



July 28, 2011

Re: Letter Ruling Request
General Corporation Tax
FLR-11-4917-GCT

Dear Mr. _____ :

This is in response to your request for a ruling on behalf of _____ regarding the proper filing of a combined General Corporation Tax ("GCT") return where the taxpayers to be included in the combined return have different tax years.¹

FACTS

The facts presented are as follows:

There are three corporations with the same shareholders: _____ ("Corporation A"), _____ ("Corporation B") and _____ ("Corporation C"). All three corporations have the same three shareholders owning an equal 1/3 ownership interest in each corporation. Corporations A and C have calendar tax years. Corporation B has a fiscal tax year ending on September 30. All three corporations share the same facility. All three corporations share the same accounting department personnel within the same facility. Each corporation conducts part of its business within New York City. Corporation A repairs and services hospital equipment. Corporation B sells equipment to hospitals throughout New York State. Corporation C provides inspections, testing and certification of HEPA Filtration Systems and HEPA filtered equipment. Some of each corporation's customers are shared with each of the other corporations.

You have requested a ruling as to whether when filing a combined return, Corporation B will be required to change its current September 30 fiscal tax year to the same tax year as the other two corporations required to file as part of the combined group. If such a change is not necessary, you have requested guidance as to the proper filing procedure for combined group members having different tax years.

ISSUE

1. Where two of the three corporations required to be included in a combined return previously filed separately on a calendar year basis and the third corporation previously filed separately on the basis of a fiscal year, is the corporation with the fiscal year required to change its tax year to conform to that of the other corporations included in the combined return?
2. In the alternative, will the fiscal year taxpayer be exempt from the mandatory, combined filing requirement because of the difference in the tax years.

¹ For purposes of this determination, we are assuming, without ruling, that a combined return for the taxpayers is required under the mandatory combined filing requirement of New York City Administrative Code §11-605(4).

CONCLUSION

The Department has concluded it will follow New York State's procedure in Technical Service Bureau Memorandum ("TSB-M") 08(2)C regarding corporations with different tax years that are included in a combined return. Consequently, when a related corporation does not have the same year as the parent (or the corporation designated as the "parent"), the related corporation's activities for its taxable year that ends during the parent's taxable year are used for purposes of reporting and filing as part of a combined report. Accordingly, each corporation with a different tax year need not conform to the parent corporation's tax year in order to comply with the combined filing requirements, but a combined return, including all the corporations, is still required.

DISCUSSION

Section 11-605.4 of the Administrative Code ("Code") of the City of New York was amended in 2009 to require a corporation subject to the New York City General Corporation Tax to file on a combined basis with related corporations where there are substantial intercorporate transactions among the related corporations.² In addition, the Department may require or permit the taxpayer to file a combined report with one or more related corporations even where substantial intercorporate transactions are absent if a combined report is necessary to properly reflect the taxpayer's GCT liability because of intercompany transactions or some agreement, understanding, arrangement or transaction. Code §11-605.4(a)(3). In the case presented, the corporations to be included in the combined report have different tax years.

New York State has a similar law requiring combined filing codified in Section 211.4 of the Tax Law. The state law is effective for tax years beginning on or after January 1, 2007. In 2008, the New York State Department of Taxation and Finance issued TSB-M-08(2)C³ to provide guidance regarding issues arising from the mandatory combined filing rules. Under the TSB-M, when a combined report will include more than one taxpayer, the corporations included in the group must designate which of the taxpayers is "the taxpayer" for purposes of computing and assessing the tax. The taxpayer so designated is often referred to as the parent corporation even though it may not be the parent of the other related corporations included in the combined report. When a related corporation does not have the same tax year as the parent, the related corporation's activities for its taxable year that ends during the parent's taxable year are used for purposes of reporting and filing as part of a combined report.

The Department has concluded that it will adopt the procedure set forth in the State's TSB-M-08(2)C. Therefore, once a "parent" is designated, a combined return should be filed that includes each related corporation's activities for its taxable year that ends during the parent's taxable year.

Very truly yours,

Beth Goldman
General Counsel

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² Prior to the effective date of the amendment, related taxpayers could avoid the requirement to file a combined return by rebutting the presumption of distortion that arose where there were substantial intercorporate transactions among the related corporations.

³ TSB-M-08(2)C supersedes and replaces TSB-M-07(6)C.