

**STATE OF MINNESOTA  
DEPARTMENT OF REVENUE**

**In the Matter of the Proposed  
Adoption of a New Rule Relating  
to the Filing of One Tax Return by  
Members of a Unitary Group which  
Includes a Bank (Minnesota Rules  
Part 8019.0400)**

**STATEMENT OF NEED  
AND REASONABLENESS**

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed new rule. It is submitted pursuant to Minnesota Statutes Section 14.23 and Minnesota Rules Part 1400.0500 requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding income tax rules including corporate income taxes was published in the State Register on January 29, 1979 and again on July 6, 1981. The notices directed persons wishing to be placed on a mailing list of persons wishing to be notified of rulemaking activities to contact the Department of Revenue. On December 16, 1985 a Notice of Intent to Solicit Outside Opinion was published in the State Register. The notice specifically mentioned this rule and invited interested persons to request a preliminary draft of this rule and submit comments or suggestions in writing to the Department by January 3, 1986. Two persons submitted written comments. Such comments have been duly considered.

**Impact on Small Business**

The impact of this rule on small business has been considered. The proposed rule is not mandatory and therefore is not expected to place any financial or administrative burden on small businesses. Small businesses which do not elect to file a tax return under this rule will not be subject to this rule.

## **Authority to Adopt Rules**

Minnesota Statutes Section 290.52 grants the Commissioner of Revenue statutory authority to promulgate rules concerning the income tax laws. Additionally, Minnesota Statutes Section 290.37, Subd. 1(a) provides that "(t)he Commissioner may adopt rules for the filing of one return on behalf of the members of an affiliated group of corporations that are required to file a combined report if the affiliated group includes a corporation subject to tax under Section 290.361."

### **Part 8019.0400 Subpart 1.**

This subpart introduces the rule and sets forth the general terms of the election to file one return.

### **Subpart 2. Definitions**

This subpart sets out definitions of terms used in the rule. Definitions are necessary to adequately inform taxpayers of whether they are eligible to make the election to file one return.

### **Item A**

This item defines the term "unitary group" to mean two or more corporations which are engaged in business operations which would be considered unitary under existing Minnesota law and rules. This definition is reasonable because it provides a consistent rule for taxpayers to follow. If taxpayers are otherwise part of a unitary group, they will be considered to be so for the purposes of this rule.

## **Item B**

This paragraph defines the term "bank." Minnesota Statutes Section 290.37, Subd. 1(a) provides that the Commissioner of Revenue may adopt rules for the filing of one return on behalf of affiliated corporations required to file a combined report if the affiliated group includes a corporation subject to tax under Section 290.361. Section 290.361, Subd. 1 imposes an excise tax measured by net income on all national and state banks.

The first sentence of the definition is primarily based on the definition of "bank" found in Section 581 of the Internal Revenue Code. However, for Minnesota purposes a "bank" does not include a building and loan association because under Minnesota law, those institutions are taxed under Section 290.02 rather than under Section 290.361. As Minnesota Statutes Section 290.37, Subd. 1(a) provides that the affiliated group must include a corporation subject to tax under Section 290.361, building and loan associations cannot be included in the definition.

The second sentence of paragraph B makes it clear that domestic building and loan associations as well as credit unions, finance corporations or acceptance companies are not included in the definition. This definition is reasonable because it provides taxpayers with a definition which is similar to the federal definition. With the exception of building and loan associations, any corporation which is a "bank" for federal purposes will be considered a bank for Minnesota purposes also.

## **Paragraph C**

This definition provides that corporations are required to be included in a combined report for purposes of this rule if they would otherwise be required to be included in a combined report. Again, this definition is reasonable because it allows taxpayers a

consistent definition. If they are otherwise included in a combined report they will be so included for purposes of this rule.

#### **Item D**

The term "bank affiliated return" is a new term and needs to be defined. It is defined as the one return filed on behalf of a unitary group which would be required to file a combined report and which includes at least one bank. (The terms "unitary group," "combined report" and "bank" are defined in items A through C.) The term "bank affiliated return" is used instead of "consolidated return". Minnesota law does not permit the filing of consolidated returns. The term "consolidated return" is used in federal practice and has a specific meaning in that context. Corporations which cannot be included on a federal consolidated return, such as affiliated companies, Puerto Rican subsidiaries and subsidiaries which are over 50% but are less than 80% owned, may be included in a bank affiliated return. Conversely, some insurance companies may be included on a federal consolidated return but are not permitted on a bank affiliated return. Therefore, to avoid confusing taxpayers, an entirely new term is used. This term includes the word "bank" which modifies "affiliated" to denote that this type of return involves at least one bank. The term "affiliated" is used in Section 290.37, Subd. 1(a) and has been retained here. The corporations included in the bank affiliated return must be included in the combined report during the taxable year for which the return is filed. This requirement is necessary to fix the time period during which the corporations to be included in the return are determined. The return must be filed by the corporation elected to be the key corporation. "Key corporation", a new term, is defined in Item E.

## **Item E**

This new term must be defined. According to the definition, the key corporation need not be the parent corporation, but it must be that corporation chosen by the affiliated group to file the return. The rule allows groups to choose any member of the group with nexus to Minnesota as the key corporation. Nexus with Minnesota must exist during the taxable year for which the return is filed. Nexus with Minnesota is required because the key corporation is responsible for changes in tax liability and assessments. A corporation without nexus to Minnesota, which is not doing business in Minnesota, would be difficult if not impossible to proceed against. Because a parent corporation may or may not have nexus with Minnesota, the key corporation cannot be required to be the parent. The wording "parent or other member of the unitary group" is used because where a parent does have nexus with Minnesota, it would be the logical choice for the key corporation. This is because the parent would be more likely to have much of the group's tax information at hand. In cases where the parent does little business in Minnesota, it may be more convenient for a corporation which does more of its business in Minnesota to act as the key corporation.

### **Subpart 3. Combined Report**

Members of a unitary group are required to be included on a combined report for purposes of this rule if they would be otherwise required to be included on a combined report. This provision is reasonable because the criteria for being included in a combined report are the same for taxpayers filing bank affiliated returns as for taxpayers filing separate returns based on combined reports. This allows taxpayers a consistent way of determining their filing status. This subpart is also consistent with one of the purposes of this rule which is to allow taxpayers a convenient alternative to filing several returns without changing the substantive requirements.

#### **Subpart 4. Eligibility Requirements**

This subpart sets out the requirements which must be met during the entire taxable year in order for a unitary group to elect to file a bank affiliated return.

##### **Item A**

The unitary group must contain at least one bank. This requirement comes directly from Minnesota Statutes 290.37, Subd. 1 which permits the Commissioner to adopt rules for the filing of one return on behalf of members of an affiliated group if the group includes a corporation subject to tax under Section 290.361. (Emphasis added.) Section 290.361 imposes an excise tax on national and state banks. A bank subject to tax under Section 290.361 has nexus with Minnesota because a non-nexus corporation is not subject to Minnesota tax law.

##### **Item B**

In order to insure that returns are filed with a minimum of paperwork, only corporations which have the same accounting periods are eligible to file bank affiliated returns. Corporations which do not meet this requirement must file combined reports. If a member of the group is divested from the unitary group during the taxable year, it is considered to have the same accounting period as the group if its accounting period for the predivestiture portion of the year commenced on the same date as the accounting period of the other members of the group. This allows bank affiliated groups which have divestitures during the year to still file one return. This should be allowed because it involves none of the additional paperwork which would be necessary to reconcile one or more different accounting periods.

## **Item C**

Each member of the unitary group must use the same accounting method. This is to insure that there will be a minimum of paperwork. Corporations using different accounting methods would need to reconcile them at some point. As most corporations included in a bank affiliated return are expected to be banks, bank holding companies or financial institutions, it is expected that they would use the same accounting methods.

## **Item D**

This paragraph merely sets out the requirement that the group must comply with the requirements in Subpart 4 which explains how the election to file a bank affiliated return must be made.

### **Subpart 5. Election to File Return**

The first sentence requires that each member of the unitary group must sign a written election to be included on the bank affiliated return. This sets up the requirement that all corporations must consent to the filing of one return. All corporations must be listed by name and Minnesota and/or federal employer identification number. This is necessary to enable the Department to keep track of which corporations are in the unitary group. It will also facilitate proper crediting of payments and tracking of returns.

The election, which also appoints a key corporation, must be filed with the tax return. This is the most logical time to file the election because it can be processed at the same time the return is processed. It is also convenient for the taxpayer to attach the election form to the return rather than make an additional filing.

Due to confidentiality requirements each member of the group must grant power of attorney to the key corporation to represent it in tax matters relating to the bank affiliated return. Specific reference is made to tax matters relating to the bank affiliated return because a corporation may have previously been granted power of attorney for tax matters but may have no knowledge of or authority concerning bank affiliated returns. The subpart requires that the key corporation must be authorized to represent the group in tax matters relating to the bank affiliated return.

The election is binding for subsequent tax years. This is necessary so that filings are treated consistently from year to year as much as possible. Because circumstances may change or unforeseen situations may arise the election may be rescinded or modified or the key corporation changed with the Commissioner's permission. The decision to allow the election to be rescinded or modified will be made on a case by case basis.

#### **Subpart 6. Filing Requirements**

This section makes it clear that the key corporation is responsible for filing the return. The key corporation is responsible for all taxes, estimated taxes, charges, claims for refund, changes in tax liability and assessments. For recordkeeping and processing purposes it is important that one corporation is responsible for all tax matters.

The last sentence of this subpart states that if all corporations which would be included on a combined cannot be included on the affiliated return a bank affiliated return shall not be filed. This merely clarifies the fact that all requirements must be met before a bank affiliated return may be filed. The alternative is to file separate returns based on combined reports.



## Subpart 7. Payment of Tax

This subpart requires the members of the group to compute their separate income (loss) for the taxable year. Each member of the group determines its separate income (loss) and apportions it to Minnesota. The members of the group then compute the aggregate tax liability of the group.

This subpart was revised in light of comments received from outside the Department. Former language required that the aggregate income (loss) of the group was subject to apportionment. The new language allows each corporation to use the weighted apportionment ceiling set out in Section 290.19. Each corporation's tax liability is computed and the amounts added together and paid by the key corporation. This method is used in California and taxpayers who also file California returns will be able to use the same system.

A drawback to this approach is that one potential advantage of filing bank affiliated returns will be lost. Taxpayers will still have to perform all the calculations necessary to determine each corporation's income even though only one return is filed. The main advantage is that each corporation may take advantage of the weighted apportionment ceiling.

The Department received two written comments during the informal comment period. Both comments indicated that the taxpayers involved would prefer to allow each corporation to calculate its income apportioned to Minnesota separately even though the other method entails less paperwork.

The last sentence of this subpart provides that each of the corporations on the bank affiliated return is severally liable for the tax. This language is similar to federal language concerning consolidated returns. It allows the Department to collect the

tax even if it is unable to collect it from the key corporation. The filing of one tax return on behalf of the group is allowed purely as a matter of convenience for the taxpayer and to eliminate paperwork and does not affect each corporation's tax liability.

#### **Subpart 8. Extensions**

This subpart provides that an extension on behalf of the group must be filed by the key corporation. A list of corporations included in the return is required to insure proper crediting of the tentative tax.

#### **Subpart 9. Estimated Payments**

The key corporation is responsible for payment of the estimated tax liability of the group. This is consistent with other sections of the rule making the key corporation responsible for all taxes, estimated payments, assessments, and other requirements. The second sentence provides a transition provision for determining whether the taxpayer is subject to an exception where the prior years' estimated tax was filed on the basis of a combined report. In such cases the prior years tax is the combined amount of the prior year's tax liabilities of all corporations on the bank affiliated return. This method is reasonable because it allows both years to be placed on a basis where the respective liabilities may be compared. It is also consistent with Subpart 6 which requires each corporation subject to tax to calculate its separate tax liability. The taxpayer's status with respect to an exception to the underpayment of estimated tax penalty will be the same as if it filed separately. The only effect this rule will have is to allow the group to file estimated tax payments on behalf of the group rather than individually. Penalties would be paid by the key corporation.

The second paragraph provides that the group is considered a "large corporation" if any member of the group's taxable net income was \$1,000,000 or more during the three taxable years immediately preceding the taxable year involved. This provision is consistent with the first paragraph which establishes that the key corporation is responsible for the aggregate liability of the group. Where some corporations in the group had over \$1,000,000 in taxable net income and some had less, a rule is needed to direct taxpayers on how to determine if the group is a large corporation.

One of the purposes of Section 290.37, Subd. 1(a) (1985) was to cut down on the paper work involved in filing several estimated tax forms and to allow under and overpayments to be netted against each other. In order to be consistent with this objective the taxable net income of the affiliated group must be treated in the aggregate. Once the triggering amount for the large corporation provision is met, it must apply to the entire group. To do otherwise would be inconsistent because the members of the group would be treated individually.

Additionally, allowing bank affiliated groups to avoid the large corporation provision unless all members meet the \$1,000,000 amount would have the effect of granting a benefit not intended by the statute.

#### **Subpart 10. Net Operating Losses**

This subpart provides that net operating losses may be carried forward or back in the same manner as they would be if combined reports were filed. This allows taxpayers to determine their net operating losses in the usual way and eliminates the need for additional calculations. The first sentence states that a net operating loss from a year in which a combined report was filed may be carried back to a year in which a bank affiliated return is filed. The second sentence of Subpart 9 requires that each corporation's net operating loss which is carried forward or back must be deducted

against its own net income for the year to which the loss is carried to. This is reasonable because it is consistent with Subpart 6 which subjects the separate income or loss of each member of the group to apportionment. The third sentence merely restates the requirement of Minnesota Statutes Section 290.095, Subd. 3(c).

The second paragraph provides that the above procedure applies to situations where a net operating loss is carried from a year in which a bank affiliated return was filed to a year in which combined reports were filed.

The last paragraph restates the provisions of Minnesota Rules Part 8019.0300, Subp. 10 dealing with net operating losses carried from a year which began prior to July 1, 1981 to years beginning after that date. Part 8019.0300, Subp. 10 was originally promulgated in order to avoid penalizing corporations as a result of the transition period from reporting their income on other than a combined report to reporting their income under the combined income approach. In order to achieve the same result in the case of corporations which carry net operating losses from years beginning prior to June 30, 1981 the same language has been adopted. This provision is reasonable because it insures that corporations which file bank affiliated returns will not be penalized due to the transition period. Bank affiliated filers will follow the same procedures and be subject to the same rule as are taxpayers who file combined reports.

#### **Subpart 11**

This subpart establishes the effective date as tax years beginning after December 31, 1984.