

ARIZONA CORPORATE TAX RULING

CTR 94-13

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

How does the subsequent sale or dissolution of some or all of the members of an affiliated group, which has elected to file Arizona consolidated income tax returns, affect the Arizona tax liabilities or overpayment credits of the group?

APPLICABLE LAW:

Laws 1994, 2nd Reg. Session, Ch. 41 (Senate Bill 1120) provided for the filing of consolidated Arizona income tax returns by an affiliated group of corporations and defines liability for members of the group and application of overpayment credits and refunds from amended consolidated returns.

Treasury Reg. § 1.1502-77(a) provides that a parent is the sole agent for the affiliated group and that any refund will be made directly to and in the name of the common parent and will discharge any liability of the government with respect to the subsidiary.

DISCUSSION:

Laws 1994, 2nd Reg. Session, Ch. 41 amended Arizona Revised Statutes (A.R.S.) § 43-947 to allow corporate taxpayers an election to file consolidated Arizona income tax returns for taxable years beginning from and after December 31, 1993. The election must be accompanied by written consent, signed by an officer, of each member of the affiliated group.

Taxpayers may also file retroactively on a consolidated basis by submitting amended returns on or before December 31, 1994, accompanied by properly executed consent forms. Taxpayers who wish to file on a consolidated basis for prior taxable years must file a consolidated Arizona return for the taxable year beginning from and after December 31, 1985, and for all succeeding taxable years (see CTR 94-10).

Taxpayers who elect to file consolidated Arizona income tax returns are bound by the conditions prescribed for consolidated filing in Laws 1994, 2nd Reg. Session, Ch 41. These laws provide that all members of the group are jointly and severally liable for tax, penalty, and interest of the affiliated group.

These laws further provide that overpayments of Arizona tax resulting from amended consolidated filings for taxable years 1986 through 1993 are not refunded. Instead such overpayments are allowed as a credit against future tax liabilities *of the affiliated group* over a ten year period at a rate of 10 percent of the total credit per taxable year or the amount of the group's tax liability, whichever is less. Overpayments remaining after the tenth year will be applied against the following taxable year's tax liability. Any remaining balance will be refunded to the group or its successors and assigns.

Overpayment credits are applied against the Arizona corporate income tax liability of the affiliated group. There is no provision for allocating the overpayment credit among the subsidiaries and allowing those subsidiaries to utilize a portion of the credit against their separate liability if they are no longer part of the group.

RULING:

This ruling consists of the department's answers to questions which have been raised concerning the liability for additional tax due, application of credits, and the issuance of refunds when members of the affiliated group have been sold or dissolved.

1. If some members of the affiliated group are unable to pay their share of the group's Arizona tax liability, can the parent or other members of the group be required to pay the unpaid portion of the tax liability?

Yes. All members of the group who are represented on a consolidated tax return for a given year are jointly and severally liable for tax, penalty, and interest of the affiliated group for that year.

2. If a member of the group has been sold and a deficiency is subsequently assessed against the group for a period in which the former subsidiary was a member of the group, is that former subsidiary jointly and severally liable for the deficiency?

Yes.

3. If one or more members of an affiliated group have been sold and are now filing as a separate corporation or as members of a new affiliated group, can a portion of an overpayment credit related to the old group be assigned to those

former subsidiaries to be used to offset the Arizona tax liability of the separate corporation or the new affiliated group?

No. Overpayment credits can only be used to offset the tax liability of the affiliated group reporting under the common parent which reported for the group at the time of making the election to file a consolidated return.

4. If an entire affiliated group which has overpayment credits resulting from amended consolidated returns is acquired by another affiliated group, may the overpayment credits be used to offset the Arizona tax liabilities of the new affiliated group?

No. Overpayment credits may only be applied against the tax liabilities of the affiliated group which filed the amended consolidated returns creating those overpayments. Overpayment credits existing at the time of acquisition will be refunded at the end of the credit period to the successor of the acquired group.

5. If one or more members of the affiliated group is sold or if additional subsidiaries are acquired and included in the group, is it considered to be a different affiliated group and, thus, precluded from using the credit against the tax liability of the current affiliated group?

No. As long as the parent continues to file a consolidated return, the addition or deletion of subsidiaries will not result in a different affiliated group and the parent may apply existing credits against the liability of the current affiliated group.

6. If an affiliated group which has overpayment credits resulting from amended consolidated returns is dissolved, may the group request an immediate refund?

No. Any existing overpayment at the time of dissolution would be refunded at the end of the credit period to the former group's successor or assigns.

7. If the parent corporation of an affiliated group changes its identity but is otherwise essentially unchanged, is a different affiliated group created?

No. A mere change in identity, form, or place of organization of the parent shall not create a new affiliated group.

Harold Scott, Director
Signed November 28, 1994

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.