

# Combined or Consolidated Returns

Section 77 of the Single Business Tax Act (MCL 208.77) controls the filing of combined or consolidated returns.

1. "The commissioner may require or permit filing of a consolidated or combined return..."
2. "...by an affiliated group of corporations..."
  - a. Section 3(1) of the Single Business Tax Act defines affiliated group as "2 or more corporations, one of which owns or controls, directly or indirectly, 80% or more of the capital stock with voting rights of the other corporation or corporation.
3. "...which are Michigan taxpayers..."
4. "...if all of the following conditions exist."
  - a. "All member of the affiliated group are Michigan taxpayers."
  - b. "Each member of the affiliated group maintains a relationship with one or more members of the group which includes inter-corporate transactions of a substantial nature other than control, ownership, or financing arrangements, or any combinations thereof."
  - c. "The business activities of each member of the affiliated group are subject to apportionment by a specific apportionment formula contained in this act which specific formula also is applicable to all other members of the affiliated group, and would be so applicable to each member even if it were not a member of the affiliated group."

## Commissioner's Authority

The Commissioner of Revenue has broad discretion regarding whether to allow or require a group of corporate taxpayers to file consolidated returns (MCL 208.77). To do so, the Commissioner must determine that the corporations are an affiliated group as defined in MCL 208.3(1) and meet the consolidated or combined return filing requirements as specified in MCL 208.77.

The Commissioner of Revenue may require an affiliated group of corporations filing consolidated or combined returns to selectively include or not include each and every member of the affiliated group in the return (MCL 208.77). The Commissioner may require this treatment if it is determined that such a consolidated or combined return is necessary to maintain a consistent treatment of tax deductions and recapture amounts or other tax benefits. A consolidated or combined return that does not or will not fairly represent the extent of the group's business activities in this State will not be permitted or required. Alternatively, the Commissioner may require appropriate adjustments on separate returns that are filed by the taxpayers when they are no longer eligible to file consolidated or combined returns or request separate filing status.

Pursuant to the discretion granted the Commissioner regarding consolidated reporting, permission will be granted to file in this manner prospectively only. A request to file a consolidated or combined return must be received by the Commissioner prior to the date set for filing the annual single business tax return (or the extended due date). Late requests shall be denied.

### **Affiliated Group Definition**

An affiliated group "means two or more corporations, one of which owns or controls, directly or indirectly, 80% or more of the outstanding capital stock with voting rights of the other corporation or corporations." (MCL 208.3(1))

### **Consolidated or Combined Return Filing Requirements**

Corporations may be included in a consolidated or combined return for single business tax purposes if during the consolidated year each corporation meets all of the following conditions:

1. The parent corporation must be a member of the consolidated group, and
2. Each member must be subject to single business tax, and
3. Each member must maintain a relationship with one or more members of the group which includes inter-corporate transactions of a substantial nature, and
4. Each member must be subject to apportionment by the same specific apportionment formula. (MCL 208.45, 57, 58, 62, and 65) The formula is the one that would be applicable to every member as if it were filing a separate return and would be subject to apportionment.

### **Substantial Inter-corporate Transactions**

Substantial inter-corporate transactions are qualified transactions between a "selling member" and a "purchasing member" of the affiliated group.

Inter-corporate transactions are transactions giving rise to a business activity as defined in the Single Business Tax Act and connected directly with the business conducted by the members. Inter-corporate transactions must be substantial in nature as such transactions relate to the total business activity of the member. The Department has established the following criteria for determining whether a member corporation has substantial inter-corporate transactions:

1. A selling member has substantial inter-corporate transactions if the receipts from such transactions comprise at least 10% of that selling member's total receipts from activities, excluding the transactions discussed under paragraph c (following). If such receipts comprise less than 10% of the selling member's total receipts, then the affiliated group must demonstrate that the inter-corporate transactions are a substantial nature.
2. A purchasing member has substantial inter-corporate transactions if the cost of such transactions comprise at least 10% of such purchasing member's total cost of operations. Cost of operations is defined as cost of goods sold plus other ordinary business deductions, excluding costs relating to function described in paragraph c (following). If the cost of such transactions comprise less than 10% of the purchasing member's total cost of operations, then the affiliated group must demonstrate that the inter-corporate transactions are of a substantial nature.

3. Inter-corporate transactions of the following nature shall not be considered business activity:
  - a. Functions of control involving accounting, legal matters and personnel matters.
  - b. Functions of ownership involving distribution of a member's capital stock, dividends and liquidations.
  - c. Functions of financing involving loans, bonds, notes and other indebtedness which are obligations of any other member.

### **Permission to File Consolidated or Combined Returns**

An affiliated group requesting permission for consolidated or combined filing must do so on SINGLE BUSINESS TAX Form C-8007. The request must provide the information indicated below for the taxable year that the request is being submitted:

1. The names, addresses, account numbers and business activities of every member.
2. The apportionment formula provision (MCL 208.45, 57, 58, 63 or 65) that is applicable to each member whether or not such activity is taxable with the State of Michigan.
3. A complete description of all inter-corporate transactions:
  - a. Total dollar amount of such transactions by each selling number, and
  - b. Total amount of receipts for such selling member, and
  - c. Total dollar amount of such transactions by each purchasing member, and
  - d. Total cost of operations for such purchasing member, and
  - e. The identity of each member purchasing from other member.
4. A list of all members in the federal affiliated group indicating those members having nexus in Michigan.
  - a. Any additional information necessary to enable the Commission to determine the adjusted tax base of each member separately.

### **Method of Computing Tax**

An affiliated group approved for this method of reporting computes tax on a consolidated or combined basis and reports such tax on a single Form C-8000. The following are specific requirements for reporting purposes:

1. Business income is federal consolidated taxable income as determined under IRS Regulation 1.1502.11, whether or not a consolidated federal income tax return is filed, and predetermined as if the only members for federal consolidation were the eligible member corporations for Single Business Tax filing.
2. Gross receipts is computed as though the eligible member corporations were one corporation. Receipts from inter-company transactions between eligible members that are deferred in arriving at federal consolidated taxable income subparagraph 1 are eliminated.
3. Additions, except compensation, and subtractions to arrive at tax base are made to the extent such items are included, excluded or deducted in arriving at federal consolidated taxable income in subparagraph 1.
4. The apportionment formula is computed as though the eligible member corporations were filing as one corporation. Inter-corporate receipts eliminated in subparagraph 2, are eliminated to arrive at the sales factor. The cost of rentals, which are the result of the inter-corporate transactions eliminated in subparagraph 2, are not included in the property factor of the lessee. Except, the allocation of

sales to arrive at the sales numerator is made as though each corporation is filing a separate return. The numerator and denominator of each factor and for each eligible member corporation are added to arrive at a combined numerator and a combined denominator for each factor.

5. Capital acquisition deduction and recapture of capital acquisition deduction are computed as though the eligible member corporations were filing as one corporation. The combined property and payroll apportionment factors are used to apportion the capital acquisition deductions on tangible personal property other than Section 1250 property. Except, any transfers, sale or exchange of properties (acquired during a member's separate taxable year) between eligible members are treated as though the selling member is filing separate returns and its separate apportionment formula is used to determine the recapture of capital acquisition deduction. The capital acquisition deduction for such acquisition is computed as though the eligible members were filing as one corporation.
6. Business loss deduction and statutory exemption, and section 31 reductions are computed as though the eligible member corporations were filing as one corporation. Except, a business loss carryover from a member's separate return limitation year (SRLY as defined in IRS regulation 1.1502-(d) (f)) is limited to that member's allocated or apportioned tax base after capital acquisition deduction, net of recapture of capital acquisition deduction, and computed as though such member were filing separate returns.
7. Small business credit is determined as though the eligible member corporations were filing as one corporation. Except, the shareholder and officer disqualifier (\$60,000.00) is computed on a separate return basis.
8. The college, library and public broadcasting credit is computed as though the eligible member corporations were filing as one corporation.

## **Tax Liability**

Where the tax is computed on the basis of consolidated or combined reporting, the Department may assess the entire amount of the tax and all additional taxes, penalty and interest computed on the basis of such consolidated or combined reporting against any one or more of the taxpayer's covered by a return, in such proportions as it determines, but every taxpayer included in the consolidated or combined return is liable for the entire amount.

## **Accounting Period**

All corporations included in the consolidated or combined return must use the same accounting period.

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