

STATE-LAW, MA-TAXRPT §92-250, **Sec. 32B. Consolidated return of income by certain corporations**
GENERAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, 1932, CHAPTER 63
TAXATION OF CORPORATIONS, Domestic Corporations.

Sec. 32B.

Sec. 32B, as reproduced immediately below, is effective for tax years through December 31, 2008. For provisions effective for tax years beginning on or after January 1, 2009, see below. CCH.

Consolidated return of income by certain corporations.

Consolidated return of income by certain corporations. 32B If two or more domestic business corporations or foreign corporations participated in the filing of a consolidated return of income to the federal government, the net income measure of their excises imposed under section thirty-two or section thirty-nine may, at their option, be assessed upon their combined net income, in which case the excise shall be assessed to all said corporations and collected from any one or more of them. The commissioner may require corporations that have made such election to report the income measure and the nonincome measure of the excise, and the minimum excise if applicable, all as set forth in sections 32 and 39r, on a single form; provided, however, that nothing in this section shall be construed to eliminate the requirement that each corporation participating in a combined return compute its nonincome measure and the minimum excise if applicable in accordance with said sections 32 and 39.

Where such election is made, each and every member of the consolidated group subject to taxation under section thirty-two or thirty-nine shall be included in such return of combined net income. The combined net income shall be determined as follows: (a) the taxable net income of each such corporation apportioned to this commonwealth pursuant to the provisions of section thirty-eight shall first be separately determined; and (b) the taxable net income of each such corporation, as so determined, shall then be added together and shall constitute their combined net income taxable under this chapter.

Any election made pursuant to this section shall be made on or before the due date, including any extension of time, for the filing of the return required under this chapter and chapter sixty-two C of each member of the group so participating. Corporations electing to file a combined return under this section must continue to file such a combined return for each succeeding taxable year unless and until they receive the written prior approval of the commissioner to file separate returns of income. Such approval shall be granted only if a valid business purpose, other than a reduction of tax, exists for the request. An application to file such separate returns, must be made on or before the due date, including any extension of time, for the filing of the return required under this chapter and chapter sixty-two C.

Sec. 32B, as reproduced below, amended by Ch. 173 (H.B. 4904), Laws 2008, is effective for tax years beginning on or after January 1, 2009. For provisions effective for tax years through December 31, 2008, see above. CCH.

Consolidated return of income by certain corporations. 32B(a) Notwithstanding any other provision of this chapter, a corporation subject to tax under this chapter and engaged in a unitary business with 1 or more corporations subject to combination within the meaning of this section shall, under regulations adopted by the commissioner, calculate its taxable net income derived from this unitary business as its share, attributable to the commonwealth, of the apportionable income or loss of the combined group engaged in the unitary business, determined in accordance with a combined report. In computing the apportionable income or loss of the combined group and of each member thereof, items of income, deductions and receipts from transactions between or among members of the combined group, including but not limited to the payment of dividends, shall be eliminated, subject to regulations as may be adopted pursuant to clause (i) of subsection (f).

32B(b)(1) For purposes of this section, the term “unitary business” shall mean the activities of a group of 2 or more corporations under common ownership that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the broadest extent permitted under the United States Constitution.

32B(b)(2) For purposes of this section, the words “common ownership” shall mean that more than 50 per cent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. A group of corporations under common ownership may be engaged in 1 or more unitary businesses.

32B(b)(3) Any business conducted by a partnership shall be treated as the business of the partners, whether the partnership interest is directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the magnitude of the partner's ownership interest or its distributive share of partnership income. A business conducted directly or indirectly by 1 corporation is unitary with that portion of a business conducted by another, commonly owned corporation through its direct or indirect interest in a partnership if the activities conducted by the former corporation and the partnership are unitary within the meaning of paragraph (1) regardless of the magnitude of the partner's ownership interest or its distributive or any other share of partnership income.

32B(c)(1) Corporations that are subject to combination within the meaning of this section shall include an entity of the kind that is subject to tax or would be subject to tax if doing business in the state under section 2, 2B, 32D, 39 or 52A, as well as an entity described in sections 20 to 29E, inclusive, in any case in which the entity does not qualify for treatment as a life insurance company as defined in section 816 of the Code or an insurance company subject to tax imposed by section 831 of the Code. A corporation is subject to combination irrespective of whether the corporation is actually subject to tax under section 2, 2B, 32D, 39 or 52A. A corporation subject to combination includes a real estate investment trust as referenced under sections 856 to 859, inclusive, of the Code and a regulated investment company as referenced under sections 851 to 855, inclusive, of the Code. Any corporation included in the combined group pursuant to this section that is subject to tax under section 2, 2B, 32D, 39 or 52A shall determine that part of its taxable net income or loss that is derived from a unitary business or from an affiliated group pursuant to an election under paragraph (2) of subsection (g). Such corporation shall not be subject to any duplicate inclusion of income or benefit from any duplicate deduction of loss under section 2, 2B, 32D, 39 or 52A.

32B(c)(2) A corporation subject to combination within the meaning of this section shall not include an entity described in section 38B or 38Y. In addition, an entity subject to combination within the meaning of this section shall not include an entity described in sections 20 to 29E, inclusive, except as provided in paragraph (1) or otherwise in this chapter.

32B(c)(3) The members of a combined group subject to tax under this chapter may elect to determine their apportioned share of the taxable net income or loss of the combined group pursuant to a worldwide election under which each taxpayer member, wherever located, shall take into account the income and apportionment factors of all the members includible in the combined group. If the members do not so elect, the combined group shall determine its share of the taxable net income or loss of the combined group on a water's edge basis under which each member shall take into account the income and apportionment factors of only the members that are described in any one or more of the following categories:-

32B(c)(3)(i) any member incorporated in the United States or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United

States;

32B(c)(3)(ii) any member, regardless of the place incorporated or formed, if the average of its property, payroll, and sales factors within the United States is 20 per cent or more;

32B(c)(3)(iii) any member that earns more than 20 per cent of its income, directly or indirectly, from intangible property or service-related activities the costs of which generally are deductible for federal income tax purposes, whether currently or over a period of time, against the business income of other members of the group, but only to the extent of that income and the apportionment factors related thereto. A worldwide election shall be effective only if made on a timely-filed, original return for a taxable year by the members of the combined group subject to tax under this chapter. A worldwide election shall be binding for and applicable to the taxable year for which it is made and all taxable years thereafter for a period of 10 years, subject to regulations adopted by the commissioner.

32B(d)(1) When used in this section, the following words shall have the following meaning:-

“Combined group's taxable income,” the aggregate taxable net income or loss subject to apportionment and derived from a unitary business or the aggregate taxable net income or loss from an affiliated group pursuant to an election under paragraph (2) of subsection (g), in either case reported on a combined report in accordance with this section, of every taxable member and non-taxable member of the combined group.

“Non-taxable member,” a member of the combined group that is not subject to tax under section 2, 2B, 32D, 39 or 52A.

“Taxable member,” a member of the combined group that is subject to tax under section 2, 2B, 32D, 39 or 52A.

32B(d)(2) A corporation subject to tax under this chapter that is part of a combined group shall apportion its income as follows:-

32B(d)(2)(i) Subject to this subsection, each taxable member shall determine its apportionment percentage based on its specific apportionment formula pursuant to this chapter.

32B(d)(2)(ii) Each taxable member shall compute the numerator of its apportionment factors pursuant to the apportionment provisions of this chapter that apply to such member. Each taxable member shall add to its sales factor numerator its share of Massachusetts sales of non-taxable members based on subparagraph (iv). If a combined group includes one or more members that are financial institutions and one or more members that are not financial institutions, the numerators of the property and sales factors of the members shall be adjusted in the same manner as the denominator adjustments described in subparagraph (iii) and such receipts as are added pursuant to such adjustments shall be sourced as provided in section 2A.

32B(d)(2)(iii) Each member shall calculate its apportionment factor denominators by determining the apportionment factor denominators of every member of the group based upon the apportionment provisions that apply to each member and by aggregating the apportionment factor denominator(s) of each member, regardless of whether any particular member is taxable in the commonwealth. A member shall determine its property and payroll factor denominators by including the property and payroll of all members of the group, including members of the group subject to a single sales factor apportionment formula. Property and payroll of all members, including members subject to single sales factor apportionment, shall be included in the property and payroll denominators of members to which such property and payroll factors apply. If a combined group includes one or more members that are financial institutions and

one or more members that are not financial institutions, the following adjustments shall apply: (1) with respect to intangible property included in the property factor denominators of the financial institution members, such intangible property values shall be reduced to 20 per cent of the otherwise determined amounts before combination of the denominators of the group members; (2) receipts described in subsections (d)(i) through (d)(xi) of section 2A of this chapter that would be otherwise excluded from the sales factor of members that are not financial institutions shall be added to the denominators of such non-financial members; and (3) in the case of a sale or deemed sale of a business, receipts from the sale of the business “good will” or similar intangible value, including without limitation “going concern value” and “workforce in place”, shall not be included in the sales factor denominators of any member.

32B(d)(2)(iv) The Massachusetts sales of each non-taxable member shall be determined based upon the apportionment rules applicable to such member and shall be aggregated. Each taxable member of the group shall include in its sales factor numerator a portion of the aggregate Massachusetts sales of non-taxable members based on a ratio, the numerator of which is such taxable member's Massachusetts sales taking into account its applicable sales factor provisions and the denominator of which is the aggregate Massachusetts sales of all the taxable members of the group taking into account their respective sales factor provisions. For purposes of determining whether sales are in the commonwealth and included in the numerator of the sales factor, a taxpayer is considered taxable in any state in which any member of its combined group is subject to tax.

32B(d)(2)(v) In computing the apportionment percentage of combined group members, each member shall eliminate intercompany transactions, subject to regulations as may be adopted pursuant to clause (i) of subsection (f).

32B(d)(3) To calculate each member's apportioned taxable net income or loss, each member shall apply its apportionment percentage, as determined under subparagraphs (i) to (v), inclusive, of paragraph (2), to the combined group's taxable income, as defined in paragraph (1).

32B(d)(4) Each taxable member shall multiply its apportioned taxable net income or loss by the tax rate applicable to such member pursuant to this chapter.

32B(e) Every member of the combined group shall be jointly and severally liable for the tax due from any taxpayer member under this chapter, including any interest and penalties, to the extent permitted under the constitution of the United States.

32B(f) The commissioner shall adopt regulations to implement this section and to coordinate the application of this section with the other provisions of this chapter. The regulations shall include rules to address without limitation, the following: (i) the elimination of intercompany transactions, including but not limited to the payments of dividends, between or among combined group members, and the elimination or deferral of income, expenses, apportionment factors or other tax items associated with those transactions and including any exceptions to such eliminations or deferrals under rules analogous to those under section 1502 of the Code; (ii) the sharing within the combined group of credits that may be validly claimed by a taxpayer and that are attributable to the combined group's unitary business, to the extent such sharing of credits by a particular member of the combined group is consistent with the statutory requirements for claiming such credits, taking into account the nature of such member's business and related activities; (iii) the application of any carry forwards, including the sharing of any net operating loss or tax credit carry forwards that are attributable to the activities of the combined group's unitary business, but the carry forward of losses, credits or other tax benefits that arise before the effective date of this section shall be available only to the extent permitted by law as in effect before the effective date; and (iv) the relationship of sections 31I to 31K, inclusive, to this section.

32B(g)(i) When used in this section, the following words shall have the following meaning: -

“Affiliated group,” an affiliated group as defined in section 1504 of the Code except that it shall include all corporations incorporated in the United States or formed under the laws of the United States, any state, the District of Columbia or any territory or possession of the United States that are commonly owned, directly or indirectly, by any member of such affiliated group and other commonly owned corporations as described in paragraph (3) of subsection (c).

“Commonly owned” shall mean more than 50 per cent of the voting control of such member is directly or indirectly owned by a common owner or owners, either corporate or non-corporate.

32B(g)(ii) A taxpayer may elect, without the consent of the commissioner, to treat as its Massachusetts combined group all corporations that are members of its affiliated group. The corporations referred to above shall include members of such affiliated group that are subject to tax or that would be subject to tax if doing business in the state under section 2, 2B, 32D, 39 or 52A. Such affiliated group shall calculate Massachusetts taxable income in accordance with subsection (d), provided that all income of all group members, whether or not such income would otherwise be subject to apportionment or would be allocable to a particular state in the absence of an election under this subsection, shall be treated as apportionable income for purposes of returns filed pursuant to an election under this subsection. Any such election shall be made on an original, timely filed return by any member of the combined group. Any corporation entering an affiliated group subsequent to the year of election must be included in the Massachusetts combined group and is considered to have waived any objection to its inclusion in the Massachusetts combined group. An election shall be binding for and applicable to the taxable year for which it is made and for the next 9 taxable years. An election may be revoked, or renewed for another 10 taxable years, without the consent of the commissioner after it has been in effect for 10 taxable years, provided however that in the case of a revocation a new election under this subsection shall not be permitted in any of the immediately following three taxable years. The revocation or renewal shall be made on an original, timely filed return for the first taxable year after the completion of a 10-year period for which an election under this subsection was in place.

32B(g)(iii) The Commissioner shall study the use and revenue impact of the affiliated group election provided by this subsection in the first 3 years in which the election is available and shall provide a report to the Chairs of the House and Senate Committees on Ways and Means and to the Chairs of the Joint Committee on Revenue not later than March 15, 2013. Any taxpayer participating in an affiliated group election under this subsection shall provide such information as the commissioner may request for purposes of such analysis, including information relating to tax filings in other jurisdictions, provided that the report by the commissioner shall include only aggregate information, and shall not identify information relating to particular taxpayers.

(As added by Ch. 927, Acts 1973; Ch 202, Acts 1988; as amended by [Ch. 262 \(H.B. 4744\)](#), Acts 2004, effective August 9, 2004; [Ch. 173 \(H.B. 4904\)](#), Laws 2008, effective for tax years beginning on or after January 1, 2009.)