



MULTISTATE TAX COMMISSION

MEMORANDUM

To: Combined Reporting Model – Finnigan Work Group
From: Helen Hecht – MTC General Counsel
Subject: Alternative Capital Gain/Loss Treatment - Massachusetts
Date: October 14, 2019

BACKGROUND

The work group has been considering the treatment of capital gains and losses in the original and proposed model (Section 3.C.(ii)(g)).

The work group asked whether other states might have a different approach to the treatment of capital gains and losses. Massachusetts provided their rule which is set out below.

CODE OF MASSACHUSETTS REGULATIONS 830 CMR 63.32B.2, COMBINED REPORTING

... 8. Capital gains or losses and Code § 1231 gains or losses from the sale or exchange of property shall be removed from the combined group's taxable income and shall be apportioned and allocated as follows under 830 CMR 63.32B.2(6)(c)8.a. through e. The combined group's taxable income that remains shall be apportioned to the taxable members of the group without regard to such capital and Code § 1231 gains or losses. However, the removal of such gains and losses from the combined group's taxable income shall not by itself have an effect upon the apportionment factors of the group or any of its members (e.g., where a member has a capital gain resulting from the sale of property used in the combined group's unitary business, that gain shall be reflected in the apportionment computation of the group and the member, except as otherwise provided in M.G.L. c. 63, § 38 or the regulations thereunder or in 830 CMR 63.32B.2).

a. Before any netting of capital gains and losses and Code § 1231 gains and losses, the gains and losses are segregated by type (i.e. capital or Code § 1231) and then classified as apportionable or allocable, as the case may be.

b. Each taxable member's apportionable capital gains and losses and Code § 1231 gains and losses derived from the sale or exchange of property used in the combined group's unitary business (or the activities of the combined group in the case of an affiliated group election) are then aggregated and apportioned to the member using the apportionment factor applicable to such member as determined under 830 CMR 63.32B.2(7), to arrive at the member's Massachusetts gains and losses for the respective classes of income or loss.



c. The apportioned capital and Code § 1231 gains and losses referenced in 830 CMR 63.32B.2(6)(c)8.b. and, in the case where no affiliated group election has been made, any capital or Code § 1231 gains and losses that (i) are to be allocated to Massachusetts, (ii) are to be apportioned to Massachusetts based upon the apportionment factors of the taxpayer member only (i.e., because the gains or losses derive from the separate non-unitary business activity of the member), or (iii) are derived from the sale or exchange of property used in the unitary business of another combined group and have been separately apportioned under these rules as applied to that group, are then netted by each taxable member using the rules of Code §§ 1231 and 1222, without regard to any of the member's gains or losses that are to be allocated to another state.

d. Any resulting Massachusetts net capital gain or ordinary income (and any ordinary loss, in a case where the netting of Code § 1231 gains and losses produces a resulting ordinary loss) of a taxable member produced by the application of the preceding subsections shall then be added to (or, in the case of a resulting ordinary loss after netting of Code § 1231 gains and losses, subtracted from) the taxable income of that member. See 830 CMR 63.32B.2(6)(b)1. Any resulting Massachusetts capital loss shall not be offset against the member's taxable income and shall not be carried forward to subsequent years.

e. In the instance where there is a fiscalized member of the combined group, the gains and losses to be aggregated and apportioned under 830 CMR 63.32B.2(6)8.b. must first be assigned to the combined group's taxable year. See 830 CMR 63.32B.2(12)(b) and (c). After the aggregation and apportionment under 830 CMR 63.32B.2(6)(c)8.b., the resulting Massachusetts gains and losses are then adjusted to align such gains and losses to the tax year of the taxable member to which it relates.