



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

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** Whether Taxpayer meets the requirements of s. 220.131, F.S., so that it can file a single consolidated Florida corporate income tax return which would include some members who currently file a consolidated Florida corporate income tax return filed under the provisions of Florida's "grandfather election," for tax year 2021 and forward.

If Taxpayer can file a single consolidated Florida return, are NOLs generated under the historical separate groups carried over to the new consolidated Florida return, without any limitation on the NOLs?

**ANSWER:** Based on the facts provided by Taxpayer in its request, Taxpayer has met the requirements to make a consolidated filing election under the current provisions of s. 220.131, F.S. Taxpayer can file a single consolidated Florida tax return for tax year 2021 and going forward.

Florida net operating losses (NOL's) generated in previous tax years by members of the consolidated group included in the consolidated Florida return under the "new" consolidated filing election may be used to the extent allowed by the Internal Revenue Code and Chapter 220, F.S., with no additional limitations.

October 19, 2023

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Technical Assistance Advise ment – TAA #: 23C1-013  
[REDACTED] ("Taxpayer")  
Corporate Income Tax – Consolidated Criteria  
Section 212.031, Florida Statutes - ("F.S.")  
FEIN: [REDACTED]  
BP #: [REDACTED]

Dear [REDACTED]

This is in response to your letter [REDACTED] requesting this Department's issuance of a Technical Assistance Advise ment ("TAA") pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C, Florida Administrative Code, regarding the matter discussed below. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set

forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

### **REQUESTED ADVISEMENTS**

Whether Taxpayer meets the requirements of s. 220.131, F.S., so that it can file a single consolidated Florida corporate income tax return which would include some members who currently file a consolidated Florida corporate income tax return filed under the provisions of Florida's "grandfather election," for tax year 2021 and forward.

If Taxpayer can file a single consolidated Florida return, are NOLs generated under the historical separate groups carried over to the new consolidated Florida return, without any limitation on the NOLs?

### **FACTS**

Your request states that Taxpayer filed two separate consolidated Florida returns, separately comprised of [REDACTED] and [REDACTED] until tax year 2021. Taxpayer is the parent of [REDACTED] and [REDACTED]. It files a consolidated federal return and has property and nexus with Florida, in accordance with Florida's requirements to file consolidated. [REDACTED] currently files a consolidated federal return inclusive of [REDACTED]. Additionally, it files a nexus only consolidated return under Florida's "grandfather election". [REDACTED] files a consolidated Florida corporate income tax return.

Taxpayer wishes to file a single Florida consolidated corporate income tax return that includes all members of its consolidated group for tax year 2021 going forward.

### **LAW AND REGULATIONS**

Section 220.131, F.S., states:

(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.
- (2) 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.
- (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.
- (4) The computation of consolidated taxable income for the members of an affiliated group of corporations subject to tax hereunder shall be made in the same manner and under the same procedures, including all intercompany adjustments and eliminations, as are required for consolidating the incomes of affiliated corporations for the taxable year for federal income tax purposes in accordance with s. 1502 of the Internal Revenue Code, and the amount shown as consolidated taxable income shall be the amount subject to tax under this code.
- (5) Each taxpayer shall apportion adjusted federal income under s. 220.15 as a member of an affiliated group which files a consolidated return under this section on the basis of apportionment factors described in s. 220.15. For the purposes of this subsection, each special industry member included in an affiliated group filing a consolidated return, who would otherwise be permitted to use a special method of apportionment under s. 220.151 or s. 220.153, shall construct the numerator of its sales, property, and payroll factors, respectively, by multiplying the denominator of each such factor by the premiums, revenue miles, or single sales factor ratio otherwise applicable under s. 220.151 or s. 220.153 in the manner prescribed by department rule.

#### **DISCUSSION, ANALYSIS and CONCLUSION**

Your letter dated [REDACTED], states that, for Florida corporate income tax filing purposes, a single consolidated group of corporations has been split into two separate consolidated groups, with one group filing its consolidated return under the "grandfather election," which allows corporations that made a valid filing election under that provision to file returns that include only the corporations in their consolidated groups that have Florida nexus. The second consolidated group files its Florida corporate income tax return under the current consolidated filing provisions of s. 220.131, F.S. Your letter asks if the parent company of the entire consolidated group may now make a "new" consolidated filing election under the current provisions of s. 220.131, F.S., to file a single

consolidated Florida corporate income tax return that includes all members of the consolidated group, beginning with the 2021 tax year going forward.

Based on the facts provided by Taxpayer in its request, Taxpayer has met the requirements to make a consolidated filing election under the current provisions of s. 220.131, F.S. Taxpayer can file a single consolidated Florida tax return for tax year 2021 and going forward. It should include Form F-1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) with its return. We would also recommend that an attachment be included with the return in which the "new" consolidated filing election is made, stating that the taxpayer is making a "new" consolidated filing election and which entities will be included in that return and future returns, versus the entities that were filing "grandfather election" returns in prior tax years.

Florida net operating losses (NOL's) generated in previous tax years by members of the consolidated group included in the consolidated Florida return under the "new" consolidated filing election may be used to the extent allowed by the Internal Revenue Code and Chapter 220, F.S., with no additional limitations. Schedules should be included with the return that show the name of the entities that generated the NOL's and the amount of NOL each entity generated, by year.

This response constitutes a TAA 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 backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 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 TAA, 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 ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6326.

Sincerely,

*Denise Smith*

Denise Smith  
Tax Law Specialist  
Technical Assistance & Dispute Resolution  
(850)717-6326

CC: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Record ID: 7000860905

## TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000860905

Respondent code: 44

Tax type: Corporate Income Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.