



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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PLR-17-001

April 27, 2017

XXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Re: Apportionment of Income on a Combined Report

Dear XXXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXX (“Affiliated Group”) a request for a private letter ruling to the Colorado Department of Revenue (“Department”) pursuant to Department Rule 24-35-103.5. This letter is the Department’s private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

May Affiliated Group calculate its combined income tax liability using the methodology outlined in Department Private Letter Ruling PLR-11-002 and Department Private Letter Ruling PLR-15-005?

Conclusion

Affiliated Group may calculate its combined income tax liability using the methodology outlined in Department Private Letter Ruling PLR-11-002 and Department Private Letter Ruling PLR-15-005; however, with respect to returns due after the effective date of the rule, Affiliated Group must calculate its combined income tax liability using the methodology that will be adopted by the Department in amended Department Rule 1 CCR 201-2, 39-22-303(11)(c) when the rule becomes effective.

Structure of Analysis

To determine how Affiliated Group should apportion its income, the Department will examine the following question:

1. How must an affiliated group of corporations apportion income if corporations within the affiliated group are engaging in distinctly different commercial activities that require the use of different apportionment methodologies under section 39-22-303.5, C.R.S. and special rules promulgated under section 39-22-303.5(7)(a), C.R.S.?

Background

Affiliated Group consists of multiple C corporation members within the larger C corporation affiliated group that files a combined report in Colorado. Affiliated Group is engaged in distinctly different commercial activities requiring the application of different apportionment methodologies by Colorado law. These include the following:

- Providing package delivery services by motor vehicle (trucking services). Members of the Affiliated Group that provide this service are required to use the apportionment methodology outlined in 1 CCR 201-3, Special Regulation 6A (“Trucking”).
- Providing transportation services of packages via aircraft. Members of the Affiliated Group that provide this service are required to use the apportionment methodology outlined in 1 CCR 201-3, Special Regulation 1A (“Airlines”).
- Providing commercial banking, small business and sales financing, and loan production services. Members of the Affiliated Group that provide this service are required to use the apportionment methodology outlined in 1 CCR 201-3, Special Regulation 7A (“Financial Institutions”).
- Providing various other general business activities, including the following services: logistics, freight forwarding, distribution, post-sales support, brokerage, and general management services. Members of the Affiliated Group that provide this service are required to use the apportionment methodology outlined in section 39-22-303.5, C.R.S.

Within the C corporation structure, the separate and distinct services are performed by different legal entities. The Affiliated Group as a whole is subject to four different apportionment methodologies but no one legal entity is subject to more than one methodology.

Discussion

The Department has previously ruled how an affiliated group of corporations should apportion their income if corporations within the affiliated group are engaging in distinctly different commercial activities that require the use of different apportionment methodologies.

In 2011 and 2015, the Department issued a Private Letter Ruling PLR-11-002 and Private Letter Ruling PLR-15-005, respectively outlining, in the most general terms, that the financial and non-financial members of the combined group must eliminate all intercompany transactions regardless of whether such transactions were among members of the same subgroup or between members of different subgroups. Then, each subgroup must separately calculate modified federal taxable income. The financial and non-financial subgroups were also required to separately allocate income and loss and apportion any apportionable business income or loss using the respective apportionment methodology and factors for each subgroup. Next, all business income or loss allocated and apportioned to Colorado by the financial and non-financial subgroups were added together to produce an aggregated Colorado tax base to which the income tax rate applied.

As such, Affiliated Group may use the allocation and apportionment methodology outlined in PLR-11-002 and PLR-15-005. The Department is currently drafting a rule to address the issues raised in this PLR. If the methodology outlined in the rule is different than that outlined in PLR-11-002 and PLR-15-005, the Department rule would apply to Affiliated Group with respect to returns due on or after the effective date of such rule.

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department reserves the right, among others, to independently evaluate Company's representations and assumptions. The ruling is null and void if any such assumption and representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.