Combined Group Filing Methods

TB-89 - Issued May 21, 2019

Tax: Corporation Business Tax

Combined reporting is mandatory in New Jersey for tax years ending on and after July 31, 2019 (this applies to any taxpayer whose tax year begins on and after August 1, 2018, if a full 12-month tax year of the managerial member begins August 1, 2018, and ends July 31, 2019).

Combined Return Methods

A combined return is a filing method for a group of business entities in a unitary business. Determining the combined group members involves imposing certain statutory limitations, which affect the treatment of income, allocation factors, and tax attributes. This decision is commonly referred to as "world-wide vs. water's-edge."

- *World-wide* group returns include all of the combined group's worldwide income and allocation factors, regardless of the source.
- *Water's-edge* group returns include only entities with significant business operations within the United States, with several inclusions and exceptions.

For New Jersey purposes, a combined group will use the water's-edge group filing method as the default filing method. However, the managerial member of the combined group may elect to make a world-wide election (see N.J.S.A. 54:10A-4.11).

As an alternative, there is an option to file the New Jersey combined return as an "affiliated group" as defined by statute. See *Affiliated Group Election* below.

The elective combined return methods were created by statute for the convenience of taxpayers. Therefore, regardless of whether the New Jersey combined return is filed on a water's-edge basis, world-wide group basis, or affiliated group basis, for purposes of calculating combined group entire net income, the application of prior net operating loss carryovers, net operating loss deductions, net operating loss carryovers, and tax credits, a combined group shall calculate their income tax attributes pursuant to N.J.S.A. 54:10A-4.6.

A taxpayer that is not in a unitary business relationship with a combined group must file a separate return if the taxpayer has nexus with New Jersey and the managerial member of the combined return does not make the election to file the affiliated group combined return. See *More Information on Nexus* below.

Allocation Methods for Combined Returns

The two methods available to allocate the income of a combined group are *"Joyce"* and "*Finnigan*." These allocation methods derive their names from California Franchise Tax Board cases[†]. These methods are differentiated by their determination of the allocation factor attributes (receipts, property, and payroll) of non-nexus entities in the numerator of the allocation factor. Under either method, the allocation factor attributes included in the denominator are the same. The denominator includes all of the combined group's total factors, regardless of nexus.

The *Joyce* method includes all of the New Jersey allocation factor attributes in the numerator that were derived from members that have nexus with New Jersey.

The *Finnigan* method includes all New Jersey allocation factor attributes in the numerator that were derived from all of the members of the combined group, regardless of whether a member has nexus with New Jersey.

[†] *Matter of Joyce, Inc.,* 1966 Cal Tax LEXIS 18; and *Matter of Finnigan Corp.,* 1988 Cal Tax LEXIS 28

The allocation method is tied to the combined return method that the managerial member uses to file the combined return. The water's-edge and world-wide group combined returns both use the *Joyce* method pursuant to N.J.S.A. 54:10A-4.7. As statutorily prescribed by N.J.S.A. 54:10A-4.11.c, affiliated group combined returns follow the *Finnigan* method.

The Water's-Edge Group

The combined group determined on a water's-edge basis will take into account the incomes and allocation factors of only the statutorily mandated members of the combined group. The water's-edge combined group *does not* take into account the incomes and allocation factors of the other members that were excluded from the water's-edge combined group. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member. Therefore, when making the determination of which members are included in a water's-edge combined group, the disregarded entity's tax attributes must be included by the member that owns the disregarded entity. Below are the member inclusion categories that would require an entity to be included in the water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11.a:

(1) Each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding any member if 80 percent or more of both a member's property and payroll during the tax year are located outside the United States, the District of Columbia, and any territory or possession of the United States;

(2) Each member, wherever incorporated or formed, if 20 percent or more of both a member's property and payroll during the tax year are located in the United States, the District of Columbia, or any territory or possession of the United States;

(3) Any member that earns more than 20 percent of its income, directly or indirectly,* from intangible property or related service activities that are deductible against the income of other members of the combined group;

(4) Each member that has income as defined under the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.) and has sufficient nexus in New Jersey pursuant to section 2 of P.L. 1945, c.162 (C.54:10A-2).

*The Division of Taxation interprets the "income, directly or indirectly, from intangible property or related service activities" in N.J.S.A. 54:10A-4.11.a(3) to mean the intangible property or the service activities related to the intangible property. This includes management fees and other intercompany service fees for managing, licensing, intellectual property defense, or other such service fees or payments related to the intangible property as well as certain research and development payments. Whether income from a service is directly or indirectly related to intangible property depends on the facts and circumstances. If the taxpayer can prove to the Division by clear and convincing evidence that an item of income from the service is not related to the intangible property, the item will be excluded.

Regardless of whether a member met items (1) through (3) of the member inclusion categories above, the member must be included in the combined group on the New Jersey combined return if the member has nexus with New Jersey. A member of a combined group can have nexus with New Jersey by deriving receipts from New Jersey or from any other factors pursuant to N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.11. The member can have nexus as part of the unitary business of the combined group or it may have nexus independently.

Elective Combined Returns – World-Wide Group Basis or Affiliated Group Basis

A New Jersey combined return will default to a water's-edge group, unless the managerial member makes a world-wide or affiliated group election (N.J.S.A. 54:10A-4.11). The election must be made on a timely filed original combined return in the tax year it becomes effective, not before or after. The world-wide group election and affiliated group election cannot be made at the same time, and the managerial member can only choose one election. The elections are binding for the tax year of the election, plus five subsequent tax years. In most cases, this will be six tax years. The election can be revoked prior to the expiration of the binding period by written request to the Director of the Division of Taxation

World-Wide Group Election. When making a world-wide group election, the combined group must include all of the income, attributes, and allocation factors of all of the worldwide business entities that are members of the unitary combined group, regardless of whether such members filed a federal tax return or whether such members filed a federal consolidated return(s).

Affiliated Group Election. For the purposes of the affiliated group election, "affiliated group" is defined pursuant to N.J.S.A. 54:10A-4(x), which states:

> 'Affiliated group' means an affiliated group as defined in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, except such affiliated group shall include all domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes (1) corporations included in more than one federal consolidated return, (2) corporations engaged in one or more unitary businesses, or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

The Division interprets "commonly owned" to mean the same as common ownership, regardless of whether there is a unitary relationship between the members. Common ownership is defined pursuant to N.J.S.A. 54:10A-4(aa) as:

> 'Common ownership' means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318.

The Division interprets N.J.S.A. 54:10A-4(aa) to mean that all of the ownership rules, including the beneficial and constructive ownership rules of I.R.C. section 318, apply since the definition of common ownership states that the control can be direct or indirect.

Only business entities that are treated as U.S. domestic corporations can be included in the affiliated group return. Corporations incorporated under the laws of a foreign nation that are treated as a U.S. domestic corporation for federal purposes under the provisions of the Internal Revenue Code can also be included.

The sole U.S. domestic corporation in a world-wide combined group cannot make the affiliated group election on its own. In this situation, the combined group must file a water's-edge or world-wide group combined return.

An affiliated group election by the U.S. domestic affiliate corporation does not relieve the non-U.S. affiliate corporations of their New Jersey Corporation Business Tax liability. Thus, any non-U.S. corporations organized outside of the United States that are not treated as U.S. domestic corporations must also file a combined return separate from the U.S. domestic affiliate combined return if the non-U.S. corporations are in a unitary business, at least one of the non-U.S. corporations has nexus with New Jersey, and the non-U.S. corporations meet one of the inclusion categories in a mandatory water's-edge group combined return with the other non-U.S. corporations. The non-U.S. corporations that have nexus with New Jersey that are not in a unitary business relationship with each other must file separate returns.

If the managerial member elects to determine the members of a combined group on an affiliated group basis, the taxable members must take into account the entire net income or loss and allocation factors of all of the members of its affiliated group, regardless of whether such members are engaged in a unitary business that are subject to tax or would be subject to tax under the Corporation Business Tax Act if doing business in this State. Unlike the water's-edge combined group return and the world-wide group elective combined return, the sourcing method for affiliated group returns follows the *Finnigan* method for allocation of receipts because N.J.S.A. 54:10A-4.11.c specifically differentiates the sourcing method to use for affiliated group elective combined returns from the sourcing used for water's-edge and world-wide combined returns in N.J.S.A. 54:10A-4.7, to include all of the New Jersey receipts of all of the members of a combined group filing an affiliated group elective combined return, regardless of whether a member is subject to tax based on income in New Jersey so long as one of the members is a taxable member.

More Information on Nexus

Additional information on nexus is available on the Division's website, see TB-79(R), Nexus for Corporation Business Tax; TAM 2011-6, Foreign Corporations Subject to Tax; or Lanco, Inc. v. Director, Division of Taxation (06-1236). In addition, the following is a list of additional court cases which are meant to illustrate certain aspects of nexus for New Jersey Corporation Business Tax purposes but are not meant to be all inclusive: *Preserve II, Inc. v. Director, Division of Taxation*, 30 N.J. Tax 133 (2017); *Springs Licensing Group v. Director, Division of Taxation*, 29 N.J. Tax 1 (2015); *Village Super Market of P.A., Inc.,* v. *Director, Division of Taxation*, 27 N.J. Tax 394 (2013); *Telebright Corp., Inc. v. Director, Division of* Taxation, 25 N.J. Tax 333 (2010); and *Praxair Technology, Inc. v. Director, Division of Taxation*, 201 N.J. 126 (2009).

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

Note: A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.