

Combined Reporting General Information 2009 FORM 355U and Accompanying Schedules

For tax years beginning on or after January 1, 2009 Massachusetts requires certain corporations engaged in a unitary business to calculate their income on a combined basis. A corporation is subject to this requirement if it is subject to a tax on its income under Massachusetts General Law (M.G.L). c. 63, § 2, 2B, 32D, 39 or 52A and it is engaged in a unitary business with one or more other corporations under common control, whether or not the other corporations are taxable in Massachusetts. The requirement to file on a combined basis is not dependent upon an evidentiary showing that there is a distortion of income between corporations that are related by common ownership or that there is a lack of arm's length pricing in transactions between such corporations.

Common ownership for the purposes of M.G.L. c. 63, § 32B means that more than 50 percent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. A unitary business exists for the purposes of § 32B when the activities of a group of two or more corporations under common ownership are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. Massachusetts construes the term unitary business to broadest extent permitted under the United States Constitution.

A "combined group" is a group of corporations engaged in a unitary business and may, at the option of the group, include all non-U.S. corporations under a world-wide election that is binding for a ten year period. Alternately, taxpayers may elect to treat as their combined group all eligible members of their affiliated group without regard to whether or not the activities of each member are unitary; such an election is also binding for a ten year period. No group may make both a worldwide election and an affiliated group election for the same tax period and no group may make either election during the ten year period for which the other is in effect.

Corporations are excluded from the group if they are entities classified and taxed under M.G.L. c. 63, § 38B (Massachusetts Security Corporations, which pay a tax under M.G.L. c. 63 on gross income). A corporation is also excluded from a combined group if it is an entity described in G.L. c. 63, §§ 20 to 29E, inclusive, except as provided in 830 CMR 63.32B.2 (4) (b) (certain insurance companies) or it is an entity described in M.G.L. c. 63, § 38Y (corporations exempt from taxation under section 501 of the Code with respect to most activities but subject to a tax on unrelated business come).

Members of the combined group, whether or not taxable in Massachusetts, combine their income from the unitary business. A "taxable member" is a corporation included in a combined group which is taxable on its income in Massachusetts; all other corporations which are part of such a group are "non-taxable members". Each taxable member of such a combined group is apportioned a Massachusetts share of the group's combined income

calculated based on its own property, payroll and sales in this commonwealth and the total property payroll and sales of the entire group. If the taxable member has other income, either from non-business activities or from its participation in a second unitary business carried on by the group, all such amounts are added together to determine the taxable member's income subject to tax. Each taxable member of the group then determines its separate income measure of excise and may take credits against this excise to the extent allowed by Massachusetts law.

The combined report required by M.G.L. c. 63, § 32B is filed on behalf of all members of the group by a principal reporting corporation, which must be a taxable member of the combined group and, if such a corporation exists and is a taxable member, the combined group's common parent. If the combined group does not have a common parent or that corporation is not a taxable member of the group, the principal reporting corporation shall be the taxable member of the group that reasonably expects to have the largest amount of Massachusetts taxable net income on a recurring basis.

In filing the return on behalf of the combined group, the principal reporting corporation agrees to act as the agent on behalf of the members of the combined group for all tax matters relating to the combined group, including: assessments; requesting extensions of time to file returns; making, renewing or revoking an election such as an affiliated group election or worldwide election; filing a refund claim; accepting of refunds or notices; executing waivers; and providing access to tax and other relevant records of the non-taxable members of the combined group as reasonably requested by the Commissioner. The designation of the principal reporting corporation, the elections allowed or required to be made by M.G.L. c. 63, the calculation of the group's combined income, the determination of the apportioned shares of the taxable members, and the calculation of the income tax liabilities of the various members and the payments made by the group are reported on behalf of all members by the principal reporting corporation when filing Form 355U.

Form 355U, and all pertinent schedules, must be filed electronically. Submissions other than by electronic filing will not be considered a timely filed return. Detailed regulatory guidance with respect to the Massachusetts combined reporting law is set forth at 830 CMR 63.32B.2.

Structure of the Return & Relationship of Schedules

Form 355U

Form 355U shows the aggregate income tax liability of the combined group. Massachusetts requires all corporations that are part of the combined group to use Department of Revenue (DOR) schedules to report their income as determined for federal income tax purposes and certain adjustments. Except as specifically provided in the case of an affiliated group election, this information must be provided separately for each member of the combined group on the specific DOR schedules described below.

Each taxable member must also separately calculate its income measure and show the credits taken against its excise on the appropriate DOR schedules. The Form 355U will report the total tax liability shown on the schedules of the taxable members. The Form 355U will also declare whether the combined group is making or filing pursuant to either a worldwide or affiliated group election, and shall provide other general information on behalf of the combined group.

Required Schedules

Schedule U-M

Each member of the combined group, whether taxable or not, reports its own income and expenses for federal income tax purposes together with certain adjustments. A single additional Schedule U-M is also filed to show the Massachusetts intercompany eliminations, if any.

Schedule U-CI

The amounts on all Schedules M are totaled to show the combined income of the group before certain Massachusetts adjustments.

Schedule U-E

In Part 1 of this schedule, the combined income from a single unitary business is modified to reflect differences between Massachusetts and federal income calculations. Note that a group which is not making or subject to an affiliated group election may have more than one unitary business, in which case the group will divide the combined income shown on Schedule U-CI between the unitary businesses and file multiple Schedules U-E, one for each different unitary business.

In Part 2 of this schedule, the group calculates the denominators of the combined group's property, payroll and sales factors for the purpose of apportioning this combined income to taxable members.

In Part 3 of this schedule, the group reports the combined Massachusetts numerators of all taxable members, totaling the amounts being reported separately by each taxable member on Schedule U-MSI.

In Part 4 of this schedule, the group reports the amount of the combined group's taxable income or loss to be apportioned to all taxable members, totaling the amounts being reported separately by each taxable member on Schedule U-MSI.

Schedule U-NI

The amounts on all Schedules U-E are totaled.

Schedule U-MSI

Each taxable member of the group separately calculates its Massachusetts numerator for the purpose of apportioning the combined income. These figures, together with the group denominators calculated in Part 2 of the Schedule U-E are used to calculate the property,

payroll and sales factors used to calculate the taxable member's apportionment percentage for determining its Massachusetts apportioned share of the income reported on Schedule U-E. The apportionment factors are weighted for each corporation based on the provisions of Ch. 63 under which that member is taxable.

Schedule U-MTI

A taxable member may have income from non-unitary sources; if such income is taxable in Massachusetts, the amount of such income allocated or apportioned to Massachusetts is reported on this schedule.

Schedule U-ST

A taxable member combines its apportioned share of income from the combined group with any other income allocated or apportioned to Massachusetts on this schedule and the member's income measure of excise is calculated here. A taxable member eligible to take a net operating loss (NOL) deduction takes that deduction here. A taxable member with available tax credits reflects those here. The total tax liability and the total credits taken by all of the taxable members as shown on all the Schedules U-ST is reported on Form 355U.

Schedule CG

The payments made by group members are reported and allocated between the combined report and the separate non-income measure of excise due from corporations taxable under c. 63, §§ 32D and 39.

Other Common Schedules

New for implementation of combined reporting, these are included in the combined report if required to support a deduction or credit.

Schedule U-NOL

A taxable member that is eligible for a net operating loss deduction calculates the amount of the available NOL and the amount taken using this schedule. Note that there are changes to the calculation of the NOL available and the deduction to be taken pursuant to the combined reporting rules. See 830 CMR 63.32B.2 (8). The NOL deduction taken is reported on Schedule U-ST.

Schedule U-NOLS

A taxable member of a combined group which has an available NOL deduction which it cannot use may share an NOL generated by the unitary business with other members of the combined group provided such other members (a) are eligible to take a NOL deduction and (b) filed a combined report under 830 CMR 63.32B.2 with the corporation that has the NOL for the tax year to which the NOL relates. Note that this precludes corporations sharing losses from tax years beginning before January 1, 2009. The total amount of all such shared losses is reported on Schedule U-ST.

Schedule U-CR

A taxable member taking credits against its excise reports the amount and type of each credit taken on this schedule. The total of the credits taken by a taxable member is reported on Schedule U-ST.

Schedule U-CS

A taxable member of a combined group which has available credits which it cannot use may share credits generated by the unitary business with other members of the combined group provided such other members (a) are eligible to take the credit and (b) filed a combined report under 830 CMR 63.32B.2 with the corporation that has the credit for the year to which the credit relates (note that this precludes corporations sharing credits from years beginning before January 1, 2009, but Corporations may also continue to share certain credits that were eligible to be shared under prior law (see 830 CMR 63.32B.2 (9)(c)(2))). The total amount of such shared credits is reported on Schedule 355U-ST.

Other Common Schedules

These may be required if claiming certain deductions or in special circumstances.

Schedule ABI

A member claiming a deduction for interest paid or accrued to a related party (in cases where such expense is not eliminated in the combined reporting that determines the taxable income of the group for Massachusetts purposes) must complete this schedule explaining the basis for the deduction.

Schedule ABIE

A member claiming a deduction for intangible expense paid or accrued to a related party (in cases where such expense is not eliminated in the combined reporting that determines the taxable income of the group for Massachusetts purposes) must complete this schedule explaining the basis for the deduction.

Schedule U-DRD

A member with dividend income which is eligible for a Massachusetts dividends received deduction calculates the amount of that deduction on this schedule. Depending on whether the dividend income is included in the combined group's income or the members separate income, the deduction is taken on Schedule U-E or Schedule U-MTI.

Schedule NIR

Certain large corporations are required to file Schedule M-3 with their U.S. tax return reconciling, in Part 1, the income reported on their financial statements to the book income figure used as a base for calculating federal taxable income. Corporations filing Schedule M-3 with its U.S. tax return must file Schedule NIR with Massachusetts.

Schedule CIR

Corporations participating in the filing of a consolidated U.S. tax return are required to submit a Schedule CIR with their Massachusetts corporate excise tax return, reconciling the net income of each member to the consolidated return income as reported federally.

Schedule TDS

Taxpayers whose Massachusetts returns take positions inconsistent with the positions taken in another state where the governing law is the same in all material respects are required to disclose those positions. Taxpayers who fail to do so are subject to a penalty of 100% of any understatement of tax due to the inconsistent position and such penalty is in addition to any other penalty that may be due.

In addition, taxpayers who substantially understate their tax liability are liable for a penalty of 20 percent of the amount of the understatement. For purposes of determining the amount of the penalty, the amount of the understatement will be reduced by any portion of the understatement attributable to a position supported by substantial authority or if the relevant facts are adequately disclosed in the return and there is a reasonable basis for the return position.

Enclosing Schedule TDS with the return understating the tax liability is one of two methods available to a taxpayer to make disclosure of such positions taken on the return. See TIR 06-05 for more information on applicable penalties and disclosure requirements.

Credit Schedules

Supporting schedules may be required if claiming certain credits. Massachusetts taxpayers may be eligible for a number of different credits, most of which require that the taxpayer complete a schedule and enclose it with the return.

If the tax year of the member ends on the same day as the combined group's tax year, any schedules claiming such credits on behalf of a member must generally be enclosed with the combined report (355U) even if the member is required to file a separate Form 355 or Form 355S to pay the non-income measure of excise.

If the tax year of the member ends on a day which is not the end of the group's tax year, but the credit is calculated on an aggregated basis (e.g. the research credit under § 38M), the credit for the group is determined based on the group year and the member with a different year end is allocated a share of the credit at that time; enclose schedules claiming such credits to the combined report.

Schedules supporting other credits claimed by a member with a year end that is different from the combined group's year must be submitted with the member's separate return when filed. A credit not used on the member's separate return and carried over may be used against the excise due on a subsequent combined report with the limitations applicable to the specific credit.

Relationship of the Combined Report (Form 355U) to the Non-Income Measure of Excise

Form 355U is used by the combined group to calculate and pay the income excise due from the taxable members of a combined group. Members of such a group that are subject to a non-income measure of excise under the provisions of M.G.L. c. 63, § 39

(including those S Corporations that are not taxed as financial institutions under M.G.L. c. 63 § 2D) must file a separate return to pay that portion of the excise. These members will file Form 355 or Form 355S (as appropriate) indicating on the face of such return that they are subject to combined reporting for their income measure of excise and exclude from that separate return the income that is reported on the group's Form 355U.

A member required to file a separate tax return to report its non-income measure of excise shall file that return at the time determined based on its own taxable year as determined as a separate taxpayer, regardless of whether or not the combined report to be filed by the combined group including the member is to be filed for a different tax year.

The separate non-income measure return, if required, must include Schedules A, B, C, D and Schedule CD along with any supporting schedules required for some entries as referenced on Schedule A. A corporation that would be eligible to apportion its income based on its own separate activities (i.e., the corporation is taxable on its income in another state without regard to the activities of its other combined group members) must also complete Schedule F without regard to the combined reporting provisions in order to determine its non-income measure. If a corporation would not be allowed to apportion its income based on its own separate activities, no Schedule F is required and the corporation will use an apportionment percentage of 100% in determining the non-income measure. Such corporations include all of their property, payroll and sales, including those attributes used to apportion income for purposes of a combined report, in completing their stand alone Schedule F for this purpose. Corporations required to file Schedule F-2 (i.e., section 38 manufacturers with more than 25 employees and mutual fund sales corporations) must submit schedule F-2 with their Form 355 or 355S. Schedule E is not required unless the taxpayer has income from a source other than a unitary business that is to be reported on a separate company basis and also has a tax year that is different than the combined group's tax year. In such cases, the corporation is to report on Form 355 or 355S, Schedule E only the income that is not included in the combined report and is to allocate or apportion such income without regard to the combined reporting provisions.

S corporations must also submit Schedule S and Schedules SK-1 with their Form 355S, determining the distributive income for shareholders and, for non-resident shareholders, the apportionment of that income without regard to the combined reporting provisions. Note that financial institutions that are S Corporations, although not subject to a non-income measure of excise, must file Form 63FI for the purpose of calculating distributive income and must submit Schedules S and SK-1.