

MAINE CORPORATE INCOME TAX

2009 FORM 1120ME

UNITARY BUSINESS COMBINED REPORTING

FORM CR

WHO MUST FILE A COMBINED REPORT (FORM CR)?

Taxable corporations that are members of an affiliated group engaged in a multi-corporate unitary business must file a combined report based on the federal taxable income of the unitary business. See MRS Rule 810. **Beginning in 2007, captive insurance companies are subject to corporate income tax and, therefore, must be included in the combined report.** Corporations that are part of a unitary business but are not required to file a federal income tax return are to be excluded from the combined report.

The combined report must indicate which corporate members have nexus with Maine, and it must include, both in the aggregate and by corporation, the federal taxable income, allowable adjustments, state modifications provided by 36 MRSA § 5200-A, and sales, payroll, and property values in Maine and everywhere.

Maine defines **affiliated group** to mean a group of two or more corporations in which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations.

Maine corporate income tax of a unitary business is determined by apportioning to Maine the gross tax of the unitary business. **Beginning in 2007, Maine utilizes a single sales factor apportionment formula.**

A UNITARY BUSINESS is one that is characterized by unity of ownership, functional integration, centralization of management, and economies of scale. The cumulative effect of these characteristics is analyzed to determine if affiliated businesses are unitary.

UNITY OF OWNERSHIP is generally demonstrated when 50% or more of the voting stock is owned directly or indirectly by a common owner or owners, either corporate or non-corporate, or by one or more of the member entities.

CENTRALIZED MANAGEMENT is indicated when directors, officers, and/or other management personnel jointly participate in management decisions that affect the respective companies. Centralized management still exists when day-to-day management responsibilities are decentralized, as long as the overall strategy of the whole group is affected centrally. Other indicators of centralized management include managing to ensure that the business segments are operated for the benefit of the entire group and not just for their own individual interest, transferring knowledge and expertise among the segments, adhering to common standards of professionalism, profitability and/or ethical practices, and transferring or rotating officers or other management employees among the business segments.

FUNCTIONAL INTEGRATION refers to transfers between, or pooling among, business segments that significantly affect the business operations of the segments. There is no specific type of functional integration that must be present. Facts suggesting the presence of functional integration should be analyzed for their cumulative effect and not in isolation. Functional integration can be illustrated by: common marketing; intercompany sales; exchanges or transfers of products, services or intangibles; common distribution systems; and common purchasing.

ECONOMIES OF SCALE exist when companies interact to achieve, or have the potential to achieve, a decrease in the cost of production or in the cost of administrative functions due to the

increase in size of the interaction. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management.

A unitary determination is made by reviewing all the business activities of an affiliated group. A **flow of value** arising from these activities is indicative of multi-corporate unity. To help you determine whether your business operates in a unitary manner, a unitary business questionnaire is available at www.maine.gov/revenue/forms. Select Corporate Income Tax under the Income/Estate Tax category.

RETURNS: Corporate members of unitary businesses may file a single combined return or separate corporate returns. A single combined return, if elected, must be filed in the name of the parent corporation if the parent is a member of the unitary business and has nexus with Maine. If there is no parent company or the parent company is not a member of the unitary business or does not have nexus with Maine, the unitary business must choose a Maine taxpayer member to file the return. Once selected, the filing member must remain the same in subsequent years unless changes in that member's ownership or nexus occur. Unitary members who have nexus with Maine may file separate returns with their income tax based on the combined report of the unitary business. A copy of the combined report (Form CR) must be attached to each of the separate returns. The apportionment factor of the unitary business is then used to compute the Maine income tax of the individual member filing a separate return.

Whether filing separately or as a group, the Maine tax liability must be calculated for all unitary members together. If filing separately, each member's tax liability is determined based on that member's share of the total liability.

The lower, preferential tax rates may be applied to a separate filer if agreed to by the entire unitary group. The remaining tax liability is then applied to the rest of the unitary group. A schedule showing the income tax assigned to each filer must be submitted with each return. Any tax credits generated by a taxable corporation engaged in the unitary business must be applied against the Maine income tax liability of that corporation only, unless otherwise permitted by law.

DIFFERING YEAR-END DATES: Members of a unitary business with differing year-end dates must file using the filing member's taxable year to determine the adjusted federal taxable income of the unitary business. If the precise amount of a unitary member's income can be readily determined from the books for the months involved in the filing member's taxable year, those actual amounts are to be used. In the absence of a precise determination, the income of a unitary member must be converted to conform to the taxable year of the filing member on the basis of the number of months falling within the applicable taxable year. For example, if the filing member operates on a calendar year and a unitary member includable in the combined report operates on a fiscal year ending on February 28th, it is necessary to assign 10/12 of that member's income from the current taxable year and 2/12 of the income from the preceding taxable year in order to arrive at a full twelve months' income to be included in the combined report (this method may be used only if the return can be timely filed after the member's taxable year ends). Alternatively, all of the income from the unitary member's taxable year ending during the taxable year of the filing member may be used.

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Whichever method for calculating adjusted federal taxable income is used, that method must be used for all years that the unitary member must file. Once the combined taxable income of the unitary business is determined on the basis of the filing member's taxable year, the apportionment factor must be computed on the basis of the same taxable year.

For more information on unitary business and combined reporting, see MRS Rule 810. Go to www.maine.gov/revenue/rules.

Taxable income under the laws of the United States of a unitary business is: (a) separate federal taxable income as defined under federal consolidated regulations for each member of a unitary business that is a member of a single federal consolidated filing; plus (b) separate federal taxable income as defined under federal consolidated regulations for members of a unitary business that are members of other federal consolidated filings; plus (c) federal taxable income from the federal returns of the unitary members that are not members of a federal consolidated group; plus (d) adjustments for certain intercompany transactions between members of the unitary business.

COMBINED REPORTING:

Corporations with taxable income under the laws of the United States that are members of an affiliated group engaged in a unitary business must file a combined report. Corporations that are members of a unitary business but are not required to file a federal return must be excluded from the combined report. This includes those corporations not required, but electing, to file a federal tax return.

"Affiliated group" means a group of two or more corporations of which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations. 36 MRSA § 5102(1-B). A "unitary business" is a business activity that is characterized by unity of ownership, functional integration, centralization of management and economies of scale. 36 MRSA § 5102(10-A).

All corporations, required to file federal returns that are part of a unitary business are required to be included in the combined report of any taxable corporation with Maine nexus, even if the affiliated corporation has no nexus with Maine.

COMBINED REPORT FOR UNITARY MEMBERS (FORM CR) INSTRUCTIONS

The combined report, when applicable, must be filed with Form 1120ME or Form 1120X-ME. This report must be accompanied by an affiliation schedule (federal Form 851 for consolidated filers is acceptable) listing name, federal ID number and corporate activity of all members of the affiliated group, both unitary and non-unitary members.

A. PURPOSE OF FORM:

NOTE: Only unitary business group members are to be included on this form. Affiliated non-unitary members are not to be included on Form CR.

Form CR is used to calculate the "taxable income under the laws of the United States" (36 MRSA § 5102(8)) of a unitary business. Taxable income under the laws of the United States of a unitary business is: (a) separate federal taxable income as defined under federal consolidated regulations for each member of a unitary business that is a member of a single federal consolidated filing; plus (b) separate federal taxable income as defined under federal consolidated regulations for members of a unitary business that are members of other federal consolidated filings; plus (c) federal taxable income from the federal returns of the unitary members that are not members of a federal consolidated group; plus (d) adjustments for certain intercompany transactions between members of the unitary business.

B. COMBINED REPORTING:

Corporations with taxable income under the laws of the United States that are members of an affiliated group engaged in a unitary business must file a combined report. Corporations that are members of a unitary business but are not required to file a federal return must be excluded from the combined report. This includes those corporations not required, but electing, to file a federal tax return.

"Affiliated group" means a group of two or more corporations of which more than 50% of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations. 36 MRSA § 5102(1-B). A "unitary business"

is a business activity that is characterized by unity of ownership, functional integration, centralization of management and economies of scale. 36 MRSA § 5102(10-A).

All corporations required to file federal returns that are part of a unitary business are required to be included in the combined report of any taxable corporation with Maine nexus, even if the affiliated corporation has no nexus with Maine.

C. COLUMN INSTRUCTIONS:

Column 1. Place a check mark in this column for corporations listed in column 2 that have nexus with Maine.

Column 2. Enter the name and federal identification number of each member of the unitary business. Indicate whether the corporation is a REIT or 936 corporation.

Column 3. Enter the separate federal taxable income under U. S. Treasury Regulation § 1.1502 of each member listed in column 2 that was part of a federal consolidated return (member's share of Form 1120, line 28). This information can be obtained from the supporting statement filed with federal Form 1120 for consolidated returns. **Attach a copy of the supporting statement from the consolidated return.**

Column 4. Enter the federal taxable income of each corporation listed in column 2 that filed a separate federal return (Form 1120, line 28 or equivalent income from other federally filed return). Entries in column 4 relate to member corporations of the unitary business that were not included in a federal consolidated return.

Each corporation on this report should have an amount entered in either column 3 or column 4, but not both.

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COMBINED REPORT FOR UNITARY MEMBERS (FORM CR) INSTRUCTIONS - continued

Column 5. Enter any adjustments for eliminations, deferrals and other modifications allowed under federal law and regulations not yet taken in column 3. Include any intercompany transactions between corporations listed on this report if those transactions resulted in gains or losses. For transactions between unitary business members not part of the same consolidated filing, enter adjustments allowed under MRS Rule 810.03(D). **Attach a worksheet that details adjustments claimed in column 5.**

Column 6. Combine columns 3, 4 and 5. This is the adjusted separate income of each member of the unitary business group.

Column 7, A. State subtraction modifications. Enter the share of state subtraction modifications applicable to the unitary member on the corresponding line. If a single return is filed for the entire group, the total for all unitary members must agree with Form 1120ME, line 2k. Attach a supporting schedule.

Column 7, B. State addition modifications. Enter the share of state addition modifications applicable to the unitary member on the corresponding line. If a single return is filed for the entire group, the total for all unitary members must agree with Form 1120 ME, line 4h. Attach a supporting schedule.

Column 8. Enter in columns A and B each corporation's share of Maine sales of the unitary business. The total of column 8(A) should be carried over from line 17 to Form 1120ME, Schedule A. If a single return is filed for the entire group, the amounts listed on the total line of column 8(A) must agree with those entered on line 12, Column (A) of Schedule A, Form 1120ME.

Column 9. Enter in column 9 each corporation's share of sales of the unitary business. For tax years beginning after 2008, exclude sales of tangible personal property into a state where the taxpayer is not taxable. Enter the total of column 9, line 17 onto Form 1120ME, Schedule A. If a single return is filed for the entire group, the amounts listed on the total line of column 9 must agree with that entered on line 12, Column (B) of Schedule A, Form 1120ME.

D. LINE INSTRUCTIONS:

Line 16. To the extent not already eliminated, remove all intercompany transactions. These eliminations are for page 2, columns 7-8 only. Attach a worksheet that details any adjustment claimed on this line.

Line 17. Enter the total for each of columns 3 through 8.

Line 18. Enter allowable special deductions for the unitary business (from federal Form 1120, line 29b). These deductions must be aggregated and adjusted, if necessary, in a manner consistent with federal consolidated filing requirements.

Line 19. Enter the allowable NOL deductions for the unitary business. *See* MRS Rule 810.09 (allocation and uses of net operating losses).

Line 20. Enter the total from column 6 minus the deductions on lines 18 and 19. If filing a single return, enter on this line and on Form 1120ME, page 1, line 1. This is the taxable income under the laws of the United States of the unitary business.

See MRS Rule 810 for more information.