CHAPTER 8019
DEPARTMENT OF REVENUE
UNITARY BUSINESS TAXATION

8019.0100 DEFINITION OF UNITARY BUSINESS.
8019.0300 UNITARY BUSINESS, REPORTING.
8019.0405 COMBINED GROUP FRANCHISE TAX RETURN.
8019.0500 UNITARY BUSINESS: AGGREGATION OF CAPITAL GAINS AND LOSSES.

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.** "Unitary business" means business activities or operations which result in a flow of value between them. The term is applied to a flow either between multiple entities that are related through common ownership or within a single legal entity, and without regard to whether each entity is a sole proprietorship, a corporation, a partnership, or a trust. Flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

Some activities that evidence a flow of value between related corporations include the following: assisting in the acquisition of equipment, assisting with filling personnel needs, lending funds or guaranteeing loans, interplay in the area of corporate expansion, providing technical assistance, supervising, providing general operational guidance, providing overall operational strategic advice, or common use of trade names and patents. Flow of value must be more than the flow of funds arising out of passive investment and consists of more than occasional financial oversight.

Transactions separately accounted for may evidence a flow of value. The fact that a business uses or can use a separate accounting system, including, but not limited to, separate accounting between divisions of a single legal entity, between multiple entities under common ownership, on an arm's length basis, on a geographical basis, or by business function, does not determine whether a corporation is operating as a unitary business.

Subp. 2a. **Presumption of unity.**

A. Business activities or operations carried on by more than one corporation related through common ownership are presumed to be unitary in nature when:

(1) the business activities or operations are of mutual benefit, dependent upon, or contributory to one another, individually, or as a group; or

(2) there is both unity of operation as evidenced generally by staff functions such as centralized advertising, accounting, financing, management, or centralized, group, or committee purchasing; and

(3) there is unity of use as evidenced generally by line functions, centralized executive force, and general system of operation.

B. The unitary nature of the business activities or operations is presumed when contributions to income result from functional integration, centralized management, and economies of scale.

(1) Examples of functional integration are centralized manufacturing, warehousing, accounting, legal staff, personnel training, financing, retirement plans, corporate-level tax return preparation, or centralized, group, or committee purchasing.

(2) Examples of centralized management are common officers or directors, exchange of personnel, frequent communication between management of the corporations, centralized administrative services, companywide payroll processing, common insurance plans, or where the parent must approve of major financial decisions.

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(3) Examples of economies of scale are commingling of funds, providing centralized services, or elimination of interest expense attributable to common financing.

All of the examples are not needed to show functional integration, centralized management, or economies of scale.

C. All of the examples in item A, subitems (2) and (3), are not needed to show the unity of operation or unity of use. The presumptions of unity stated in item A, subitem (1), are independent from the presumption of unity stated in item A, subitems (2) and (3). 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 2a and 5 is evidence that the activities of the corporations constitute a unitary trade or business. The presence of any one of the factors contained in subparts 3 and 4 creates a 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. **Centralized management.** Centralized management in determining the policies of each corporation in a group of corporations that are related through common ownership indicates that the corporations, which might otherwise be considered to be carrying on separate trades or businesses, are engaged in a unitary trade or business.

The fact that the executive officers of one of the corporations in a group of corporations are normally involved in determining the policies respecting the business activities of the other corporations in the group indicates that the group of corporations is carrying on a unitary trade or business.

A finding of centralized management is not supported merely by showing that the requisite ownership percentage exists. When a more than incidental economic benefit accrues to a group because such ownership improves its financial position, it indicates that the group is carrying on a unitary trade or business. Both centralized management authority and the exercise of that authority must exist in order to justify a conclusion that unity of use is present.

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 by the Internal Revenue Code of 1986, section 267, as amended through December 31, 1999. Examples of common ownership are:

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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

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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*

History: *26 SR 435*

8019.0200 [Repealed, 26 SR 435]

8019.0300 UNITARY BUSINESS, REPORTING.

Subpart 1. [Repealed, 26 SR 435]

Subp. 2. [Repealed, 26 SR 435]

Subp. 3. [Repealed, 26 SR 435]

Subp. 4. [Repealed, 26 SR 435]

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. [Repealed, 26 SR 435]

Subp. 7. [Repealed, 26 SR 435]

Subp. 8. [Repealed, 26 SR 435]

Subp. 9. [Repealed, 26 SR 435]

Subp. 10. [Repealed, 26 SR 435]

Subp. 11. [Repealed, 26 SR 435]

Statutory Authority: *MS s 270.06; 290.52*

History: *26 SR 435*

8019.0400 [Repealed, 15 SR 584]

8019.0405 COMBINED GROUP FRANCHISE TAX RETURN.

Subpart 1. **Filing of a single return.** Members of a unitary business, as defined in part 8019.0100, subpart 2, required to be included on a combined report must file a single corporate franchise tax return for the combined group. While a foreign corporation may be part of a unitary business, only domestic corporations, as defined in Minnesota Statutes, section 290.01, subdivision 5, can file a combined report.

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

A. "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 are required or permitted to file a combined report under part 8019.0300 and Minnesota Statutes, section 290.34, subdivision 2.

B. "Designated member" means the member of a combined group designated by the combined group. The designated member must be subject to tax in Minnesota under Minnesota Statutes, section 290.015.

C. "Member" means a corporation that is part of a combined group that is subject to tax in Minnesota under Minnesota Statutes, section 290.015.

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

Subp. 3. **Taxable year.** A single return must be filed on the basis of the designated member's taxable year. Each member shall conform the calculation of its corporate franchise tax, including its Minnesota net income, alternative minimum tax, apportionment factors, deductions, and credits, to the designated member's annual accounting

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period for the first and subsequent single return years in which the member is included in the combined group.

Subp. 4. **Members with different accounting periods.** A member of a combined group that has a different accounting period than the designated member shall calculate its corporate franchise tax using the same accounting period as the designated member. A member shall conform its calculation of its corporate franchise tax to the designated member's annual accounting period by:

A. creating a pro forma federal income tax return based upon the member's actual accounting records for the time period covered by the designated member's accounting period; or

B. allocating the income and other return information, on a pro rata basis, based upon the number of months falling within the designated member's accounting period. For example, if a designated member's accounting period ends on December 31 and a member's accounting period ends on September 30, the member would assign 9/12 of its income and apportionment factors of one year and 3/12 of its income and apportionment factors of the succeeding accounting period to arrive at a full 12 months' income to be included in the single return.

Subp. 5. **Filing requirements.** The designated member is responsible for filing the single return.

The single return must identify each member that is included in the combined return.

Subp. 6. **Liability for tax.** Every corporation that is a member of a combined group during any part of a tax year is severally liable for the taxes, penalties, interest, or additions to tax of the combined 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 combined 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.** The designated member shall combine the separate franchise tax of each member to determine the combined group's franchise tax liability for the taxable year in which a single return is filed.

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

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

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

Subp. 12. [Repealed, 26 SR 435]

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

Subp. 14. [Repealed, 26 SR 435]

Statutory Authority: *MS s 270.06; 290.37; 290.52*

History: *15 SR 584; 26 SR 435*

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

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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)

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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*

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