Florida Department of Revenue
Technical Assistance and Dispute Resolution

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QUESTION: Taxpayer requests a 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: The Department is inclined to concur with Taxpayer's suggested calculation for the income generated by or arising out of the qualifying project. However, Taxpayer was reminded that should the facts provided in its request be determined to be substantially different, this TAA would not apply and the methodology may be deemed inappropriate.

September 8, 2021

XXXXXX
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XXXXXX

Re: Technical Assistance Advisement – 21C1-009
Request for 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: XXXXXX
Project ID: XXXXX
XXXXXX ("Parent")
FEIN: XXXXXX
Florida Department of Economic Opportunity ("DEO")
Enterprise Florida, Inc. ("EFI")

Dear XXXXX:

This is in response to your request dated XXXXX, 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

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 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, has examined your letter and has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department of Revenue is hereby granting your request for a 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 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.

ISSUE PRESENTED

In its letter dated XXXXX, Taxpayer requests a written agreement to determine how the qualifying project's income will be computed, based upon s. 220.191, F.S., and Rule 12C-1.0191, F.A.C.

FACTS SUPPLIED BY TAXPAYER

Taxpayer is a XXXXX. Taxpayer's XXXXX. Taxpayer generates over $XXXXX in annual revenue and has more than XXXXX employees located in Florida alone. Taxpayer is included in the Parent's Florida and federal consolidated filing for corporate income tax.

The qualifying project ("Project") involves the XXXXX. The Project includes the purchase of new XXXXX.

The Project will create approximately 100 net new-to-Florida jobs, with an average annual wage of at least $XXXXX ("project wage"). Taxpayer estimates a cumulative capital investment of at least $XXXXX million. Taxpayer will utilize fiscal year 2020 as the baseline comparison when calculating the Project's capital investment and net new to Florida jobs.

Commencement of operations is expected to be December 31, 2024.
Taxpayer states this Project can be separately accounted for from the existing Project (XXXXXX) and the calculation of the Project's income and associated CITC will be mutually exclusive of the existing Project. For the current Project, Taxpayer proposes using actual gross profit determined by the XXXXX and sold on each qualifying project line (XXXXX) multiplied by their average selling price less the XXXXX. From the gross profit, any associated incremental selling, marketing, distribution, and other expense related to the qualifying project XXXXX will be subtracted to arrive at the qualifying project's income before tax.

The income will then be adjusted by Schedule M items associated with the project to determine taxable income for the qualifying project. Taxpayer will utilize actual Schedule M items related to depreciation and gain or loss from fixed assets which are attributable to the qualifying project. All other Schedule M adjustments will be computed by using a ratio of XXXXX before tax over the total income before tax of Taxpayer's separately stated Income Statement. This percentage will then be applied to the Total Schedule M Items from Taxpayer's separately stated pro forma federal income tax return less federal pro forma Schedule M depreciation and gain or loss from the sales or disposition of fixed assets.
After the Project's taxable income is determined using the methods described above, the Florida apportionment factor, as determined under section 220.15, F.S., will be applied to the Project's taxable income to determine the Project's Florida taxable income. The Project's taxable income would then be multiplied by the applicable tax rate.

LAW

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

On XXXXX, DEO issued a letter approving Taxpayer's project for participation in Florida's CITC program, and indicated in its letter that the qualifying project will be located in a High Impact Performance Incentive Sector pursuant to s. 288.108, F.S. The certification approval entitles the project to eligibility for an annual tax credit against the corporate income tax imposed if certain criteria are met, in an amount equal to the lesser of the following for up to twenty years, beginning with the commencement of operations:

1. Five (5) percent of the cumulative capital investment, which is estimated to be $XXXXX million, but must be at least $25 million;
2. Fifty (50%), seventy-five (75%), or one hundred percent (100%) of the annual corporate income tax liability generated by or arising out of the qualifying project, depending on the level of cumulative capital investment; or
3. The tax due on the consolidated Florida corporate income tax return of Parent prior to the application of this credit that includes the income generated by or arising out of the qualifying project.

DEO has required that the qualifying project meet certain criteria by the commencement of operations. The "commencement of operations" (as defined in s. 220.191, F.S.) will not be deemed to occur unless Taxpayer has provided DEO with evidence that it has met the following criteria:

1. Capital investment of at least $25 million has been made at the project's location in XXXXX; and
2. Creation of at least 100 net new-to-Florida full-time equivalent jobs paying at least the project wage at the project's location in XXXXX.

No annual CITC may be claimed without a letter from DEO stating that the appropriate annual requirements have been satisfied or maintained.

The Department agrees with Taxpayer's proposed method to determine project income. Taxpayer must apply generally accepted accounting principles and the provisions of s. 220.13, F.S., in computing the income of the qualifying project. Taxpayer will provide a pro forma Florida and federal return for the Project and a schedule of the Schedule M calculations and adjustments to determine the qualifying project's taxable income, tax liability and associated CITC. The allowable CITC will be limited to the lesser of the limitations stated above.

Pursuant to s. 220.191(2)(d), F.S., when the capital investment is at least $100 million, credit amounts not fully used in any one year because of insufficient tax liability on the part of the qualifying business may be used in any one year or years beginning with the 21st year after the commencement of operations of the project and ending with the 30th year after the commencement of operations of the qualifying project.

The amount of carryover from any one taxable year is five (5) percent of the cumulative capital investment that is at least $100 million less the amount of capital investment tax credit that could be used on the tax return for the taxable year. The amount of carryover from a taxable year may not exceed five (5) percent of the cumulative capital investment that is at least $100 million.

CONCLUSION

Given the specific circumstances involved in this case, and based on the representation of the Taxpayer, the Department concurs with Taxpayer's suggested calculation for 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 XXXXX, be determined to be incorrect or changed, the computation for the income generated by or arising out of the 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