QUESTION: May a parent/subsidiary consolidated filing group be granted permission to cease filing Florida consolidated tax returns after being purchased by a new owner (parent).

ANSWER: The parent/subsidiary consolidated filing group was granted permission to cease filing Florida consolidated tax returns based on provisions of the F. A. C. which addresses changes in business circumstances.

October 03, 2012

XXX
XXX
XXX

Re: Technical Assistance Advisement 12C1-010R
Request for Authority to Discontinue Consolidated Filing
Section 220.131, F.S.
Rule 12C-1.0131(3)(b), F.A.C.
XXX (FEIN: XXX) (hereinafter referred to as “Purchaser”)
XXX (FEIN: XXX) (hereinafter referred to as “Taxpayer”)
XXX (FEIN: XXX) (Subsidiary of Taxpayer)
XXX (FEIN: XXX) (Subsidiary of Taxpayer)

Dear XXX:

This is in response to your request dated XXX, for a Technical Assistance Advisement (TAA) pursuant to section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding permission to discontinue filing consolidated returns for Florida corporate income tax purposes. An examination of your letter has established that you have compiled with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

FACTS SUPPLIED BY TAXPAYER

According to the Florida Department of Revenue’s (hereinafter referred to as the Department) database, the Taxpayer is a corporation headquartered in XXX. Its account indicates that the Taxpayer and its subsidiaries have a history of filing consolidated Florida and federal corporate income tax returns. Taxpayer is engaged in the XXX business.
On XXX the Purchaser acquired 100% of the common stock of the Taxpayer and its subsidiaries. Taxpayer and subsidiaries filed their last Florida and federal consolidated returns for the short period XXX, through XXX. As a result of the purchase, the consolidated group consisting of Taxpayer and its subsidiaries no longer exists for Florida and federal corporate income tax purposes. The Purchaser is the parent to its own consolidated group and files its required Florida returns on a separate entity basis. Purchaser has never elected to file Florida consolidated returns for its consolidated group either prior to or after its acquisition of the Taxpayer/subsidiaries. Purchaser requests permission for the Taxpayer and subsidiaries to discontinue filing consolidated Florida corporate income tax (CIT) returns. This request is based on a “change in circumstances,” as Taxpayer’s consolidated group ceased to exist after Purchaser’s acquisition and is now a subgroup of Purchaser’s consolidated group and not eligible to file a Florida consolidated return (see Rule 12C-1.0131, Florida Administration Code (F.A.C.).

**LEGAL AUTHORITY**

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 the 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:

(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)(b), F.A.C., states:
(b)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 had a substantial adverse effect on the consolidated tax liability of a 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.

**ISSUE PRESENTED**

Has sufficient reasonable cause been established for the Executive Director to grant Taxpayer permission to stop filing consolidated Florida corporate income tax returns?
DISCUSSION AND ANALYSIS

In its request for permission to discontinue filing a consolidated Florida corporate income tax return, Purchaser relies on Rule 12C-1.0131(3)(b) 2.a., F.A.C., which permits the Executive Director to consider "changes in law or circumstances, including changes that do not affect income tax liability." Purchaser cites a change in circumstance occurring on XXX, when it acquired 100% of the common stock of the Taxpayer. As a result of the acquisition, the Taxpayer’s consolidated group no longer exists. Taxpayer and subsidiaries are now part of the Purchaser’s consolidated group, which does not file a Florida consolidated return. Purchaser, which is domiciled in XXX, has always elected to file Florida corporate income tax returns on a separate entity basis. Prior to the acquisition, Purchaser and Taxpayer did not share common ownership and were completely unrelated to each other. Taxpayer is now bound by the Florida filing election made by the new parent (Purchaser), and each company within the new group of companies will file separate Florida corporate income tax returns beginning with the tax year ending December 31, 2011.

CONCLUSION

Taxpayer has met the requirements for granting permission to discontinue the Florida corporate income tax consolidated filing election. Accordingly, based on the following two conditions, the Department grants the Taxpayer permission to discontinue filing consolidated Florida corporate income tax returns:

1. That the deconsolidation is effective for the Florida corporate income tax returns for the tax year ending December 31, 2011;

2. That the Taxpayer Group has no realized, but unrecognized, income or expense items that may be recognized at a later date that would benefit a member of the affiliated group, nor any deferred income or expenses that would normally be reported on a consolidated basis, but would not be included in separately filed corporate income tax returns.

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,

Charles J. Dunning, MBA
Tax Law Specialist
Technical Assistance and Dispute Resolution

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