## 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.

(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:

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; 270C.06; 290.52*

**History:** *26 SR 435; L 2005 c 151 art 1 s 114*

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