CHAPTER 8019
DEPARTMENT OF REVENUE
UNITARY BUSINESS TAXATION

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 midwestern 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 270.06; 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 [Repealed, 15 SR 584]

8019.0405 UNITARY GROUP FRANCHISE TAX RETURN.

Subpart 1. **Filing of a single return.** Members of a unitary group required to be included on a combined report may elect to file a single corporate franchise tax return for the group.

Subp. 2. **Definitions.** The following definitions apply to this part.

A. "Unitary group" means two or more corporations that are part of a unitary business, as defined in Minnesota Statutes, section 290.17, subdivision 4, and are required or permitted to file a combined report under Minnesota Statutes, section 290.34 and part 8019.0300.

B. "Designated member" means the member of the affiliated group designated by the unitary group as provided in subpart 4. The designated member must have nexus with Minnesota under Minnesota Statutes, section 290.015.

C. "Member" means a corporation that is part of a unitary group that elects to file a single return as provided in this part.

D. "Single return" means one return filed by the designated member on behalf of all members of a unitary group.

E. "Single return year" means a taxable year for which a single return is filed or required to be filed by a unitary group.

Subp. 3. **Taxable year.** A single return must be filed on the basis of the designated member's taxable year. Each member must adopt the designated member's annual accounting period for the first and subsequent single return years in which the member is included in the unitary group.

When a corporation becomes a member of the unitary group during the taxable year, its taxable year must end on the same date as the designated member. When a corporation ceases to be a member of the unitary group during the taxable year, its taxable year must begin on the same date as the designated member's taxable year.

Subp. 4. **Election.** In order to elect to file a single return as provided in subdivision 1, all members of a unitary group that are subject to Minnesota franchise taxes must make a written election. The election must be filed with the single return in the form prescribed by the commissioner of revenue and contain:

A. the names of all members;

B. the Minnesota and federal employer identification numbers for each member; and

C. a statement appointing one member as the designated member and granting power of attorney to the designated member to represent the unitary group for all tax matters related to the single return.

The election to file a single return and the appointment of a designated member are binding for all subsequent tax years and may be rescinded or modified only on a form as prescribed by the commissioner.

Subp. 5. **Filing requirements.** The designated member is responsible for filing the single return. The return must be signed by a person who is authorized by the designated member and who has knowledge of the contents of the return.

The single return must include an explanation of changes in the unitary group's membership in the single return year, if any.

Subp. 6. **Liability for tax.** Every corporation that is a member of a unitary group during any part of a single return year is severally liable for the taxes, penalties, interest, or additions to tax of the unitary group for that taxable year provided, however, that the designated member is primarily responsible for payment of the taxes, penalties, interest, or additions to tax for the taxable year.

The tax liability prescribed in this part cannot be reduced by an agreement entered into by one or more members with another member or with another person.

Subp. 7. **Exception.** A former member may be less than severally liable, as provided in subpart 6, for an assessment of a tax deficiency in an amount not exceeding the portion of the deficiency which the commissioner determines to be allocable to the former member, based upon the proportion of the former member's taxable net income over the unitary group's taxable net income, if:

A. the corporation has ceased to be a member as the result of a bona fide sale or exchange of its stock for fair value;

B. the sale or exchange occurred prior to the date of the assessment of the deficiency; and

C. the commissioner believes that the assessment or collection of the balance of the deficiency is not jeopardized.

Subp. 8. **Refunds.** Claims for refund are filed by the designated member on behalf of the members. Refunds are paid to the designated member.

Subp. 9. **Computation of tax.** Each member must compute its separate franchise tax for the taxable year and combine those amounts for the unitary group's franchise tax liability for the taxable year in which a single return is filed.

Subp. 10. **Estimated payments.** The designated member must make quarterly payments of estimated taxes for the unitary group, as provided in Minnesota Statutes, section 289A.26.

In applying the provisions of Minnesota Statutes, section 289A.26, a unitary group electing to file a single return is treated as if it were a single corporation.

For purposes of the first taxable year in which an election is made under this part, the amount used as the tax liability for the prior taxable year to calculate the required installment under Minnesota Statutes, section 289A.26, subdivision 7, paragraph (b), clause (2), will be calculated using the total of the prior taxable year's tax liabilities of all the members.

If the members make separate estimated tax payments for the taxable year, then the provisions of this subpart do not apply and the provisions of Minnesota Statutes, section 289A.26, are applied to each member separately.

Subp. 11. **Forms and schedules.** The single return must include the forms and schedules prescribed by the commissioner.

Subp. 12. **Extensions.** A request for an extension in the time for filing a single return must be made by the designated member on behalf of the other members.

Subp. 13. **Interest.** Interest due on an underpayment or assessment of tax is calculated as if the unitary group were a single corporation.

Subp. 14. **Applicability.** This part applies to elections made for tax years beginning after December 31, 1989.

Statutory Authority: *MS s 290.37; 290.52*

History: *15 SR 584*

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 8019.0300 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 x ($1,000) / ($10,000)	=	$300	($1,000)-($300) =	($700)
B	$3,000 x ($4,000) / ($10,000)	=	$1,200	($4,000)-($1,200) =	($2,800)
C	$3,000 x ($5,000) / ($10,000)	=	$1,500	($5,000)-($1,500) =	($3,500)
D	N/A		N/A	N/A	N/A
E	N/A		N/A	N/A	N/A
Total			$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 270.06*

History: *23 SR 807*