

Multistate Tax Commission



TO: PPWG – UNIFORMITY COMMITTEE LIAISON GROUP
MEMBERS

FROM: ALAN H. FRIEDMAN, CONVENOR

SUBJECT: UNITARY BUSINESS DEFINITIONS

DATE: MAY 4, 1999

I am attaching six documents for your review and consideration. The first contains brief minutes of the three Subgroup's teleconferences of April 28th; and the second is the current beginning draft of a Three Unities Test, with modifications made based upon last week's Subgroup input. The third document is a copy of Minnesota's statutory provisions and ruling regarding that state's unitary business principle. The fourth is California Rev. & Tax Code Section 25105. The fifth and sixth documents are the current versions of the Dependency/Contribution Test alternatives that were updated last week based upon input from the Subgroups.

Please review the attached and be prepared to discuss the Three Unities Test draft during our meeting of the full Group on Wednesday, May 5, 1999 at 1:30 PM (Eastern). Your thoughts are necessary if we are to move forward with modifying and supplementing what is before us.

Again, the number to call in at the appointed hour is 703-736-7307.

I look forward to hearing from all of you.

Minutes of Teleconference Meetings of Subgroup on Unity of
Ownership/Functional Integration, Unity of Operations/Economies of
Scale, and Unity of Use/Centralized Management
of PPWG – Uniformity Committee Liaison Group on
Definitions of Unitary Business

**April 28, 1999
11:30 AM (Eastern)
Unity of Ownership Subgroup**

Those attending this teleconference reviewed the memorandum of April 22, 1999 from Alan Friedman, Moderator. The memorandum set forth (1) the initial draft skeleton of a Three Unities Test (Ownership, Operation and Use) for a unitary business and (2) an updated draft of the Dependency/Contribution Test.

The discussion opened with the Moderator reviewing with the group a memo he received from a participant raising whether this group would get into issues of ownership attribution raised among closely related persons by the *Rain Bird Sprinkler* case in California and the *True* cases in North Dakota. A discussion of the two cases – one holding that minority ownership interests may be aggregated for the purposes of determining unity of ownership and the other case not permitting such aggregation under its set of facts. The second issue raised by the memo was, for purposes of combination, what is the effect of having 50+ ownership, but not control, and of having control, but not 50+ percent ownership. The Subgroup thought these questions worthy of addressing in the proposed definition. The next iteration of the ownership element will look at California's treatment of the ownership issue at Section 25105 of the Rev. & Tax Code.

The Subgroup next discussed the interplay between the proposed definition and general statutes, such as Section 18 of UDITPA and the Compact (permitting modifications to the factors under limited circumstances) and other general statutes that permit or require combination to clearly reflect income. It was the sense of the Subgroup that the current proposal should not preempt the application of the other statutory powers and should be worded to guard against such preemption.

The Subgroup next raised the issue of partnerships and LLCs and their effect upon issues of combination. California and Minnesota's approaches were discussed and appeared to be similar in that the ownership element is not considered as an issue when determining the unitary nature of a flow-through type of entity. Both states will be

submitting copies of their respective statutes to the moderator for use in the next draft.

Lastly, the Subgroup reviewed the April 22nd redraft of the Dependency/Contribution test. The redraft added language (1) to make clear that dependency/contribution can be found, even though the operations of the entities were neither “essential” nor “necessary” to the operations of one another; and (2), to further explain the meaning of “same general line of business”. With one minor correction, no one in the Subgroup objected to the changes.

April 28, 1999
1:30 PM (Eastern)
Unity of Operations Subgroup

The Unity of Operations Subgroup reviewed paragraph I.B.2 of the proposed definition and agreed to select, from the choices offered, the words “common” and “resources”; and to add the term “functions”. Until further amendments are made, the paragraph will state:

“The ‘unity of operation’ element of this test is satisfied when each entity or segment within such entity that is to be included within the unitary business receives support, guidance or direction from all or part of common staff resources, personnel or functions.

Illustrations etc.....”.

The Subgroup also added “common insurance” to the laundry list of illustrations that is to be fleshed out.

The Subgroup also reviewed the April 22nd redraft of the Dependency/Contribution Test and no objection to the changes was raised.

April 28, 1999
4:30 PM (Eastern)
Unity of Use Subgroup

The Subgroup on Unity of Use reviewed paragraph I.B.3. of the draft and it, too, accepted the changes made by the Unity of Operations Subgroup. After a discussion of whether the existence of “common

management”, without more, is sufficiently evidentiary of a unitary relationship, the Subgroup felt that a rebuttable presumption could properly arise from the existence of common management to satisfy the unity of use element. In addition, added to the laundry list of illustrations of unity of use were – policy manuals required of the entities; and approval of overall budgets and capital expenditures over a significant amount. The Subgroup recognized that there should be a demarcation between substantive types of oversight and mere stewardship over an investment. Further input from business representatives would be helpful here, as in all other areas.

The members present on this Subgroup also reviewed the April 22nd redraft of the Dependency/Contribution Test and had no objections to the changes.

PROPOSED DEFINITION ONE
THREE UNITIES TEST
May 3, 1999 Draft

I. Three Unities Test for Determining a Unitary Business.

A. Definitions.

For the purposes of this section, the following definitions shall apply and control:

1. "Business" means a single entity or two or more entities under common ownership or control with respect to which [this State's income/franchise tax] law requires a determination of whether the activities of the entity or entities within and without this State constitute one or more unitary businesses within this State.
2. "Entity" means each type of organization that [this State's income/franchise law] recognizes as a reporting person, except such term does not include an individual or [insert other applicable exceptions].
3. "Segment" means a subdivision of an entity consisting of any grouping of business activities, functions or transactions.

B. Three Unities Test.

A unitary business includes each entity or segment of a business among which there exists a unity of ownership; and a unity of operation or a unity of use, or both.

1. The "unity of ownership" element of this test is satisfied when one or more entities directly or indirectly owns, in whole or in part, an ownership interest in each entity sought to be included in the unitary business. **[The unity of ownership element may be satisfied for apportionment of income purposes even though an entity owns less than a 50+% ownership in the entity sought to be included in the unitary business.]** **[However, to determine whether entities that are included within the same unitary business may be combined for income reporting purposes, see the ownership requirements set forth in []].**

Illustrations of this “ownership” element are as follows:

- a.
 - b.
2. The “unity of operation” element of this test is satisfied when each entity or segment within such entity that is to be included within the unitary business receives support, guidance or direction from all or part of common staff resources, personnel or functions.

Illustrations of this “operation” element are as follows:

- a. Common purchasing
 - b. Common advertising
 - c. Common accounting and legal support
 - d. Financing support
 - e. Common retirement plan
 - f. Common insurance coverage
 - g.
3. The “unity of use” element of this test is satisfied when each entity or segment within such entity that is to be included within the unitary business receives support, guidance or direction from all or part of common line or executive resources, personnel, or functions.

Illustrations of this “use” element are as follows:

- a. Common management
- b. Control of major policies
- c. Inter-entity transactions
- d. Common policy manuals
- e. Required (i) budgetary or (ii) capital asset purchase approval

C. Facts and Circumstances; Presumptions.

The determination under paragraph B. of whether an entity or segment forms part of a unitary business with another shall be determined by the facts and circumstances of each case. It shall be presumed, subject to rebuttal, that a unitary business exists between entities or segments when the “unity of ownership” and either the “unity of operation” or the “unity of use” elements have been satisfied.

D. Illustrations

The above principles are illustrated by the following examples:

Example 1

* * * * *

Minnesota Unitary/Combination Statute and Revenue Notice

The following is the text of our revenue notice on partnership combination in Minnesota. Please note that we exclude the 50% ownership requirement contained in our unitary statute. Below this revenue notice I have provided you with our unitary statute (Minn. Stat. sec. 290.17, subd. 4).

Department of Revenue

Revenue Notice # 92-16 Corporate Franchise Tax - Treatment of Partnership Income of Corporate Partners

When a corporation is a partner in a partnership, the corporation's pro-rata share of partnership net distributable income and pro-rata share of Minnesota additions and subtractions are included in "Minnesota net income or loss" (line 5 of 1991 Minnesota Form M-4). If the corporation and the partnership would be considered unitary under Minn. Stat. §290.17, subd. 4, disregarding paragraph (e) (50 percent indirect or direct ownership needed for unity of ownership), the corporation's pro-rata share of partnership income is apportionable income of the corporation. Consequently, the corporation would combine its pro-rata share of the partnership's sales, property, and payroll factors with its own factors on lines 4 through 9 of Schedule A of the Form M-4. Further, in computing lines 2 (total nonapportionable net income) and 15 (Minnesota nonapportionable net income) of the 1991 Minnesota Schedule A of the M-4, the corporation would not include any portion of the corporation's share of partnership income or loss.

If on the other hand a partnership and a corporation are not unitary, the corporation reports its share of partnership income as nonapportionable net income. The partnership then computes its Minnesota assignable net income on the basis of the partnership's net business income and sales, property and payroll factors if the partnership business is conducted partly within and partly without Minnesota. The partnership business income is totally assigned to Minnesota if the partnership business is conducted entirely in Minnesota. The corporation then includes its pro-rata share of partnership income or loss on line 2 of Schedule A and its pro-rata share of Minnesota assignable partnership income or loss on line 15 of Schedule A.

Michael E. Boekhaus
Director, Appeals and Legal Services

Dated: June 29, 1992

For your information, the following is the text of Minnesota Statute on unitary combination.

Subd. 4. Unitary business principle.

(a) If a trade or business conducted wholly within this state or partly within and partly without this state is part of a unitary business, the entire income of the unitary business is subject to apportionment pursuant to section 290.191.

Notwithstanding subdivision 2, paragraph (c), none of the income of a unitary business is considered to be derived from any particular source and none may be allocated to a particular place except as provided by the applicable apportionment formula. The provisions of this subdivision do not apply to farm income subject to subdivision 5, paragraph (a), business income subject to subdivision 5, paragraph (b) or (c), income of an insurance company determined under section 290.35, or income of an investment company determined under section 290.36.

(b) The term "unitary business" means business activities or operations which are of mutual benefit, dependent upon, or contributory to one another, individually or as a group. The term may be applied within a single legal entity or between multiple entities and without regard to whether each entity is a corporation, a partnership or a trust.

(c) Unity is presumed whenever there is unity of ownership, operation, and use, evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction, but the absence of these centralized activities will not necessarily evidence a nonunitary business.

(d) Where a business operation conducted in Minnesota is owned by a business entity that carries on business activity outside the state different in kind from that conducted within this state, and the other business is conducted entirely outside the state, it is presumed that the two business operations are unitary in nature, interrelated, connected, and interdependent unless it can be shown to the contrary.

(e) Unity of ownership is not deemed to exist when a corporation is involved unless that corporation is a member of a group of two or more business entities and more than 50 percent of the voting stock of each member of the group 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.

(f) The net income and apportionment factors under section 290.191 or 290.20 of foreign corporations and other foreign entities which are part of a unitary business shall not be included in the net income or the apportionment factors of the unitary business. A foreign corporation or other foreign entity which is required to file a return under this chapter shall file on a separate return basis. The net income and apportionment factors under section 290.191 or 290.20 of foreign operating corporations shall not be included in the net income or the apportionment factors of the unitary business except as provided in paragraph (g).

(g) The adjusted net income of a foreign operating corporation shall be deemed to be paid as a dividend on the last day of its taxable year to each shareholder thereof, in proportion to each shareholder's ownership, with which such corporation is engaged in a unitary business. Such deemed dividend shall be treated as a dividend under section 290.21, subdivision 4. Dividends actually paid by a foreign operating corporation to a corporate shareholder which is a member of the same unitary business as the foreign operating corporation shall be eliminated from the net income of the unitary business in preparing a combined report for the unitary business. The adjusted net income of a foreign operating corporation shall be its net income adjusted as follows:

(1) any taxes paid or accrued to a foreign country, the commonwealth of Puerto Rico, or a United States possession or political subdivision of any of the foregoing shall be a deduction; and

(2) the subtraction from federal taxable income for payments received from foreign corporations or foreign operating corporations under section 290.01, subdivision 19d, clause (11), shall not be allowed. If a foreign operating corporation incurs a net loss, neither income nor deduction from that corporation shall be included in determining the net income of the unitary business.

(h) For purposes of determining the net income of a unitary business and the factors to be used in the apportionment of net income pursuant to section 290.191 or 290.20, there must be included only the income and apportionment factors of domestic corporations or other domestic entities other than foreign operating corporations that are determined to be part of the unitary business pursuant to this

subdivision, notwithstanding that foreign corporations or other foreign entities might be included in the unitary business.

(i) Deductions for expenses, interest, or taxes otherwise allowable under this chapter that are connected with or allocable against dividends, deemed dividends described in paragraph (g), or royalties, fees, or other like income described in section 290.01, subdivision 19d, clause (11), shall not be disallowed.

(j) Each corporation or other entity that is part of a unitary business must file combined reports as the commissioner determines. On the reports, all intercompany transactions between entities included pursuant to paragraph (h) must be eliminated and the entire net income of the unitary business determined in accordance with this subdivision is apportioned among the entities by using each entity's Minnesota factors for apportionment purposes in the numerators of the apportionment formula and the total factors for apportionment purposes of all entities included pursuant to paragraph (h) in the denominators of the apportionment formula.

(k) If a corporation has been divested from a unitary business and is included in a combined report for a fractional part of the common accounting period of the combined report:

(1) its income includable in the combined report is its income incurred for that part of the year determined by proration or separate accounting; and

(2) its sales, property, and payroll included in the apportionment formula must be prorated or accounted for separately.

STATE-LAW, CA-TAXRPTR ¶228-339, Sec. 25105. [Determination of ownership or control.]

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**[California Laws], REVENUE AND TAXATION CODE, DIVISION 2--
OTHER TAXES, PART 11. BANK AND CORPORATION TAX LAW,
CHAPTER 17 ALLOCATION OF INCOME, Article 1 General
Provisions.**

Sec. 25105. [Determination of ownership or control.]

(a) For purposes of this article, other than Section 25102, the income and apportionment factors of two or more corporations shall be included in a combined report only if the corporations, otherwise meeting the requirements of Section 25101 or 25101.15, are members of a commonly controlled group.

(b) A "commonly controlled group" means any of the following:

(1) A parent corporation and any one or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if--

(A) The parent owns stock possessing more than 50 percent of the voting power of at least one corporation, and, if applicable,

(B) Stock cumulatively representing more than 50 percent of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subparagraph (A), or one or more other corporations that satisfy the conditions of this subparagraph.

(2) Any two or more corporations, if stock representing more than 50 percent of the voting power of the corporations is owned, or constructively owned, by the same person.

(3) Any two or more corporations that constitute stapled entities.

(A) For purposes of this paragraph, "stapled entities" means any group of two or more corporations if more than 50 percent of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests.

(B) Two or more interests are stapled interests if, by reason of form of ownership restrictions on transfer, or other terms or conditions, in connection with the transfer of one of the interests the other interest or interests are also transferred or required to be transferred.

(4) Any two or more corporations, all of whose stock representing more than 50 percent of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of paragraph (1) of subdivision (e)) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

(c)(1) If, in the application of subdivision (b), a corporation is eligible to be treated as a member of more than one commonly controlled group of corporations, the corporation shall elect to be treated as a member of only one commonly controlled group. This election shall remain in effect unless revoked with the approval of the Franchise Tax Board.

(2) Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of subdivision (b) are not met, except as follows:

(A) When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of subdivision (b) are again met immediately after the sale, exchange, or disposition.

(B) The Franchise Tax Board may treat the commonly controlled group as remaining in place if the conditions of subdivision (b) are again met within a period not to exceed two years.

(d) A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of paragraph (4) of subdivision (b)

by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subdivision, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

(e) Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned.

(1) An individual constructively owns stock that is owned by any of the following:

(A) His or her spouse.

(B) Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of 21 years.

(C) An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.

(2) Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than 50 percent of the voting power of the corporation.

(3) Stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner.

(4) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited

partner to the extent of its capital interest in the limited partnership.

(f) For purposes of this section, each of the following shall apply:

(1) "Corporation" means a subchapter S corporation, any other incorporated entity, or any entity defined or treated as a corporation pursuant to Section 23038 or 23038.5.

(2) "Person" means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(3) "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(4) "More than 50 percent of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(5) "Stock representing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(A) For one year or less.

(B) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(g) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to, regulations that do the following:

(1) Prescribe terms and conditions relating to the election described by subdivision (c), and the revocation thereof.

(2) Disregard transfers of voting power not described by paragraph (5) of subdivision (f).

(3) Treat entities not described by paragraph (2) of subdivision (f) as a person.

(4) Treat warrants, obligations convertible into stock, options to acquire or sell stock, and similar instruments as stock.

(5) Treat holders of a beneficial interest in, or executor or trustee powers over, stock held by an estate or trust as constructively owned by the holder.

(6) Prescribe rules relating to the treatment of partnership agreements which authorize a particular partner or partners to exercise voting power of stock held by the partnership.

(h) This section shall apply to income years beginning on or after January 1, 1995.

(As amended by Ch. 1243, Laws 1994; Ch. 605, Laws 1997, applicable retroactively to income years beginning on or after January 1, 1955.)

PROPOSED DEFINITION ONE OF
DEPENDENCY/CONTRIBUTION TEST
May 3, 1999

(DISJUNCTIVE)

I. Dependency/Contribution Test for Determining Unitary Business

A. Definitions.

For the purposes of this section, the following definitions shall apply and control:

1. "Business" means a single entity or two or more entities under common ownership or control with respect to which [this State's income/franchise tax] law requires a determination of whether the activities of the entity or entities within and without this State constitute one or more unitary businesses within this State.
2. "Entity" means each type of organization that [this State's income/franchise law] recognizes as a reporting person, except such term does not include an individual or [insert other applicable exceptions].
3. "Segment" means a subdivision of an entity consisting of any grouping of business activities, functions or transactions.

B. Dependency/Contribution Test.

1. An entity or segment of a business is part of a unitary business with (i) each other entity or segment upon which it is dependent or to which it contributes; and with (ii) each other entity or segment which is dependent upon or contributes to any other entity or segment which is part of the unitary business.
2. In order to satisfy this test, the operations of the entities and segments need not be (i) interdependent or of mutual benefit to one another, (ii) nor essential or necessary to the operations of one another.

C. Facts and Circumstances; Presumptions.

The determination under paragraph B. of whether an entity or segment forms part of a unitary business with another shall be determined by the facts and circumstances of each case. It shall be presumed, subject to rebuttal, that sufficient dependency or contribution exists between entities or segments under paragraph B. to form a unitary business when one or more of the following factors are present:

1. When the principal activities of the entities or segments are in the same general line of business. Illustrations of the same general line of business, but not limitations, are manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation or finance. In determining whether two entities or segments are in the same general line of business, consideration shall be given to the nature and character of the basic operations of each entity or segment, including, but not limited to, sources of supply, goods or services produced or sold, labor force and market. Two entities or segments are in the same general line of business when their operations are sufficiently similar to reasonably conclude that the entities or segments depend upon or contribute to one another.
2. When the entities or segments are engaged in different steps of a vertically structured business. Illustrations of such different steps, but not limitations, are exploration, mining/drilling, production, refining, marketing, and/or transportation of natural resources.
3. When there exists a strong centralized management among the entities or segments. Illustrations of such management, but not limitations, are executive level policy decisions in the areas of purchasing, accounting, financing, tax compliance, legal services, human resources, health/retirement plans, product lines, capital investment, marketing and the like are determined by a central person or persons or committee and not by each entity or segment.

4. When the business segments are in the same entity.

[Note: There was support expressed to eliminate this subparagraph 4. as possibly duplicative of the other three subparagraphs, especially subparagraph 3.]

D. Illustrations.

The above principles are illustrated by the following examples:

Example 1: Corporation A has an ownership interest in Corporations B, C, and D. Corporation A is dependent upon or contributes to Corporation C. Corporation C is dependent upon or contributes to Corporation D. Corporation B does not contribute to and is not dependent upon Corporations A, C, or D. In this example, Corporations A, C, and D constitute a unitary business. This is the result even though Corporation A is not directly dependent upon and does not directly contribute to Corporation D.

Example 2: Corporation A has an ownership interest in Corporations B, C, and D. Corporation A consists of Segments A1, A2, and A3. The presumption that A1, A2, and A3 are part of a unitary business has not been successfully rebutted. Segment A1 is dependent upon or contributes to Corporation C. Corporation C is dependent upon or contributes to Corporation D. Corporation B does not contribute to and is not dependent upon Corporations A (or any of its segments), C, or D. In this example, Corporations A (including each of its segments), C, and D constitute a unitary business.

Example 3: Same as Example 2, except that the presumption that Segment A3 is part of a unitary business with the other segments of Corporation A has been successfully rebutted. Furthermore, Segment A3 does not contribute to and is not dependent upon Corporations C or D. In this example, Corporations A (including Segments A1 and A2), C, and D constitute a unitary business.

**PROPOSED DEFINITION TWO OF
DEPENDENCY/CONTRIBUTION TEST**
May 3, 1999

(CONJUNCTIVE)

I. Dependency/Contribution Test for Determining Unitary Business

A. Definitions.

For the purposes of this section, the following definitions shall apply and control:

1. "Business" means a single entity or two or more entities under common ownership or control with respect to which [this State's income/franchise tax] law requires a determination of whether the activities of the entity or entities within and without this State constitute one or more unitary businesses within this State.
2. "Entity" means each type of organization that [this State's income/franchise law] recognizes as a reporting person, except such term does not include an individual or [insert other applicable exceptions].
3. "Segment" means a subdivision of an entity consisting of any grouping of business activities, functions or transactions.

B. Dependency/Contribution Test.

1. An entity or segment is part of a unitary business with (i) each other entity or segment upon which it is dependent or to which it contributes; and with (ii) each other entity or segment which is dependent upon or contributes to any other entity or segment which is part of the unitary business.
2. In order to satisfy this test, the entities and segments must be interdependent or of mutual benefit to one another; however, the operation of any one entity or segment need not (i) contribute to or depend upon the operation of all other entities or segments; nor (ii) be

essential or necessary to the operation of any other entity or segment.

C. Facts and Circumstances; Presumptions.

The determination under paragraph B. of whether an entity or segment forms part of a unitary business with another shall be determined by the facts and circumstances of each case. It shall be presumed, subject to rebuttal, that sufficient dependency or contribution exists between entities or segments under paragraph B. to form a unitary business when one or more of the following factors are present:

1. When the principal activities of the entities or segments are in the same general line of business. Illustrations of the same general line of business, but not limitations, are manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation or finance.
 - a. In determining whether two entities or segments are in the same general line of business, consideration shall be given to the nature and character of the basic operations of each entity or segment, including, but not limited to, sources of supply, goods or services produced or sold, labor force and market.
 - b. Two entities or segments are in the same general line of business when their operations are sufficiently similar to reasonably conclude that the entities or segments are likely to depend upon or contribute to one another.
2. When the entities or segments are engaged in different steps of a vertically structured business. Illustrations of such different steps, but not limitations, are exploration, mining/drilling, production, refining, marketing, and/or transportation of natural resources.
3. When there exists a strong centralized management among the entities or segments. Illustrations of such management, but not limitations, are executive level policy decisions in the areas of purchasing, accounting, financing, tax compliance, legal services, human resources, health/retirement plans, product lines, capital

investment, marketing and the like are determined by a central person or persons or committee and not by each entity or segment.

4. When the business segments are in the same entity.

[Note: There was support expressed to eliminate this subparagraph 4. as possibly duplicative of the other three subparagraphs, especially subparagraph 3.]

D. Illustrations.

The above principles are illustrated by the following examples:

Example 1: Corporation A has an ownership interest in Corporations B, C, and D. Corporation A is dependent upon or contributes to Corporation C. Corporation C is dependent upon or contributes to Corporation D. Corporation B does not contribute to and is not dependent upon Corporations A, C, or D. In this example, Corporations A, C, and D constitute a unitary business. This is the result even though Corporation A is not directly dependent upon and does not directly contribute to Corporation D.

Example 2: Corporation A has an ownership interest in Corporations B, C, and D. Corporation A consists of Segments A1, A2, and A3. The presumption that A1, A2, and A3 are part of a unitary business has not been successfully rebutted. Segment A1 is dependent upon or contributes to Corporation C. Corporation C is dependent upon or contributes to Corporation D. Corporation B does not contribute to and is not dependent upon Corporations A (or any of its segments), C, or D. In this example, Corporations A (including each of its segments), C, and D constitute a unitary business.

Example 3: Same as Example 2, except that the presumption that Segment A3 is part of a unitary business with the other segments of Corporation A has been successfully rebutted. Furthermore, Segment A3 does not contribute to and is not dependent upon Corporations C or D. In this example, Corporations A

(including Segments A1 and A2), C, and D constitute a unitary business.