



QUESTION: Taxpayer requests a written agreement between themselves and the Florida Department of Revenue, petitioning the Department for permission to use an alternative method of apportionment if the methods provided by s. 220.15, F.S., or s. 220.152, F.S., do not fairly represent the taxpayer's tax base attributable to Florida.

ANSWER: Given the specific circumstances involved in this case, and based on the Department's permitted option, Taxpayer is granted permission to use the alternative apportionment formula when filing Florida corporate income tax returns for taxable year ending on or after [REDACTED]. However, Taxpayer is reminded that should the facts provided in its request, or any supplemental information provided be determined to be incorrect or change, the use of an alternative method of apportionment will be disallowed.

April 10, 2023

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

Re: Technical Assistance Advisement – 23C1-001R
Request for Alternative Apportionment
Sections 220.152, Florida Statutes ("F.S.")
Rule 12C-1.0152, Florida Administrative Code ("F.A.C.")
[REDACTED] ("Taxpayer")
FEIN: [REDACTED]
BP#: [REDACTED]

Dear [REDACTED]:

This is in response to your request dated [REDACTED], for a Technical Assistance Advisement ("TAA") pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding your request to use alternative apportionment pursuant to s. 220.152, F.S. and Rule 12C-1.0152, F.A.C.

ISSUE PRESENTED

Whether Taxpayer has established sufficient cause for the Department to permit it to use an alternative method of apportionment.

FACTS SUPPLIED BY TAXPAYER

[REDACTED]
[REDACTED]. It offers products [REDACTED]
[REDACTED]. Taxpayer distributes its products [REDACTED]
[REDACTED]. It has [REDACTED]

and [REDACTED] across [REDACTED]

In [REDACTED], Taxpayer opened a new office in [REDACTED], where it added more than [REDACTED]. In addition to opening a new office in [REDACTED], Taxpayer also contracted with [REDACTED] [REDACTED] independently chose to process these [REDACTED] located in [REDACTED]. Taxpayer has no control over where [REDACTED]. Once [REDACTED] process is completed, the [REDACTED] are shipped [REDACTED] [REDACTED] to be packaged, labeled, and moved to a distribution facility in [REDACTED], [REDACTED], or [REDACTED] to be stored as finished goods until they are ultimately distributed to customers [REDACTED]

As a result of the [REDACTED] being processed within the [REDACTED], Taxpayer's property factor has increased to a level that does not fairly represent the extent of Taxpayer's tax base attributable to Florida. Taxpayer estimates that the inclusion of the [REDACTED] in its standard apportionment methodology for tax year [REDACTED] results in its property factor increasing from [REDACTED] to [REDACTED] a [REDACTED]. Overall, including the [REDACTED] increases Taxpayer's Florida apportionment factor from [REDACTED] to [REDACTED] a [REDACTED].

Additionally, Taxpayer asserts that the use of the standard apportionment methodology does not accurately and fairly reflect its business activity in Florida. Nearly all of [REDACTED] processed by [REDACTED] in the [REDACTED] is alleged to be sold or donated to end consumers [REDACTED]. Of the inventory, [REDACTED], [REDACTED], and only [REDACTED].

Taxpayer has proposed three alternative apportionment options: 1) [REDACTED] from the property factor numerator, 2) [REDACTED] inventory from the property factor numerator and denominator, or 3) [REDACTED] inventory from the property factor numerator and denominator.

Taxpayer believes that any of the three alternative methods more fairly and accurately apportions its Florida income. Taxpayer asserts that:

- Each alternative method narrowly relates only to property located in an [REDACTED].
- The first two alternative methods uniquely focus only on property located in the state based on an independent act of a third-party contractor.
- All three alternative methods resolve the unconstitutional level of income distortion.

For those reasons, Taxpayer requests that the Department allow it to use one of the proposed alternative apportionment approaches.

LEGAL AUTHORITY

Section 220.152, F.S., states in part:

If the apportionment methods of ss. 220.15 and 220.151 do not fairly represent the extent of a taxpayer's tax base attributable to this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's tax base, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the taxpayer's tax base attributable to this state; or
- (4) The employment of any other method which will produce an equitable apportionment.

Rule 12C-1.0152, F.A.C., states:

(1)(a) A departure from the applicable method of apportionment required under the provisions of section 220.15 or 220.151, F.S., shall be permitted only where the method does not accurately and fairly reflect business activity in Florida. An alternative method may not be invoked, either by the Department of Revenue or the taxpayer, merely because it reaches a different apportionment percentage than the regularly applicable formula. However, if the applicable formula will lead to grossly distorted result in a particular case, a fair and accurate alternative method is appropriate (see Norfolk and Western Railway Co. v. Missouri State Tax Commission, 390 U.S. 317, 88 S. Ct. 995, 19 L. Ed. 2d 1201 (1968), which is incorporated by reference in Rule 12C-1.0511, F.A.C.).

(b) A taxpayer seeking to utilize an alternative apportionment method must show by clear and cogent evidence that the regularly applicable formula would result in taxation of extraterritorial values (see Butler Bros. v. McColgan, 315 U.S. 501, 62 S.Ct. 701, 86 L. Ed. 991 (1942), which is incorporated by reference in Rule 12C-1.0511, F.A.C.). This can be shown only if the regularly applicable formula is demonstrated to operate unreasonably and arbitrarily in apportioning to Florida a percentage of income which is out of all proportion to the business transacted in Florida and does not accurately and fairly reflect business activity in Florida (see Hans Rees' Sons, Inc. v. North Carolina ex rel Maxwell, 283 U.S. 123, 51 S. Ct. 385, 75 L. Ed 879 (1931), which is incorporated by reference in Rule 12C-1.0511, F.A.C.).

(2) The party seeking to use an alternative formula must prove that the alternative formula fairly and accurately apportions income to Florida based upon business activity in Florida.

(3) A departure from the regularly applicable apportionment method will be authorized only in limited and specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce a result that is incongruous with the results of previous tax years under the regularly applicable apportionment method.

(4) A taxpayer shall petition the Department for a departure from the required apportionment method by filing, on or before the due date for filing of the return for the taxable year, with extension, either: a written request for a technical assistance advisement under section 213.22, F.S., and Department of Revenue rule chapter 12-11, F.A.C.; or, a petition for a declaratory statement under section 120.565, F.S.

(a) The taxpayer shall file the request or petition with Technical Assistance and Dispute Resolution, P. O. Box 7443, Tallahassee, Florida 32314-7443.

(b) The taxpayer's request or petition must include a summary of the evidence to support the taxpayer's contention that the applicable apportionment formula results in taxation of extraterritorial values and to demonstrate that the regular formula operates to unreasonably and arbitrarily attribute income to Florida far out of proportion to the business transacted in Florida. The taxpayer must also furnish evidence that the use of an alternative method fairly and accurately apportions income to Florida.

DISCUSSION

Section 220.152, F.S., authorizes the Department to require a taxpayer to use an alternative method of apportionment different from those required by s. 220.15, F.S., or s. 220.151, F.S., if those methods do not "fairly represent the extent of a taxpayer's tax base attributable to this state..." Section 220.152, F.S., also allows a taxpayer to petition the Department for permission to use an alternative method of apportionment if the methods provided by s. 220.15, F.S., or s. 220.152, F.S., do not fairly represent the taxpayer's tax base attributable to Florida.

Rule 12C-1.0152, F.A.C., sets forth the conditions where an alternative method of apportionment is appropriate and the requirements that must be met before permission to use an alternative method of apportionment may be granted. The Rule also requires the taxpayer to show by clear and cogent evidence that the normal apportionment formula results in taxation of extraterritorial values. Taxpayer cites a significant change in its property factor as a result of [REDACTED] in the Florida [REDACTED]. Taxpayer demonstrated that the normal apportionment formula operates unreasonably and arbitrarily in apportioning income to Florida, by providing workpapers summarizing the [REDACTED] Florida tax impact on its apportionment factor for multiple tax years.

Based on the information provided by Taxpayer, it appears that if Taxpayer is required to calculate its Florida income based on the normal applicable apportionment method, its percentage of Florida income would increase from [REDACTED] to [REDACTED], which would be exceptionally out of proportion to Taxpayer's business transacted in Florida, and would not accurately and fairly reflect business activity in Florida.

The Department agrees that the inclusion of the [REDACTED] located in the Florida [REDACTED] in Taxpayer's property factor appears to distort Taxpayer's business transacted in [REDACTED] and does not seem to reflect Taxpayer's business activity accurately and fairly, in [REDACTED].

Therefore, Taxpayer should use Option 3 provided in its TAA request, which would exclude all of Taxpayer's [REDACTED] inventory from its property factor numerator and denominator when computing its apportionment factor. Taxpayer's use of this alternative apportionment formula is exclusively based on the facts and supplemental information provided to the Department in its TAA request, during the meeting between Taxpayer and the Department on [REDACTED], and the supplemental supporting documentation provided on [REDACTED]. If this information is found to be incorrect or misrepresentative of Taxpayer's business activity in Florida, alternative apportionment will be prohibited.

CONCLUSION

Given the specific circumstances involved in this case, and based on the Department's permitted option, Taxpayer is granted permission to use the alternative apportionment formula when filing Florida corporate income tax returns for taxable year ending on or after [REDACTED].

However, Taxpayer is reminded that should the facts provided in its request, or any supplemental information provided be determined to be incorrect or change, the use of an alternative method of apportionment will be disallowed.

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,

Susan R Coxwell

Susan R. Coxwell
Revenue Program Administrator
Technical Assistance and Dispute Resolution
(850) 717-6478

Record ID: 7000803597

Cc: [REDACTED]
[REDACTED]
[REDACTED]
[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 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: 7000803597

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.