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## ARIZONA CORPORATE TAX RULING CTR 04-1

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:**

How does the reverse acquisition of a federal consolidated group that has elected the Arizona consolidated filing method affect the Arizona filing method for that group in years subsequent to the acquisition?

### **APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 43-947 provides the requirements for electing and filing an Arizona consolidated income tax return.

Internal Revenue Code (IRC) §§ 1501 through 1504 and related U.S. Treasury Regulations provide the requirements for electing and filing a federal consolidated income tax return.

### **DISCUSSION:**

A.R.S. § 43-947 allows a federal consolidated group to elect to file a consolidated income tax return to Arizona that includes all members of the federal consolidated group and provides that the election is binding on all future years. When the federal consolidated group acquires additional members and includes them in the federal consolidated group, those members must be included in the Arizona consolidated group and the acquisition does not affect the Arizona consolidation election.

A reverse acquisition is one in which a (first) corporation acquires substantially all of the assets of a (second) corporation in exchange for stock of the first corporation, and the stockholders of the second corporation own immediately after the acquisition more than fifty percent of the shares of the first corporation. While in form the first corporation, which exchanged the stock and acquired the assets, is the acquiring corporation, in substance

## **ARIZONA CORPORATE TAX RULING**

### **CTR 04-1**

Page 2

the more than fifty percent change in ownership indicates that the second corporation is the true acquiring corporation.

#### **Examples:**

Corporation A acquires the assets of Corporation B in exchange for 70 percent of the stock of Corporation A. After this exchange the former stockholders of Corporation B now own 70 percent of Corporation A, therefore, Corporation B and its stockholders are considered to be the true acquiring corporation rather than Corporation A.

Corporation A acquires the assets of Corporation B in exchange for 40 percent of the stock of Corporation A. After this exchange the former stockholders of Corporation B now own 40 percent of Corporation A, therefore, Corporation A is considered to be the acquiring corporation since the stockholders of Corporation B control less than 50 percent of the stock of Corporation A.

When a corporation or federal consolidated group of corporations has been acquired by another corporation or group of corporations in a reverse acquisition as discussed in U.S. Treasury Reg. § 1.1502-75(d)(3)(i), the acquired corporation or group is considered to be the true acquiring corporation and is subject to continued filing requirements for federal tax purposes.

A.R.S. § 43-947(l)(1) defines the affiliated group as the group of corporations that elected or are required to file a consolidated federal tax return under IRC § 1501. Therefore, the affiliated group after a reverse acquisition would be the group that is subject to continued filing requirements under the Internal Revenue Code. If that group had a valid Arizona consolidated filing election, the group will be required to continue filing an Arizona consolidated return.

#### **RULING:**

A consolidated group that has been acquired by another corporation or group of corporations in a reverse acquisition as discussed in U.S. Treasury Reg. § 1.1502-75(d)(3)(i) is considered to be the true acquiring corporation for federal tax purposes, and is subject to continued filing requirements. If the true acquiring group has elected the Arizona consolidated filing method, the group is required to continue filing an Arizona consolidated income tax return.

A consolidated group that acquires another corporation or group of corporations in a reverse acquisition as discussed in U.S. Treasury Reg. § 1.1502-75(d)(3)(i) is not considered to be the true acquiring corporation for federal tax purposes, and is not subject

## **ARIZONA CORPORATE TAX RULING**

**CTR 04-1**

Page 3

to continued filing requirements. If the acquiring affiliated group has elected the Arizona consolidated filing method, but the acquired group (true acquiring group) has not elected to file an Arizona consolidated income tax return, the new group must make an Arizona consolidated filing election if it desires to file an Arizona consolidated return.

Gale Garriott, Deputy Director,  
for J. Elliott Hibbs, Director

Signed: July 12, 2004

### 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.