

2011 Form 355U

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 and that corporation's Federal Identification number. 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. Check one box only. If the combined group is making no affirmative election (i.e., the default method of filing) and chooses "neither," the combined group that is under common control and engaged in a unitary business will be determined on a "water's edge" basis (i.e., with only certain non-U.S. corporations included in the combined group). See Regulation 830 CMR 63.32B.2 (5).

If the combined group is entitled to make an affiliated group election and affirmatively makes this election, the combined group is determined on a water's edge basis but is expanded to include affiliated corporations that constitute the "Massachusetts affiliated group," as defined in 830 CMR 63.32B.2(2) and (10). The composition of the combined group as a "Massachusetts affiliated group" is not dependent upon whether the group is engaged in a unitary business but can have the effect of converting income that is otherwise allocable income into apportionable income as well as other specific, significant tax consequences. A combined group is not entitled to make an affiliated group election unless it includes a federal affiliated group filing a consolidated return for federal income tax purposes, though the "Massachusetts affiliated group" that is subject to the election is not necessarily co-extensive with such a federal affiliated group. For example, the Massachusetts affiliated group can include (1) S corporations, certain insurance companies, REITs, RICs and non-U.S. corporations; (2) corporations that are under indirect or direct common ownership of greater than 50% (instead of the 80% vote-and-value standard used for purposes of filing a federal consolidated income tax return); and (3) the members of two or more affiliated groups where each group files a consolidated return for federal income tax purposes. A combined group is not entitled to make an affiliated group election if it is making or is subject to a previously made worldwide election. See Regulation 830 CMR 63.32B.2 (10) for the rules that apply in the context of a Massachusetts affiliated group election.

If the combined group is entitled to make the worldwide election and affirmatively makes this election, the combined group that is under common control and engaged in a unitary business will be determined on a worldwide basis (i.e., with no limitations on the non-U.S. corporations included in the combined group). When a combined group makes a worldwide election the

income of the non-U.S. corporations that are included in the combined group are determined on a worldwide basis, and other specific rules apply. A combined group is not entitled to make a worldwide election if it is making or is subject to a previously made affiliated group election. See Regulation 830 CMR 63.32B.2 (5), (6) (c) 2.b for the rules that apply in the context of a worldwide election.

Both the affiliated group election and the worldwide election can only be made on this form 355U, when timely filed, by the combined group's principal reporting corporation. Both elections are irrevocable and binding on all members of the combined group, including the non-taxable members and any corporations that subsequently enter the combined group, for the taxable year in which the election is made and the next nine taxable years. See Regulation 830 CMR 63.32B.2 (5) (c), (10) (d)-(f).

Where a combined group makes either an affiliated group or a worldwide 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, e.g., information required to verify that the appropriate members of the combined group are included, that the requirements of the election have been met, that the tax computation and tax reporting are proper, etc. In the case of the worldwide election, the documents shall be provided in language and form acceptable to the Commissioner.

Question 3. Check "Yes" if either the Affiliated Group Election or the Worldwide Election is indicated on line 2 and this is the first year the election is in effect.

If the combined group is making the affiliated group election or a worldwide election, the principal reporting corporation must at the time of the election prepare for 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 enters 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 purposes of this question, 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.

An amended return may require additional action to ensure that the proper adjustment is reflected on the Department's records. In addition to electronically filing the amended return, a taxpayer must separately file form CA-6 with an explanation of the changes reflected on the amended return and the expected change to net tax if either of the following applies:

The tax shown on the amended return is a decrease from the amount of tax previously reported.

The amended return is a 2nd (or subsequent) amendment.

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 10. Answer "Yes" if any member is under audit by the I.R.S.

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. Enter the number of members subject to the non-income measure only.

Question 18. Enter the number of non-taxable members in the combined group.

Question 19. 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 20. 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 21 through 27 reflect the totals of the separately determined amounts for the combined group's taxable members. The amounts in lines 30 through 36 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 21. 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 37 of all Schedules U-ST filed for members classified as financial institutions or financial institution S corporations.

Line 22. 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 37 of all Schedules U-ST filed for members classified as a utility.

Line 23. 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 37 of all Schedules U-ST filed for members classified as business corporations.

Line 25. 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 38 of all Schedules U-ST filed for all members.

Line 26. 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 39 of all Schedules U-ST filed for all members.

Line 27. Subtract the amounts on line 25 and line 26 from the total on line 24. This total must match the total reported on line 41 of all Schedules U-ST filed for all members. This should also match the total of column g amounts on Schedule U-TM.

Line 30. Enter the total of all members' 2010 overpayments applied to 2011 estimated taxes as shown on Schedule CG, Part 1, line 2.

Line 31. Enter the total of all members' estimated tax payments for all installments as shown on Schedule CG, Part 1, lines 3 through 6.

Line 32. Enter the total of all members' payments made with extension as shown on Schedule CG, Part 1, line 7.

Line 33. Enter the total of the pass-through entity withholding shown on schedule U-ST, line 42 for all members.

Line 34. Enter the total of the refundable credits shown on schedule U-ST, line 43 for all members.

Line 35. Enter the total amount of any tax payment(s) made with respect to the excise due from the combined group not included above. If this is an amended return, this includes but is not limited to a payment made with a previous return. If this is an amended return and a refund was previously issued in connection with a prior return or an overpayment was applied to estimated taxes for a subsequent year in lieu of a refund on such prior return, enter the amount as a negative number.

Line 41.

M-2220 Penalty: An additional charge may be imposed on corporations which underpay their estimated taxes or fail to pay estimated taxes. Form M-2220, Underpayment of Massachusetts Estimated Tax by Corporations, should be used to compute any underpayment penalty.

Other Penalties. Enter any other penalty due separately from the M-2220 penalty. The following penalties most commonly apply.

The penalty for failure to file a tax return by the due date is 1% of the tax due per month (or fraction thereof), up to a maximum of 25%.

The penalty for failure to pay the total payment due with this form is 1% of the tax due per month (or fraction thereof), up to a maximum of 25%

The penalty for failure to file an amended return and pay the additional tax due within 90 days of a federal change (including settlements) is 10% of the additional tax.

Line 42. 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.