

TAX: Corporate Income – Capital Investment Tax Credit

TAA NUMBER: 10C1-003

ISSUE: Request for written agreement for determination of project income

STATUTE CITE(S): Sections 220.11, 220.13, and 220.191, F.S.

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 applying the Florida Capital Investment Tax Credit.

ANSWER: When filing its Florida corporate income tax return it shall be necessary for the taxpayer to separately account for, using a “pro forma” format, the project’s annual taxable income. This “pro forma” attachment will indicate separately all revenues, expenses, either direct or indirect. After determining the Project’s annual taxable income, Taxpayer will apply the Florida tax rate to Project’s annual taxable income, for the determination of the Project’s Florida tax liability, and associated Capital Investment Tax Credit.

February 26, 2010

Re: Technical Assistance Advisement 10C1-003

Request for Written Agreement for Determination of Income

Sections 220.11, 220.13, 220.15, 220.191, Florida Statutes.

Rule 12C-1.015, F.A.C.

XXX (hereinafter referred to as “CORPORATION A”)

XXX (hereinafter referred to as “PROJECT”)

XXX (hereinafter referred to as “COMPANY B”)

Office of Tourism, Trade, and Economic Development (hereinafter referred to as “OTTED”)

Enterprise Florida, Inc. (hereinafter referred to as “EFI”)

XXX (hereinafter referred to as “CORPORATION C”)

XXX (hereinafter referred to as “CORPORATION D”)

XXX (hereinafter referred to as “CORPORATION E”)

XXX (hereinafter referred to as “CORPORATION F”)

Dear XXX:

Your letter of XXX, requests a written agreement between the Florida Department of Revenue and COMPANY B, concerning the method by which income generated by or arising out of COMPANY B’s PROJECT shall be determined for purposes of applying the Capital Investment Tax Credit. 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 section 213.22, F.S.

FACTS SUPPLIED BY TAXPAYER

This application for the written agreement referenced above, involves the Florida Department of Revenue, COMPANY B and its qualifying project, the PROJECT. This project is the successor and combination of two former XXX programs which were owned by CORPORATION A and CORPORATION C. In XXX CORPORATION A submitted an application to EFI/OTTED requesting participation and certification in Florida’s Capital Investment Tax Credit (CITC) Program for its investment in XXX. That investment was referred to as the XXX project, and was later certified as a “qualifying project” under Florida’s CITC Program (see section 220.191, F.S.). In XXX, in response to a request for a written agreement for the determination of taxable income and the associated CITC, the Department issued on August 26, 2004, TAA 04C1-005. This document specified the manner in which the Taxpayer’s project would account for its annual taxable income, and the subsequent CITC.

Later, the XXX determined that it was not cost effective to operate these two separate programs, and XXX consented to the merger of the two programs into a separate joint venture company, a Limited Liability Company (LLC), under the name of COMPANY B. Effective XXX, CORPORATION A contributed all of its PROJECT assets and employees, and CORPORATION C contributed all of its XXX assets and employees into COMPANY B. Under this agreement CORPORATION A and CORPORATION C each were granted a 50 percent ownership interest in the new joint venture (COMPANY B). For federal income tax and Florida corporate income tax purpose COMPANY B was treated as a partnership and will continue to be treated as a partnership.

On XXX, the Governor's Office of the State of Florida recognized CORPORATION A's contribution of its PROJECT to COMPANY B and recertified COMPANY B as the legal successor to the former qualifying CITC project called the "XXX." CORPORATION A's eligible capital costs of \$XXX (\$XXX) were to be used as the basis for the annual credit.

Since its formation, COMPANY B's financial accounting and tax records have been compiled using separate general ledger accounting systems maintained by CORPORATION A and CORPORATION C. Beginning in XXX, COMPANY B implemented its new financial reporting system that combines both the PROJECT and the XXX project into one general ledger system. This new general ledger system continues to provide for the separate tracking of revenues, direct costs, and indirect costs of the PROJECT and the XXX project, which will allow for separate accounting between the PROJECT and the XXX projects.

COMPANY B indicates that it will determine the PROJECT's annual taxable income using Generally Accepted Accounting Principles (GAAP), provisions contained in Chapter 220, F.S., and will separately account for the project's taxable income using a "pro forma" format. This "pro forma" format will separately account for all revenues, direct and indirect costs, book to tax adjustments, and any other adjustments made in the determination of the PROJECT's annual taxable income. The amount of the Florida income tax liability and the amount of the associated annual CITC credit will be readily determinable.

In addition, to the above proposed methodology, there are miscellaneous corporate general ledger accounts which COMPANY B indicates are not directly allocated to the PROJECT. If book to tax adjustments are necessary for these accounts they will be allocated using the method listed in the following schedule. These accounts, and their XXX/XXX balances are listed below:

	Income (Expense)		
	XXX	XXX	<u>Allocation Method</u>
Miscellaneous Income	\$XXX	XXX	Indirect Cost of Sales
Interest Income-other	\$XXX	\$XXX	Sales Revenue
Gain/Loss Derivatives	(\$XXX)	(\$XXX)	100% to XXX
FAS/CAS Pension Exp. Historical	(\$XXX)	(\$XXX)	Pre COMPANY B-
Interest Exp.	(\$XXX)	(\$XXX)	Indirect Cost of Sales
Purchase Discounts	\$XXX	\$XXX	Indirect Cost of Sales
Imputed Income/Loss	(\$XXX)	(\$XXX)	Indirect Cost of Sales

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 then be applied to the PROJECT's taxable income to determine the project's Florida taxable income and the associated CITC. The allowable CITC will be limited to the lesser of the amount calculated or the \$XXX limitation. That amount will be reported via footnote on the partners' Florida Partnership Information Returns (Form F-1065), and Schedule K-1's. The COMPANY B partners are listed below:

- CORPORATION A - XXX% ownership (XXX)
- CORPORATION E - XXX% ownership (XXX)
- CORPORATION F - XXX% ownership (XXX)
- CORPORATION C - XXX% ownership (XXX)
- CORPORATION D - XXX% ownership (XXX)

These partners will claim the credit on their Florida corporate income tax returns (F-1120s) to offset their tax liability. Each year, the partners will attach copies of the "pro forma" calculations used to determine the annual taxable income, and CITC to their F-1120's. COMPANY B anticipates that the CITC generated each year will be less than \$XXX due to historical and projected profitability limitations of the PROJECT.

COMPANY B has not reported any CITC on its previously filed F-1065's. For this reason, upon reaching an agreement with the Department of Revenue for the determination of the method by which taxable income will be calculated, COMPANY B plans to amend its XXX and XXX (if previously filed) F-1065s. In addition, the partners listed above also plan to amend their respective F-1120s.

LEGAL AUTHORITY

Section 220.11, F.S., states in pertinent 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 pertinent 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 220.191, F.S., states in pertinent part:

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

- (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.

- (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 tax credit shall be granted against only the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section shall not exceed 100 percent of the eligible capital costs of the project. In no event may any credit granted under this section be carried forward or backward by any qualifying business with respect to a

subsequent or prior year. 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 investment of at least \$100 million.

(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.

(5) Applications shall be reviewed and certified pursuant to s. 288.061. The office, upon a 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.

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

ISSUE PRESENTED

Taxpayer has requested a written agreement for the determination of the Florida qualifying project's annual Florida corporate taxable income, and the amount of the associated Capital Investment Tax Credit.

DISCUSSION AND ANALYSIS

The Department issued TAA 04C1-005 to CORPORATION A dated August 26, 2004, providing a written agreement which set forth the terms and conditions to report the CITC on its form F-1120 relating to PROJECT. CORPORATIONS A, C, D, E and F

formed COMPANY B in order to consolidate the PROJECT and the XXX Project due to requirements imposed by the XXX.

COMPANY B indicated that the XXX previously entered into a contract for the operations for the PROJECT and a separate contract for the XXX Project. In addition, the XXX enters into contracts relating to the XXX. It is anticipated that the XXX will issue one contract which will encompass both the operations for the PROJECT and the XXX Project instead of continuing to maintain two separate contracts.

COMPANY B requests that it allocate the CITC based upon historical costs following the contribution of the PROJECT and the XXX Project into COMPANY B.

CONCLUSION

The Department will permit COMPANY B to allocate the CITC credit using historical costs to the extent the PROJECT's annual taxable income reflects the actual expenses incurred using GAAP. COMPANY B will determine the PROJECT's annual taxable income using GAAP, provisions contained in Chapter 220, F.S., and will separately account for the project's taxable income using a "pro forma" format. The "pro forma" format will separately account for all revenues, direct and indirect costs, book to tax adjustments, and any other adjustments made in the determination of the PROJECT's annual Florida taxable income, and the amount of the associated annual CITC credit claimed.

In addition to the above, there are miscellaneous corporate general ledger accounts listed below which the Taxpayer states are not directly allocated to the PROJECT. If book to tax adjustments are necessary for these accounts they will be allocated using the method listed in the subsequent schedule.

<u>Ledger Account</u>	<u>Allocation Method</u>
Miscellaneous Income	Indirect Cost of Sales
Interest Income-other	Sales Revenue
Gain/Loss Derivatives	100% to XXX
FAS/CAS Pension Exp.	Pre COMPANY B-Historical
Interest Exp.	Indirect Cost of Sales
Purchase Discounts	Indirect Cost of Sales
Imputed Income/Loss	Indirect Cost of Sales

The PROJECT's taxable income is to be determined using the methods described above. The Florida Apportionment factor will then be applied to the PROJECT's taxable income to determine the project's Florida taxable income and the associated CITC. That amount will be reported via footnote on the partners' Florida Partnership Information Returns. These partners will claim the credit on their annual F-1120s, and each partner will attach a copy of the "pro forma" calculations used to determine the annual taxable income, and

CITC. Furthermore, all of the above proposed methods for the determination of Florida taxable income, and the associated CITC may be audited by the Florida Department of Revenue, to determine whether they accurately calculate the Florida revenues, expenses, “pro forma” corporate taxable income, and the associated CITC.

As COMPANY B has not taken any CITC, it may amend its XXX and XXX (if previously filed) F-1065s. In addition, the partners listed above may amend their respective F-1120s.

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 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 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 15 days of the date of this letter.

Sincerely,

Charles J. Dunning
Technical Assistance and Dispute Resolution

Control No. 71667