual tax credit granted under this section shall not exceed the following percentages of the annual corporate income tax liability or the premium tax liability generated by or arising out of a qualifying project:

1. One hundred percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.
2. Seventy-five percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.
3. Fifty percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.

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(d) If the credit granted under subparagraph (a)1. is not fully used in any one year because of insufficient tax liability on the part of the qualifying business, the unused amounts may be used in any one year or years beginning with the 21st year after the commencement of operations of the project and ending the 30th year after the commencement of operations of the project.

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(4) Prior to receiving tax credits pursuant to this section, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations at a qualifying project and continuing each year thereafter during which tax credits are available pursuant to this section.

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(8) The Department of Revenue may specify by rule the methods by which a project's pro forma annual taxable income is determined.

### **DISCUSSION**

Taxpayer has requested the Department revise the method by which the income generated by or arising from the project is determined. The Department concurs with the new method proposed by Taxpayer.

Taxpayer must apply Generally Accepted Accounting Principles (GAAP) and the provisions of s. 220.13, F.S. Taxpayer will be required to provide with its consolidated Florida corporate income tax return the pro-forma return for the qualifying project.

The allowable CITC is limited to the lesser of the three limitations defined in XXXXX. Additionally, the criteria set by DEO regarding commencement of operations, as described in Taxpayer's certification letter and XXXXX, still apply.

Taxpayer asserts its cumulative capital investment has increased to over \$XXXXX million. Based on this assertion, as provided in s. 220.191(2)(a)2., F.S., the annual credit would be calculated at XXXXX of the annual corporate income tax liability generated by or arising out of the qualifying project.

### **CONCLUSION**

Given the specific circumstances involved in this case, and based on the representation of Taxpayer, the revised computation above properly computes the income generated by or arising out of the qualifying project based upon s. 220.191, F.S., and Rule 12C-1.0191, F.A.C. However, Taxpayer is reminded that should the facts provided in its request of August 21, 2020, be determined to be incorrect or changed, the computation for the income generated by or arising out of the qualifying project could be substantially different from what has been agreed upon in this TAA.

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 R. Coxwell*

Susan R. Coxwell  
Tax Law Specialist  
Technical Assistance and Dispute Resolution