

Chapter 810: MAINE UNITARY BUSINESS TAXABLE INCOME, COMBINED REPORTS AND TAX RETURNS

SUMMARY: This rule explains standards for determining Maine income tax for unitary businesses and for filing combined reports under 36 M.R.S.A. §5244 and related tax returns. A combined report is required when an affiliated group of corporations is engaged in a unitary business and at least one member of the group has Maine nexus. The combined report provides the basis for determining taxable income under the laws of the United States and the net income of a unitary business.

Outline of Contents:

.01	Definitions
.02	Combined report
.03	Taxable income under the laws of the United States
.04	Differing year-end dates
.05	Unitary business returns
.06	Computation of tax
.07	Credits
.08	Allocation and use of combined net operating losses
.09	Carry in and carry out of net operating loss deductions
.10	Application date

.01 Definitions

- A. **Affiliated group.** "Affiliated group" means a group of 2 or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations. 36 M.R.S.A. §5102(1-B).
- B. **Apportionment factor.** The apportionment factor is the sales factor. *See* 36 M.R.S.A. §5211(8) and Me. Dep't of Admin. & Fin. Servs., 18 125 CMR 801. In the case of an affiliated group of corporations engaged in a unitary business and filing a single return, the factor of the unitary business is the combined factor for all members of the group. In the case of a member of a unitary business group that is filing a separate return, the numerator of the factor is the amount of sales in Maine attributable directly to that member plus the applicable portion of Maine sales attributable to non-nexus entities as determined under section .05(B) and the denominator is the sales everywhere of all members of the group.
- C. **Code.** "Code" means the Internal Revenue Code of 1986 with amendments of the United States as of the date specified in 36 M.R.S.A. §111(1-A).

- D. **Consistent with federal law or regulations.** "Consistent with federal law or regulations" or similar language used in this rule means making a relevant determination in the same manner as under federal law or regulations. Consistent with federal law or regulations" or similar language used in relation to determining net operating losses and the use of losses means determining in the same manner as under federal law or regulations (a) whether a net operating loss deduction is allowed, (b) the amount of deduction, or (c) the timing of the deduction. It does not mean that a net operating loss for a unitary business - its occurrence, amount, or use as a deduction - is based solely on whether the net operating loss or its use as a deduction is included on a federal return filed by member corporations of the unitary business.
- E. **Nexus.** A corporation has nexus with Maine when it has sufficient contact with Maine to give the State jurisdiction to tax. *See* Me. Dep't of Admin. & Fin. Servs., 18 125 CMR 808.
- F. **Unitary business.** "Unitary business" means a business activity that is characterized by unity of ownership, functional integration, centralization of management and economies of scale. 36 M.R.S.A. §5102(10-A).

.02 Combined report

A taxable corporation that is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group must file a combined report. 36 M.R.S.A. §5220(5). Maine utilizes a "water's edge" methodology for determining the apportionable income base, meaning the income subject to apportionment is the income required to be reported on the taxpayer's federal income tax return as modified by Maine law. Therefore, all unitary members of the affiliated group, except those members not required to file a federal return, must be listed on the combined report. Furthermore, the income of a corporation not required to file a federal return may not be included on the combined report. The apportionment factor must include only those amounts attributable to the apportionable income base for that taxable year. Variation may be allowed when petitioned for by the taxpayer or may be required by the Assessor. *See* 36 MRSA § 5211(17).

The combined report must indicate whether each corporation has nexus with Maine. The combined report must also include, both in the aggregate and by corporation: the federal taxable income, state modifications provided by 36 M.R.S.A. §5200-A, sales in Maine and everywhere, and the Maine net income of the unitary business. *See* 36 M.R.S.A. §5244. The corporations listed that are unitary members of the affiliated group and that have nexus with Maine must file a Maine corporate income tax return or returns as provided in Section .05 below. *See* 36 M.R.S.A. §5220(5).

.03 Taxable income under the laws of the United States

The taxable income under the laws of the United States, *see* 36 M.R.S.A. §5102(8), of the unitary business is determined in the following manner.

- A. The separate federal taxable income, as defined under federal consolidated regulations for each member of the unitary business group that is a member of a single federal consolidated filing, must be adjusted for eliminations, deferrals and other modifications allowed under federal law and regulations. In the event that the eliminations, deferrals,

and other modifications are based on intercompany transactions, such adjustments must be made only for transactions between corporations included in the combined report. If a unitary group member did not receive the full benefit of an allowable tax benefit (such as a charitable contribution deduction) in the federal consolidated return because of the effect of income of non-unitary members in the consolidated return, the unitary member may take the adjustment that would have been allowed under federal law if only the unitary members had filed the consolidated return.

- B. The federal taxable income (before special deductions and net operating loss deductions) from the federal returns of unitary group members that are not members of a federal consolidated group must be added to the income amounts obtained pursuant to subsection A above.
- C. The taxable income referenced in subsections A and B above includes, for a corporation with an interest in a passthrough entity (e.g., partnership, LLC, S corporation), its distributive share of the entity income, loss, or deduction in accordance with the Code and 36 M.R.S.A. §5102(8). The character of any item included in the distributive share is determined as if it were realized or incurred directly by the corporation. The business of the passthrough entity is treated as the business of the corporation. *See* Me. Dep't of Admin. & Fin. Servs., 18 125 CMR 801.
- D. The income computed in accordance with subsections A and B above must be adjusted by certain intercompany transactions that result in gains/losses between corporate members of the unitary business group that have not already been used to adjust income under subsection A. Adjustments made under this subsection include, but are not limited to, those for (a) dividends paid out of income subject to apportionment under 36 M.R.S.A., chapter 821 by one unitary member to another unitary member; (b) deferrals of gains/losses from intercompany sales of inventory; and (c) deferrals of gains/losses from intercompany sales of fixed assets. These intercompany transactions are deferred or eliminated for the purpose of reflecting the income of the unitary business as a separate economic unit, similar to the purpose that underlies the federal consolidated filing regulations. Intercompany transactions must therefore be treated in a manner consistent with federal law and regulations.
- E. The amount calculated by adjusting the aggregate income computed under subsections A and B in accordance with subsection D constitutes the taxable income of the unitary business under the laws of the United States before special deductions (Code §§ 241 *et seq.*) and net operating loss deductions (Code §172).
- F. The amount of the special deductions for the members of the unitary business must be aggregated and adjusted if necessary in a manner consistent with the federal consolidated filing regulations.
- G. The federal taxable income computed in accordance with subsection E above must be combined with the special deductions computed in accordance with subsection F above. If the result of this computation is positive, available net operating loss deductions for members of the unitary business group may be applied against the income of the unitary business. If the result of the computation is negative, it constitutes a net operating loss for the unitary business and may be treated as the basis for a net operating loss

deduction that may be carried back or forward consistent with the Code and related regulations and with the requirements of section .08 below.

.04 Differing year-end dates

If the taxable years of the members of the unitary business group differ, the filing member's (see section .05(A) below) taxable year must be used to determine the net income of the unitary business.

If the precise amount of a unitary member's income can be readily determined from the books for the months involved in the filing member's taxable year, those actual amounts are to be used. In the absence of a precise determination, the income of a unitary member must be converted to conform to the taxable year of the filing member on the basis of the number of months falling within the applicable taxable year. For example, if the filing member operates on a calendar year and a unitary member includible in a combined report operates on a fiscal year ending on April 30, it is necessary to assign 8/12 of that member's income from the current taxable year and 4/12 of the income from the preceding taxable year in order to arrive at a full twelve months' income to be included in the combined report. This method may be used only if the return can be timely filed after the filing member's taxable year ends. As an alternative, the combined report may include the taxable income of a group member for the taxable year ending within the taxable year of the filing member. Once one of these methods is used for a group member, that member must continue to use that method for succeeding years for as long as the corporation remains a member of the unitary business group.

After the combined taxable income of the unitary business is determined on the basis of the filing member's taxable year, the apportionment factor must be computed on the basis of the same taxable year.

.05 Unitary business returns

- A. **Single return.** Taxable corporations that are members of an affiliated group and that are engaged in a unitary business may file a single return on which the aggregate Maine income tax liability of all those corporations is reported. See 36 M.R.S.A. §5220(5). The income of the unitary business is the net income, or Maine net income, as the case may be, of the entire group. All members of the unitary business with Maine nexus must be included in the single return.

The single return must be filed in the name and federal employer identification number of the parent corporation if the parent is a member of the unitary business group and has nexus with Maine. If there is no parent corporation, if the parent is not a unitary group member, or if the parent does not have nexus with Maine, the members of the unitary business must choose a Maine taxpayer member to file the return. Once this filing member has been selected, it must remain the same in subsequent years unless an ownership change occurs or the filing member no longer has nexus with Maine. The return must be signed by a responsible officer of the filing member as the agent of all unitary business members subject to Maine tax. The Maine combined report of the unitary business must be attached to the Maine corporate income tax return. Members of the unitary group are jointly and severally liable for the tax of the members of the unitary group included in the combined return.

B. Separate return. If the single return option is not chosen, each unitary member that has nexus with Maine must file a separate income tax return based on the combined report. Each of the separate returns must list the combined federal taxable income and the combined state modifications of the unitary business. Each separate member determines its apportionment factor as follows. The numerator of the factor is the amount of Maine sales attributable directly to that separate member plus the applicable portion of Maine sales attributable to non-nexus entities described below. The denominator of the factor is the amount of everywhere sales of the unitary business.

The applicable portion of Maine sales attributable to non-nexus entities is determined by applying a fraction to the total Maine sales of the non-nexus entities. The fraction is equal to the separate Maine nexus member's Maine sales attributable directly to that member (i.e., Maine sales before the addition of a portion of non-nexus affiliate sales) divided by the total Maine sales attributable directly to all nexus entities. A copy of the combined report must be attached to each of the separate returns.

.06 Computation of tax

The gross tax is calculated by applying the Maine corporate income tax rates provided in 36 M.R.S.A. §5200 against the net income of the unitary group. The gross tax is then adjusted by multiplying that amount by the apportionment factor of the unitary group, the product of which is the Maine tax liability for the nexus members of the unitary group.

If separate returns are filed, each filing member applies its separate apportionment factor, as calculated under section .05(B), against the gross tax to determine the member's Maine tax liability. If an alternate assignment of tax liability is elected by the assignment of the preferential rates provided in 36 M.R.S.A. §5200 to a specific member or members, the associated reduction of tax liability must result in an equal increase of tax liability to one or more other members of the unitary group. The sum of tax liabilities of the separate filing members must equal the Maine tax liability that would have been imposed on the nexus members of the unitary group if a single return was filed.

.07 Credits

A tax credit generated by a taxable corporation that is a member of an affiliated group engaged in a unitary business may be applied only against the Maine income tax liability of that corporation, and not against the Maine income tax liability of other members of the unitary business, unless otherwise specifically permitted by law.

.08 Allocation and use of combined net operating losses

The allocation and/or use of losses is necessary for purposes of determining the availability of net operating loss deductions to the unitary business in the event that a member leaves the unitary business and/or a new member enters a unitary business. Net operating losses and the use of net operating losses must be allocated to each member of the unitary business that individually sustains a loss or utilizes a net operating loss. The allocation and use of the net operating losses must be done in a manner consistent with federal law and regulations.

In a year in which the unitary business as a whole experiences a loss as determined in section .03(G) above, the loss amount, and the use of the loss amount, allocated to individual members of the unitary business is determined as follows:

- A. **Allocation of losses.** The loss allocated to those members that sustained a loss under the calculations performed under section .03(G) above is determined on the basis of each loss member's proportional contribution to the loss. The proportional factor is applied against the total net loss of the unitary business as a whole to determine the amount allocated to each member that experienced the loss.
- B. **Allocation of use of losses.** Net operating losses that make up the net operating loss deduction must be applied in chronological order. Eligible losses arising in taxable years ending on the same day and that are deductible without limitation in the taxable year are applied on a pro rata basis.

.09 Carry in and carry out of net operating loss deductions

When a unitary business member with an allocated net operating loss carryover leaves the unitary business, the allocated net operating loss amount remaining follows the former member and is no longer available for use by the unitary business. The former member may use the net operating loss carryover when filing a separate Maine income tax return if the member does not become a member of another unitary business. If the former member becomes a member of another Maine unitary business, the member may use the net operating loss in a manner consistent with the Code and related regulations and with the requirements of this Rule.

.10 Application date

This Rule applies to tax years beginning on or after January 1, 2010.

STATUTORY AUTHORITY: 36 M.R.S.A. §112

EFFECTIVE DATE:

September 3, 2001

NON-SUBSTANTIVE CORRECTIONS:

March 17, 2004 - punctuation only in .10

AMENDED:

March 12, 2008 – filing 2008-99

September 12, 2010