

CHAPTER 8019
DEPARTMENT OF REVENUE
INCOME TAX DIVISION
UNITARY BUSINESS TAXATION

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8019.0100 DEFINITION OF UNITARY BUSINESS.

Subpart 1. Definitions of corporation and United States. The term "corporation" does not include an S corporation. The term "United States" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of any of the foregoing.

Subp. 2. Unitary business defined; presumption. Business activities or operations carried on by more than one corporation are unitary in nature when the corporations are related through common ownership and when the trade or business activities of each of the corporations are of mutual benefit, dependent upon, or contributory to one another, individually or as a group. Unity is presumed whenever there is:

A. the unity of common ownership;

B. the unity of operation evidenced generally by staff functions such as centralized advertising, accounting, financing, management, or centralized, group, or committee purchasing; and

C. the unity of use evidenced generally by line functions, centralized executive force, and general system of operation.

All of the examples are not needed to show the unity of operation or unity of use.

The unitary nature of the business activities or operations is also evidenced by contributions to income resulting from functional integration, centralized management, and economies of scale. Examples of functional integration are centralized manufacturing, warehousing, accounting, legal staff, personnel training, financing, or centralized, group, or committee purchasing. Examples of centralized management are common officers or directors, exchange of personnel, frequent communication between management of the corporations, or where the parent must approve of major financial decisions. All of the examples are not needed to show functional integration or centralized management.

The term "unitary business" for purposes of filing a combined report includes only those corporations created or organized in the United States or under the laws of the United States or any state. The mere ownership of as much as 100 percent of the stock of another corporation does not, in the absence of other indicia of a unitary business, mean that the business of the group is unitary in nature.

The presence of any one of the factors contained in subparts 3 to 5 creates a strong presumption that the activities of the corporations constitute a unitary trade or business.

Subp. 3. Horizontal type of business. Business activities or operations carried on by more than one corporation, related through common ownership, are generally unitary when the activities of the corporations are in the same general line of business and exhibit functional integration and economies of scale.

For example, separately incorporated grocery stores, related through common ownership, will usually be engaged in a unitary trade or business if they are functionally integrated, and have centralized management and economies of scale.

Subp. 4. Steps in a vertical process. Business activities or operations carried on by more than one corporation, related through common ownership, are unitary in nature when the various members are engaged in a vertically structured enterprise.

For example, assuming that the common ownership requirement is met, a trade or business that is functionally integrated and which benefits from centralized management and controlled interaction which involves the exploration and mining of copper ore by one of the related corporations; the smelting and refining of the copper ore by another of the related corporations; and the fabrication of the refined copper into consumer products by another of the related corporations, is unitary in nature.

Subp. 5. Strong centralized management. A group of corporations, related through common ownership, which might otherwise be considered to be carrying on separate trades or businesses are considered engaged in a unitary trade or business when there is strong centralized management in determining the policies of each corporation respecting its primary business activities, coupled with the existence of centralized offices for such functions as financing, advertising, research, or purchasing.

Thus, some groups of corporations are considered as carrying on a unitary trade or business when the executive officers of one of the corporations in the group are normally involved in determining the policies respecting the primary business activities of the other corporations in the group, and there are centralized units which perform for some or all of the corporations functions which truly independent corporations would perform for themselves, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing.

A finding of strong centralized management is not supported merely by showing that the requisite ownership percentage exists or that there is incidental economic benefit accruing to a group because such ownership improves its financial position. Both elements of strong centralized management, that is, strong centralized management authority and the exercise of that authority through centralized operations, must exist in order to justify a conclusion that the operations of otherwise seemingly separate trades or businesses are significantly integrated so as to constitute a unitary business.

Subp. 6. Common ownership. Common ownership does not exist unless the corporation is one which is a member of a group of two or more corporations and more than 50 percent of the voting stock of each member is directly or indirectly owned by a common owner or by common owners, either corporate or noncorporate, or by one or more of the member corporations of the group. The term "common owner" includes the constructive ownership of stock by related taxpayers as provided in Minnesota Statutes, section 290.10, clause (6). Examples of common ownership are:

A. Corporation P owns 51 percent of the voting stock of corporation R1 and corporation R1 owns 51 percent of the voting stock of each of corporations R2 and R3. Common ownership exists among P, R1, R2, and R3.

B. Corporation P owns 51 percent of the voting stock of corporation R1, corporation R1 owns 49 percent of the voting stock of corporation R2 and corporation R2 owns 51 percent of the voting stock of R3. Common ownership exists among P and R1 and will be identified as group A. Common ownership exists among R2 and R3 and will be identified as group B. There is no common ownership between group A and group B.

Subp. 7. Examples. The provisions of subparts 1 to 6 may be illustrated by the examples in items A to C.

A. Sales corporation owns 51 percent of the outstanding voting stock in each of four subsidiaries: refining corporation, drilling corporation, transport corporation, and research corporation. Sales corporation markets and sells petroleum products in the United States and abroad. Some of the petroleum products are obtained from refining corporation which acquires some of the crude oil from drilling corporation. Transport corporation operates pipeline facilities to transport crude oil from drilling corporation's storage facilities to refining corporation's refineries. Research corporation conducts research and development for both sales and refining corporations. Since the corporations are operating a vertically integrated business and since there is common ownership, the five corporations are conducting a unitary business.

B. Corporation A owns 60 percent of the outstanding voting stock in each of three corporations: B, C, and D. Corporation B, in turn, owns 100 percent of the outstanding voting stock in corporation E. Corporation A is primarily engaged in operating multiline department stores in Minnesota and other mid-western states. Corporation B operates a chain of department stores in the northwestern portion of the United States. B's stores sell only high quality, top grade consumer items. Corporation C operates a chain of discount stores throughout the southwestern portion of the United States. Corporation D is a finance company, handling all of the consumer credit and financing arrangements of purchases at the stores owned by corporations A, B, and C. Corporation E is the purchasing agent for corporations A, B, and C and maintains warehouses for the stores' inventories. Corporation A provides management services for all of the other corporations and maintains overall control in determining the policies respecting the primary business activities of the other corporations, including their budgetary and financial affairs. All of these corporations are engaged in the conduct of a unitary business since they are operating a horizontally integrated business and since they have common ownership.

C. Corporation K was incorporated in 1945 and thereafter was engaged primarily in activities connected with the manufacture and sale of canned goods. In 1960, K embarked upon a diversification campaign designed to insulate its profits from fluctuations in the demand for canned goods. One hundred percent of the voting stock of corporation L was acquired. Corporation L operated a chain of department stores throughout the United States. In 1961, K purchased 80 percent of the voting stock of corporation M which was engaged primarily in the manufacture and sale of household goods. In 1962, K acquired 75 percent of the voting stock of corporation N which developed and marketed computer software and programs. There was no significant flow of goods between any of the corporations. While these subsidiaries were relatively autonomous in their day-to-day operations, each subsidiary did not operate as a distinct business enterprise at the level of full-time management. Corporation K involved itself in policy determinations respecting the primary business activities of all the corporations. The subsidiaries were required to submit annual budgets to K for approval. Capital expenditures in excess of \$500,000 needed approval from K. All of the financing arrangements for the subsidiaries were made by or with the approval of K's management team which authorized and directed intercompany loans when feasible. Tax matters were supervised by K's tax department which prepared the subsidiaries' federal income tax returns. Corporation K also performed centralized warehousing and accounting functions for itself and its subsidiaries. A uniform system of inventory control for corporation K and the subsidiaries was developed and managed by corporation N. Due to the control that corporation K exerted over policy determinations respecting the primary business activities of the subsidiaries and the integration and interdependence occasioned by the centralization of various business functions, all of the corporations are engaged in a unitary business.

Statutory Authority: *MS s 290.52*

8019.0200 INTERCOMPANY TRANSFERS WITHIN UNITARY BUSINESS.

Subpart 1. Elimination to avoid distortion. Elimination of income, loss, expense, or deduction items arising from transactions between members of a unitary group must be made to avoid distortion of:

A. the group's income, loss, expenses, or deductions;

B. the denominator used by all members of the group in calculating apportionment factors; or

C. the numerator used by any particular member of the group in calculating its apportionment factors.

Subp. 2. If no distortion. Where a corporation can show that no distortion of income, loss, expense, or deduction will result where intercompany transactions are not eliminated, a corporation may elect to not eliminate intercompany transactions for subpart 1, item A only. All intercompany transactions must be eliminated when calculating the factors as provided in subpart 1, items B and C.

Statutory Authority: *MS s 290.52*

8019.0300 UNITARY BUSINESS, REPORTING.

Subpart 1. Minnesota business. A unitary business which conducts its entire business within Minnesota may file a combined report for each corporation. The income or loss must be allocated among the corporations on the report by use of the equally weighted arithmetic average of the property, payroll, and sales factors. Each corporation on the report is entitled to have its first \$25,000 of income taxed at the lower tax rate as provided in Minnesota Statutes, section 290.06, subdivision 1. These provisions also apply to banks and bank holding companies.

Subp. 2. Required if Minnesota nexus. Except as provided in this part, a combined report is required from every corporation that has a nexus with Minnesota and is part of a unitary business as defined in part 8019.0100 other than insurance companies subject to the provisions of Minnesota Statutes, section 290.35, investment companies subject to the provisions of Minnesota Statutes, section 290.36, or mining companies as provided in Minnesota Statutes, section 290.05, subdivision 1.

Subp. 3. Farm income. Farm income is specifically excluded from combined reporting. Therefore, a unitary business must exclude farm income when figuring its combined income or loss and assign that income or loss to the state in which the farm is located. Where a Minnesota farm is a part of a unitary farming business which is located within and without Minnesota, the product from the Minnesota farm which is transferred outside of Minnesota for use in the unitary farming business must be treated as if it was sold at fair market value on the day of the transfer. Expenses connected with the farm are allowed under separate accounting.

Subp. 4. Deductions. A corporation is allowed a charitable deduction which is subtracted from that corporation's apportioned unitary business income as determined on that corporation's combined report. The charitable contribution deduction is only allowed to a corporation which has a nexus with Minnesota and is determined as follows. The corporation is allowed to deduct:

A. those contributions it makes to an entity carrying on substantially all of its activities in Minnesota; and

B. a percentage of the charitable contributions made by the entire unitary group after reduction for all contributions qualifying under item A made by a corporation with a Minnesota nexus. The percentage to be used is the ratio of Minnesota taxable net income of the corporation to the total net income of the unitary group.

Subp. 5. Credits. Any refundable or nonrefundable credits allowed on the Minnesota return are allowed only to a corporation that has a nexus with

Minnesota and must be based on that corporation's expenditures. These credits must be taken into consideration after computing the income or loss of a unitary business on the combined report.

Subp. 6. Minimum tax. The minimum tax liability must be determined by using 40 percent of the corporation's federal minimum tax liability as computed on its federal return, multiplied by a fraction the numerator of which is the taxpayer's preference item income allocated to this state and the denominator of which is the taxpayer's total preference item income for federal purposes. If the corporation filed a separate federal return the minimum tax must be based on that, or if a federal consolidated return was filed the minimum tax must be based on that to the extent all corporations on the consolidated return are also on the combined return.

Subp. 7. Business acquisition. When a corporation acquires another corporation and starts a unitary business with that corporation, the new corporation must be included on the combined report and its income or loss reported starting with the first taxable year of the acquiring corporation that begins on or after the date of acquisition. Acquiring another corporation does not include creating the corporation from a part of a corporation's unitary business group as it previously existed.

Subp. 8. Unitary banking business. When a bank, including a bank holding company, is part of a unitary business that is doing business within and without Minnesota, a combined report must be filed for that bank as part of the unitary business. Receipts from intangible personal property must be included in the sales factor as follows:

A. Interest and other receipts from assets in the nature of loans, including federal funds sold, and installment obligations must be attributed to the state where the office is located at which the customer applied for the loan except in cases where the loan is recognized by appropriate banking regulatory authority as being made from and as an asset of an office located in another state, in which case it must be attributed to the state where that office is located. For purposes of this item the word "applied" means initial inquiry, including customer assistance in preparing the loan application, or submission of a completed loan application, whichever occurs first in time.

B. Interest or service charges from bank, travel, and entertainment credit card receivables and credit card holders' fees must be attributed to the state in which the credit card holder resides in the case of an individual or, if a corporation, to the state of the corporation's commercial domicile provided the taxpayer is taxable in that state. If the taxpayer is not taxable in the state of the individual card holder's residence or commercial domicile of the corporate card holder, the receipts must be attributed to the state of the taxpayer's commercial domicile.

C. Merchant discount income derived from bank and financial corporation credit card holder transactions with a merchant must be attributed to the state in which the merchant is located, provided the taxpayer is taxable in that state. If the taxpayer is not taxable in the state in which the merchant is located, the merchant discount income must be attributed to the state in which the taxpayer's commercial domicile is located.

D. Receipts from investments of a bank in securities must be attributed to its commercial domicile with the following two exceptions:

(1) Receipts from securities used to maintain reserves against deposits to meet federal and state reserve deposit requirements must be attributed to each state based upon the ratio that total deposits in the state bear to total deposits everywhere.

(2) Receipts from securities owned by a bank but held by a state treasurer or other public official or pledged to secure public or trust funds

deposited in such bank must be attributed to the banking office at which such secured deposit is maintained.

E. Receipts (fees or charges) from the issuance of travelers checks and money orders must be attributed to the state where the taxpayer's office is located that issued the travelers checks. If the travelers checks are issued by an independent representative or agent of the taxpayer, the following rules apply:

(1) If the taxpayer is taxable in the state in which the independent representative or agent issues the travelers checks or money orders, the receipts (fees or charges) must be attributed to that state.

(2) If the taxpayer is not taxable in the state in which the independent representative or agent issues the travelers checks or money orders, the receipts (fees or charges) must be attributed to the state of commercial domicile of the taxpayer.

F. Receipts from investments of a financial corporation must be attributed to its commercial domicile unless the securities have acquired a business situs elsewhere.

Subp. 9. **Accounting periods.** When members of the unitary group employ different accounting periods, the income must be reported on the combined report using one of the following methods. The income or loss and factors of all the corporations involved are those amounts for the same common months contained in the accounting period of the parent corporation, or the corporation filing the Minnesota return. If there is no parent corporation, the members of the unitary group may select one corporation to be the parent corporation for purposes of this part. Once a method is selected, it must not be changed without the consent of the commissioner. For the first taxable year beginning after June 30, 1981, income or loss and the factors attributable to a month or months which were previously reflected on the corporation's separate income tax return shall not be again reflected on the corporation's combined report. For the first taxable year beginning after June 30, 1981, if all the months are not included on a combined report or on a separate return, a separate return shall be filed reflecting the income or loss and factors for those months which are omitted. The due date of the return continues to be determined with reference to the actual accounting period of the corporation.

Subp. 10. **Net operating loss.** The provisions of Minnesota Statutes, section 290.095, subdivision 3, paragraph (c) must be applied as if the corporation was not included on a combined report for that year when a corporation is included on a combined report for that year, and it is carrying over a net operating loss from a taxable year which began before July 1, 1981. This provision shall apply only if the corporation was a member of the unitary group prior to July 1, 1981.

Subp. 11. **Factors.** Where members of a unitary business employ different methods of apportioning their income to Minnesota, the method used by the predominant business activity shall be used by all members of the unitary group.

Statutory Authority: *MS s 290.52*

8019.0400 BANK AFFILIATED RETURNS.

Subpart 1. **In general.** Members of a unitary group required to be included on a combined report may elect to file a return on behalf of all corporations in the group.

Subp. 2. **Definitions.** For the purposes of this part, the following terms have the meanings given to them.

A. "Unitary group" means two or more corporations which are engaged in business operations as defined in Minnesota Statutes, section 290.17, subdivision 2, paragraph (4), and part 8019.0100, and are required or permitted to file a combined report under Minnesota Statutes, sections 290.20, 290.34, and part 8019.0300.

B. "Bank" means a bank or trust company incorporated and doing business under the laws of the United States, the District of Columbia or any state and the substantial part of its business consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the comptroller of the currency and which is subject by law to supervision and examination by a state or federal authority having supervision over banking institutions. Bank does not include domestic building and loan associations, credit unions, finance corporations, or acceptance companies.

C. "Bank affiliated return" is one return which includes all corporations included in the unitary group which are required to be included on a combined report during the taxable year for which the return is filed. The bank affiliated return is filed by one corporation elected by the group to be the key corporation.

D. "Key corporation" is the parent or other member of the unitary group that has elected to file a bank affiliated return, chosen by the group to file the return. The key corporation must have nexus with Minnesota during the taxable year for which the return is filed.

Subp. 3. **Combined report.** Members of a unitary group are required to be included on a combined report for purposes of this part if they would be included on the combined report under Minnesota Statutes, section 290.34, subdivision 2.

Subp. 4. **Eligibility requirements.** A unitary group which meets all of the following conditions during the entire taxable year may elect to file a bank affiliated return:

A. the unitary group must contain at least one bank which has nexus with Minnesota;

B. each member of the unitary group must use the same accounting period (or, if a member is divested from the unitary group during the taxable year, its accounting period for the predivestiture portion of the year commenced on the same date as the accounting period of the other members of the group);

C. each member of the unitary group must use the same accounting method; and

D. the unitary group must make the election to file a bank affiliated return in the manner prescribed in subpart 5.

Subp. 5. **Election to file return.** A representative of each corporation in the unitary group shall sign a written election to be included in the bank affiliated return. The name and Minnesota and/or federal employer identification number of all corporations included on the bank affiliated return must be listed on the election. The election must be filed with the tax return and must appoint a key corporation from among the group. Each corporation in the unitary group shall grant power of attorney to the key corporation to represent it on all tax matters relating to the bank affiliated return.

Subp. 6. **Filing requirements.** The key corporation is responsible for filing the bank affiliated return. The return must be signed by a person designated by the key corporation who has knowledge of the contents of the return. All taxes, estimated taxes, payments, or charges must be paid in the name of the key corporation on behalf of the corporations on the bank affiliated return. The key corporation is responsible for all changes in tax liability and assessments. Claims for refund must be filed by the key corporation on behalf of the corporations on the bank affiliated return. Refund checks must be made payable to the key corporation.

If all corporations that would be included in the combined report cannot be included on a bank affiliated return, a bank affiliated return may not be filed and separate returns based on a combined report must be filed.

Subp. 7. **Payment of tax.** Each member of the unitary group shall compute

its taxable net income (loss) on the basis of a combined report which must be filed with the return. Each member of the unitary group shall compute its separate tax pursuant to Minnesota Statutes, section 290.06, subdivision 1. The members of the unitary group shall compute their aggregate tax for the taxable year. The key corporation and each of the corporations on the bank affiliated return are severally liable for the tax for such year on or before the due date or extended due date.

Subp. 8. Extensions. An extension under Minnesota Statutes, section 290.42, paragraph (6), must be filed by the key corporation on behalf of the corporations included in the bank affiliated return. A list of corporations included in the return must be filed with the extension.

Subp. 9. Estimated payments. The key corporation shall pay the total estimated group liability for the taxable year. Where corporations included in the bank affiliated return filed separate returns for the prior year, the prior year's tax for purposes of determining whether the taxpayer is covered by an exception to the penalty for underpayment of estimated tax is the combined amount of the prior year's tax liabilities of all corporations included in the bank affiliated return.

A bank affiliated group is considered a "large corporation" for purposes of Minnesota Statutes, section 290.934, subdivision 4, paragraph (b), if any member of the group's taxable net income was \$1,000,000 or more during the three taxable years immediately preceding the taxable year involved.

Subp. 10. Net operating losses. A net operating loss from a year in which a combined report was filed may be carried to a year in which a bank affiliated return is filed. The net operating loss of each corporation on the combined report may be carried forward or back and deducted against the net income of that member of the bank affiliated group. The net operating loss deduction is allowed to the extent of the apportionment ratio of the loss year, or the year to which the loss is carried, whichever is smaller.

A net operating loss from a year in which a bank affiliated return was filed may be carried to a year in which combined reports were filed. The net operating loss of each member of the bank affiliated group may be carried forward or back and deducted against the net income of that member on the combined report. The net operating loss deduction is allowed to the extent of the apportionment ratio of the loss year or the year to which the loss is carried, whichever is smaller.

A net operating loss from a taxable year which began before July 1, 1981, may be carried to a taxable year which begins after June 30, 1981. The provisions of Minnesota Statutes, section 290.095, subdivision 3, paragraph (c), must be applied to each member of the bank affiliated group as if each corporation in the group is not included on a bank affiliated return or combined report for that year, when the corporation would be included in a bank affiliated return or combined report for that year. This provision applies only if the corporation was a member of the unitary group prior to July 1, 1981.

Subp. 11. Applicability. This part applies to tax years beginning after December 31, 1984.

Statutory Authority: *MS s 290.37 subd 1 para (a); 290.52*

History: *11 SR 544*