



# **Commission on Economic Competitiveness**

## **Review of Mandatory Unitary Combined Reporting**

**November 5, 2015**

**Jeffrey L. Hyde**

**Commissioner**

## Unitary Business – Definition

If the operation of the portion of the business done within the state is dependent upon or contributes to the operation of the business without the state, the operations are unitary.

(Edison Cal Stores v. McColgan 30 Cal. 2d 472, 1947)

## Unitary Business – Subjective Test – Three Unities

A more particular statement of the test is that a business is unitary if these circumstances are present: “(1) Unity of ownership; (2) Unity of operation as evidenced by central purchasing, advertising, accounting and management divisions; and (3) Unity of use of its centralized executive force and general system of operations.

(Butler Brothers v. McColgan 17 Cal. 2d 664, 1942)

## Mandatory Unitary Combined Reporting – Key Points

- Must be an unitary business – US Constitutional Standard based on Due Process Clause
- An apportionment regime based on economic theory that unitary parts contribute to an economic whole.
- Not the same as federal consolidated reporting
- Not a tax revenue generating process

Commission on Economic Competitiveness

◦ NCSL Task Force on State & Local Taxation of  
Communications and Interstate Commerce\*

Report: Combined Reporting with the Corporate Income Tax  
November, 2010

Key take Aways:

\*Renamed: NCSL Executive Committee Task Force on State and Local Taxation

◦ NCSL Task Force on State & Local Taxation of Communications and Interstate Commerce\*

Report: Combined Reporting with the Corporate Income Tax

November, 2010

Key take Aways:

- ... claims and counterclaims [regarding combined reporting] are complicated and confusing.

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Report: Combined Reporting with the Corporate Income Tax  
November, 2010

Key take Aways:

- State corporate income taxes have historically provided a modest share of state tax receipts - ... less than 10 percent ...

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◦ NCSL Task Force on State & Local Taxation of Communications and Interstate Commerce\*

Report: Combined Reporting with the Corporate Income Tax

November, 2010

Key take Aways:

- ... combined reporting can increase, decrease or leave the tax liability the same ...

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Report: Combined Reporting with the Corporate Income Tax  
November, 2010

Key take Aways:

- Defining the combined group is surprisingly difficult

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Report: Combined Reporting with the Corporate Income Tax

November, 2010

Key take Aways:

- ... combined reporting reduces private GDP in states ... [with] corporate income tax rates above the state median rate (7.4%)... CT Rate is 7.5%: Does it mean neutrality?

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1. ... combined reporting can lead to a more accurate measure of corporate profits.
2. ... combined reporting can help close or lessen the tax benefits from certain tax planning activities
3. ... tax revenues are expected to fall to the extent ... combined reporting harms the state's economy or rise if combined reporting enhances the economy.

We find that combined reporting **has no direct effect on state tax revenues** ... (*emphasis added*)

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- Assumes separate pieces within the group are equally profitable.
- US Constitutional restrictions limit consolidation without evidence of unitary relationships.
- Creates winners and losers within the state.
- Costs of compliance for the state can be much higher since determination of unitary is a subjective business analysis based on operations not finances.



Questions?