

# ARIZONA DEPARTMENT OF REVENUE

1600 WEST MONROE - PHOENIX, ARIZONA 85007-2650



JANE DEE HULL  
GOVERNOR

MARK W. KILLIAN  
DIRECTOR

## ARIZONA CORPORATE TAX RULING CTR 01-1

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:**

Does a federal tax-free Internal Revenue Code § 351 reorganization affect the Arizona unitary determination of the affiliated companies?

### **APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 43-941 provides for filing of a combined return of two or more affiliated corporations when necessary to properly reflect Arizona income.

Arizona Administrative Code (A.A.C.) R15-2D-401 provides guidance on the determination of a unitary business.

Internal Revenue Code (I.R.C.) § 351 provides for a tax-free transfer of property to a controlled corporation solely in exchange for stock in that corporation.

*Container Corp. of America v. Franchise Bd. of California*, 463 U.S. 159 (1983), established constitutional standards for combined filing of a unitary business.

*Talley Industries, Inc. v. Arizona Department of Revenue*, 182 Ariz. 17, 893 P.2d 17 (App. 1994), established the standards for combined filing of a unitary business in Arizona.

### **DISCUSSION:**

An I.R.C. § 351 reorganization provides for a tax free transfer of property to a controlled corporation solely in exchange for stock in that corporation. Although this results in a change in the *form* of the business, it generally does not affect the substance of the business operations.

A.R.S. § 43-941 provides for the filing of a combined return in the case of a unitary business conducted by two or more corporations. A.A.C. R15-2D-401 and a number of

**ARIZONA CORPORATE TAX RULING**  
**CTR 01-1**

Page 2

cases, including *Talley Industries, Inc. v. Arizona Department of Revenue*, 182 Ariz. 17, 893 P.2d 17 (App. 1994), provide that the determination of the proper reporting of a unitary business is based on the operation of the business activities and not on the form of the business.

After an I.R.C. § 351 reorganization, the new corporation controlling the assets generally remains an affiliated corporation and the activities of the group generally remain unchanged. Activities conducted as part of a unitary business do not become a separate and unrelated business simply because those activities are subsequently conducted by a different affiliated corporate entity.

**RULING:**

An affiliated corporation resulting from an I.R.C. § 351 reorganization is required to file a combined return as part of the unitary group if its activities are conducted as a part of the unitary business.

Mark W. Killian, Director

Signed: May 2, 2001

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 that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning 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 96-1 for more detailed information regarding documents issued by the Department of Revenue.