AFFILIATED GROUPS: EXEMPTION, DEFINED

Sales of services between included members of an "affiliated group" are excluded from the pre-apportionment tax base of the group.

All included members of an "affiliated group" defined in s. 1504(a) of the Internal Revenue Code of 1986, whose members are includible under subsections (b), (c) or (d) thereof, as well as certain mutual insurance companies (as described later herein) are considered a single entity (i.e., the purchaser) for the purpose of establishing use or consumption of services in Florida pursuant to s. 212.02(2), F.S., and s. 212.0591(9)(b)4., F.S.

The pre-apportionment tax base includes the purchases from third parties made by all included member corporations including the parent. As to that portion of the tax base which is apportionable, generally a single apportionment factor is calculated for all included members of the affiliated groups. The portion of the tax liability of an affiliated group which results from the application of the single apportionment formula to that part of the tax base which is apportioned (rather than allocated) is the sum of the separate liabilities of each included member corporation which as a separate entity has tax nexus in this state.

A group of includible corporations (other than certain mutual insurance companies described herein) is defined as an affiliated group, for purposes of the state sales and use tax, if it consists of one or more chains of includible corporations and if the stock ownership test prescribed in IRC s. 1504(a) is satisfied and the group is eligible to file a consolidated return for purposes of the federal income tax.

The stock ownership requirement for affiliation is satisfied if: (1) the common parent of the group is an includible corporation and owns directly (not by attribution) 80 percent of the value and voting power of the stock of one or more of the other includible corporations; and, if more than 1 chain, (2) one or more of the other includible corporations in the group owns directly (not by attribution) 80 percent of the value and voting power of the stock of one or more of the remaining includible corporations other than the common parent.

Being "eligible to file a consolidated tax return for federal income tax purposes" pursuant to s. 220.02(2), F.S., does not require that a consolidated federal tax return be filed nor that each includible member file a consent to all of the federal consolidated return regulations prescribed under s. 1502 of the Internal Revenue Code of 1986.

An "affiliated group," for purposes of the Florida sales and use tax is defined in s. 212.02(2), F.S., Rule 12AER 87-10(2), F.A.C., and Section 1504 of the Internal Revenue Code of 1986 (I.R.C.). Any corporation is an
incorporated unless it is a corporation described in I.R.C. s. 1504(b)(1), (b)(3) – (4), or (e). Accordingly, corporations are not included corporations only if they are: corporations exempt from taxation under I.R.C. 5012(c); corporations with respect to which an election under I.R.C. s. 936 is in effect for the taxable year (relating to possession tax credit); corporations organized under the China Trade Act of 1922; regulated investment companies and real estate investment trusts subject to tax under I.R.C. Chapter 1, Subchapter M; either a domestic international sales corporation (DISC), within the meaning of I.R.C. s. 992(a)(1), or any other corporation (such as a s. 922(a)(1) foreign sales corporation (FSC)) which has accumulated DISC income after December 31, 1984; tax-exempt organizations that are included corporations under I.R.C. s. 1504(e), for purposes of the federal income tax; and foreign corporations other than foreign corporations that are organized under the laws of a country contiguous with the United States for the purpose of complying with the laws of the contiguous country pertaining to title and operation of property; and 100 percent of the stock of such a foreign corporation is owned directly or indirectly by a domestic corporation pursuant to I.R.C. s. 1504(d).

Insurance companies subject to taxation under I.R.C. s. 801 are expressly exempt from the exception prescribed in I.R.C. s. 1504(b)(2) to the general definition of includible corporations. Therefore, insurance companies subject to taxation under I.R.C. s. 801 are includible corporations for purposes of the state sales and use tax even though such insurance companies are includible corporations under I.R.C. s. 1504 only to the extent described in I.R.C. s. 1504(c). Moreover, insurance company systems that are subject to s. 628.801, F.S., constitute an affiliated group for purposes of the state sales and use tax regardless of whether such systems (a) are eligible to file consolidated returns for purposes of the federal income tax; or (b) otherwise satisfy the requirements of an affiliated group within the meaning of I.R.C. s. 1504.

The taxpayer for a group that qualifies as an affiliated group for purposes of the sales and use tax may elect to exclude any includible corporation which satisfies all of the following requirements:

(1) The corporation has no nexus with Florida, as nexus is defined for purposes of the sales and use tax (sales tax nexus);

(2) The business activities of the excluded corporation are unrelated to any one or more of the business activities conducted by any one of the included corporations; and

(3) A separate election for each member to be excluded from the affiliated group is made pursuant to Rule 12AER87-10(2), on Form DR-4 (in accordance with the instructions thereon), on or before the earlier occurrence of July 20, 1987, or the 20th day of the first calendar month of the fiscal year of the excluded member.
In no event is a parent of an includible member corporation permitted under the terms of § 212.02(2), F.S., to be electively excluded from the affiliated group.

Where the affiliated group includes more than one unrelated business, subject to prior authorization by the Department by a technical assistance advisement issued in accordance with § 213.22, F.S., or Rule 12AER 87-91, F.A.C., the pre-apportionment tax base may be divided into the respective parts attributable to the included members of each respective unrelated business and such part be apportioned to this state using the group apportionment factor for the includible members which conduct the same respective business. The apportioned part of the tax base of each of such unrelated businesses shall be aggregated to determine the total tax liability of each of the included members which separately have tax nexus in this state.

In turn, the separate liability of each included member which has, separately, tax nexus in this state, is determined by use of its separate apportionment numerators over the aggregate denominators of all included members which conduct the separate and discreet business times the tax base of the unrelated business.