

Economic Development Tax Incentives--Use of Credits by a Unitary Group Including a Financial Institution. THE CREDITS EARNED BY A FINANCIAL INSTITUTION MAY BE USED TO REDUCE THE CORPORATE INCOME TAX LIABILITY OF THE UNITARY GROUP THAT INCLUDES THE FINANCIAL INSTITUTION OR TO OBTAIN A REFUND OF SALES OR USE TAX PAID ON PURCHASES BY ANY MEMBER OF THE UNITARY GROUP FOR USE AT THE PROJECT.

Advice has been requested as to whether the credits earned under the Employment and Investment Growth Act (Act) by a financial institution that is a member of a unitary group can be used to reduce the corporate income tax liability of the other members of the group and to obtain refunds of sales or use tax paid by any member of the unitary group on purchases for use at the project.

Section 77-2734.04(3), R.S. Supp., 1987, provides in part that:

Corporate taxpayer shall . . . not include . . . any financial institution as defined in section 77-3801;

Section 77-2734.04(13), R.S. Supp., 1987, provides in part that:

Unitary business shall mean a business that is conducted . . . by one or more corporations, with common ownership . . . that contribute to the single economic unit.

Section 77-2734.04(14), R.S. Supp., 1987, provides that:

Unitary group shall mean the group of corporations that are conducting a unitary business.

Section 77-4103(12), R.S. Supp., 1987, provides in part that:

Taxpayers shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967, or a franchise tax under Chapter 77, article 38, any corporation that is a member of the same unitary group which is subject to such taxes,

Section 77-4106(1)(a), R.S. Supp., 1987, provides in part that:

The credits . . . may be used . . . to reduce the taxpayer's income tax liability The credits may be used to obtain a refund of sales and use taxes . . . on purchases, including rentals, for use at the project.

A financial institution, as defined in section 77-3801, has filed an application for an agreement under the Act. The financial institution is the wholly owned subsidiary of a holding company. The holding company has other wholly owned subsidiaries that are not financial institutions. The holding company and its wholly owned subsidiaries are a unitary group. The financial institution is a member of the unitary group, even though it is not a part of the corporate taxpayer for income tax purposes. The project is an expansion of portions of the financial institution and the computer center that provides computer services for all of the members of the group.

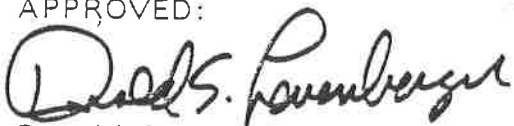
Each member of the unitary group is subject to the sales and use tax and either the financial institution franchise tax or the corporate income tax. All of the members of the unitary group are, therefore, included in the term "taxpayer" under the Act.

The incentives under the Act are available to the taxpayer. The unitary group is not limited in its use of the incentives to just the corporation that is primarily responsible for the project.

Even though the financial institution does not file an income tax return, and must be excluded from the income tax return filed for the rest of the group, the credits received under the Act which were created by the activities of the financial institution are available to reduce the tax liability shown on the income tax return of the unitary group.

The Act also allows a refund of sales and use taxes paid on purchases by the taxpayer that are for use at the project. The refunds will be allowed regardless of which member of the unitary group actually made the purchase.

APPROVED:



Donald S. Leuenberger
State Tax Commissioner

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