

**TAX:** Corporate Income – Capital Investment Tax Credit

**TAA Number:** 10C1-005

**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 itself 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 the purposes of applying the Florida Capital Investment Tax Credit.

**ANSWER:** When filing a separate Florida corporate income tax return, it shall be necessary for the taxpayer to separately account for, using a “pro forma” format, the project’s Florida annual taxable income. The qualifying project will separately account for all revenues, expenses, and book to tax adjustments included in the determination of its Florida annual taxable income. The CITC is based on a statutory percentage of t income.

March 22, 2010

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Re: Technical Assistance Advisement 10C1-005

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”) requestor

XXX (hereinafter referred to as “The Project”)

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

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

Dear XXX:

Your letter of XXX, requests a written agreement between the Florida Department of Revenue and Corporation A, concerning the method by which income generated by or arising out of the 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, Florida Administrative Code, and is issued to you under authority of section 213.22, Florida Statutes.

#### FACTS SUPPLIED BY TAXPAYER

This application for the written agreement referenced above, involves the Florida Department of Revenue, Corporation A, and its qualifying project, the Project. Corporation A is a XXX corporation with its headquarters located in XXX. Corporation A is owned by a publicly traded foreign corporation (XXX) and maintains various other sales and manufacturing locations throughout the United States. The company (Corporation A) files a federal consolidated income tax return and a separate Florida corporate income tax return (F-1120).

On 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, herein referred to as the Project, has been certified as a “qualifying project” under Florida’s CITC Program (see section Section 220.191, Florida Statutes).

On XXX, OTTED issued a certification letter approving The Project as qualified for participation in Florida’s CITC program. In its report, EFI stated that Corporation A will build a new manufacturing facility in XXX, and that it will be located XXX, as designated under Section 288.108, Florida Statutes. The certification provides The Project eligibility for the CITC’s annual tax credit against the corporate income tax imposed, of up to five (5) percent of the eligible capital costs for up to twenty years on the Florida corporate income tax liability arising out of that investment.

Approval of its annual tax credit shall be dependent upon confirmation that the new capital investment in The Project in XXX is at least \$25 million. The capital investment, subject to the CITC pursuant to this certification, shall include all “eligible capital costs,” as defined under section 220.191(1)(c), F.S., that are incurred by Corporation A or its affiliates, or by any other vendor or contractor in connection with the development, construction, and equipping of the facilities that will constitute The Project. Furthermore, the granting of the credit will be dependent upon the creation and maintenance of at least XXX net new jobs at The Project.

With the addition of The Project’s new facility in XXX, Corporation A will consist of XXX separate, divisions each representing a location and/or operating division of the company. Corporation A applies Generally Accepted Accounting Principles (GAAP) in the determination of reportable income for financial statement purposes in the United States, which is the starting point for determining the company’s federal taxable income. Each division maintains its own set of books and records, with federal tax adjustments applied to each individual division, leading to a pro forma federal taxable income by division. The divisions are then consolidated to generate a single entity filing for both federal and state tax purposes. The Project’s accounting records will conform to this method and will be a separate accounting division within the company.

Corporation A states that The Project will separately account for all revenues and expenses, direct and indirect, and will make separate book and tax adjustments in the determination of its annual taxable income. Furthermore, The Project’s Florida taxable income will be determined beginning with its federal taxable income and application of the provisions contained in Florida Corporate Income Tax Law under Chapter 220 of the Florida Statutes. The Florida apportionment factor, as determined for Corporation A, will then be applied to The Project’s adjusted federal income to determine its Florida apportioned taxable income, tax liability, and associated CITC. Corporation A anticipates that all Project activities will be limited to the XXX site, and no other company locations, either within or without Florida will be included.

LEGAL AUTHORITY

Section 220.11, Florida Statutes, 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.

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Section 220.13, Florida Statutes, 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 section 220.131, for the taxable year, adjusted as follows:

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Section 220.191, Florida Statutes states in pertinent part:

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

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- (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:

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- (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 section 220.13.

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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 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:

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3. Fifty percent for a qualifying project which results in a cumulative investment of a least \$25 million but less than \$50 million.

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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.
- (5) Applications shall be reviewed and certified pursuant to section 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.

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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.

### ISSUE PRESENTED

Corporation A has requested a written agreement for the determination of The Project's annual Florida corporate taxable income, and the amount of the associated annual Capital Investment Tax Credit.

### DISCUSSION AND ANALYSIS

On XXX, OTTED issued a letter of certification which approved the application, and certified Corporation A's Project as CITC qualified. This certification provides the project eligibility, for an annual tax credit against the corporate income tax imposed, of up to five (5) percent of the eligible capital costs for a period not to exceed twenty (20) years as provided in section 220.191(2), F.S. Furthermore, the sum of all credits provided pursuant to section 220.191(2), F.S., shall not exceed 100 percent of the eligible capital costs of this project. The capital investment subject to the CITC, pursuant to this certification shall include all "eligible capital costs," as defined under section 220.191(1)(c), F.S., that are incurred by Corporation A or its affiliates, or by any other vendor or contractor in connection with the development, construction, and equipping of the facilities that will constitute The Project.

Approval of the annual tax credit shall also be dependent upon confirmation that the new capital investment in The Project will be at least \$25 million. This credit is also limited on an annual basis, in that it shall not exceed 50 percent of The Project's annual corporate income tax liability, as prescribed by section 220.191(2)(a), F.S., and the credit may only be granted against the corporate income tax liability generated by or arising out of this qualifying investment project. In addition, to the above referenced limitations, the credit will be dependent upon The Project achieving and maintaining the minimum employment goals at commencement, and for each year thereafter (see section 220.191(3), F.S.). The required minimum employment specifics for The Project are XXX net new jobs, at the new facility constructed in XXX.

In its letter of XXX, Corporation A requested the issuance of a Technical Assistance Advisement as a means of satisfying the requirement in section 220.191(5), F.S., for a written agreement specifying how income generated by or arising out of The Project will be determined. The Department's response and specifics of the requested agreement are set forth in the subsequent section entitled "CONCLUSION."

### CONCLUSION

To determine The Project's annual Florida corporate taxable income, and the associated Capital Investment Tax Credit (CITC), Corporation A must apply Generally Accepted Accounting Principles (GAAP) in the determination of all reportable income for financial statement purposes in the United States, and those principles will be the starting point for determining the company's federal taxable income. The Project division and the other company divisions will maintain their own set of books and records, with federal tax adjustments applied to that division, leading to a pro forma federal taxable income for

each division. The divisions are then consolidated to generate a single entity filing for both federal and state tax purposes. The Project's accounting records will conform to this method and will consist of a separate accounting of each division within the company.

Consequently, The Project will separately account for all revenues, expenses (direct and indirect), and book to tax adjustments, included for the determination of its annual taxable income. The Project's Florida taxable income will be determined beginning with its adjusted federal taxable income and application of the provisions provided for in Florida Corporate Income Tax Law under Chapter 220 of the Florida Statutes. The Florida apportionment fraction for the project will then be applied to its adjusted federal taxable income to determine its apportioned Florida taxable income, Florida tax liability, and associated CITC. The Project's Florida taxable income will be limited to income generated only at the XXX site, and no other taxable income from any other company locations, either within or without Florida, will be included in that amount. Furthermore, all aspects of the foregoing taxable income determination may be audited to determine whether accurate calculations of the Florida taxable income generated from The Project are made.

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,

Charles J. Dunning

Technical Assistance and Dispute Resolution

Record ID: 74738

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