



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

**Jim Zingale**  
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** Is a corporation that owns an indirect interest in a Florida partnership required to file a Florida corporate income tax return?

**ANSWER:** The corporation that owns an indirect interest in a Florida partnership is required to file a Florida corporate income tax return.

April 28, 2023

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

Re: Technical Assistance Advise ment 23C1-001B  
Taxation of Corporate Partners in Florida Partnerships  
Sections 220.02, 220.11, 220.13, 220.22, 220.222, F.S.  
Rules 12C-1.002, 12C-1.011, 12C-1.013, 12C-1.015, 12C-1.0153, 12C-1.0154,  
12C-10.155, 12C-1.022, F.A.C.  
[REDACTED] (“the taxpayer”)  
FEIN: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated [REDACTED], requesting this Department’s issuance of a Technical Assistance Advise ment (“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 the taxpayer is required to file a Florida corporate income tax return and report its items of income, deductions, gains, and losses, in the Florida return.

### FACTS SUPPLIED BY TAXPAYER

Based on the information provided in the TAA request, the taxpayer is incorporated under the laws of the [REDACTED]. It has no [REDACTED]. The taxpayer has a [REDACTED] ownership interest in a [REDACTED]. That [REDACTED] owns [REDACTED] of a [REDACTED]. In [REDACTED], the [REDACTED] [REDACTED] began [REDACTED] and [REDACTED] located in Florida. The assets were placed in service in [REDACTED] and [REDACTED]. [REDACTED] of the Florida [REDACTED] flows through to the taxpayer. Neither of the two [REDACTED] have [REDACTED] located in the [REDACTED] and the Internal Revenue Code (I.R.C.) does not consider their income to be [REDACTED].

### LAW

Subsection 220.02(1), F.S., states:

It is the intent of the Legislature in enacting this code to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. It is intended that any limited liability company that is classified as a partnership for federal income tax purposes and is defined in and organized pursuant to chapter 605 or qualified to do business in this state as a foreign limited liability company not be subject to the tax imposed by this code. It is the intent of the Legislature to subject such corporations and other entities to taxation hereunder for the privilege of conducting business, deriving income, or existing within this state. This code is not intended to tax, and shall not be construed so as to tax, any natural person who engages in a trade, business, or profession in this state under his or her own or any fictitious name, whether individually as a proprietorship or in partnership with others, or as a member or a manager of a limited liability company classified as a partnership for federal income tax purposes; any estate of a decedent or incompetent; or any testamentary trust. However, a corporation or other taxable entity which is or which becomes partners with one or more natural persons shall not, merely by reason of being a partner, exclude from its net income subject to tax its respective share of partnership net income. This statement of intent shall be given preeminent consideration in any construction or interpretation of this code in order to avoid any conflict between this code and the mandate in s. 5, Art. VII of the State Constitution that no income tax be levied upon natural persons who are residents and citizens of this state.

Subsection 220.11(1), F.S., states:

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.

Subsection 220.13, F.S., states:

(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: . . .

\* \* \*

(2) For purposes of this section, a taxpayer’s taxable income for the taxable year means taxable income as defined in s. 63 of the Internal Revenue Code and properly reportable for federal income tax purposes for the taxable year, but subject to the limitations set forth in paragraph (1)(b) with respect to the deductions provided by ss. 172 (relating to net operating losses), 170(d)(2) (relating to excess charitable contributions), 404(a)(1)(D) (relating to excess pension trust contributions), 404(a)(3)(A) and (B) (to the extent relating to excess stock bonus and profit-sharing trust contributions), and 1212 (relating to capital losses) of the Internal Revenue Code, except that, subject to the same limitations, the term: . . .

Subsection 220.22(2), F.S., states:

(2) Every Florida partnership having any partner subject to tax under this code, shall make an information return setting forth:

- (a) All items of income, gain, loss, and deduction;
- (b) The names and addresses of all partners subject to tax hereunder who would be entitled to share in the net income of the partnership if distributed;
- (c) The amount and proportion of the distributive share of each partner-taxpayer; and
- (d) Such other pertinent information as the department may by form or regulation prescribe.

Paragraph 220.222(1)(a), F.S., states:

Returns required by this code shall be filed with the office of the department in Leon County or at such other place as the department may by regulation prescribe. All returns required for a DISC (Domestic International Sales Corporation) under s.

6011(c)(2) of the Internal Revenue Code shall be filed on or before the 1st day of the 10th month after the close of the taxable year; all partnership information returns shall be filed on or before the 1st day of the 4th month after the close of the taxable year; and all other returns shall be filed on or before the 1st day of the 5th month after the close of the taxable year or the 15th day after the due date, without extension, for the filing of the related federal return for the taxable year, unless under subsection (2) one or more extensions of time, not to exceed 6 months in the aggregate, for any such filing is granted.

Rule 12C-1.002, F.A.C., states:

Corporations and other artificial entities which are to become partners in a partnership which conducts business, derives income or exists within the state shall be subject to tax under the Florida Income Tax Code, without regard to any other factor which would determine the tax status of that partner for Florida income tax purposes. The partnership's conduct of business, derivation of income or existence within Florida shall be deemed attributable to the partners, rather than to the partnership itself.

Rule 12C-1.011(1)(v), F.A.C., states:

Foreign (out-of-state) corporations not otherwise subject to the law but who are partners or members of Florida partnerships or joint ventures are subject to the law by virtue of their membership in such partnerships or joint ventures. Florida partnerships are partnerships doing business, deriving income, or existing in Florida. A partnership will be considered to be existing within Florida if an active partner who participates in management decisions has permanent or extended temporary residency (for 3 months in the aggregate of a 12 month period) within Florida. If an active partner is residing within Florida, management of the partnership is presumed to be occurring within Florida.

Rule 12C-1.013(1), F.A.C., states:

(1)(a) "Taxable income," as defined by Section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due.

(b) In general, "taxable income" is the amount of a corporation's income that is subject to federal tax. However, the federal deductions provided for net operating losses, capital losses, excess charitable contributions, excess pension trust contributions, excess stock bonus and profit-sharing trust contributions are limited by Section 220.13(1)(b), F.S.

(c) Elections under s. 338(h)(10), I.R.C. For federal tax purposes, an election under s. 338(h)(10), I.R.C., can only be made if a consolidated return is being filed that includes both the target corporation and the selling consolidated group. The federal tax treatment of s. 338(h)(10), I.R.C., which is incorporated by reference in Rule 12C-

1.0511, F.A.C., will be piggybacked to the greatest extent possible even though the taxpayer is not filing a consolidated Florida return. The target corporation should report the gain attributable to the deemed asset sale on its separate Florida return, if appropriate. The basis in the assets will then be stepped-up for Florida tax purposes to the same extent as for federal income tax purposes.

(d) "Taxable income" for an S corporation is defined as the amount subject to tax under s. 1374, I.R.C., which is incorporated by reference in Rule 12C-1.0511, F.A.C., (built-in gains or capital gains) or s. 1375, I.R.C., which is incorporated by reference in Rule 12C-1.0511, F.A.C. (passive investment income).

(e) For tax years ending on or after July 1, 1998, limited liability companies and foreign limited liability companies qualified to do business in Florida will be allowed to file in the same manner for Florida corporate income tax purposes as for federal tax purposes.

Rule 12C-1.013(14)(d), F.A.C., states:

A schedule reflecting all of the adjustments made under Section 220.13(1)(e), F.S., must be created and maintained. Taxpayers must also report any additions on Schedule I, Additions and/or Adjustments to Federal Taxable Income, of the Florida Corporate Income/Franchise Tax Return (Form F-1120, incorporated by reference in Rule 12C-1.051, F.A.C.), and any subtractions on Schedule II (Subtractions from Federal Taxable Income), of the return for the current tax year. Partnerships filing a Florida Partnership Information Return (Form F-1065, incorporated by reference in Rule 12C-1.051, F.A.C.), are required to make the adjustments required by Sections 220.13(1)(e)1. and 3., F.S., on Part I (Florida Adjustment to Partnership Income), of the return. The additions and subtractions under Sections 220.13(1)(e)1. and 3., F.S., must be reported in Part I of Form F-1065. Partnerships must report the amount of expenses claimed under s. 179, I.R.C., to their partners, so that their partners can compute the amount under subparagraph (14)(a)1., F.A.C.

Rule 12C-1.013(20), F.A.C., states:

Adjustments from partnerships. Parts I and II of Form F-1065, Florida Partnership Information Return, are used to report to the partner and the State each partner's share of the Florida partnership's adjustments.

Rule 12C-1.015(10), F.A.C., states:

Partnerships. The amounts of the property, payroll, and sales of a partnership are attributable to the partners or members of the joint venture. A corporation that is a partner in a partnership must add its share of the property, payroll, and sales to its own apportionment factors, regardless of whether the partnerships are Florida

partnerships. Form F-1065 is used in part to distribute to each partner subject to the tax its share of the apportionment factors of the partnership or joint venture.

Rule 12C-1.0153(9), F.A.C., states:

A portion of a partnership's real and tangible personal property, both owned or rented and used during the tax year in the regular course of such trade or business, is included in the denominator of a taxpayer's property factor to the extent of the taxpayer's interest in the partnership. The value of such property located in Florida is also included in the numerator of the property factor. The value of property that is rented or leased by the taxpayer to the partnership or vice versa is, with respect to the taxpayer, excluded from the property factor of the partnership or eliminated to the extent of the taxpayer's interest in the partnership in order to avoid duplication. For purposes of inclusion in the Florida property factor, partnership property is allocated to each partner based on their interest in the partnership, or as designated in the partnership agreement.

Rule 12C-1.0154(6), F.A.C., states:

Compensation paid to employees of a partnership is included in the denominator of the taxpayer's payroll factor to the extent of the taxpayer's interest in the partnership. The amount paid to employees in Florida is also included in the numerator of the payroll factor to the extent of the taxpayer's interest in the partnership. Partnership payroll should be allocated to each partner based on each partner's interest in the partnership, or as designated in the partnership agreement, for inclusion in the Florida payroll factor.

Rule 12C-1.0155(4), F.A.C., states:

Sales of a partnership are included in the denominator of a taxpayer's sales factor to the extent of the taxpayer's interest in the partnership. The amount of sales in Florida is also included in the numerator of the sales factor to the extent of the taxpayer's interest in the partnership. Partnership sales should be allocated to each partner based on each partner's interest in the partnership, or as designated in the partnership agreement, for inclusion in the Florida sales factor.

Rule 12C-1.022, F.A.C., states:

(2) Foreign (out-of-state) corporations.

\* \* \*

(e) Foreign (out-of-state) corporations not otherwise subject to Chapter 220, F.S., but who are partners or members of Florida partnerships or joint ventures, are subject to the Florida Income Tax Code by virtue of their membership in such partnerships or joint ventures and must file Form F-1120. A copy of the federal Schedule K-1 (Form 1065) should also be attached.

\* \* \*

(6)(a) Every Florida partnership having any partner subject to the Florida Income Tax Code is required to make an information return. A Florida partnership is a partnership, as defined in Section 220.03(1)(s), F.S., having income apportionable or allocated to Florida. A partner subject to the Florida Income Tax Code includes a taxpayer, as defined in Section 220.03(1)(z), F.S., and any corporation subject to the tax solely by virtue of its membership in a Florida partnership.

(b) The partnership will not be required to file a partnership return if the only partner subject to the Florida Income Tax Code is an S corporation.

(c) The following examples illustrate when a Florida partnership must file a partnership return.

1. Example: AB, a Florida partnership, has three partners, all of whom are individuals. AB is not required to file a Florida Partnership Information Return because it has no corporate partners.

2. Example: BC, a Florida partnership, has three partners, two individuals and one corporation, Corporation X. Corporation X is subject to the Florida Income Tax Code; therefore, BC is required to file a Florida Partnership Information Return.

3. Example: CD, a Florida partnership, has three partners, two individuals and one corporation, Corporation Y. Corporation Y is a New York corporation which does no business in Florida. However, CD is required to file a Florida Partnership Information Return because Corporation Y is subject to the Florida Income Tax Code solely by virtue of its membership in the Florida Partnership, CD.

4. Example: DE, a Florida Partnership, has three partners, two individuals and one corporation, Corporation Z. Corporation Z is an "S" Corporation. DE is not required to file a Florida Partnership Information Return.

(d) The return required of a partnership under this section shall be made on Form F-1065, Florida Partnership Information Return. A copy of the related U.S. Partnership Return of Income, Form 1065, must be attached. The instructions for Form F-1065 prescribe the attachments required to be submitted with the copy of the related federal Form 1065.

(e) Form F-1065 is used to determine the Florida partnership income adjustment; to report the names and addresses of all partners subject to tax under Chapter 220, F.S., who are entitled to share in the net income of the partnership; and to distribute to each partner subject to the tax its share of the Florida partnership income adjustment and its share of the apportionment factors of the partnership or joint venture.

(f)1. The corporate taxpayer-partner filing Form F-1120, Florida Corporation Income Tax Return, may use Form F-1065 to report its distributive share of any partnership

income adjustments and its share of the apportionment factors of a partnership or joint venture which is not a Florida partnership.

2. Example: Corporation W is subject to the Florida Income Tax Code and is also a partner in partnership UVW, an Ohio partnership, that does no business in Florida and is not required to file a Florida Partnership Information Return. However, Corporation W may use Form F-1065, Florida Partnership Information Return, to report its share of the partnership income adjustments and the partnership apportionment factors for partnership UVW.

(g) Corporations who are members of a Florida partnership or joint venture must file Form F-1065, Florida Partnership Information Return, as well as, Form F-1120.

### **ANALYSIS**

In subsection 220.02(1), F.S., the Florida Legislature expressly states its intent to tax all artificial entities for the privilege of conducting business, deriving income, or existing in Florida, and to exempt individuals and partnerships from Florida corporate income tax, including LLC's that are classified as partnerships for federal income tax purposes. However, the Legislature also expressly states that its intent to exempt partnerships from taxation does not extend to corporations that have ownership interests in partnerships. As an expression of this intent, Rule 12C-1.002, F.A.C., states that “[c]orporations and other artificial entities which are to become partners in a partnership which conducts business, derives income or exists within the state shall be subject to tax under the Florida Income Tax Code, without regard to any other factor which would determine the tax status of that partner for Florida income tax purposes. The partnership’s conduct of business, derivation of income or existence within Florida shall be deemed attributable to the partners, rather than to the partnership itself.” This rule became effective on October 20, 1972. Consistent with these provisions, Rule 12C-1.022(2)(e), F.A.C., states that corporations that would otherwise not be subject to the provisions of Chapter 220, F.S., become subject to its provisions as a result of being partners of Florida partnerships.

Subsection 220.11(1), F.S., states that “[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.” Therefore, again, the Florida Legislature intended to tax artificial entities that benefit from the privileges and protections conferred on them by the State of Florida. Rule 12C-1.011(1)(v), F.A.C., expresses the intent of Chapter 220, F.S., taken as a whole, in stating that “[f]oreign (out-of-state) corporations not otherwise subject to the law but who are partners or members of Florida partnerships or joint ventures are subject to the law by virtue of their membership in such partnerships or joint ventures. Florida partnerships are partnerships doing business, deriving income, or existing in Florida. . . .”

Subsection 220.22(2), F.S., requires Florida partnerships that have a corporation as a partner, to file a Florida partnership information return. Paragraph 220.222(1)(a), F.S., establishes the filing



date for such partnership information returns. Rule 12C-1.022 (2)(e), F.A.C., and Rule 12C-1.022(6), F.A.C., reflect this requirement.

Rule 12C-1.013(14)(d), F.A.C., Rule 12C-1.013(20), F.A.C., Rule 12C-1.015(10), F.A.C., Rule 12C-1.0153(9), F.A.C., Rule 12C-1.0154(6), F.A.C., and Rule 12C-1.0155(4), F.A.C., all address how partnership income, adjustments, payroll, property, and sales, are to be reported in the Florida Partnership Information Return, and by corporate partners in their Florida Corporate Income Tax Returns.

Section 220.13(1), F.S., defines “adjusted federal income,” and Rule 12C-1.013(1), F.A.C., states that “taxable income,” as defined by section 220.13(2), F.S., is the starting point in determining Florida corporate income tax due. In general, “taxable income” is the amount of a corporation’s income that is subject to federal corporate income tax.

As can be seen from the framework and provisions of Chapter 220, F.S., and, as is further expressed in Chapter 12C-1, F.A.C., it is clearly the intent of the Florida Legislature to attribute nexus to corporations that have ownership interests in Florida partnerships, as that term is defined, and to tax the income of corporations that is received from Florida partnerships, without exception. Additionally, neither the statute nor the rule distinguish between the tax treatment of income derived from ownership of a *limited* partnership interest and income derived from ownership of a *general* partnership interest, for purposes of Florida corporate income tax.

### **CONCLUSION**

Based on the discussion presented above, the taxpayer has Florida nexus through its ownership interest in partnerships that exist and are doing business in Florida. Therefore, the taxpayer should file a Florida corporate income tax return, reporting its income, deductions, gains, and losses, and apportion its income, including income it derives from investments in partnerships, using the three-factor formula provided by Chapter 220, F.S., to compute its Florida corporate income tax liability.

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 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 P. Haines*

Suzanne P. Haines  
Tax Law Specialist  
Technical Assistance & Dispute Resolution

cc: [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

Record ID: 7000784156

### 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: 7000784156

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](mailto:douglas.charity@floridarevenue.com).

Thank you.