

State of Rhode Island - Division of Taxation

Business Corporation Tax

Regulation CT 88-07

Consolidated Returns

I. Conditions for Filing

An affiliated group of corporations may file a consolidated return for the taxable year provided that each member corporation:

- (A) is not a Foreign Sales Corporation (FSC), Domestic International Sales Corporation (DISC), a Subchapter S corporation, or is not a corporation as described in sections 44-11-2(2)(a) or 44-11-2(2)(b) of the Rhode Island General Laws, and
- (B) is subject to taxation under chapter 44-11 of the Rhode Island General Laws, and
- (C) has the same fiscal period, and
- (D) was affiliated at any time during the taxable year, and
- (E) consents to such filing and gives written notice thereof to the Tax Administrator no later than the 15th day of the third month following the close of the fiscal year, and joins in the filing of such consolidated return.

II. Certain Terms Defined

The term "affiliated group" shall mean two or more corporations connected through stock ownership with a common parent corporation, if

- (A) at least ninety-five percent of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and,
- (B) the common parent corporation owns directly at least ninety-five percent of the stock of at least one of the other corporations. The term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

The term "consolidated return period" means any taxable year for which a consolidated return is made.

The term "subsidiary" means a corporation (other than the common parent) which is a member of the affiliated group during any part of the consolidated return period.

The term "tax" includes any interest, penalties, additional amount, or addition to the tax payable in respect thereof.

III. Liability for Tax

(A) Several liability of members of affiliated group.--Except as provided in paragraph (B) each member of the affiliated group during any part of a consolidated return period, shall be severally liable for the tax (including any deficiency in respect thereof) computed on the basis of a consolidated return of the group.

(B) Liability of subsidiary after withdrawal.--If a subsidiary by reason of a bona fide sale of stock for fair value has ceased to be a member of the affiliated group its liability under paragraph (A) shall remain unchanged. However, if such cessation occurred prior to the date on which the deficiency is assessed, the former subsidiary's deficiency shall be reduced to an amount equal to the part allocable to the former subsidiary on the basis of the consolidated net income properly allocated to it.

(C) Effect of intercompany agreements.--Any agreement entered into by one or more members of the affiliated group with any other members of the group or with any other person shall in no case, reduce the liability prescribed under III.

IV. Parent-Agent for Subsidiaries

(A) The parent corporation shall be for all purposes, in respect of the tax for the taxable year for which a consolidated return is made, the agent of each corporation which during any part of the year was a member of the affiliated group, duly authorized in the name of the parent to act for and represent each such corporation in all matters relating to such tax; the parent corporation shall be the sole agent for such corporations in such matters; and such corporations shall not have authority to act for or to represent themselves in any such matter. As examples but not limited to: All correspondence will be carried on directly with the parent corporation and deficiency notices will be mailed only to the parent corporation in the affiliated group. The parent corporation will file petitions and conduct proceedings before the Tax Administrator, and any such petitions shall be considered as also having been filed by each other member of the group. The parent corporation will file claims for refund or credit; the refunds will be made directly to and in the name of the parent corporation and will discharge any liability of the state in respect thereof to any other member. The parent corporation will, in its name, execute agreements and all other documents. Any agreement or other documents so executed, shall be considered as having been also executed by each other member of the group. However, notwithstanding other provisions of this paragraph, any matter of deficiency of tax for a consolidated return will name each corporation which was a member of the affiliated group during any part of such period, and any assessment (whether of the original tax or of the deficiency) will be made in the name of each such corporation. A failure to include the name of any such corporation will not affect the validity of the deficiency notice or the assessments as to the other corporations. After the assessment has been made, any notice or demand for payment or any proceeding to collect the amount of any assessment, will name the corporation from which such collection is to be made. The provisions of this paragraph shall apply whether or not one or more members have become or have ceased to be members of the group at any time.

(B) Effect of dissolution of parent.--In the event that the parent corporation is contemplating dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it shall be the parent's duty to notify the Tax Administrator of such act and to designate another agent to act as agent in the parent's place to the same extent and subject to the same conditions and limitations as are applicable to the parent corporation. Until this notice (in

writing with the designation of another agent) has been received by the Tax Administrator, any notice or deficiency letter mailed to the parent corporation shall be considered as having been mailed to the agent of the group. If the Tax Administrator has reason to believe that the existence of the parent corporation has terminated, is about to terminate or has been notified of the designation of another agent to act in the parent's place, he may (if he deems it advisable) deal directly with any member of the affiliated group with respect to its liability.

V. Failure to Include Income of Subsidiary

If the income of any subsidiary liable for tax under chapter 44-11 has not been included in the consolidated return, notice may be given by the Tax Administrator to the parent corporation at the Tax Administrator's discretion. The tax liability may be determined on the basis of separate returns for all members of the affiliation: or on a separate return for the subsidiary whose income is omitted from the consolidated return, or on the inclusion of the income of such subsidiary in the consolidated return.

VI. Consolidated Net Income and Net Worth

(A) Consolidated net income: The consolidated net income of the affiliated group making a consolidated return for any taxable year, shall be the aggregate of the taxable income or loss apportioned to this state of each of the members of such group, without eliminations for any kinds of transactions between members or nonmembers of the group. This computation is as follows: each member's taxable income or loss is separately apportioned to this state and then these apportioned income or loss amounts are aggregated. (Example 1)

(B) Consolidated net worth: The consolidated net worth of the affiliated group making a consolidated return for any taxable year, shall be the aggregate of the net worth apportioned to this state of each of the members of such group, computed without eliminations of any kind between members or nonmembers of the group. This computation is as follows. Each member's net worth is separately apportioned to this state and then their apportioned net worth amounts are aggregated. (Example 2)

(C) Separate statements of income and separate balance sheets for each corporation must accompany the return. The minimum tax for the group is the aggregate of the franchise tax for each member joining in the consolidated filing. (Example 3)

VII. Bad Debts

(A) Resulting from transactions during consolidated return period.--Intercompany accounts receivable shall not be deducted as bad debts during a consolidated return period.

(B) Resulting from transactions prior to the consolidated return period.--No deduction shall be allowed during a consolidated return period for intercompany accounts receivable or other obligations resulting from intercompany transactions during the period of filing separate returns.

VIII. Net Operating Loss

(A) See Net Operating Loss Deduction Regulation CT88-6.

IX. Existence and Termination of Affiliated Group

(A) When an affiliated group remains in existence: For the purpose of these regulations, an affiliated group is considered as remaining in existence if the common parent corporation remains as a common parent and at least one subsidiary remains affiliated with it, whether or not that subsidiary was a member of the group at the time the group was formed and whether or not one or more corporations have become subsidiaries or have ceased to be subsidiaries at any time after the group was formed.

(B) When an affiliated group terminates: For the purpose of these regulations, an affiliated group shall be considered as terminated if the common parent corporation ceases to be the common parent or if there is no subsidiary affiliated with it.

R. GARY CLARK

TAX ADMINISTRATOR

DATE FILED: December 9, 1988

EFFECTIVE DATE: December 31, 1988

THIS REGULATION AMENDS AND SUPERCEDES THE REGULATION ENTITLED
"CONSOLIDATED RETURNS" PROMULGATED JANUARY 20, 1977.