

**Vermont Department of Taxes
TECHNICAL BULLETIN**

TAX: CORPORATE INCOME TAX TB - 36

ISSUED: March 16, 2007

**SUBJECT: INTERCOMPANY TRANSACTIONS IN UNITARY COMBINED GROUP
 RETURNS**

REFERENCES: Tax Department Reg. § 1.5862(d)-7(e)(5), 26 CFR 1.1502-13

Act 152 of the 2004 General Assembly amended the Vermont corporate income tax to require the filing of a unitary combined return for taxable years beginning on or after January 1, 2006. This bulletin provides basic information with respect to: (1) how transactions between members of a unitary combined group are treated for purposes of determining the taxable business income of the unitary combined group; and (2) how transactions between members of a unitary combined group are treated for purposes of determining the Vermont apportionment percentage of the unitary combined group.

(1) Determining Taxable Business Income of a Unitary Combined Group

In general, for purposes of determining the taxable business income of the unitary combined group, transactions between members of the same unitary combined group (“intercompany transactions”) are deferred in a manner similar to 26 CFR 1.1502-13. *See* Department Reg. § 1.5862(d)-7(e)(5). The purpose of this general deferral rule is to clearly reflect the taxable income (and tax liability) of the combined group as a whole by preventing intercompany transactions from creating, accelerating, avoiding or deferring combined taxable income (or combined tax liability). In effect, this general deferral rule treats transactions between members of a unitary group as though they were transactions between divisions of a single corporation.

“Intercompany transaction” means a transaction between corporations which are members of the same combined reporting group immediately after the transaction, and includes, but is not limited to a sale of property, performance of services, licensing of technology, rental of property, lending of money, and distributions with respect to stock.

Items of income, gain, deduction or loss subject to this general deferral rule are taken into account for purposes of determining the taxable business income of the unitary combined group when the subject of the deferred intercompany transaction is the subject of a later transaction between a member of the unitary combined group and a nonmember of the group.

For example, gain or loss resulting from the sale of depreciable property between members of a unitary combined group in a tax year is deferred so that the group does not include gain or loss with respect to the transaction in the taxable business income of the group. Further, the transaction does not result in a change to the depreciation of the asset reported by the group. When the buying member subsequently sells the asset to a nonmember, the unitary combined

group reports the gain at that time, which includes the gain recognized by the selling member and any gain deferred attributable to the original intercompany transaction.

Exceptions to application of the principles and methods of the federal regulation will arise due to differences between the composition of the federal consolidated group and the combined reporting group, the requirements of Vermont’s allocation and apportionment provisions, jurisdictional limitations, and treatment of members of a combined reporting group as separate entities for many purposes of Vermont’s corporate income tax statutes.

(2) Determining the Vermont Apportionment Percentage of the Unitary Combined Group

For purposes of determining the Vermont apportionment percentage of the unitary combined group, transactions between members of the same unitary combined group (“intercompany transactions”) are generally deferred in a manner similar to 26 CFR 1.1502-13. *See* Department Reg. § 1.5862(d)-7(e)(5). The principles governing application of this general deferral rule are similar to those described above for determining the taxable business income of the unitary combined group.

Accordingly, items of income, gain, deduction or loss attributable to any intercompany transaction are not taken into account for purposes of determining the Vermont apportionment percentage of the unitary combined group until the subject of such intercompany transaction becomes the subject of a later transaction between a member of the unitary combined group and a nonmember of the group.

For example, the proceeds from the sale of depreciable property in the example above are not included in either the numerator or the denominator of the sales factor. When the buying member subsequently sells the asset to a nonmember, and the unitary combined group reports the gain at that time, then the proceeds realized by the selling member shall be taken into account for purposes of the sales factor.

Molly Bachman
General Counsel

Date

Approved:

Tom Pelham
Commissioner of Taxes

Date