



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

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** May a parent company be granted permission to cease filing Florida consolidated tax returns based upon a change in business circumstances regarding the members of the taxpayer's affiliated group?

**ANSWER:** The parent company was granted permission to cease filing Florida consolidated tax returns based on provisions of the F.A.C. which address changes in business circumstances regarding the members of the taxpayer's affiliated group.

November 4, 2022

XXX  
XXX  
XXX  
XXX

Re: Technical Assistance Advisement 22C1-007  
Request for Authority to Discontinue Consolidated Filing  
Section 220.131, F.S.  
Rule 12C-1.0131(3), F.A.C.  
XXX ("Taxpayer")  
FEIN: XXX

Dear XXX:

This is in response to your letter dated XXX, 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, 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.

**ISSUE**

Whether Taxpayer has established sufficient reasonable cause for the Executive Director to permit it to stop filing consolidated Florida corporate income tax returns beginning with the tax year ended XXX.

**FACTS SUPPLIED BY TAXPAYER**

Based on the information provided in the TAA request, Taxpayer made its Florida consolidated filing election with the filing of its Florida corporate income tax return for the XXX tax year. At that time, Taxpayer was a XXX located in XXX, with XXX in XXX states. It's pre-tax income of \$XXX was derived from XXX, XXX, XXX, and XXX.

In response to increased XXX and XXXX in XXX, Taxpayer focused on XXX and XXX during XXX and XXX, with XXX percent of its revenue being derived from XXX. In XXX, Taxpayer was the XXX in XXX. It had also expanded into the areas of XXX and XXX, which represented XX percent of its XXX revenue.

On XXX, Taxpayer acquired XXX Kentucky, which had XXX in XXX states, \$XXX in XXX, \$XXX in XXX, and XXX of \$XXX as of XXX, thus expanding Taxpayer's business into XXX. On XXX, Taxpayer acquired XXX with XXX in XXX, \$XXX in XXX, and total XXX of \$XXX.

On XXX, Taxpayer acquired XXX, which had XXX in XXX, XXX, and XXX, \$XXX in XXX, and \$XXX in XXX as of XXX, giving Taxpayer a total of XXX, and significantly expanding its operations in XXX. At the same time, Taxpayer acquired XXX (XXX), a XXX serving the XXX. This acquisition was incorporated into Taxpayer's XXX and was projected to XXX Taxpayer's XXX by \$XXX.

On XXX, Taxpayer acquired XXX, a XXX serving more than XXX across XXX, XXX, and XXX, that offered XXX and XXX to XXX. This acquisition balanced Taxpayer's XXX between XXX and XXX and comprised nearly XXX of Taxpayer's XXX.

By XXX, the XXX was changing. The XXX of Taxpayer's XXX was XXX, and Taxpayer saw the need to change its XXX and XXX to XXX, through XXX and XXX. Taxpayer saw XXX as a XXX and also saw an opportunity to XXX and XXX for the future, by XXX.

Taxpayer's XXX with XXX took place in XXX. As XXX, Taxpayer became the XXX, with around XXX and \$XXX in XXX, an approximately XXX from the \$XXX in XXX. Taxpayer then changed its name to XXX and established a XXX and an XXX in XXX. It has a XXX and XXX in XXX, and a XXX in XXX, allowing Taxpayer to XXX in XXX, as well.

Taxpayer's previous XXX is now a XXX directors. The XXX has also allowed Taxpayer to XXX to XXX, XXX, and XXX. Specifically, XXX, XXX, offers XXX, XXX.

In contrast to XXX, when XXX comprised the majority Taxpayer's income, its income is now comprised primarily of XXX, with XXX only XX percent of its current revenue. Taxpayer also created a XXX to XXX involving XXX and XXX, XXX and XXX, and XXX to XXX and XXX. These XXX either did not exist in XXX or were XXX.

As a result of the significant changes and expansion of Taxpayer's business and operations since XXX, when its Florida consolidated filing election was made, Taxpayer is requesting permission to discontinue filing its Florida corporate income tax returns on a consolidated basis, beginning with its return for the tax year ended XXXX.

#### LAW

Section 220.131(1), 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.

Section 220.131(3), F.S., states:

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)(b), F.A.C., provides:

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."<sup>1</sup>

Taxpayer contends that the business focus of the affiliated group has changed significantly since XXX, the year for which Taxpayer made its consolidated filing election.

The information provided by Taxpayer shows substantial growth in its business and significant changes to its operations since XXX, with major acquisitions and substantial changes to its method of operations. Taxpayer's overall growth, expanding markets, and changes in operations, taken together, are a sufficient basis for granting Taxpayer's request for deconsolidation.

#### **CONCLUSION**

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 ended XXX:

1. That the deconsolidation is effective for the tax year ending on XXX.
2. That Taxpayer has no realized but unrecognized income or expense items that may be recognized at a later date.
3. That Taxpayer group does not become part of a consolidated Florida corporate income tax return prior to the tax year ending XXX.
4. That any deferred gains which are realized for Federal tax purposes, but which have not yet been recognized, must be reported in total, on the income tax return filed by the taxpayers for tax year ending XXX.

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

---

<sup>1</sup> Taxpayer estimates that, based on XXX taxable income, XXX apportionment factors, and using a tax rate of XXX percent, its XXX Florida corporate income tax liability on a consolidated basis of \$XXX will decrease to \$XXX on a separate return basis. Taxpayer's XXX Florida corporate income tax liability on a consolidated basis was \$XXX. Although the amount of Taxpayer's XXX Florida corporate income tax liability on a separate, pro forma basis was requested, that information has not been provided.

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) 717-6794.

Sincerely,

*Suzanne C. Paul*

Suzanne C. Paul  
Tax Law Specialist  
Technical Assistance and Dispute Resolution  
(850) 717-6794

SCP/

cc: XXX  
XXX  
XXX  
XXX