



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

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QUESTION: May a parent company be granted permission to cease filing Florida consolidated tax returns based upon changes in facts surrounding the members of the taxpayer's affiliated group?

ANSWER: The parent company was granted permission to cease filing Florida consolidated tax returns based on provisions of the F.A.C. which address changes in facts surrounding the members of the taxpayer's affiliated group.

October 9, 2020

XXX
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XXX

Re: Technical Assistance Advisement 20C1-011
Request for Authority to Discontinue Consolidated Filing
Section 220.131, F.S.
Rule 12C-1.0131, F.A.C.
XXX ("the taxpayer")
FEIN: XX-XXXXXXX

Dear XXX:

This is in response to your request dated XXX, 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 Florida corporate income tax returns. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

FACTS SUPPLIED BY TAXPAYER

The taxpayer files consolidated federal and Florida corporate income tax returns. On XXX, XXX purchased the taxpayer's stock. The taxpayer was then merged into an entity XXX had previously formed for that purpose, after which the taxpayer ceased to exist. Following the merger, the name of the surviving entity was changed, and it received a new federal identification number. XXX is the parent company of the surviving entity.

As XXX has not made a consolidated filing election pursuant to the provisions of section 220.131, F.S., XXX and its subsidiaries file their Florida corporate income tax returns on a separate basis.

The taxpayer's affiliated group that existed prior to the merger no longer exists for federal and Florida income tax purposes, as the taxpayer and its affiliated group have become part of the XXX affiliated group. Due to the changes in facts surrounding the members of the taxpayer's affiliated group, the taxpayer requests permission to discontinue filing Florida consolidated tax returns for tax years beginning on or after XXX, the date the taxpayer was acquired by XXX.

ISSUE

Whether the taxpayer should be granted permission to discontinue filing consolidated Florida corporate income tax returns.

LAW

Section 220.131(1), F.S., states:

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.

Section 220.131(2), F.S., states:

Subject to subsection (5), the director may require a consolidated return for those members of an affiliated group of corporations which are subject to tax and which would be eligible to elect to consolidate their incomes under subsection (1), if the filing of separate returns for such corporations would improperly reflect the taxable incomes of such corporations or of such group.

Section 220.131(3), F.S., states:

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., states:

- (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 had a substantial adverse effect on the consolidated tax liability of a 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

Effective XXX, the taxpayer became a member of XXX affiliated group. That affiliated group does not file consolidated Florida corporate income tax returns. Prior to the acquisition, the taxpayer and XXX did not share common ownership and were completely unrelated to each other. Based on its having been acquired by XXX, the taxpayer seeks permission to discontinue filing consolidated Florida corporate income tax returns, as authorized by section 220.131, F.S., and Rule 12C-1.0131, F.A.C.

As the taxpayer's original Florida affiliated group was acquired by XXX, a change in ownership has occurred, and the taxpayer's original affiliated group has ceased to exist. The taxpayer is now bound by the filing election made by its new parent company, XXX.

CONCLUSION

Based on the following three conditions, the Department grants the taxpayer permission to discontinue filing consolidated corporate income tax returns:

1. That the deconsolidation is effective for the tax year beginning on XXX;
2. That the taxpayer has no realized but unrecognized income or expense items that may be recognized at a later date that would benefit a member of the affiliated group;

3. That the taxpayer group does not become part of a consolidated Florida corporate income tax return until tax years ending on or after XXX.

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

Suzanne C. Paul
Tax Law Specialist
Technical Assistance and Dispute Resolution
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