

8019.0500 UNITARY BUSINESS: AGGREGATION OF CAPITAL GAINS AND LOSSES.

Subpart 1. **General information.** Minnesota Statutes, section 290.17, subdivision 4, provides that if a trade or business conducted wholly within this state, or partly within and partly without this state, is part of a unitary business, the entire income of the unitary business is subject to apportionment under Minnesota Statutes, section 290.191. Minnesota Statutes, section 290.17, subdivision 4, further provides that none of the income of a unitary business is considered to be derived from any particular source, and none may be allocated to a particular place, except as provided by the applicable apportionment formula. In accordance with the unitary business principle, the aggregation of capital gains and capital losses is permitted or required in combined reporting as follows: for open taxable years beginning after December 31, 1986, and ending on or before October 19, 1998, corporations may file claims for refund in accordance with this part under Minnesota Statutes, section 289A.40, in effect for the year of the claims; and for taxable years beginning after October 19, 1998, capital losses must be aggregated with capital gains.

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

A. "Capital gain" means the amount of gain from the sale or exchange of capital assets in a taxable year that exceeds the losses from the sale of capital assets in the same taxable year. Capital assets is defined in section 1221 of the Internal Revenue Code.

B. "Capital loss" means the amount of losses from the sale or exchange of capital assets in a taxable year that exceeds the gains from the sale of capital assets in the same taxable year. Capital assets is defined in section 1221 of the Internal Revenue Code.

C. "Change in ownership" means the sale or transfer of voting stock, that is either directly or indirectly owned by a common owner or by common owners, either corporate or noncorporate, of a member of a combined group, which results in 50 percent or less of the voting stock of the member being owned by the previous common owner, or common owners who had owned more than 50 percent of such stock prior to the sale or transfer.

D. "Combined group" means two or more corporations that are part of a unitary business as defined in Minnesota Statutes, section 290.17, subdivision 4, and that file returns on a combined report basis under part 8019.0405 or Minnesota Statutes, section 290.17 or 290.34.

E. "Member" means a corporation or person whose income is included in a combined report.

F. "Net capital loss" means the sum of the capital gains and losses of all of the members of the combined group for a taxable year which results in an overall loss.

G. "Open year" means any taxable year for which the Minnesota commissioner of revenue may issue orders of assessment or the taxpayer may file an amended return to claim a credit or refund.

H. "Taxpayer" means a corporation as defined in Minnesota Statutes, section 290.01, subdivision 4, subject to tax imposed by Minnesota Statutes, chapter 290.

Subp. 3. **Application of capital losses.** In each taxable year, a member must first apply any capital loss to that member's capital gains. Any capital loss not applied and available must then be aggregated with the capital gains and capital losses of the other members of the combined group. Any capital loss not applied after aggregation must then be carried forward to the next taxable year by each member, subject to subpart 4. Any capital losses not applied through aggregation must be retained by the member that sustained the loss, and that member must carry the loss forward to the next tax year, regardless of the combined group to which the member belongs.

Subp. 4. **Proration of capital losses.** Proration of capital losses is required when more than one member of a combined group has a capital loss, and the combined group sustains a net capital loss. Proration is necessary in order to determine the amount of capital loss used by each member in aggregation, and the amount that is subsequently available for carryover. For any tax year that a combined group has two or more members with capital losses, and the combined group has a net capital loss, each member's capital loss must be aggregated based on its pro rata share of the combined group's total capital loss. The pro rata share of each member's capital loss to be applied to the capital gains is the sum of the capital gains for all the members having capital gains, multiplied by a fraction, the numerator of which is the amount of the member's capital loss, and the denominator of which is the total capital losses for all members of the combined group that had capital losses. The pro rata share of the member's capital loss not used in aggregation must then be available for carryover.

Example: A combined group has the following capital gains and capital losses:

| Corporation | Capital Loss | Capital Gain |
|-------------|--------------|--------------|
| A | (1,000) | |
| B | (4,000) | |
| C | (5,000) | |
| D | | 1,000 |
| E | | 2,000 |
| Total | (10,000) | 3,000 |

These losses would be prorated as follows:

| Corp. | Computation | Loss To Be Aggregated | Computation | Amount Available for Carry Forward |
|-------|----------------------------|-----------------------|---------------------------|------------------------------------|
| A | $\$3,000 \times (\$1,000)$ | = \$300 | $(\$1,000) - (\$300) =$ | (\$700) |
| | <hr/> | | | |
| | (\$10,000) | | | |
| B | $\$3,000 \times (\$4,000)$ | = \$1,200 | $(\$4,000) - (\$1,200) =$ | (\$2,800) |
| | <hr/> | | | |
| | (\$10,000) | | | |
| C | $\$3,000 \times (\$5,000)$ | = \$1,500 | $(\$5,000) - (\$1,500) =$ | (\$3,500) |
| | <hr/> | | | |
| | (\$10,000) | | | |
| D | N/A | N/A | N/A | N/A |
| E | N/A | N/A | N/A | N/A |
| Total | | <hr/> | | <hr/> |
| | | \$3,000 | | (\$7,000) |

Subp. 5. **Carryover from tax years beginning before January 1, 1987.** Capital losses incurred by a corporation for tax years beginning before January 1, 1987, must first be carried back three years under Minnesota Statutes 1986, section 290.16. Any losses not applied may be allowed as a capital loss carryover, and will offset the capital gains of the combined group of which it is a member in the carryover year.

Subp. 6. **Separate return loss carryover.** A corporation may not aggregate its capital gains or capital losses in any tax year in which the corporation does not file as a member of a combined group. Capital losses incurred in such tax year must be carried forward and, in years which the taxpayer files as a member of a combined group, must be aggregated under subpart 3.

Subp. 7. **Treatment of losses incurred when corporation not subject to tax in Minnesota.** Capital losses incurred by a corporation in a year in which it did not file a Minnesota tax return, or was a member of a combined group of which no member filed a Minnesota tax return, are not available for carryover to offset any gains either on a separate or combined return. This subpart applies to all loss years, including those beginning after December 31, 1986.

Subp. 8. **Carryover when changes in ownership occur.** When a member of a combined group has a change in ownership, the member shall aggregate its capital gains

or capital losses that were recognized during the time period of the tax year immediately preceding the change in ownership with those capital gains and losses that were recognized during the same time period by all members of the combined group regardless of whether a short period return has been filed. Such capital gains and losses must be aggregated under subpart 3. Any capital losses not applied through aggregation must be carried forward in accordance with subpart 3 and may only be aggregated with those capital gains and losses that were recognized by the corporation's new combined group for the portion of the corporation's tax year immediately following the change in ownership.

Statutory Authority: *MS s 14.386; 14.388; 270.06; 270C.06*

History: *23 SR 807; L 2005 c 151 art 1 s 114; 32 SR 2175*

Published Electronically: *June 30, 2008*