



5050 West Tennessee Street, Tallahassee, FL 32399

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Question: Whether Taxpayer has established sufficient reasonable cause for the Executive Director to permit it to stop filing consolidated corporate income tax returns beginning with the tax year ending [REDACTED].

Answer: Taxpayer has established sufficient reasonable cause for the Executive Director to grant Taxpayer permission to cease filing consolidated Florida corporate income tax returns.

May 15, 2024

[REDACTED]

Via email to: [REDACTED]

Re: Technical Assistance Advisement – TAA #: 24C1-002
Corporate Income Tax – Consolidated Criteria
[REDACTED] (“Taxpayer”)
Sections 220.131(1) and (3), Florida Statutes (F.S.)
Rule 12C-1.0131(3), Florida Administrative Code (F.A.C.)
FEIN: [REDACTED]
BP#: [REDACTED]

Dear [REDACTED]

This is in response to your initial letter dated, [REDACTED], the revised letter dated, [REDACTED], supplemental letter dated, [REDACTED], and several in-person meetings¹, requesting this Department’s issuance of a Technical Assistance Advisement (TAA) pursuant to Section (s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C., 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.

ISSUE PRESENTED

Whether Taxpayer has established sufficient reasonable cause for the Executive Director to permit it to stop filing consolidated corporate income tax returns beginning with the tax year ending [REDACTED].

¹ In-person meeting dates: [REDACTED]

FACTS SUPPLIED BY TAXPAYER

Taxpayer is the parent company of an affiliated group of corporations that files consolidated federal and Florida corporate income tax returns. Taxpayer made an election to file on a consolidated basis with its Florida corporate income tax return for its fiscal tax year ending [REDACTED].

It is Taxpayer's belief that its significant business transformation, as it has evolved from a [REDACTED] demonstrates sufficient business changes to support deconsolidation.

Since making a Florida consolidated filing election for its Fiscal Year Ending [REDACTED] (" [REDACTED] ") Taxpayer has undertaken numerous steps with the overall goal of transforming itself into an industrial service provider and disposing of many of its more [REDACTED] to fund this business transformation.

Taxpayer's significant business changes have resulted in lower overall revenues as well as significantly [REDACTED], [REDACTED] and [REDACTED], but also significant increases in [REDACTED] as well as [REDACTED] and other [REDACTED].

In addition, although many of the corporate entities in Taxpayer's U.S. federal consolidated filing group have remained in existence since [REDACTED], the makeup of Taxpayer's consolidated filing group does not fairly reflect the changes to the Taxpayer's business as many of its acquisitions and dispositions were effectuated through [REDACTED] and [REDACTED].

LEGAL AUTHORITY

Section 220.131(1), F.S., provides,

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(3), F.S., provides:

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)(a), F.A.C, provides that,

1. A group which filed, or was required to file, a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it has permission to discontinue filing consolidated returns under paragraph (b) or (c) of this subsection; or as long as a federal consolidated return is filed.
2. The requirement set forth in section 220.131(1), F.S., that the parent company of an affiliated group must be subject to the Florida Income Tax Code is a condition that is necessary for an affiliated group to make an election to file a Florida consolidated return. There is no requirement in section 220.131, F.S., that the parent be subject to the Florida Income Tax Code in each subsequent year. Therefore, the affiliated group may not break its consolidated election because the parent company no longer has nexus with Florida.

Rule 12C-1.0131(3)(b), F.A.C., provides, in part,

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.

ANALYSIS

Taxpayer relies on Rule 12C-1.0131(3)(b)2.a., F.A.C., which permits the Executive Director to consider "[c]hanges in law or circumstances, including changes which do not affect income tax liability." Taxpayer contends that the business nature of the affiliated group has changed significantly since its fiscal year end [REDACTED], on or about the year for which Taxpayer made its consolidated filing election.

The information provided by Taxpayer demonstrates significant business changes in the consolidated group since Taxpayer made its consolidated filing election. Significant acquisitions and business segment combinations undertaken by Taxpayer have also expanded its geographic footprint considerably between [REDACTED] and [REDACTED].

Taxpayer's overall shift in business focus, to include [REDACTED] [REDACTED] have changed dramatically since the initial Florida consolidated election was made. This shift, along with significant increases in profit margin, [REDACTED] and other [REDACTED], taken together, are a sufficient basis for granting Taxpayer's request for deconsolidation.

CONCLUSION

Taxpayer has established sufficient reasonable cause for the Executive Director to grant Taxpayer permission to cease filing consolidated Florida corporate income tax returns.

Based on the following four conditions, the Department grants permission to Taxpayer to discontinue filing consolidated corporate income tax returns beginning with the tax year ending [REDACTED]:

1. That the deconsolidation is effective for the tax year ending [REDACTED].
2. Taxpayer and its subsidiaries have no intercompany unrealized or unrecognized items or deferred income or expenses that would normally be reported on a consolidated basis but may not be included in separately filed corporate income tax returns.
3. That Taxpayer group does not become part of a consolidated Florida corporate income tax return prior to the tax year ending [REDACTED].

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 [REDACTED]

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 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 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 ten (10) days of the date of this letter.

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

Kind Regards,

Denise L. Smith

Denise L. Smith, MPM

Tax Law Specialist

Technical Assistance & Dispute Resolution

cc:

[REDACTED]

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 address 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: 7001076095

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.

Thank you.