2010 COMBINED REPORT FOR UNITARY GROUP & UNITARY AFFILIATE SCHEDULE INSTRUCTIONS

Forms CO-411-U & CO-421

General Information

Beginning in 2006, taxable corporations which are part of an affiliated group engaging in unitary business are required to file combined returns, reporting the combined net income of the group. Starting with tax year 2008, such groups are required to file **Form CO-411-U** and associated schedules instead of Form CO-411.

Group Composition In general, "affiliated group" means a group of two or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations. "Unitary business" means one or more related business organizations engaged in business activity both within and without the state among which there exists a unity of ownership, operation, and use; or an interdependence of their functions.

For detailed information about the composition of the unitary group, please review Reg. §1.5862(d) - 4-6.

Principal VT Corporation The group must designate a Principal VT Corporation (PVC), which will be responsible for preparing all returns and making payments. The PVC is the parent corporation if the parent has nexus in Vermont. If the parent is not taxable in VT or there is no parent, the taxpayer designates the PVC, which is the group member that is subject to VT corporate income tax and has the greatest amount of business activity in VT. The PVC should be the same corporation from year to year, and should not be changed based on moderate fluctuations in business activity within the group. For further details about the PVC, please review section 10 of the Unitary regulation.

Determination of Tax VT income and tax are determined on a separate company basis for each taxable member of the group. The combined group's tax liability is the sum of the separate taxpayer-affiliates' liabilities. Each VT-nexus-member of the group applies its apportionment factor to the combined net income of the entire group. The apportionment is determined with Form BA-402, using the separate company's VT factors as numerator, and the entire group's factors as the denominator. Other items such as allocated income, credits, and net operating losses are accounted for on a separate company basis.

Federal Consolidated Group For Unitary Groups which include members of a federal consolidated group, the provisions of 32 V.S.A. §5862(c) remain intact, but underneath the umbrella of 5862(d). That is, separate companies that are part of a federal consolidated group must file within the combined report if they meet the unitary definition. **But within the combined report, the VT-nexus members of the federal consolidated group may elect to be treated as a consolidated filer, i.e. a single taxpayer.**

If this election is made, the VT consolidated group is treated as a single taxpayer within the group, and provides only one each of Form CO-421 (Unitary Affiliate Schedule) and Form BA-402 (Apportionment and Allocation schedule). Income will be summed and taxed as though the VT-nexus members of the consolidated group are one taxpayer. If the consolidated taxpayer is in a minimum tax position, the $250 is assessed one time, not once for each nexus member of the group. Each member of the consolidated group still must provide its separate apportionment, income, and tax calculations on a spreadsheet attached to Form CO-411-U.

The election to be treated as a consolidated taxpayer for Vermont is binding.

Additional Resources

(Available at the "Publications" and "Forms" section of our website: *http://tax.vermont.gov*)

- **Regulation §1.5862(d)** Unitary Combined Reporting
- **Regulation §1.5833-1** Allocation and Apportionment of Income
- **VT Technical Bulletin 35** (TB-35) Net operating losses
- **VT Technical Bulletin 36** (TB-36) Intercompany transactions in unitary group returns.
- **VT Technical Bulletin 40** (TB-40) Conversion to Initial VT Net Operating Loss
- **Excel Spreadsheet and Instructions** to assist unitary filers in understanding VT's unitary methodology. Available at the Corporate Tax section of our website: *http://www.state.vt.us/tax/majorvttaxescorporate.shtml*. This spreadsheet was created prior to the development of Form CO-411-U. The calculation therein is mimicked by the CO-411-U, CO-421, and BA-402. Vermont law, regulation, and policy regarding Unitary taxation have not changed since 2006.
- **Form CO-411 (Corporate Income Tax Return) and Instructions** explains filing requirements, due dates, extensions, estimated payments, interest and penalties, and amendments. These requirements are generally the same for unitary groups as for stand-alone corporations.

Forms and Information Required to be Filed

Form CO-411-U Combined Report for Unitary Group One form required for the group, to report combined group income, combined tax due, and combined payments and balance due. The CO-411-U and all schedules and attachments must be filed by the **Principal Vermont Corporation**.

Form CO-421 Unitary Affiliate Schedule required of **each** taxpayer affiliate to determine the separate VT tax of each group member. (Only one Form CO-421 and Form BA-402 is required for members of the group that have elected to be treated as a consolidated filer.) Separate attributes, such as apportionment of group income, credits and incentives, net operating loss deductions, and allocated non-business income are accounted for on this form. The amount of tax due for each affiliate carries through to the Form CO-411-U.

Form BA-402 Apportionment and Allocation Schedule required of **each** taxpayer-affiliate to apportion group's income to VT. Apportionment percentage carries through to Form CO-421.

Form BA-410 Affiliation Schedule to identify all members and VT-nexus members of the affiliated group.

Summary Spreadsheet If the consolidated election is made, provide on 8.5" x 11" paper (multiple pages if necessary) a printed copy of the unitary tax calculation in spreadsheet format comparable to that referenced above, in the "Additional Resources" section. Include a column for each VT-nexus member included in the VT consolidated group. Non-nexus members may be combined into a single column, labeled accordingly.

Form CO-419 Apportionment of Foreign Dividends Required by unitary-combined filers (if applicable) to determine the amount of apportioned foreign dividends taxable to the State of VT.

Form CO-420 Foreign Dividend Factor Increments Required by unitary-combined filers (if applicable) to determine the incremental factors of Foreign Dividends to Sales and Receipts, Salaries and Wages, and Property.

Federal Information For all taxable members of the group, provide the following: the first five pages of the federal 1120 (or other return filed); Federal Form 4562 as filed and pro-forma, if any members of the group have taken "bonus" depreciation; copies of federal statements regarding other income and deductions, net operating loss, and taxes and licenses.

NOTE: Corporations are no longer required to file a complete copy of the *entire* federal income tax return.

Form CO-411-U Instructions – Combined Report

Please do not staple or bind the return together. If anything, wrap it in a rubber band, or use a paper clip or binder clip.

Please print clearly in blue or black ink if not using a computer generated form.

Header Information All fields are required

Name and Address Complete the information for the PVC of the affiliated group.

Place an "X" in the appropriate boxes below the address to indicate if:

- The name or address has changed since the last return has been filed (we may not have updated information provided on an extension or estimated payment)
- The address is located outside the United States
- You do not require us to send a blank form next year

Box A Check all that apply.

If return is extended and you did not file Form BA-403 (Request for Extension) on time, provide a copy of the federal request for extension.

Checking "Final Return" means you have ceased doing business in VT and your corporate income tax account will be closed.

Box B Federal Employer Identification Number (FEIN) – Provide the account number for the PVC.

Box C Provide the total number of companies in the Water's Edge group (see sections 4 and 5 of the Unitary regulation)

For "Number with VT Nexus", provide the number of taxpayer affiliates in the group tax calculation. Include the PVC as one. If multiple companies are electing to be taxed as a single consolidated taxpayer (described in "*General Information*", above) count this group as 1 affiliate.

The return should include the same number of Forms CO-421 and BA-402 as the number of nexus taxpayer affiliates indicated here.

Box D Provide the group's primary NAICS (North American Industrial Classification System) code. See *www.census.gov/naics* if you do not know your company's code.

Line-by-Line Instructions

All entries should represent the combined amounts for all members of the Water's Edge group. A breakdown should be detailed in the required **Summary Spreadsheet**, described above.

Place an "X" in the box to the left of the amount to indicate a negative number.

Report in whole dollar amounts.

Line 1 Federal Taxable Income is the group's combined net income or loss as reported to the federal government for all companies in the water's edge combined group. This number is current year income or loss, and does not include any deduction for net operating loss (Federal Form 1120, Line 29a). (For tax years beginning January 1, 2007 and later, VT is decoupled from federal NOL and has created its own VT Net Operating Loss. This will be accounted for on a separate company basis on Form(s) CO-421.)

Line 2 Bonus Depreciation Adjustment VT does not recognize the special "bonus" depreciation provision of the *Federal Jobs Creation and Worker Assistant Act of 2002*, the *Federal Jobs and Growth Tax Relief Reconciliation Act of 2003*, the *Economic Stimulus Act of 2008*, or the 2009 extension for certain transportation and aircraft property {IRC 168(k)}. If taken in the current or in prior years, the Federal taxable income must be recomputed without the 30% or 50% special "bonus" depreciation. Report the net adjustment from federal income to VT income as a result of disallowing bonus depreciation. Report an increase in income as a positive number, and a decrease as a negative number.

Provide a detailed schedule showing the recomputed depreciation amounts for each affiliate company.

Line 3 Add Lines 1 and 2 to arrive at the group's federal taxable income, as adjusted to disallow bonus depreciation.

Line 4 VT Adjustments to Taxable Income

Add:

Line 4(a) Enter the amount of **interest** received from non-VT **state and local obligations** that were exempted from Federal tax (e.g., Municipal Bonds).

Line 4(b) Enter the amount of **state and local tax deductions** taken on the Federal return(s). State and local income taxes are taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business, and capital stock taxes. These are deductible for federal income tax, but taxable in Vermont. **Attach a statement showing a detail of the taxes claimed as deductions on the Federal return(s).**

Subtract:

Line 4(c) Enter the amount of **interest** received from **U.S. Government obligations** included on the Federal return(s).

Line 4(d) Enter the total amounts of **IRC Section 78 "gross up" foreign dividends** and other income included on Federal Form 1120, Line 28 which is excludable from state taxation. (Attach Federal Form 1118 to support "gross up" amounts as well as any appropriate schedules.)

Line 4(e) Enter the **wage expense** associated with work opportunity credit disallowed on the Federal return by IRC Section 280C(a).

NOTE: **Allocated Income:** Also enter on Line 4(e) the amount of **non-business income and foreign dividends allocated "Everywhere."** This should match the amounts on Form BA-402 (Apportionment Schedule), Lines 1a and 1c. Allocated income will be subtracted from net income to arrive at apportionable income. If there is a value for Line 4(e), please provide a statement or explanation of the amount. If allocated income is a negative number (which would increase apportionable income), include the amount on Line 4a, and provide a statement.

Line 5 Net Apportionable Income Total of Line 3 plus Lines 4(a) and 4(b) minus Lines 4(c), 4(d) and 4(e). Carry this amount to Line 2 of all Unitary Affiliate Schedules (Forms CO-421) filed with this report.

Line 6 Total Tax Due is the sum of the amounts on Line 11 for all Forms CO-421, Unitary Affiliate Schedule, filed with this report.

Complete the Unitary Affiliate Schedule, Form CO-421, for each affiliated group member that is subject to VT corporate income tax. **If multiple corporations filing as part of a federal consolidated group have elected to file a VT consolidated return under 32 V.S.A. §5862(c), complete one Form CO-421 for the consolidated VT taxpayer. The VT group includes only the members of the federal consolidated group that have nexus in VT.** Provide information for the separate companies in the consolidated group in the "Summary Spreadsheet" described in the "Additional Resources" section. The $250 minimum tax is due once for the single consolidated taxpayer, not once for each VT-nexus member.

If no member of the group had nexus, presence, income, or expenses in Vermont during the tax period, check the "No Vermont Activity" box at the bottom of the CO-411-U. The minimum tax of $250 will not be assessed.

Line 7 Payments Enter the amounts for the four line items.

- Estimated Payments – Total paid by the corporation for this tax year
- Payment with Extension – Any payment made with extension request
- Nonresident Estimated Payment - Enter the amount of estimated payments made on behalf of this company by pass-through business (S-Corp, Partnership, or LLC) that this corporation is a shareholder, partner, or member of. Payments would have been made by the pass-through business using Form WH-435.
- Real Estate Withholding - Enter the amount of real estate withholding (REW) from Form RW-171, Schedule A. REW would have been paid on your behalf by the buyer of VT real estate that you sold.

NOTE: If any payments were made by an entity other than the PVC on behalf of this unitary group, provide a statement identifying amount and type of payment(s), and the payor's name and FEIN.

Line 7a Enter the sum of payments from the four lines above. If payments were made by multiple corporations or parties, provide a statement to indicate the source(s) and amounts.

Line 7b Enter the amount of overpayment to be applied from the previous tax year.

Line 7c Add Lines 7a. and 7b. This is the total amount of payments available to apply against VT Corporate income tax.

Line 8 If Line 6 (Tax Due) is greater than Line 7c, the difference is the balance due. Make checks payable to the ***VT Department of Taxes***. If payment is late, interest and penalty will be assessed.

Lines 9, 10, & 11 If Line 7c. is greater than Line 6, the difference is the amount of overpayment. The Department of Taxes will either apply the overpayment as a carry-forward to next year's corporate income tax liability, or refund the amount to you. We can split the overpayment to refund part and carry forward part. Complete Lines 10 and 11 (Overpayment to Apply and Overpayment to Refund, respectively), making sure that Line 10 plus Line 11 equals Line 9 (the total overpayment).

Form BA-410 Instructions – Affiliation Schedule

Please print clearly in blue or black ink only.

The Affiliation Schedule is required with all Corporate consolidated returns and combined reports (ref. 32 V.S.A. §5862(c) and (d)). It identifies the parent or PVC and all subsidiaries or affiliates. Complete Form BA-410 and attach it to the Form CO-411 or Form CO-411-U, as appropriate.

PVC or Parent Information - Identify the PVC (if Combined Report) or VT Consolidated Parent (if consolidated return) and its federal employer identification number (FEIN) at the top of the page.

Affiliates/Subsidiaries - For each affiliate/subsidiary, complete all information. There is space for 3 affiliates on each side. Use additional forms if necessary.

Enter the corporation's name, address, and FEIN

For Unitary/Combined taxpayers (Form CO-411-U) Only:

- **Affiliate's Group Type** - If a combined report is being filed, check one (and only one) of the three boxes indicating the affiliate's status. Review Regulation §1.5862(d) for specific descriptions of included and excluded corporations.
- **Consolidated** - If the affiliate-taxpayer is not a separate corporation, but rather multiple members of a consolidated group electing to be treated as a single taxpayer, include only one entry for the VT parent of the consolidated group. Check the "Consolidated" box. Include a statement identifying all members of the group by name, address, and FEIN.
- **Nexus** - Check the "VT Nexus" box for each affiliate that has presence in VT.
- As part of the Form CO-411-U filing, you must include Forms CO-421 and BA-402 for the PVC and each affiliate indicated as a "Water's Edge Combined Group Member" with VT Nexus. The number of such affiliates on Form BA-410 should be one less than the number indicated in Box C, Form CO-411-U. (The 1 extra company is the PVC).

For VT Consolidated Groups that are not required to file Unitary/Combined Reports:

Please review Regulation §1.5862(d) carefully. In most cases, consolidated groups are required to file combined reports. If you are a consolidated group but do not meet the unitary definition, complete the boxes as follows:

- Affiliate's Group Type – leave all three boxes blank.
- Consolidated – Check this box.
- Check the "VT Nexus" box for each affiliate that has presence in VT.

For Large Groups:

In order to limit the number of pages included with the return, for large groups (more than 60 affiliates), information for non-nexus members may be provided on an additional statement. All information required on Form BA-410 must be provided.

All VT-Nexus members (regardless of how many) MUST be included on the Form BA-410.

Form CO-421 Instructions – Unitary Affiliate Schedule

Please print clearly in blue or black ink only.

General Information

Prepare a Form CO-421 for each VT-nexus, taxpaying affiliate of the unitary group, including the Principal VT Corporation (PVC).

If VT-nexus members of a federal consolidated group are electing to be treated as a single consolidated taxpayer within the VT unitary group (32 V.S.A. §5862(c)), prepare a single Form CO-421 for the group. (This election is binding until written permission is received from the Commissioner to calculate Unitary tax on a separate-affiliate basis.) Provide a statement identifying name and FEIN of all corporations included in the group. On the "Summary Spreadsheet" described in the Form CO-411-U instructions, list each member of the consolidated group filing separately.

Header Information

Principal VT Corporation Provide the name and FEIN of the Principal VT Corporation (PVC).

Affiliate Provide the name and FEIN of the affiliate for whom this Form CO-421 is being prepared. If it is for the PVC, repeat the information from above.

NAICS Code Enter the primary North American Industrial Classification System number. See *www.census.gov/naics* if you do not know your company's code.

Consolidated Check the box if this Form CO-421 is being provided **for multiple VT members of a federal consolidated group, as described above.**

First prepare Form BA-402, Apportionment and Allocation Schedule, for the Affiliate. Identify the PVC and the Affiliate name and FEIN at the top of the form. If this Form BA-402 is being prepared for the PVC, put the PVC's information in both sets of boxes. Separate instructions are provided for Form BA-402. Be sure to report the VT factors for the taxpayer in the "Vermont" column, and the combined everywhere factors for **all members** of the water's edge combined group in the "Everywhere" column. The "Everywhere" factors should be the same for every affiliate in the unitary group. The factors cannot be less than 0.

Line-by-Line Instructions

Line 1 Apportionment Percentage Enter the VT apportionment percentage from Line 22 of the Form BA-402 prepared for this affiliate.

Line 2 Group Apportionable Income Enter the amount from Form CO-411-U, Line 5.

Line 3 Apportioned Income Multiply Line 1 times Line 2.

Line 4 Allocated Income Enter the amount from Line 1b of the Form BA-402 prepared for this affiliate.

Line 5 Foreign Dividends Enter the amount from Line 1d of the Form BA-402 prepared for this affiliate.

Line 6 Net VT Income Add Lines 3, 4 and 5.

Line 7 VT Net Operating Loss (VNOL) applied Enter any deduction taken for a VT net operating loss (VNOL). VNOL is tracked and applied on a separate affiliate basis. It would have been incurred as a negative amount after apportionment and allocation of VT income in 2007 or 2008, or may have been converted from available pre-2007 NOLs into an "Initial VNOL" in 2007. For tracking, VNOL must be applied on a first-in first-out basis. Any converted Initial VNOL must be used first.

Provide a schedule detailing the origin of the VNOL. If VNOL used or carried over includes any Initial VNOL converted from remaining pre-2007 NOL, provide a copy of the conversion worksheet from the 2007 return, updating for amounts used. See Technical Bulletins 35 and 40, available at the Tax Department website, for additional details.

Line 7 cannot be greater than Line 6; VNOL cannot reduce VT Net Taxable Income below 0.

Line 8 VT Net Taxable Income Subtract Line 7 from Line 6. If Line 8 is negative you have incurred a Vermont Net Operating Loss (VNOL), available to carry forward to offset Vermont net taxable income of this affiliate for up to 10 years. Include a statement/schedule to track the availability of the VNOL. The schedule must detail loss years, utilization years, expiration years, and available carryover.

Line 9 Tax Apply VT corporate income tax rates to the amount on Line 8.

Line 10 Credits Report any VT income tax credits here. Generally, credits may not reduce tax by more than 80% of the liability, and cannot reduce tax liability below the minimum tax of $250. Complete and attach Form BA-404. Provide all documentation required by the guidelines of the tax credit program in which you are participating. If the credit program does not have its own forms and documentation, provide a statement and calculation schedule to demonstrate the origin of the credit.

Line 11 Tax Due for this affiliate Subtract Line 10 from Line 9. Minimum tax for each affiliate is $250. Add the amounts from Line 11 for all affiliates to arrive at total tax due for the combined group. Enter the total on Form CO-411-U, Line 6.

If no member of the group had nexus, presence, income, or expenses in Vermont during the tax period, check the "No Vermont Activity" box at the bottom of the CO-411-U. The minimum tax of $250 will not be assessed.

Contacting the Department

Appeals:

Vermont Department of Taxes
PO Box 1645
Montpelier, VT 05601-1645

Tax Returns and Correspondence:

Vermont Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Taxpayer Services: (802) 828-5723
E-mail Address:
tax-corpincome@state.vt.us
Website Address: *http://tax.vermont.gov*
Fax: (802) 828-5787
Forms: (802) 828-2515

2010 VERMONT NONPROFIT INCOME TAX RETURN INSTRUCTIONS

Starting in tax year 2010, nonprofit organizations with unrelated business income in Vermont are required to complete CO-411 and include a copy of their federal return.

Who must file? A nonprofit organization that carried out business in Vermont in 2010 and had unrelated business income of greater than $1,000 is required to complete the Vermont Corporate Income Tax Return. If your nonprofit has affiliates that engaged in your unrelated business income, you will need to fill out CO-411U and follow the instructions for the use of that form. If you have no affiliates engaged in unrelated business activities, complete CO-411.

Carrying out business in Vermont for any tax year means:

- Owning property in Vermont that yielded rental income
- Having an office in Vermont where employees carried out unrelated business
- Carrying out services in Vermont that produced unrelated business income.

Unrelated business income is defined by the Internal Revenue Service. Publication 598 from the Internal Revenue Service provides the following general description:

> Unrelated business income is the income from a trade or business regularly carried on by an exempt organization and not substantially related to the performance by the organization of its exempt purpose or function, except that the organization uses the profits derived from this activity.

The two key terms in this description are "regularly carried out" and "not substantially related to the performance … of its exempt purpose or function." Vermont uses the same definition of unrelated business income as does the Internal Revenue Service. If your income meets the requirements to report income on federal form 990-T, then you must complete Vermont corporate income tax forms as well.

How to file? The instructions for Vermont Form CO-411 and CO-411U are the same instructions that nonprofits need to follow for filing the state return. In addition, nonprofits shall include the first page of federal form 990 and the complete 990-T. The unrelated taxable income reported on Line 34 of 990-T is reported as taxable income on Line 1 of CO-411 or CO-411U.

Exceptions for nonprofits filing CO-411

Line 2a – Nonprofit organizations do not need to include interest of any kind in the calculation of net taxable income. Therefore report "0" on Line 2a even if your organization has interest on non-Vermont state and local obligations.

Line 2c – Interest on US Government obligations are not included in the calculation of Line 1 income and therefore should not be reported on Line 2c used for reducing the calculated Vermont Net Taxable Income.

Apportionment of income - If a nonprofit organization's income is derived entirely from activities within the state, its Vermont net income is allocated entirely to Vermont. If the nonprofit organization's income is derived from activities conducted both in Vermont and another state or states, its Vermont net income is apportioned as provided in 32 V.S.A. §5833 on Vermont Form BA-402. For example, income derived from sales of tangible personal property that occur in more than one state as a fundraising activity is apportioned between or among the states. In cases where the nonprofit organization is a part of an affiliated group and other members of the affiliated group report unrelated business income, the Vermont nonprofit organization must complete BA-402 and apportion the combined group's unrelated business income.

See Technical Bulletin 59, Unrelated Business Income, at *www.state.vt.us/tax/legaltb.shtml* for further information on this subject.