



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

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floridarevenue.com

Question: Whether Taxpayer has established sufficient reasonable cause for the Executive Director to permit it to stop filing consolidated corporate income tax returns beginning with the tax year ending [REDACTED].

Answer: Taxpayer has established sufficient reasonable cause for the Executive Director to grant Taxpayer permission to cease filing consolidated Florida corporate income tax returns.

June 5, 2023

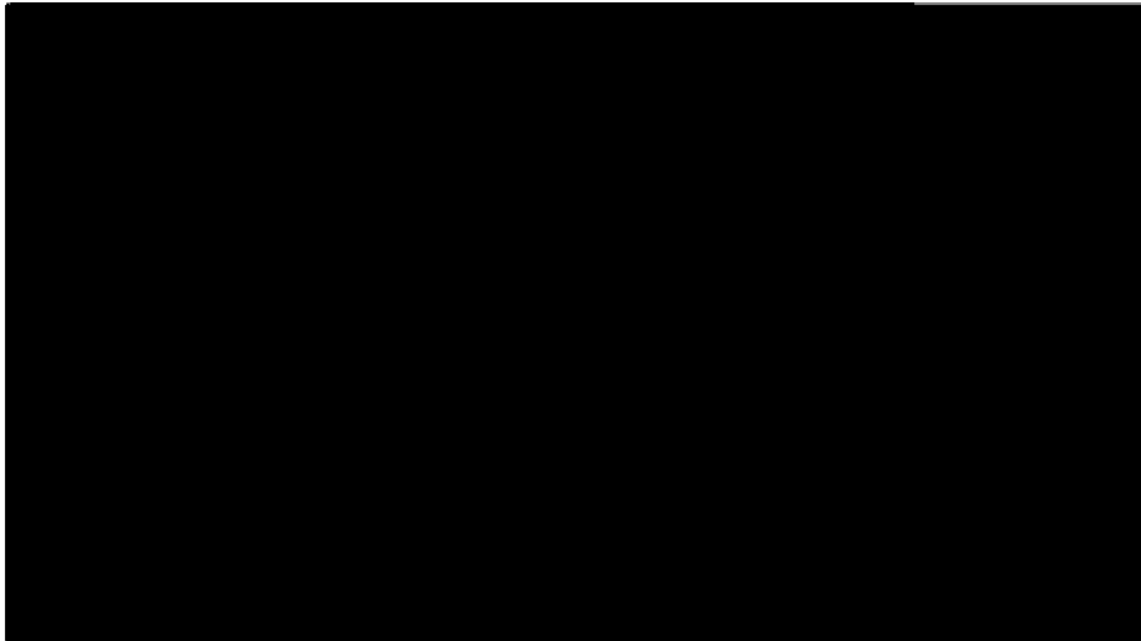
[REDACTED]
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Via email to: [REDACTED]

Re: Technical Assistance Advisement – TAA #: 23C1-003
Corporate Income Tax – Consolidated Criteria
[REDACTED] (“Taxpayer”)
Section 220.131(1) and (3), Florida Statutes (F.S.)
Rule 12C- 1.0131(3), Florida Administrative Code (F.A.C.)
FEIN: [REDACTED]
BP#: [REDACTED]

Dear [REDACTED]:

This is in response to your letter dated, [REDACTED], 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., 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.

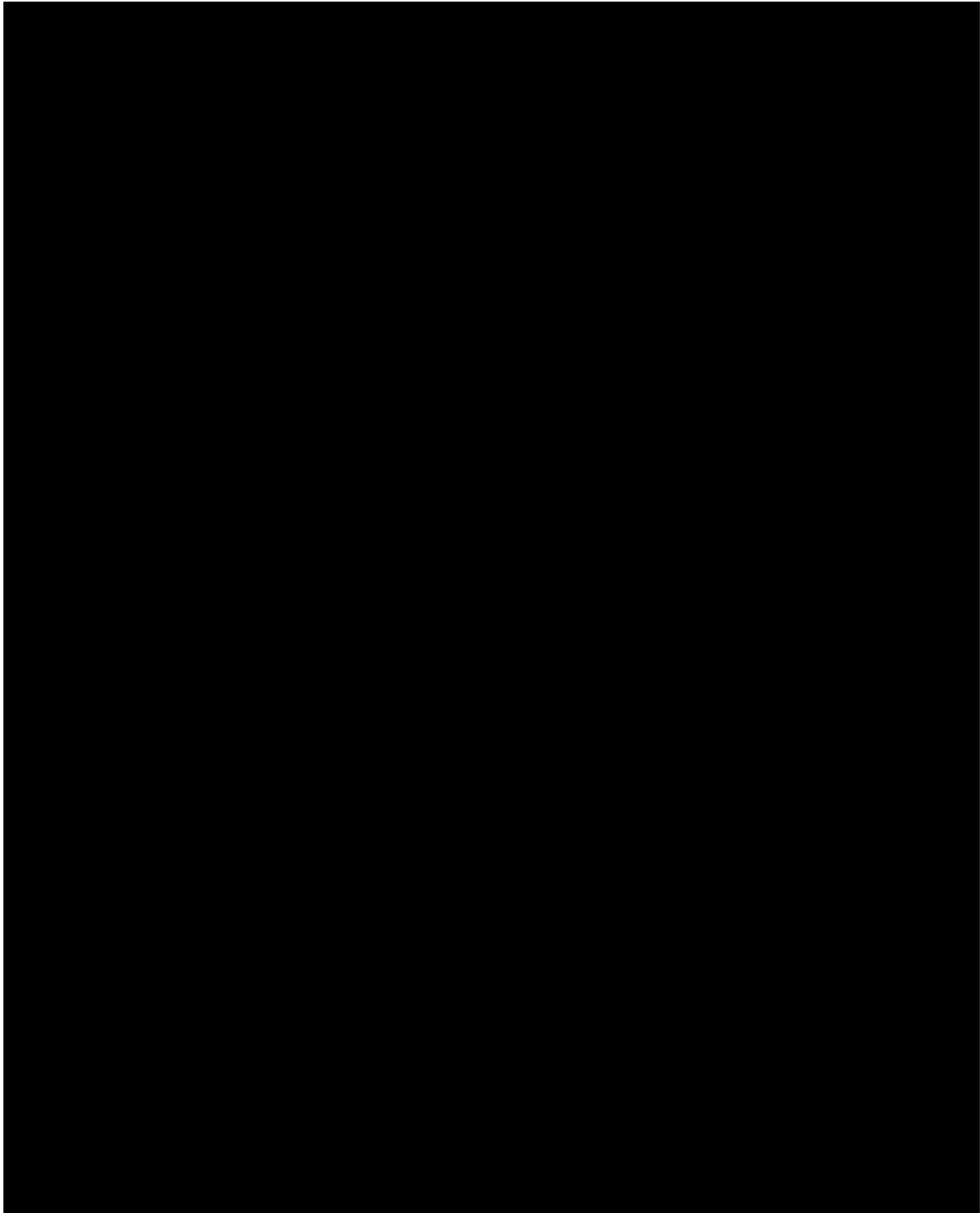


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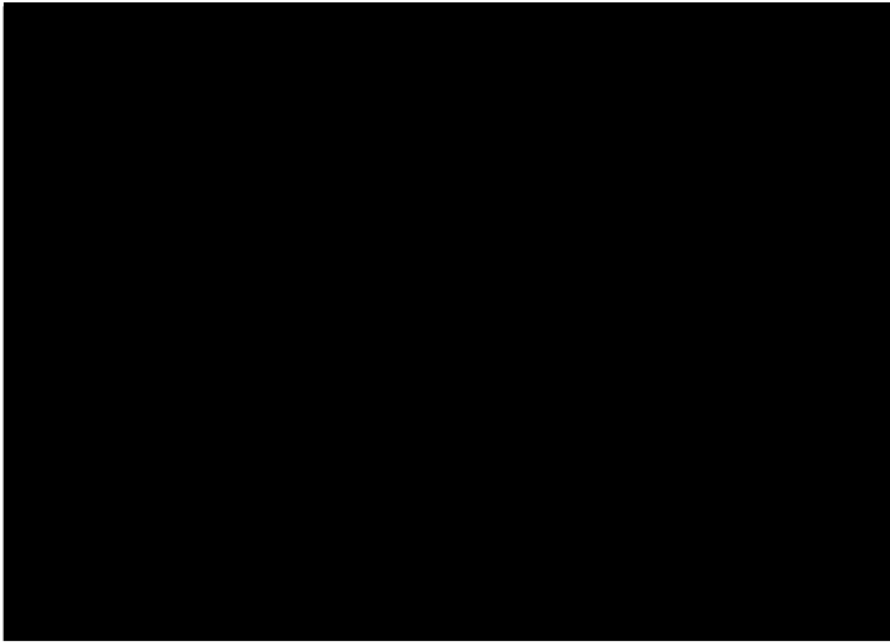
In [Redacted], the [Redacted] segment comprised approximately [Redacted] while the [Redacted] segment accounted for [Redacted].

As of the end [Redacted], the [Redacted] segment now contributes approximately [Redacted] and the [Redacted] segment contributes approximately [Redacted]. In [Redacted], [Redacted] was [Redacted]. Additionally, this trend is projected to continue in [Redacted].

¹ [Redacted]



Today, Taxpayer is a substantially different company than it was when the initial Florida consolidated election was made. Taxpayer exited the [REDACTED] business [REDACTED] in [REDACTED], Taxpayer reentered the [REDACTED] industry with the acquisition of [REDACTED]



Business

In contrast, the business remains largely unchanged from an operational perspective. Although the exact percentages of the various services based on revenue has changed, mainly provides the same services as it did at the time of the initial Florida consolidated election – and .

The segment is currently the portion of Taxpayer’s business with significant Florida operations. However, was not part of the Taxpayer group at the time of the initial Florida consolidated election.

Further, the industry as a whole has changed drastically in the past few years. Specifically, changes stemming from the . As discussed below, the segment is grappling with challenges specific to the . These challenges have put increased pressure on the segment as a result of declining revenue, coupled with increased costs.

Specifically, the segment of the industry is experiencing .² First, the segment has been particularly sensitive to the

²

[REDACTED]

Although [REDACTED] drives a substantial portion of Taxpayer's [REDACTED] [REDACTED], in the last few years [REDACTED] has gone from accounting for [REDACTED] [REDACTED] [REDACTED]. This is contrasted with growth [REDACTED] has experienced in the last few years where [REDACTED] has gone from accounting for [REDACTED] [REDACTED] [REDACTED]. Thus, [REDACTED] currently drives more of Taxpayer's overall growth and while at the same time has very minimal nexus creating activity with Florida. Additionally, [REDACTED] operates in a highly regulated industry, with significant recent changes to the industry, while [REDACTED] industry is less regulated. In particular there are three challenges to the [REDACTED] business that the [REDACTED] business is not faced with: [REDACTED] [REDACTED]

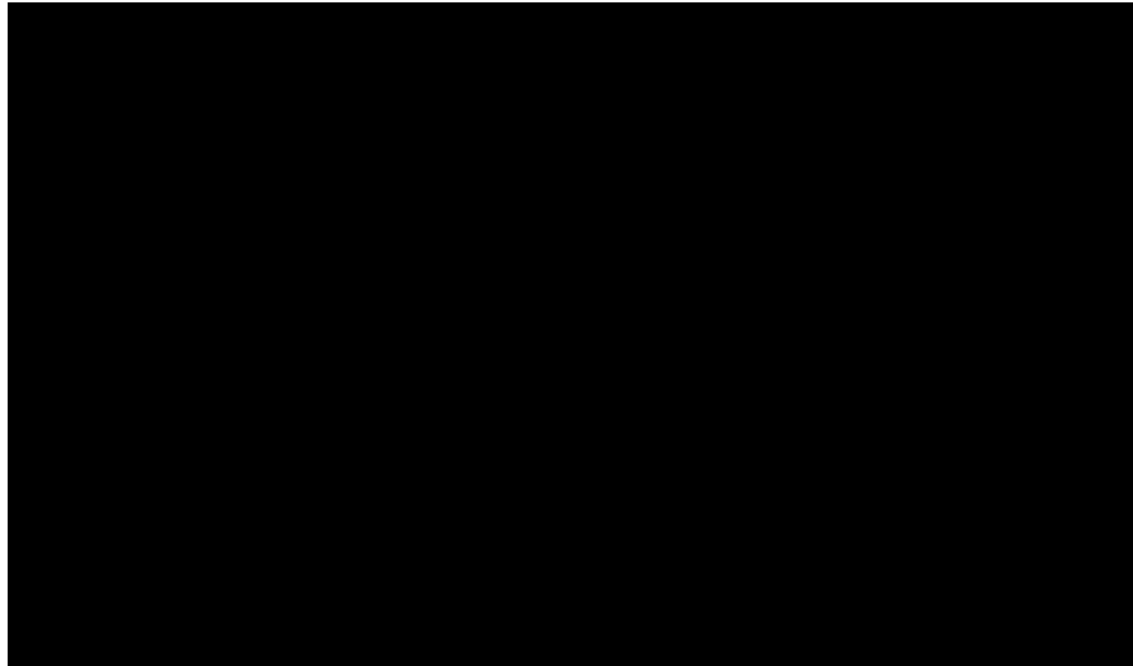
[REDACTED] [REDACTED] [REDACTED] [REDACTED]. All three of these constraints put pressure on the [REDACTED] revenue streams and which account for a material portion of the [REDACTED] revenues. [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] as a result of bad actors in this marketplace. These stark differences in the [REDACTED] and [REDACTED] industries have caused Taxpayer to focus and invest more heavily in the [REDACTED] segment, including but not limited to the recent major acquisitions and expansions into new services relative to the [REDACTED] business.

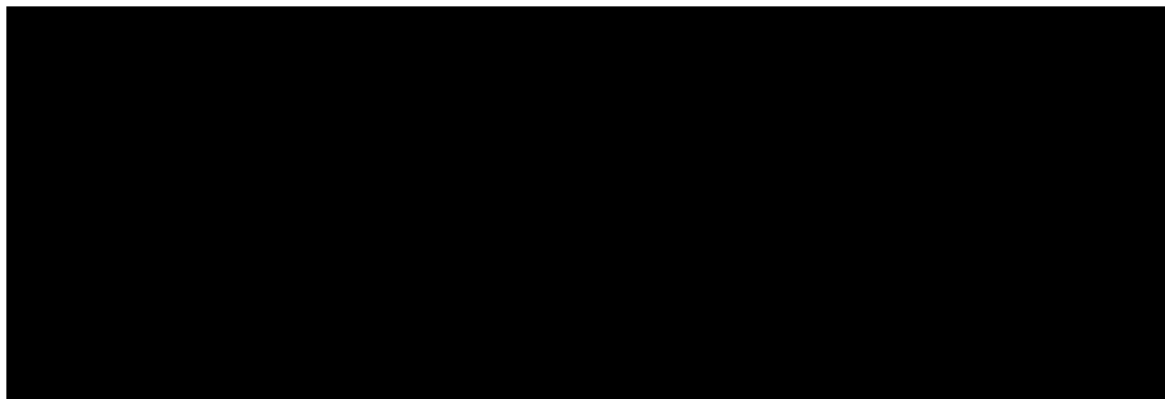
[REDACTED]

Although [REDACTED] continues to generate the majority of Taxpayer's total revenue, [REDACTED] contribution continues to decrease and [REDACTED] contribution to total [REDACTED] continues to increase. For example, in [REDACTED], [REDACTED] generated approximately [REDACTED]. However, as of [REDACTED], [REDACTED] contribution to [REDACTED].



Summary of Florida Taxpayers

For taxable years beginning on or after [REDACTED], the following legal entities are projected to have nexus with the state of Florida and would be required to file Florida corporate income tax returns on a separate company basis if this request is granted:



Again, the above illustrates the entities within the current Florida consolidated return that would have separate company nexus with Florida. The current Florida consolidated return has an

apportionment percentage of approximately [REDACTED], which is much greater than any portion of the [REDACTED] business would have on a standalone basis.

Please note, Taxpayer and subsidiaries will continue to file a consolidated federal income tax return. Taxpayer estimates that its Florida corporate income tax liability for the tax year [REDACTED], will [REDACTED] on a consolidated basis [REDACTED] on a separate return basis.

TAXPAYER POSITION:

In summary, the Department should grant this request to discontinue filing consolidated returns because there has been a significant change in circumstances since Taxpayer initially elected to file consolidated. These changes include:

- Taxpayer exited the [REDACTED] via the divestitures of its [REDACTED] and [REDACTED] businesses.
- In [REDACTED], Taxpayer reentered the [REDACTED] with the acquisition [REDACTED] of [REDACTED]. [REDACTED] immediately became [REDACTED] driver and Taxpayer invested heavily in [REDACTED] business.
- However, Taxpayer now [REDACTED] derives its [REDACTED] from the [REDACTED] business and will continue to do so for the foreseeable future.
- This change in the overall business operations has resulted in a realignment of [REDACTED] between the operating segments, primarily due to the following:
 - Diversification of [REDACTED] service offerings, specifically, with respect to the [REDACTED] the [REDACTED] services business by [REDACTED], which went from [REDACTED]
 - Significant acquisitions of [REDACTED].
 - Downward pressure on the [REDACTED] business, [REDACTED]
- The [REDACTED] segment now contributes [REDACTED].

Statement

1. Taxpayer and its subsidiaries are not currently under audit with the state of Florida.
2. The issue is not currently under consideration by the Department.
3. The issue is not pending litigation involving Taxpayer and subsidiaries or a person who is party to the transaction.
4. Taxpayer and its subsidiaries have no intercompany unrealized or unrecognized items or deferred income or expenses that would normally be reported on a consolidated basis but may not be included in separately filed corporate income tax returns.

LAW AND REGULATIONS

Section 220.131, F.S., provides,

(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.

(3) 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)(a), F.A.C, provides that,

1. A group which filed, or was required to file, a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it has permission to discontinue filing consolidated returns under paragraph (b) or (c) of this subsection; or as long as a federal consolidated return is filed.
2. The requirement set forth in section 220.131(1), F.S., that the parent company of an affiliated group must be subject to the Florida Income Tax Code is a condition that is necessary for an affiliated group to make an election to file a Florida consolidated return. There is no requirement in section 220.131, F.S., that the parent be subject to the Florida Income Tax Code in each subsequent year. Therefore, the affiliated group may not break its consolidated

election because the parent company no longer has nexus with Florida.

Rule 12C-1.0131(3)(b), F.A.C., provides, in part,

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;

Rule 12C-1.0131(3)(d), F.A.C., provides,

(d) If a group has permission under paragraph (b) or (c) of this subsection to discontinue filing consolidated returns for any taxable year and such group wishes to exercise such election, then the common parent must file a separate return for such year on or before the last day prescribed by law including extensions of time for the filing of the consolidated return for such year.

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."³ Taxpayer contends that the business nature of the affiliated group has changed significantly since its fiscal year end [REDACTED], on or about the year for which Taxpayer made its consolidated filing election.

³ [REDACTED]

The information provided by Taxpayer demonstrates that, since prior to [REDACTED], on or about the time when Taxpayer began to file its Florida corporate income tax return on a consolidated basis, there have been significant changes to Taxpayer's business.

Taxpayer's overall shift in business focus, to include operating businesses, service offerings, and overall revenue distribution, have changed dramatically since the initial Florida consolidated election was made. This shift, along with its substantial growth, taken together, are a sufficient basis for granting Taxpayer's request for deconsolidation.

CONCLUSION

Taxpayer has established sufficient reasonable cause for the Executive Director to grant Taxpayer permission to cease filing consolidated Florida corporate income tax returns.

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 ending [REDACTED]:

1. That the deconsolidation is effective for the tax year ending [REDACTED].
2. Taxpayer and its subsidiaries have no intercompany unrealized or unrecognized items or deferred income or expenses that would normally be reported on a consolidated basis but may not be included in separately filed corporate income tax returns.
3. That Taxpayer's group does not become part of a consolidated Florida corporate income tax return prior to the tax year ending [REDACTED].
4. That any deferred gains which are realized for federal purposes, but which have not yet been recognized, must be reported in total, on the income tax return filed by Taxpayer's group for tax year ending [REDACTED].

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 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 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 ten (10) days of the date of this letter.

If you have any further questions regarding this matter and wish to discuss them, you may contact me directly at 850-717-6326.

Kind Regards,

Denise L. Smith

Denise L. Smith, MPM

Tax Law Specialist

Technical Assistance & Dispute Resolution

cc:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Record ID # 7000 949287

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: 7000949287

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.