

2009 Form 355U Instructions

Income Excise for Taxpayers Subject to Combined Reporting

This form is to be submitted on behalf of every combined group that is filing pursuant to M.G.L. c. 63 § 32B. Enter the name of the principal reporting corporation, that corporation's Federal Identification number and its state or country of incorporation. Also enter the principal reporting corporation's address as shown on its federal income tax return and the name and phone number of an individual with whom a DOR representative may discuss any questions or issues that come up in processing this return or allocating payments made by the various combined group members.

The principal reporting corporation is the common parent of the combined group or, if no such corporation exists or such common parent is not a taxable member, the taxable member of the group that reasonably expects to have the largest amount of Massachusetts taxable net income on a recurring basis. See 830 CMR 63.32B.2 (11) for additional information about the determination of the principal reporting corporation and the requirements and obligations of such corporation.

General Information

Question 1. Check one box only. A financial group is a combined group all of whose members, including members not taxable on their income in Massachusetts, are entities that are financial institutions within the meaning of M.G.L. c. 63, s. 1. A non-financial group is a combined group none of whose members, including non-taxable members, are financial institutions. A mixed group is any combined group that includes at least one member that is a financial institution and at least one member that is not a financial institution.

Question 2. A combined group, at least one of whose members participates in the filing of a federal consolidated return, may elect to include all activities of all members of the Massachusetts affiliated group in its determination and apportionment of the combined group's taxable income by making an affiliated group election, without regard to whether such activities are part of a single unitary business.

Check "Yes" if the combined group is making the affiliated group election for the first time or if the group is required to calculate its income as an affiliated group because of a prior year election. An affiliated group election can only be made on this form, when timely filed, by the principal reporting corporation. The election is binding on all members of the group, including the non-taxable members, for a period of 10 years and is also binding on all corporations that enter the combined group during that period, as well as corporations in the group that are subsequently the subject of a reverse acquisition. See 830 CMR 63.32B.2 (10) (d)-(e).

The membership of a combined group as determined pursuant to an affiliated group election is not limited to those corporations that are members of one or more affiliated groups that are filing a federal consolidated return. The affiliated group election shall also include, for example, any corporation that meets either of the two following standards even though such corporations would not be included in a federal consolidated return:

1. any corporation regardless of the place incorporated or formed, if the average of the corporation's property, payroll, and sales factors within the United States is 20% or more, or
2. any corporation that earns more than 20% of its income, directly or indirectly, from intangible property or service-related activities the costs of which generally are deductible for federal income tax purposes, whether currently or over a period of time, against the business income of other members of the group, but only to the extent of that income and the apportionment factors related thereto. See 830 CMR 63.32B.2 (5) (b).

Also, the Massachusetts affiliated group shall be determined by including all corporations that are related by common ownership (i.e., direct or indirect ownership of more than 50% of voting control), rather than applying the standard applicable for federal consolidated return purposes (i.e., 80% control of certain stock by vote and value). Further, control of members of the Massachusetts affiliated group may be direct or indirect, and a common owner or owners may be corporate or non-corporate. For example, two or more federal consolidated groups would be combined in one Massachusetts affiliated group filing if both consolidated groups were commonly owned by a non-U.S. corporation.

When an affiliated group election is made, the combined group's taxable income includes not only the apportionable income of members without regard to whether the income is derived from the group's unitary business but also income that would otherwise be allocable. If any member of the affiliated group is taxable on its income from business activity in another state, all the income of every member shall be treated as apportionable income, irrespective as to whether, for example, such income would be allocable to a particular state in the absence of the election. An affiliated group election may not be made for the same year in which a worldwide election is being made under 830 CMR 63.32B.2 (5), or if such an election was made in a prior year, for any year in which a worldwide election is still in effect.

When a combined group makes an affiliated group election, the principal reporting corporation and all members of the group consent to the production of documents or other information that the Commissioner reasonably requires, for example, for the purposes of verifying the appropriate members of the group, that the requirements of the affiliated group election have been met and that the tax computation and tax reporting are proper, etc.

If the combined group is making the affiliated group election (or a worldwide election as described below), the principal reporting corporation must at the time of the election prepare itself and collect on behalf of each group member a letter of consent, to be made available to the Commissioner upon request. stating that the group member has agreed to the election and, also, further agrees (1) that such election applies to any member that subsequently enter the group and (2) that each member continues to be bound by the election in the event that such member is subsequently the subject of a reverse acquisition

as described in U.S. Treas. Reg. s. 1.1502-75(d) (3). After making the election, the principal reporting corporation shall collect an identical consent from any member that subsequently enters the group during the period in which the election is in effect.

Question 3. A combined group that is not making an affiliated group election and is not subject to an affiliated group election made in a prior year may make a “worldwide election” to determine the combined group’s unitary business income to be apportioned to the taxable group members by including within the combined group all corporations that are under common ownership irrespective as to the location of the corporation’s formation or incorporation. A combined group may not make both an affiliated group election and a worldwide election for the same taxable period and may not make either election if the other was previously made and remains in effect.

Check “Yes” if the group is making the election for the first time or if the group is required to calculate its income on a worldwide basis because of a prior year election. A worldwide election can only be made on this form, when timely filed, by the principal reporting corporation. The election is binding on all members of the group, including the non-taxable members, for a period of ten years and is also binding on all corporations that enter the combined group during that period, as well as corporations in the group that are subsequently the subject of a reverse acquisition. See 830 CMR 63.32b.2 (5) (c).

When a combined group makes an election to calculate the group’s income on a worldwide basis, the principal reporting corporation and all members of the group consent to the production of documents or other information that the Commissioner reasonably requires, for example, for purposes of verifying the appropriate members of the combined group, that the requirements of the worldwide election have been met, that the tax computation and tax reporting are proper, etc. The documents shall be provided in language and form acceptable to the Commissioner.

If the combined group is making a worldwide election, the principal reporting corporation must at the time of the election prepare itself and collect on behalf of each group member a letter of consent, to be made available to the Commissioner upon request. stating that the group member has agreed to the election and, also, further agrees (1) that such election applies to any member that subsequently enter the group and (2) that each member continues to be bound by the election in the event that such member is subsequently the subject of a reverse acquisition as described in U.S. Treas. Reg. s. 1.1502-75(d) (3). After making the election, the principal reporting corporation shall collect an identical consent from any member that subsequently enters the group during the period in which the election is in effect.

Question 4. If any member of the group is requesting alternative apportionment under M.G.L. c. 63, s. 42, check “Yes” and submit form AA-1 and the supporting materials under separate cover (currently Form AA-1 cannot be filed electronically). In general, each taxable member of a combined group is to determine its apportionment formula on Schedule U-MSI. If any member of the combined group is seeking alternative apportionment, it must nonetheless complete Schedule U-MSI by applying the statutory

rules that apply to such taxpayer, and not by applying the taxpayer's proposed alternative apportionment approach. If the taxpayer's proposed alternate method is later accepted, a refund of any overpayment will be made.

Question 5. If this is an amended filing (including, for this purpose, a filing that is to supersede a prior filing when both filings are made on or before the due date for the return), check "Yes." An amended filing must include all applicable forms and schedules, not just those reporting a change from the previous submission.

Question 6. If the group or any member is deducting an interest expense paid or accrued to a related entity and that expense is not eliminated in the combined report when determining the combined group's taxable income, check "Yes". Enclose one or more schedules ABI supporting the claim of deduction.

Question 7. If the group or any member is deducting an intangible expense paid or accrued to a related entity, (including but not limited to an embedded royalty) and that expense is not eliminated in the combined report when determining the combined group's taxable income, check "Yes." Enclose one or more schedules ABIE supporting the claim of deduction.

Question 8. If there is an entity or corporation that owns more than 50% of the voting stock of any member of the combined group that is not being included in the combined group, irrespective of that parent's place of incorporation or formation, check "Yes."

Question 9. In general, when a corporation that was not previously a Massachusetts taxpayer enters or otherwise is first included in a combined group the basis of the various assets of such member will be the basis of such assets for federal income tax purposes. However, the principal reporting corporation of a combined group may elect to determine and apply a Massachusetts-adjusted basis for all assets of every member of the combined group that was not previously a Massachusetts taxpayer, including any non-taxpayer corporation that subsequently enters or otherwise is included in the combined group, provided that the corporation must possess and maintain adequate records to demonstrate the appropriate Massachusetts adjusted basis for all such assets. This election, which is irrevocable, may be made on this line. If a taxpayer is unable to reasonably document basis adjustments pursuant to this election for any member of the group, this election will be treated as void. See 830 CMR 63.32B.2 (6) (d).

Question 11. If any member of the group is reducing its excise by utilizing a Massachusetts film credit under c. 63, § 38X, check "Yes."

Question 12. If any member of the group is reducing its excise by utilizing a Massachusetts life sciences credit under c. 63, §§ 31M, 38U or 38W, check "Yes."

Question 13. If one or more members of the group have undergone a federal audit that has resulted in a final determination, including any settlement or compromise, of a change to taxable income of any person subject to tax under c. 63, the changes must be

reported to the commissioner within 2 months. This requirement also extends to changes in federal credits, but only if the change in the credit has an effect on the calculation of the tax imposed under c. 63. Enter the year (YYYY) of the most recent tax period for which such a change was received from the I.R.S.

Question 14. .If any member of the group has filed Form 8275, Form 8275-R or Form 8886 with its federal tax return, enter the number of disclosures made by all members of the group. Note that Form 8275 and 8275-R allow for the disclosure of multiple issues on the same form. A taxpayer seeking to make adequate disclosure of an item for purposes of avoiding the Massachusetts penalty imposed under M.G.L. c. 63, s. 35A must disclose the relevant facts directly to the Department. See TIR 06-05.

Question 15. If any member of the group is submitting a Massachusetts Schedule TDS with this return, enter the number of disclosures made by all members of the group. A taxpayer seeking to make adequate disclosure of an item for purposes of avoiding the Massachusetts penalty imposed under M.G.L. c. 63, s. 35A must disclose the relevant facts directly to the Department. See TIR 06-05.

Question 16. A “taxable member” is a corporation included in the combined group that is taxable on its Massachusetts apportioned share of the combined group’s taxable income; each taxable member must file a Schedule U-ST with this return. Enter the total number of such taxable members on line 16.

Question 17. A “non-taxable member” is a corporation whose income is included in the calculation of the combined group’s taxable income but which is not subject to Massachusetts tax on its share of the combined group’s taxable income. Enter the total number of such non-taxable members on line 17.

Question 18. Certain large corporations are required to file federal Schedule M-3 with their U.S. tax return. Enter the number of Schedules M-3 filed by members, including non-taxable members, of the Massachusetts combined group. Treat the Schedule M-3 filing made with a federal consolidated tax return as a single Schedule M-3 for the purpose of answering this question (e.g., in the instance where more than one member of the Massachusetts combined group is included in a single federal Schedule M-3). Taxpayers filing federal Schedule M-3 must file Massachusetts schedule NIR with their Massachusetts income tax return. Enclose one Schedule NIR for each different Schedule M-3 filed with the I.R.S.

Question 19. Any member of a combined group that has a taxable year that is different than the combined group’s taxable year for which the combined group’s taxable income is being determined is required to adjust its income and expenses as shown on its U.S. tax return to reflect its income and expenses as incurred during the combined group’s taxable year. Enter the number of members that are subject to such a “fiscalization” adjustment.
Excise Tax Calculation

In order to complete the tax calculation, all applicable schedules must be completed first. The amounts in lines 20 through 26 reflect the totals of the separately determined

amounts for the combined group's taxable members. The amounts in lines 29 through 37 reflect the total of all payments to be applied to the income excise, and also certain refundable credits, of such individual members. Any refund due will be issued to the principal reporting corporation on behalf of the group.

Line 20. Enter the total income excise, before credits, due from members that are taxed as financial institutions as defined in c. 63, s. 2 or as financial institution S corporations under c. 63, s. 2B. This total must match the total reported on line 30 of all Schedules U-ST filed for members classified as financial institutions or financial institution S corporations.

Line 21. Enter the total income excise, before credits, due from members that are taxed as public utilities under c. 63, s. 52A. This total must match the total reported on line 30 of all Schedules U-ST filed for members classified as a utility.

Line 22. Enter the total income excise, before credits, due from members that are taxed as business corporations (including members classified as manufacturing corporations and research and development corporations) under c. 63, s. 39 or as S Corporations under c. 63, s. 32D. This total must match the total reported on line 30 of all Schedules U-ST filed for members classified as business corporations.

Line 24. Enter the total of individual members' credits used to reduce the income excise of the member that generated the credit. This total must match the total reported on line 31 of all Schedules U-ST filed for all members.

Line 25. Enter the total of individual members' credits used to reduce the income excise of any member other than the member that generated the credit. This total must match the total reported on line 32 of all Schedules U-ST filed for all members.

Line 26. Subtract the amounts on line 24 and line 25 from the total on line 23. This total must match the total reported on line 34 of all Schedules U-ST filed for all members.

Line 29 through Line 31. Enclose Schedule CG referencing the tax payments made by individual members, the amounts to be allocated to taxes due in connection with the combined report, and the amounts to be applied to any non-income measure excise due from individual members. The amounts entered on lines 29 through 31 of Form 355U should not include any amounts allocated by Schedule CG to the non-income measure excise of individual members.

Line 32. A member of the group that is a member, partner, or other beneficiary of an entity subject to pass-through withholding as to Massachusetts income tax that has received notice from the pass through entity that taxes were withheld on its distributive share of income must report the amount withheld on this line. **This is the amount of withholding from all Schedules 3K-1, lines 33 and 35 that the corporation has received.**

Line 33 through Line 35. All refunds due with respect to taxes paid in connection with the combined report are issued to the principal reporting corporation, regardless of which

member of the combined group is claiming the refund. Similarly, all refundable credits that are due with respect to the operation of the combined group's unitary business (or the activities of the combined group in the case of an affiliated group election) are issued to the principal reporting corporation. See 830 CMR 63.32B.2 (11).

Line 33. A member of the group that is a motion picture production company and that has not transferred or carried forward a portion of the film credit for a production may apply for a refund of 90% of the unused credit in lieu of carrying forward the credit to a future year. Transferees do not qualify for such a refund. Enclose Schedule RFC and enter the amount to be refunded on line 33. The amount of the refund claimed must match the total on all Schedules RFC submitted.

Line 34. A member of the group which holds a certificate of registration as a dairy farm pursuant to section 16A of chapter 94 and which is allowed a credit under c. 63 § 38Z may apply the credit against its excise and is allowed a refund of 100% of the unused credit. Enter the total amount of credits authorized by the commissioner of agricultural resources on this line.

Line 35. A member of the group that is a life sciences company, to the extent authorized by the life sciences tax incentive program established by section 5 of chapter 23I, may apply for a refund of certain unused tax credits.

There are three different credits which the Massachusetts Life Sciences Center, with the approval of the Secretary of Administration and Finance, may authorize a taxpayer to have refunded in lieu of carrying forward such credit to a future year.

A member may apply for a refund of 90% of the unused credit granted under c. 63, § 38U or the additional credit on the same property that may be granted under c. 63, § 38N if property for which the 38U credit is granted is used in a certified project.

A member may apply for a refund of 90% of the unused credit granted under G.L. c. 63, § 38M, including credits carried over from prior years.

A member may apply for a refund of 90% of the unused credit granted under G.L. c. 63, § 31M.

Enter the total amount of the refund sought for all three credits on line 35 and enclose Schedule RLC. The amount of the refund claimed must match the total of the life sciences tax credit refunds calculated on all Schedules RLC submitted.

Line 36. Enter the amount of any tax payment made with respect to the income derived from the activities of the combined group not included above. This includes but is not limited to a payment made as to such income with a previous return. If a refund was previously issued in connection with such income, enter the amount as a negative number.

Line 42. Enter any undedpayment penalty on this line. Also on this line, include any late file and late payment penalty due.

See Form M-2220, Underpayment of Estimated Tax by Corporations to compute the amount of this penalty. Also on this line, include any late file and late payment Chapter 63, § 33(a) imposes a penalty of 1 % of the tax due per month (or fraction thereof) for failure to file a return by the due date, up to a maximum of 25% of the tax due.

Chapter 63, § 33(b) imposes a penalty of 1 % of the tax shown due on the return per month (or fraction thereof) for to pay the tax by the due date, up to a maximum of 25% of the tax due.

Line 43. Any taxpayer that fails to pay its tax when due will be subject to interest charges on the unpaid balance. The interest rate is re-determined on a quarterly basis and Massachusetts announces the rate applicable by issuing a Technical Information Release (TIR) for each quarter.