

**Mid-Process PPWG Consensus Poll Regarding  
Proposed Definition Of A Unitary Business**

The PPWG is being asked to set forth its general agreement or disagreement with certain statements of principle or specific wording of the proposed definition of a Unitary Business. The term "general agreement" means that a PPWG member agrees with a specified approach in principle, even though the party may not support or agree to its exact wording as presented by the specific Regulation language as set forth. The term "general disagreement" means that the PPWG member believes that the principle as set forth or as specifically worded is either (i) invalid as a constitutional matter; (ii) is unreasonable as a matter of good tax policy; (iii) is not administrable; (iv) is unlikely to be adopted by a significant number of states; or (v) does not promote taxpayer compliance.

## **Major Unitary Business Principle Issues**

### **Statement Of Principle Number 1:**

#### **INSTANT UNITY: NEWLY ACQUIRED CORPORATION**

**The unitary business definition should contain a presumption, rebuttable by clear and cogent evidence to the contrary, against an acquired corporation being instantly unitary with its acquirer during the period between the date of acquisition and the end of the reporting period.**

### **Wording Of Principle Number 1:**

**[To be developed]**

## **Major Unitary Business Principle Issues**

### **Statement Of Principle Number 2:**

#### **INSTANT UNITY: NEWLY FORMED CORPORATION**

**The unitary business definition should contain a presumption, rebuttable by clear and cogent evidence to the contrary, in favor of a newly formed corporation being instantly unitary with its creator during the period between the date of formation and the end of the reporting period.**

### **Wording Of Principle Number 2:**

**[To be developed]**

## **Major Unitary Business Principle Issues**

### **Statement Of Principle Number 3:**

#### **BASIC TEST**

The definition of a unitary business should emphasize the application of a “basic test” that considers Mobil’s three elements: (1) centralized management, (2) economies of scale; and (3) functional integration; and de-emphasizes, but not eliminate, the “three unities” and “contribution/dependency” tests, should a state wish to apply them.

### **Wording Of Principle Number 3:**

[To be developed]

## **Major Unitary Business Principle Issues**

### **Statement Of Principle Number 4a:**

#### **OWNERSHIP**

**With regard to the issue of unity of ownership, the definition of a unitary business should contain an ownership requirement that is not dependent upon "control", but focuses upon ownership of voting stock interest.**

### **Wording Of Principle Number 4a:**

**"Unity of ownership exists if there is direct or indirect ownership of more than 50% of the voting stock of the business entity by another entity or a group acting in concert."**

## **Major Unitary Business Principle Issues**

### **Statement of Principle Number 4b:**

#### **OWNERSHIP**

**With regard to the issue of unity of ownership, the definition of a unitary business should contain an ownership requirement that is identical or consistent with that set forth in Cal. Rev. & Tax Section 25105 and Legal Ruling 91-1.**

### **Wording Of Principle Number 4b:**

**See Cal. Rev. & Tax Section 25105 and Legal Ruling 91-1.**

## **Major Unitary Business Principle Issues**

### **Statement Of Principle Number 5:**

#### **HOLDING COMPANY**

**With regard to the issue of a holding company over one separate unitary business, the definition of a unitary business should contain a provision similar to that contained in Cal. FTB Revenue Rulings 95-7 and 95-8.**

### **Wording Of Principle Number 5:**

**See Cal. FTB Revenue Rulings 95-7 and 95-8.**

## **Major Unitary Business Principle Issues**

### **Statement Of Principle Number 6:**

#### **PASS - THROUGH ENTITIES**

**With regard to the issue of pass-through entities, the definition of a unitary business should contain a provision similar to that contained in Cal Reg. §25137-1 with regard to partnerships.**

### **Wording Of Principle Number 6:**

**See Cal Reg. §25137-1.**

## **Major Unitary Business Principle Issues**

### **Statement Of Principle Number 7:**

#### **DIVERSE BUSINESSES**

**The tests for determining whether diverse businesses may be unitary with one another are the same as the tests applied to non-diverse businesses.**

### **Wording Of Principle Number 7:**

**“The test(s) to be applied to determine whether one or more diverse businesses are unitary with another business or group of businesses are the same as the test(s) to be applied to determine whether one or more non-diverse businesses are unitary with another business or group of businesses.”**

## **Miscellaneous Unitary Business Principle Issues**

**Statement Of Miscellaneous Issue A:**

**Statement Of Miscellaneous Issue B:**

**Statement Of Miscellaneous Issue C:**

**Statement Of Miscellaneous Issue D:**

**Statement Of Miscellaneous Issue E:**