

# Rulings of the Tax Commissioner

**Document Number:** 13-241  
**Tax Type:** Corporation Income Tax  
**Brief Description:** Corporation file consolidated returns any new Corp. joining the group would be required to be included in the consolidated return  
**Topics:** Federal Conformity; Filing Status; Returns and Payments  
**Date Issued:** 12/31/2013

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December 31, 2013

Re: Request for Ruling: Corporate Income Tax

Dear \*\*\*\*\*:

This will respond to your letter submitted on behalf of your client (the "Buyer"), in which you request a ruling as to whether it may be allowed to elect to file a consolidated Virginia corporate income tax return with its affiliates effective for the taxable year ended December 31, 2009.

## FACTS

The Buyer, commercially domiciled outside Virginia, was the parent corporation of a group of corporations, which file a federal consolidated income tax return. Prior to 2009, only one of the Buyer's subsidiaries (Subsidiary A) filed a Virginia income tax return. The Buyer itself was not subject to Virginia income tax.

Late in 2008, the Buyer acquired Corporation A. Corporation A was the parent corporation of a group of affiliated corporations, which filed Virginia consolidated returns.

For the taxable year ended December 31, 2009, Corporation A continued to file a consolidated return with its subsidiaries. Subsidiary A filed a separate 2009 Virginia income tax return. The Buyer requests a ruling that it made a valid election to file consolidated Virginia returns beginning with the 2009 taxable year and that the 2009 through 2011 consolidated returns should be amended in order to include Subsidiary A.

## RULING

*Virginia Code* § 58.1-442 allows corporations to elect to file returns as separate, combined, or consolidated entities regardless of how the corporations file their

federal income tax returns. Title 23 of the Virginia Administrative Code (VAC) 10-120-320 provides that in the first full taxable year, two or more members of a group of corporations affiliated pursuant to *Va. Code* § 58.1-302 are required to file Virginia returns, the group may elect to file separate returns, a combined return, or a consolidated return. All returns for subsequent years must be filed on the same basis unless permission to change is granted by the Department.

The election to use a certain filing status is determined by the affiliated group at the time such group meets the definition of affiliated under *Va. Code* § 58.1-302. In the case of an acquisition, the acquiring entity's election to use a certain filing status prior to the acquisition would be binding on the acquired affiliate or affiliates. In Public Document (P.D.) 97-226 (5/16/1997), the Department ruled that when a corporation, which had no other affiliates in Virginia, purchases an existing affiliated group in a taxable transaction, the affiliates became members of a newly formed affiliated group. However, the mere formation of a parent corporation or corporate reorganization by an affiliated group would not create a new filing election. See P.D. 92-75 (5/29/1992) and P.D. 97-397 (9/30/1997).

In this case, the Buyer, which was not subject to Virginia income tax, acquired an existing affiliated group. Because the Buyer was not subject to Virginia income tax before or after the time the transaction took place, no new affiliated group was created. Under such circumstances, Corporation A's election to file consolidated returns would remain in effect and any new corporations joining the group would be required to be included in the consolidated return. Accordingly, Subsidiary A would be required to join in the election with Corporation A and its affiliates.

In accordance with this ruling, Corporation A must file an amended return for the 2009 through 2011 taxable years to reflect the inclusion of Subsidiary A in the consolidated Virginia income tax returns. All subsequent returns must be filed using the consolidated filing status unless permission to change is granted by the Department.

The *Code of Virginia* sections, regulation, and public documents cited are available on-line at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules & Decisions section of the Department's web site. If you have any questions regarding this ruling, you may contact \*\*\*\*\* in the Office of Tax Policy, Appeals and Rulings, at \*\*\*\*\*.

Sincerely,

Craig M. Burns  
Tax Commissioner

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