

CONSOLIDATED RETURNS: WHO CAN JOIN THE PARTY?

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Recently, the Ohio Board of Tax Appeals issued its Decision and Order in *Time Warner Cable Inc. & Subs., et al., v. City of Cincinnati, et al.*, BTA Case No. 2017-1448 (May 31, 2019), holding that a taxpayer was entitled to include all members of the taxpayer's federal consolidated group in its City of Cincinnati consolidated net profit tax return. This decision related to a tax year prior to the effective date of Sub. H.B. 5, which established uniformity among municipal income tax definitions.

On its amended 2013 net profit tax return, the taxpayer filed a consolidated return and included all members of its federal consolidated group, including entities that did not have nexus in Cincinnati. The City rejected the return by asserting that the taxpayer could only include those members of the federal consolidated group that had nexus in Cincinnati. The taxpayer argued that former R.C. 718.06 preempted the city ordinance and restricted the municipality's power to only allow the inclusion in the consolidated net profit tax group those entities that were doing business in Cincinnati. Cincinnati argued that the phrase "subject to the municipal corporation's tax" in former R.C. 718.06 meant that the taxpayer could only include, in the net profit tax consolidated group, those entities that were doing business in the municipality.

Former R.C. 718.06 stated:

Any municipal corporation that imposes a tax on the income or net profits of corporations shall accept for filing a consolidated income tax return from any affiliated group of corporations subject to the municipal corporation's tax if that affiliated group filed for the same tax reporting period a consolidated return for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

Former Cincinnati Municipal Code Sec. 311-11 stated:

A consolidated return may be filed by an affiliated group of corporations subject to the tax imposed by this chapter if that affiliated group filed for the same taxable year a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. Only corporations subject to the tax imposed by this chapter may be included in such consolidated return filed for Municipal income tax purposes.

The Board concluded that former R.C. 718.06 expressly required a municipality to accept a consolidated net profit tax return from any affiliated group subject to the municipality's net profit tax so long as one member of the group is subject to net profit tax and the same group filed a consolidated return for federal income tax purposes.

Next steps

While the decision analyzed former R.C. 718.06, there are potential refund opportunities for taxpayers that filed a consolidated return for federal income tax purposes and did not include all of those same entities in a consolidated municipal net profit tax return.

If you would like to discuss this decision or municipal net profit tax, please contact [Adam Garn](#), [Steve Hall](#), [Tom Zaino](#), or [any other ZHF professional](#).

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