

ARIZONA DEPARTMENT OF REVENUE

1600 WEST MONROE - PHOENIX, ARIZONA 85007-2650

FIFE SYMINGTON
GOVERNOR



HAROLD SCOTT
DIRECTOR

ARIZONA CORPORATE TAX RULING **CTR 93-6**

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:

Are a corporation's capital gains, which are offset by capital losses of other corporations participating in filing a federal consolidated return, included in Arizona gross income of that corporation when it files to Arizona on a separate corporation basis?

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 43-102.A.5 declares the intent of the legislature to tax each corporation on its income derived from sources within this state.

A.R.S. §§ 43-942 and 43-947 provide the basis for determining reportable income of a corporation which controls or is controlled by an affiliated corporation.

Internal Revenue Code (I.R.C.) § 61 defines gross income to include gain on the sale of property.

Treasury Regulation (Treas. Reg.) §§ 1.1502-12 and 1.1502-22 provide special treatment for capital gains and losses of corporations included in a consolidated return which allows capital losses of one corporation to be offset against capital gains of another corporation in computing consolidated federal taxable income.

DISCUSSION:

Capital gains are includable in the Arizona gross income of a corporation. While the Treasury regulations pertaining to federal consolidated returns allow capital losses of one corporation participating in filing a federal consolidated return to be offset against the capital gains of other corporations participating in filing that consolidated return, there is no Arizona provision allowing such an offset when a separate company return is filed to Arizona.

ARIZONA CORPORATE TAX RULING

CTR 93-6

Page 2

A.R.S. § 43-942 allows the department to distribute income or deductions among affiliated taxpayers if necessary to clearly reflect income of a taxpayer. A.R.S. § 43-102.A.5 declares the intent of the legislature to impose a tax on each corporation based on taxable income from sources within this state. Therefore, when computing taxable income of a separate corporation in Arizona, the capital losses of one corporation may not be used to offset the capital gains of another separate corporation, although both corporations may be participating in filing the same consolidated group return for federal tax purposes.

RULING:

A corporation that participates in filing a federal consolidated return may be required to file a separate corporation return to Arizona. The Arizona gross income of such a corporation shall be computed by including any capital gains without offsetting capital losses from other corporations which participated in filing the federal consolidated return. If the separate corporation has capital losses which were offset against capital gains of other corporations in the federal consolidated return, those losses will remain available for carry forward on a separate corporation basis.

Harold Scott, Director

Signed: May 24, 1993

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.