



The Unitary Business Principle and Combined Returns

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Tax: Corporation Business Tax

P.L. 2018, c. 48, as amended by P.L. 2018, c. 131, requires mandatory unitary combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month privilege period of the managerial member begins August 1, 2018, and ends July 31, 2019). This Technical Bulletin explains the unitary business principle and the definition of unitary business for New Jersey Corporation Business Tax purposes.

For privilege periods ending on and after July 31, 2019, unitary business is defined pursuant to N.J.S.A. 54:10A-4(gg) as:

'Unitary business' means a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. "Unitary business" shall be construed to the broadest extent permitted under the Constitution of the United States. A business conducted by a partnership which is in a unitary business with the combined group shall be treated as the business of the partners that are members of the combined group, whether the partnership interest is held directly or indirectly through a series of partnerships, to the extent of a partner's distributive share of partnership income. The amount of partnership income to be included in the partner's entire net income shall be determined in accordance with subsection a. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership.

Common ownership is defined in 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 the beneficial and constructive ownership rules of I.R.C. section 318 apply to the analysis of common ownership since the definition of common ownership states that the ownership can be direct or indirect.

A combined group is defined in N.J.S.A. 54:10A-4(z) as: "'Combined group' means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities, except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.)."

The definition of unitary business for New Jersey Corporation Business Tax purposes (N.J.S.A. 54:10A-4(gg)) is based on the Multistate Tax Commission's Model definition of a Unitary Business, with some state-specific variations. New Jersey construes the term "unitary business" to the broadest extent permitted under the United States Constitution. Although a business entity may be "unitary" with other business entities, it is still necessary under the Due Process and Commerce Clause of the United States Constitution to identify the scope of the unitary business. To the extent compatible with New Jersey law and U.S. Supreme Court jurisprudence, any legal or factual determination relevant to the existence or nonexistence of a unitary business will favor consistency with legal and factual determinations of other mandatory unitary combined reporting states. New Jersey will also look to the definitions and other

guidance in the Multistate Tax Commission Reg.IV.1.(b), Principles for Determining the Existence of a Unitary Business.

In addition to New Jersey law, there are a number of different aspects of the unitary business principle and combined reporting that were developed from court decisions. In order to help determine whether a group of affiliated business entities is engaged in a unitary business, please review the following cases:

Butler Brothers v. McColgan, 315 U.S. 501 (1942)

Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 425 (1980)

Container Corp. of America v. Franchise Tax Board, 463 U.S. 159 (1983)

Allied-Signal Inc. v. Director Division of Taxation, 504 U.S. 768 (1992)

Barclays Bank PLC v. Franchise Tax Board of California, 512 U.S. 298 (1994)

MeadWestvaco Corp. v. Illinois Dept. of Revenue, 553 U.S. 16 (2008)

A unitary business is characterized by significant flows of value evidenced by factors such as functional integration, centralization of management, and economies of scale, as described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980). These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence.

Thus, one or more related business organizations engaged in business activity – entirely within this state, or both within and without this state – are unitary if there exists interdependence in their functions. This test adopts the decisional law of the United States Supreme Court with respect to the constitutional prerequisites for requiring unitary combination. The Court has expressed the constitutional test in various ways in various cases, holding that a finding of unitary relationship requires “contribution or dependency” between businesses; “substantial mutual interdependency” or “flow of value,” functional integration, centralized management, or economy of scale.

The participants in an economic enterprise under common ownership may also be considered a unitary business if there is unity of operation and use. See *Butler Brothers v. McColgan*. The unity of operation and use indicates the existence of interdependence of functions.

Note: An affiliated group/commonly controlled group may be engaged in one or more unitary businesses. Therefore, an affiliated group/commonly controlled group may contain more than one combined group and file more than one New Jersey combined return.

If the taxpayers meet either the “Interdependence of Functions Test” or the “Unity of Operations and Use Test,” the taxpayers are part of the unitary business. A determination of whether an entity forms part of a unitary business with another is determined based on the facts and circumstances of each case.

Interdependence of Functions Test

Any of the following circumstances indicate that an interdependence of functions exists:

- **Same Line of Business.** The principal activities of the entities are in the same general line of business. Examples of the same line of business are manufacturing, wholesaling, retailing, servicing, and/or repairing of tangible personal property; transportation; or finance (these examples are for illustration purposes and are not meant to be all-inclusive). In determining whether two entities are in the same general line of business, consideration is given to the nature and character of the basic operations of each entity. This includes, but is not limited to, sources of supply, goods or services produced or sold, labor force, and market. Two entities are in the same general line of business when their operations are sufficiently similar to reasonably conclude that the entities are likely to depend upon or contribute to one another.
- **Vertically Structured Business.** The principal activities of the entities are different steps of a vertically structured business. Illustrations of such different steps are exploration, mining and drilling, production, refining, marketing, and transportation of natural resources.

- **Centralized Management.** Centralized management may be evidenced by executive-level policy made by a central person, board or committee and not by each entity in areas such as, but not limited to, purchasing, accounting, finance, tax compliance, legal services, human resources, health and retirement plans, product lines, capital investment, and marketing.
- **Non-Arm's-Length Prices.** Goods or services or both are not supplied at arm's-length prices between or among entities. Existence of arm's-length pricing between entities, however, does not indicate lack of unity.
- **Existence of Benefits from Joint, Shared, or Common Activity.** A discount, cost-saving, or other benefit that arise from the joint purchases, leaseholds, or other forms of joint, shared, or common activities between or among entities.
- **Relationship of Joint, Shared, or Common Activity to Income-Producing Operations.** When determining whether there exists a joint, shared, or common activity that is indicative of a unitary relationship, consideration is given to the nature and character of the basic operations of each entity. Such consideration includes, but is not limited to, the entity's sources of supply, its goods or services produced or sold, and its labor force and market. These considerations are used, to determine whether the joint, shared, or common activity is directly beneficial to, related to, or reasonably necessary to the income-producing activities of the unitary business.
- **Exercise of Control.** The exercise of control by one entity over another entity is indicative of a unitary relationship.

Unity of Operations and Use Tests

Unity of operation means there is functional integration among the entities and is evidenced generally by shared support functions. Unity of use is evidenced generally by centralized management or use of centralized policies. These unities exist if each entity that is to be included in the unitary business benefits or receives goods, services, support, guidance, or direction arising from the actions of common staff resources or common executive resources, personnel, third-party providers, or operations under the direction of such common resources. The tests are overlapping and the indicators of each test also indicate the existence of interdependence of functions. The existence or non-existence of the following factors will assist in the determination of whether unity of operations and use exist with respect to a combined group. The existence or non-existence of any one factor, by itself, is normally not determinative of whether there is a unity of operations and use. Factors that may be considered include, but are not limited to:

- Common purchasing;
- Common advertising;
- Common employees, including sales force;
- Common accounting;
- Common legal support;
- Common retirement plan;
- Common insurance coverage;
- Common marketing;
- Common cash management;
- Common research and development;
- Common offices;
- Common manufacturing facilities;
- Common warehousing facilities;
- Common transportation facilities;
- Common computer systems and support;
- Financing support;
- Common management (meaning that one or more officers or directors of the parent are also officers or directors of the subsidiary);
- Control of major policies (e.g., the parent corporation's board of directors requires that it approve any acquisition by either the parent or subsidiary of any interest in any other company; or the

parent corporation's board of directors requires that it approve any lending in excess of a minimum amount to any one or more of either the parent or subsidiary's suppliers);

- Inter-entity transactions (e.g., a subsidiary corporation licenses the use of personal property it developed to the parent corporation and the parent corporation uses the property in its production activities);
- Common policy or training manuals (e.g., the parent corporation's employee handbook applies to all of a subsidiary's employees; *or* the subsidiary's employees are required to attend parent corporation's employee training courses; *or* disciplinary procedures are the same for both corporations' employees, even if the appeal process is only through their respective entities);
- Required budgetary approval (e.g., the parent corporation's board of directors requires that it approve the budget and expenditure plans of the subsidiary on a periodic basis);
- Required capital asset purchases approval (e.g., the parent corporation's board of directors requires that it approve any capital expenditures by the subsidiary in excess of a minimum set amount).

Holding Companies. The tests for a unitary business apply when determining whether a holding company is included or excluded from a unitary business of a combined group. If a holding company is organizationally structured between two unitary entities, it does not negate unity of ownership. A passive holding company that is in a commonly controlled economic enterprise and holds intangible assets that are used by the enterprise in a unitary business is deemed to be engaged in the unitary business, even though the holding company's activities are primarily passive.

Sharing of Intellectual Property; Intercompany Financing. Transferring or sharing technical information or intellectual property (e.g., patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development) provides evidence of a unitary relationship when the information or property transferred or shared is significant to the businesses' operations. Similarly, a unitary relationship is indicated when there is significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities, if the financing activity serves an operational purpose.

Portion of a Company's Operations Engaged in a Unitary Business

There are instances where a portion of a member's business operations are independent of the unitary business activity of the combined group. Only the income, attributes, and allocation factors related to the portion of a company's operations that are part of a unitary business of the combined group are included in the calculation of the combined group's entire net income and allocation factor. The remaining portion of a member's business operations may be subject to tax separately from the combined group if such member individually conducts business in New Jersey or with another combined group (if it is engaged in a unitary business with that combined group that also conducts business in New Jersey).

Note: In lieu of filing a separate return to report such income, such member of a combined group must complete Schedule X to report the separate portion of its business operations (and those operations are not part of another combined group). Schedule X will be used to calculate the New Jersey taxable net income of that separate activity income that must be reported on Part III of Schedule A of the CBT-100U.

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

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