

Amendments to the Article 9-A Regulations
concerning Combined Reports

On November 29, 1983, the Tax Commission approved regulations governing when a combined report will be permitted or required.

In addition to the 80% stock ownership or control requirement and the unitary business requirement, a distortion requirement must be met. The previous regulations were similar in the sense that there was a requirement for both 80% stock ownership or control and a unitary business requirement. However, under the old regulations the third requirement was that there be substantial intercorporate transactions among the corporations.

The three requirements for filing a combined report, as shown in the new regulations, are as follows:

1. Capital Stock Requirement

The Tax Commission must first determine whether:

- (i) the taxpayer owns or controls, either directly or indirectly, 80% of the capital stock of all the other corporations which are to be included in the combined report; or
- (ii) 80% of the capital stock of the taxpayer is owned or controlled, either directly or indirectly, by other corporations which are to be included in the combined report; or
- (iii) 80% of all the capital stock of the taxpayer and 80% of all the capital stock of the other corporations which are to be included in the combined report are owned or controlled, either directly or indirectly, by the same interests.

2. Unitary Business Requirement

In deciding whether a corporation is part of a unitary business, the Tax Commission will consider whether the activities in which the corporation engages are related to the activities of the other corporations in the group, such as:

- (i) manufacturing or acquiring goods or property or performing services for other corporations in the group; or
- (ii) selling goods acquired from other corporations in the group; or
- (iii) financing sales of other corporations in the group.

The Tax Commission, in deciding whether a corporation is part of a unitary business, will also consider whether the corporation is engaged in the same or related lines of business as the other corporations in the group, such as:

- (i) manufacturing or selling similar products; or
- (ii) performing similar services; or
- (iii) performing services for the same customers.

3. Distortion Requirement

The Tax Commission will also determine if the distortion requirement has been met. The activities, business, income or capital of a taxpayer will be presumed to be distorted when the taxpayer reports on a separate basis if there are substantial intercorporate transactions among the corporations. Substantial intercorporate transactions may be as little as 50% of a corporation's receipts or expenses from qualified activities.

However, substantial intercorporate transactions are not necessarily the final determining factor in deciding if the distortion test has been met. If it can be shown that distortion does not exist even though there are substantial intercorporate transactions, or that distortion does exist in the absence of substantial intercorporate transactions, the presumption of distortion may be overcome.

In determining whether there are substantial intercorporate transactions, the following will be considered:

- (i) Manufacturing or acquiring goods or property or performing services for other corporations in the group; or
- (ii) selling goods acquired from other corporations in the group; or
- (iii) financing sales of other corporations in the group; or
- (iv) performing related customer services using common facilities and employees.

Domestic and foreign corporations will be considered for inclusion in a combined report if they meet the necessary requirements. Foreign corporations include corporations incorporated in any of the states (other than New York) or possessions of the United States. Alien corporations may not be included in a combined report. A corporation which is taxable under Article 9 (except corporations which are taxable under both section 186-A and article 9-A), Article 32 or Article 33 of the Tax Law may not be included in a combined report. A foreign corporation not subject to tax will not be required to be included in a combined report unless the Tax Commission determines that inclusion is necessary to properly reflect the tax liability of one or more taxpayers.

A taxpayer must make a written request for permission to file a combined report. The request must be received by the Tax Commission no later than 30 days after the close of its taxable year, except that a taxpayer whose taxable year ends on December 31, 1983 has until February 29, 1984 to request permission.

The amendments to the regulations will become effective for taxable periods ending on or after December 31, 1983.