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ADOPTION OF COMBINED REPORTING IN SELECTED STATES

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SEPARATE VS. COMBINED REPORTING

Separate and combined reporting are different methods for determining the income a business owes each taxing state from which it derives income. The major difference between these methods is how they treat the income and expenses the business incurs from its transactions with affiliated businesses.

Separate reporting treats these transactions as though they were between unrelated entities. Consequently, they appear as income or tax-deductible expenses on the business's tax return. The taxes due depend on the business's activity level in the taxing state, calculated according to a statutory formula.

Combined reporting requires the business's affiliates to determine their total income as though they were one group and apportion it to each taxing state. In doing so, they may not include transactions among themselves. The taxes due depend on the group's activity level in each taxing state, calculated according to a statutory formula.

ISSUE

Describe the evolution of combined reporting and the circumstances under which it was adopted in Georgia, Illinois, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Rhode Island, and Wisconsin. Compare these states' net operating loss (NOL) carryforward provisions.

SUMMARY

Combined reporting is a method states devised to calculate businesses' corporate income taxes. It requires a business that is part of a group of affiliated businesses to (1) report the group's total income as though the group were a single unified business and (2) apportion a share of that income to each taxing state based on the group's activity level in each of those states.

States turned to combined reporting when businesses began to operate in national and global markets and use new organizational forms to make and sell goods. Intercontinental railroads and new manufacturing machines allowed businesses to mass-produce goods for customers in other states, and many did so by establishing product distribution and sales offices in those states. States considered these businesses and

their satellite offices as unitary businesses and taxed them in proportion to the income they generated in the state.

Taxing these multi-state businesses became more complex when they began to create subsidiaries and affiliates to make products or perform functions that large businesses traditionally performed in-house. This change served many purposes, including insulating the parent business from the inherent risks of new venture by placing it in a subsidiary. It also allowed parents and their affiliates to deduct from their taxes the cost of the goods and services they purchased from each other, costs some tax administrators claimed were not the same as those incurred from doing business with unaffiliated businesses.

Some states argued these costs were not the same and required parents and affiliates to submit combined returns as though they were a unitary business. Today, 24 states (including Connecticut starting in tax year 2016) and the District of Columbia require combined reporting. These include Illinois (1982), Maine (1986), Massachusetts (2008), New Hampshire (1981), New York (2007), Rhode Island (2014), Vermont (2004), and Wisconsin (2009). Illinois, Massachusetts, Rhode Island, and Vermont adopted combined reporting after their respective governors required a study on combined reporting's effects. Attachment 1 lists the states requiring combined reporting.

Illinois's governor did so after the legislature sent him a bill prohibiting combined reporting. Besides vetoing a bill or allowing it to become law without the governor's signature, the Illinois Constitution allows the governor to amend a bill and resubmit to the legislature (i.e., amendatory veto). The governor amended the bill to allow combined reporting and returned it to the legislature, which approved it. Maine adopted combined reporting after receiving the Taxation Committee's business climate report.

The other states in our sample that require combined reporting did so under different circumstances. New York adopted combined reporting to eliminate lawsuits that arose under a regulation authorizing the Taxation and Revenue Department to require combined reporting on a case-by-case basis. Wisconsin adopted combined reporting to help close the budget deficit that occurred during the national recession.

Georgia, New Jersey, and Ohio do not require combined reporting. Georgia's revenue commissioner, however, has the authority to require a business to submit a combined return if it prevents the business from underestimating the income attributed to the state. The New Jersey legislature is considering bills requiring combined reporting. Ohio taxes businesses' gross receipts, not income.

Although about half the states impose combined reporting, most allow businesses to deduct certain expenses, including NOLs. A business incurs a NOL when the total value of its deductions exceeds its gross income for a tax year. All of the states we examined allow businesses to add these losses for the previous years to the losses incurred during the current year (carryforwards). The carryforward periods range from five years to 20 years. Georgia and New York also allow businesses to apply NOLs against previous years' taxes.

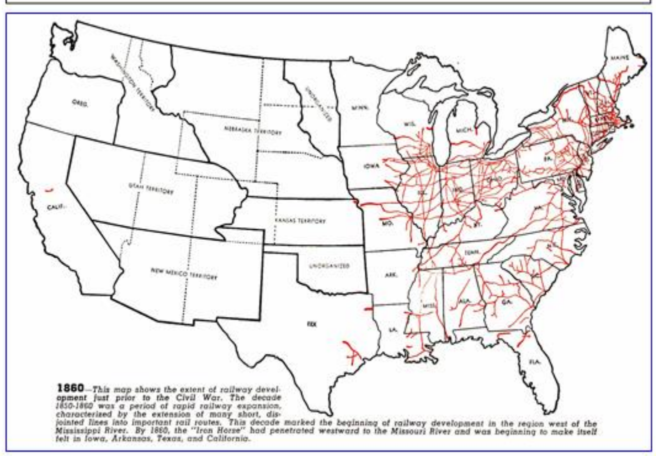
COMBINED REPORTING'S ORIGINS

Combined reporting's roots stretch back to the 1800s when businesses began selling goods and services to customers in other states and experimented with new organizational forms and structures. These changes required those states to devise reporting requirements that tax only the income derived in the state (i.e., apportionment).

Taxing Railroad Property

The apportionment problem first arose when railroad companies began moving people and goods across state lines. The value of a company's tracks, trains, and other property derived from being part of an integrated multistate system (see Figure 1). States taxing railroad property had to determine the system's total value and attribute shares to each taxing state.

Figure 1: Railroad Development as of 1860



U.S. Railway Development 1860: http://users.humboldt.edu/ogayle/RR1860.jpg

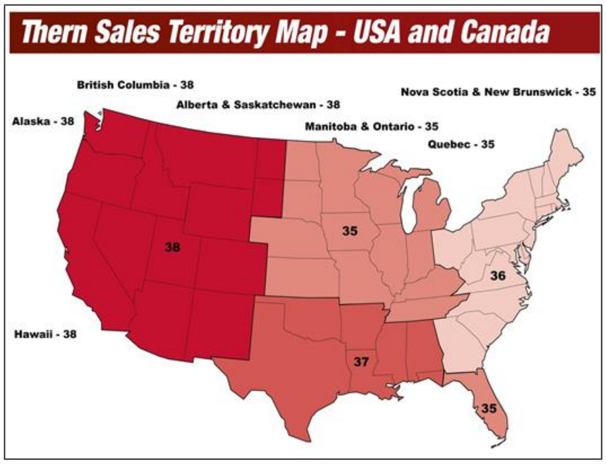
In 1875, the U.S. Supreme Court upheld the idea that the value of a railroad's property was greater than the sum of its parts:

> [A] railroad must be regarded for many, indeed for most, purposes as a unit. The track of the road is but one track from one end of it to the other, and except in its use as one is of little value. . . . It may well be doubted whether any better mode of determining value of that portion of the track within any one county has been devised than to ascertain

the value of the whole road and apportion the value within the county by its relative length to the whole, *State Railroad Tax Cases*, 92 U.S. 575 (1875).

Taxing Multistate Business Income

Figure 2: Multistate Company's Sales Territory



http://1.thern.com/wp-content/uploads/TerritoryRep_map_web.jpg

Just as railroad companies began to operate across state lines, new production technologies allowed businesses to make goods for sale in regional and national markets. When the states began to tax business income, they faced the same type of problem they faced when they began to tax railroad property: specifically, how to apportion a multistate business's total income to the taxing state (see Figure 2).

States addressed this problem by devising apportionment formulas. In *Underwood Typewriter Co. v. Chamberlin* 254 U.S. 113 (1920), the U.S. Supreme Court upheld Connecticut's formula in a case that involved a manufacturing company with headquarters in New York; manufacturing plants in Connecticut; and sales, lease, and repair offices in these and other states.

In its decision, the Court recognized how the business's organizational units were located in various states, thus presenting the Connecticut legislature with "the impossibility of allocating specifically the profits earned by processes conducted within its borders." Consequently, the legislature "adopted a method of apportionment which, for all that appears in this record, reached, and was meant to reach, only the profits earned within the state."

Underwood affirmed three concepts that became integral to combined reporting: (1) a business with units in several states is still a unitary business, (2) these units operate together to generate the business's income, and (3) states may use formulas to apportion the income derived from the state.

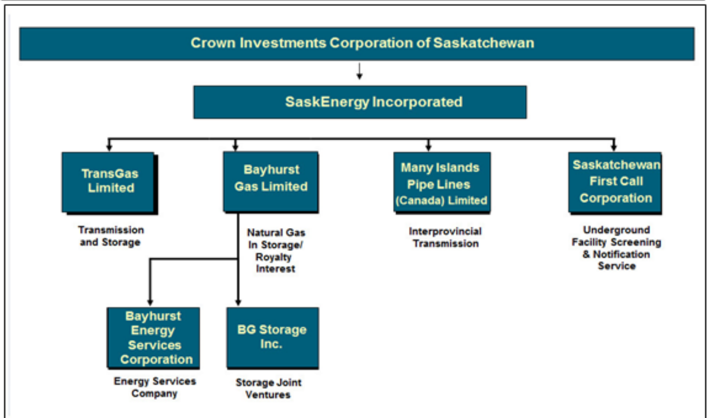
Taxing Related Businesses

Taxing businesses became more complicated when they began to adopt new organizational models. Figure 3 shows the traditional business structure, with the major functions housed in separate departments under an executive office. States taxed these businesses as single units, with each state taxing only the income a business generated in the state.

Figure 3: Classic Corporate Organization Structure

Traditional Corporate Organizational Structure
http://study.com/cimages/multimages/16/Functional_Organizational_Structure.jpg

Figure 4: Organizational Structure of a Corporation and its Subsidiaries



http://www.saskenergy.com/abouthttp://www.saskenergy.com/about_saskenergy/images/Orgcharmay2015.jpg

Just as some businesses decentralized and dispersed distribution, sales, and other departments to different states, others began to place these functions in separate but mutually supportive subsidiaries and affiliates, often located in different states (see Figure 4). This change also included creating subsidiaries to produce and distribute new products.

Creating subsidiaries and affiliates served several purposes, including insulating the parent business from the potential risks of launching new products (*Georgia's Corporate Income Tax: A Description and Reform Options*, Fiscal Research Center, Andrew Young School of Policy Studies, Georgia State University, April 2012). This change also allowed the parent and its subsidiaries and affiliates to treat the cost of the services they purchase from each other as tax-deductible operating losses. Consequently, states collected less from these entities. The issue was whether such costs were the same as those businesses incur when they purchase goods and services from unaffiliated businesses.

California addressed this issue in the 1930s when filmmakers began distributing their made-in-California movies through out-of-state affiliates. The filmmakers regarded filmmaking and film distribution as separate businesses, assuming that the state could tax filmmakers only for the income they received from selling the movies to their affiliates, not the income the affiliates received from distributing the movies to local theaters.

The state argued that the making and distributing films represented a single unitary business, regardless of the relationship between the filmmakers and their affiliated distributors. Consequently, it required filmmakers to apportion to California the total income from making and distributing films (Joe Huddleston and Shirley Sicilian, "History and Consideration for Combined Reporting: Will States Adopt a Model Combined Reporting Statute?" accepted for publication in *The Tax Lawyer—The State and Local Tax Edition* and *The State and Local Tax Lawyer—Symposium Edition*).

According to Huddleston and Sicilian, California's tax administrators imposed this reporting requirement without statutory authorization, maintaining that, "combined reporting was implicit in the apportionment statutes, based on the unitary business principle." The filmmakers did not legally challenge this claim. It was not until 1947 that the California Court of Appeals upheld the state's apportionment formulas for unitary businesses. In 1963, it further ruled that the state had to impose combined reporting on such businesses, *Edison Ca. Stores v. McColgan,* 30 Cal 2d 472 (1947); *Honolulu Oil Corporation v. Franchise Tax Board*, 60 Cal 2d. 414 (1963), respectively.

Instituting Combined Reporting

The California cases and the Multistate Tax Commission's model income apportionment act encouraged other states to adopt combined reporting. (The commission is an intergovernmental agency the states created in 1967 to "protect their tax authority in the face of previous proposals to transfer the writing of key features of state tax laws from the state legislature.") By the 1980s, 16 states had adopted combined reporting. The Illinois, Kansas, Montana, Nebraska, and Oregon courts followed the California court's lead, ruling that combined reporting was inherent in the uniform act and the unitary apportionment principle, Huddleston and Sicilian stated. But the adoption of combined reporting without explicit statutory authorization hit a speed bump in the late 1980s when Maine and Massachusetts courts ruled that combined reporting required such authorization (*Sears & Roebuck & Co. v. State Tax Assessor*, 561 A.2d 172 (1989); *Polaroid Corp. v. Comm. of Rev.,* 472 N.E. 2d 259 (1984), respectively).

In the 2000s, six states instituted combined reporting, bringing the total to 22. During this period, corporate business tax revenues as a share of total state tax revenue continued to drop in most states, a trend researchers attributed to several factors, including:

1. reductions in the federal tax base, which many states use as the starting point for calculating state income taxes;

2. the proliferation of state corporation business tax credits and exemptions;

3. the growth of business partnerships and other pass-through entities (whose owners pay personal income taxes on the income they receive from the entity); and

4. complex organizational structures, such as the one described above, that allow separate but affiliated businesses to reduce their taxable income by doing business with each other as though they were unaffiliated businesses.

SELECTED STATES' ADOPTION OF COMBINED REPORTING

Georgia

Georgia requires separate reporting, but a 2010 regulation also authorizes the revenue commissioner to require combined reporting if it prevents a taxpayer from diverting profits "in an arbitrary manner between corporations and their stockholders or between affiliated corporations" (G. Comp. R & Regs. 560-7-8-.07). The commissioner must "require the consolidation of income of all such affiliates and then proceed to compute the entire net income in accordance with Section 92-3113, which relates to apportionment of income within and without the State." Examples of income distortion include "sales at more or less than fair value" and "payment of unreasonable officers' salaries, rents, royalties, interest, and other charges against income."

Illinois

Regulations. Illinois mandated combined reporting in 1993 after several regulatory, judicial, and legislative twists and turns. In 1967, the state adopted the Multistate Tax Commission's Multistate Tax Compact, a model law developed to promote uniform state tax administration. In 1969, Illinois adopted a corporate income tax without explicitly authorizing combined reporting. The state's revenue department issued regulations and a tax bulletin requiring such reporting, but neither "were viewed as authority for the use of combined reporting," Buresh and Weinstein stated ("Combined Reporting: The Illinois Experience," *Journal of State Taxation*, Spring 1984).

Under the regulations and the guidelines, the department preferred that corporations submit combined returns that included their foreign subsidiaries (worldwide combination) but, under certain conditions, would allow them to include only their domestic subsidiaries (i.e., water's edge combination). In 1975, the legislature repealed the compact and the department subsequently rescinded the bulletin, thus eliminating combined reporting for tax years ending on or after October 31, 1975.

Court-Mandated Combined Reporting. Before the legislature and the department acted, however, the Caterpillar Tractor Company and its subsidiaries filed refund claims for the 1969-1974 tax years, claiming that combined reporting should have been required for most of those years. The Illinois Supreme Court upheld Caterpillar's right to file a combined report and held that the law authorized the department to require such reports.

Governor's Amendatory Veto. In June 1982, the legislature passed and sent to the governor a bill prohibiting combined reporting. The governor, who had until September to act on the bill, hired Coopers and Lybrand to study combined reporting and created a task force to advise him about the issue. He decided to support combined reporting and, as permitted by the Illinois Constitution, amended the bill and resubmitted it to the legislature. Among other things, the bill allowed water's edge combined reporting. By this time, "a growing majority of companies on both sides of the issue . . . began to realize that while the bill was not a perfect solution to the combined reporting problem, it represented the best possible compromise approach," Buresh and Weinstein stated.

In 1993, the legislature required, rather than allowed, water's edge combined reporting.

Maine

Maine's legislature adopted combined reporting in 1986, apparently without debate. Previously, though, in 1984, its Joint Committee on Taxation issued a report discussing how combined reporting and other tax policies could affect business decisions, including whether to expand a facility or relocate operations to another state. The report stated that it was difficult to generalize about combined reporting's potential effects on Maine's business climate:

> As long as states vary in the treatment of capital gains and losses [,] some businesses may fear double taxation or prefer to locate in states where it is possible to shelter a portion of business income from

taxation. In addition, the uncertainty of the initial imposition of unitary provisions may cause some reluctance to initiate investments in Maine. On the other hand, it is possible to envision situations where a business could benefit from unitary taxation, and some corporations have expressed preference for such treatment. Therefore, the effects of this factor [are] not entirely clear.

Massachusetts

2008 Proposal. Massachusetts adopted combined reporting in 2008 for tax years starting on or after 2009. The governor's 2007 tax package recommended combined reporting after a 2007 study commission endorsed it if it was coupled with a "meaningful reduction" in the corporate income tax rate, Joseph Donovan and Sara Wellings stated ("Massachusetts Unitary Proposal Survives Study and Becomes Law," *State Tax Notes*, July 21, 2008). But the House speaker publically opposed adopting combined reporting, significantly reducing its chances for passage.

Commission. To keep the proposal alive, the governor convinced the Senate president and House speaker to establish a 15-member commission to advise him about his tax proposals. The commission included legislators, executive branch officials, business advocates, tax lawyers, and economists. It had until June 15, 2007 to submit an interim report and January 1, 2008 to submit a final one.

Although it was divided about "where it should head its recommendations," the commission submitted an interim majority report endorsed by eight members and a minority report endorsed by seven. According to Donovan and Wellings, the majority supported the purposes of the governor's proposals, including combined reporting, but stated more time was needed to consider how it should be designed and implemented. The minority made no recommendations, expressing only concerns about "whether it was possible to make informed decisions by the interim due date." The speaker remained opposed to combined reporting.

Consensus. During the summer, the commission divided into subcommittees, each examining one or two topics, including combined reporting. As they met, an informal consensus developed that the corporate tax rate should be reduced because it undermined the state's competitiveness. The consensus helped set the stage for combined reporting by offering "an opportunity to break the logjam posed by the speaker's opposition." It also provided a way to "shift some tax benefits from large multistate corporations whose effective tax rate was low despite the high nominal rate because of aggressive [tax] planning, to companies that had not adjusted their structures to reduce the Massachusetts tax burden," Donovan and Wellings explained.

Consensus was reflected in the five-member combined reporting subcommittee's final votes. It voted three-to-two to recommend combined reporting without conditions and four-to-one to recommend it if it were accompanied by a revenue neutral corporate tax rate cut.

The other factor that pushed combined reporting along was the speaker's change of heart, which came after he successfully opposed the governor's casino gambling proposal. "Having inflicted political damage on a popular governor of his own party by stopping casino gambling, [Speaker] DiMasi, cognizant of the unitary/check-the-box for rate cuts compromise brewing at the commission, may have concluded that it was prudent to facilitate a victory for the governor on the tax front," Donovan and Wellings concluded.

New Hampshire

New Hampshire instituted worldwide combined reporting in 1981 and subsequently limited it to water's edge in 1986. The bill proposing the change to water's edge was "the result of a year of work by the Ways and Means Committee, the Department of Revenue Administration, and numerous representatives of the business community" (*House Journal 14*, May 13, 1986).

New Jersey

New Jersey does not require combined reporting, but the legislature is currently considering two bills that require it (Assembly Bill 4629 and Senate Bill 3045). In June 2015, the nonprofit New Jersey Policy Perspective issued a report recommending combined reporting (*Closing Corporate Tax Loopholes Would Help New Jersey's Small Businesses & Provide Resources to Build the Economy*, June 2015).

New York

As in Illinois, there were several twists and turns to New York's imposition of combined reporting: first, combined reporting was discretionary, then required under specific conditions, and finally required without conditions.

Discretionary Combined Reporting. Before 2007, the Taxation and Revenue Department's regulations authorized the department to:

1. allow combined reporting if a group of businesses could show that its members are under a common ownership and engaged in a unitary business and

2. require it if a business is related to other businesses and submits a separate report that distorts the amount of income apportioned to New York.

Regarding the latter, such distortion was presumed to have occurred if half of the group's transactions occurred among its members (i.e., "substantial transaction").

The group, though, could rebut this presumption by showing that its members conducted these transactions independently of each other, each pursing its own self-interest (i.e., arm's length transactions). Such rebuttals "generally boiled down to a dispute about transfer pricing." Consequently:

> . . . every audit and every case that went to court ended up involving expert witnesses, who depending on which side they were on, would testify regarding whether the intercorporate transactions met arm's length standards. That could be an expensive exercise because expert witnesses do not come cheap. Accordingly, the department went to the State Legislature in 2007 and got the law amended in an effort to eliminate some of the controversy." (Peter L. Faber, "Combined Reporting Developments in New York State," *State Tax Notes,* January 7, 2013.)

Conditional Combined Reporting. In 2007, the legislature enacted the regulatory criterion for requiring combined reporting without the rebuttable presumption. In 2008, the department issued a technical services bulletin explaining how it interpreted this change. In 2012, it adopted regulations that, according to Faber, "solely addressed whether combined reports will be permitted or required" but not "the manner in which income or capital is calculated when combined reports are filed."

Following the 2012 changes, the department seemed to shift gears regarding its preferred filing method. For years, it favored combined reporting, believing that it accurately reflected the income of related groups because it prevented businesses from using affiliates to shift otherwise taxable income out of state. Farber noted that since 2012, though, the department's auditors have been challenging corporations that submitted combined reports, claiming they should be "decombined."

According to Farber, the department's new stance suggests that combined reporting could benefit some businesses. For example, "combination enables the losses of one corporation to offset the income of another corporation" and "enables intercorporate sales to be done on a tax-deferred basis."

Mandatory Combined Reporting. In 2014, the legislature required combined reports for all groups of related businesses under common ownership regardless of the volume of intra-group transactions.

Ohio

In 2005, Ohio replaced its corporation income tax with a broad-based gross receipts tax (i.e., Commercial Activity Tax (CAT)). Although businesses may pay this tax by submitting a "consolidated" or "combined return," the difference "is not analogous to the typical distinction between these two filing options in a corporate income tax context" (KPMG (Klynveld Peat Marwick Goerdeler), "CAT Got Your Tongue? Navigating the Complexities of Ohio's New Commercial Activity Tax," *Perspectives in State and Local Taxation*, Fall 2005).

Rhode Island

The governor proposed combined reporting in 2011, but the legislature did not enact it until 2014, effective for tax years beginning on or after January 1, 2015. In both cases, he proposed combined reporting along with tax cuts and other changes.

During the House Finance Committee's 2011 public hearing on the governor's proposals, representatives of Rhode Island-based Hasbro Inc. and California-based pharmaceutical Amgen testified that combined reporting would discourage them from expanding in Rhode Island. The legislature did not adopt the proposals but instead directed the state's tax administrator to study how combined reporting would affect the state's revenue picture. To facilitate the study, the legislature required corporations to file pro forma combined returns for the 2011 and 2012 tax years.

The administrator concluded that corporations would have paid more income taxes during those years if they had submitted combined returns. He determined that almost 29% of business taxpayers would have paid more taxes, 6.6% less, and about 65% the same. But he also identified several factors that might have affected these results, including the national recovery that began in 2011 and the steps businesses might have taken to reduce their taxes if the state required combined reporting. The study did not recommend whether the legislature should adopt combined reporting (Rhode Island Department of Revenue, Division of Taxation, *Tax Administrator's Study of Combined Reporting*, March 15, 2014).

But the legislature subsequently enacted combined reporting, effective for tax years beginning on or after January 1, 2015. It also cut the corporation business tax rate from 9% to 7%, repealed the business franchise tax, imposed the $500 minimum tax on S corporations, and required the Tax Division to create a nonbinding appeals process to resolve apportionment disputes.

Vermont

Vermont adopted mandatory combined reporting in 2004, applicable to tax years beginning on or after January 1, 2006, and cut the corporate tax rates over two years (2006 and 2007). The legislature took these steps after the Tax Department, at the governor's behest, evaluated the efficiency, equity, competitiveness and sustainability of the state's taxes. The department also prepared a report on combined reporting and briefed the legislature's Ways and Means Committee on its potential effects.

Department Report. The report to the Ways and Means Committee cited a Multistate Tax Commission study that estimated Vermont lost between $7 million to $14 million in 2001 due to tax sheltering methods possible under separate reporting. The report also estimated that combined reporting would generate enough additional revenue to offset a 1% corporate tax rate cut, according to Michael Cowan and Clint Kakstys ("A Green Mountain Miracle and the Garden State Grab: Lessons from Vermont and New Jersey on State Corporate Tax Reform," 60 *Tax Lawyer* 351 (2007)).

Committee Briefing. The department briefed the committee on the arguments against combined reporting, explaining that combined reporting would:

1. not complicate the tax system because most multistate businesses already prepare combined reports for the other states in which they operate;

2. not drive businesses out of Vermont because taxes constitute a relatively small share of business costs and play a little role in decisions about where to locate a facility or whether to expand an existing one;

3. not raise new revenue because combined reporting would be coupled with tax rate cuts;

4. not take effect until 2006, thus giving the department enough time to develop implementing rules and regulations;

5. apply only to a combined group's domestic members (i.e., water's edge); and

6. implement tax reform by broadening the tax base and lowering the rate.

Public Hearing. The Ways and Means Committee heard testimony from combined reporting's advocates and opponents. UConn law professor Richard Pomp stated that combined reporting coupled with tax rate cuts would improve Vermont's business climate, not hurt it. Taxes, Pomp told the committee, generally have little effect on business decisions and economic growth.

The Associated Industries of Vermont argued that combined reporting would discourage businesses from creating jobs and complicate the tax system. It favored the rate reduction and recommended cutting spending to offset the revenue loss. The Council on State Taxation also argued that combined reporting would hurt the state's business climate and set the stage for costly litigation over whether affiliated businesses constitute a unitary business.

Passage. The governor subsequently proposed mandatory combined reporting and cutting the tax rate, among other things. The legislature adopted combined reporting and most of the governor's other proposals.

Wisconsin

Wisconsin enacted combined reporting in 2009, applicable to tax years beginning on or after January 1, 2009, as part of a broader effort to eliminate a budget deficit. But the issue about whether to adopt combined reporting began to percolate in the early 2000s and gained momentum in 2007 as the state struggled to address revenue shortfalls triggered by the national economic recession.

1999 Tax Reform. The legislature began debating combined reporting in 1999, when the governor proposed it and other tax changes. Although the legislature rejected combined reporting, it "had entered the legislative and public discussion," according to the Massachusetts Budget & Policy Center for the Opportunity to Learn Campaign (MassBudget) (*Stories from the States: Wisconsin: Combined Reporting*, undated).

Tax Enforcement. In 2000, combined reporting remained on the front burner as the state's revenue department began taking enforcement action against banks it claimed shifted income to out-of-state subsidiaries. In 2006, the Institute for Wisconsin's Future began making presentations around the state on the amount of revenue the state lost due to these "tax avoidance" strategies.

2007 National Recession. The 2007 national recession hit Wisconsin hard, and the governor and the legislature considered deep spending cuts to offset revenue shortfalls. Diverse interest groups opposed this "cuts only approach," recommending instead a combination of budget cuts and revenue raising measures. But their recommendations were not included in the budget act.

The deficit grew in 2009, and legislators "became more receptive to the idea that projected budget gaps in the coming biennium should be closed using a balanced approach, one that combined both spending cuts and increased tax collections." Tax options included combined reporting, which the governor included in his "budget repair bill." The bill "moved through the legislature and was signed into law by the Governor extremely quickly—all within 48 hours of the bill's introduction," MassBudget reported.

Implementation. In August 2009, the Revenue Department adopted emergency regulations interpreting the new combined reporting law. It did so "without complying with the typical notice, hearing, and publication requirements because the retroactive application of many of the combined reporting provisions created an emergency need for more clarity and certainty" (Schenkelberg, Sutton, and Yesnowitz, "Wisconsin Finalizes Combined Reporting Regulations," *State Tax Notes*, May 10, 2010). In September and October, the department began to revise the regulations and then held hearings and solicited comments on the proposed regulations. It issued final emergency regulations in January 2015.

NOLs

Most states that levy corporation business taxes allow various deductions, including NOLs. Table 1 compares the selected states NOL carryforward and carryback provisions.

Table 1: Selected States Net Operating Loss Carryback and Carryforward Provisions

State	***Net Operating Loss***	
	Carryback Years	***Carryforward Years***
Georgia	2	20
Illinois	0	12
Maine	0	20
Massachusetts	0	20
New Hampshire	0	10
New Jersey	0	20
New York	20	3 (for tax years starting before January 1, 2015)
Ohio	Not Applicable	Not Applicable
Rhode Island	0	5
Vermont	0	10
Wisconsin	0	20

Source: Commerce Clearing House, *State Tax Smart Charts*

HYPERLINKS

Joe Huddleston and Shirley Sicilian, "History and Consideration for Combined Reporting: Will States Adopt a Model Combined Reporting Statute?," accepted for publication in *The Tax Lawyer—The State and Local Tax Edition* and *The State and Local Tax Lawyer—Symposium Edition*, http://www.ncleg.net/DocumentSites/committees/revenuelaws/2007-2008/Meeting%20Documents/Meetings%20for%20Report%20to%202009%20Session/19%20November%202008/History%20and%20Considerations%20for%20Combined%20Reporting%20-%20MTC.pdf, last activated September 4, 2015

Multistate Tax Commission, http://www.mtc.gov/The-Commission, last activated September 4, 2015

"Massachusetts Unitary Proposal Survives Study and Becomes Law," *State Tax Notes*, July 21, 2008, http://www.sandw.com/assets/htmldocuments/Massachusetts_Unitary_Proposal_Survives_Study_and_Becomes_Law.pdf, last activated September 4, 2015

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A Green Mountain Miracle and the Garden State Grab: Lessons from Vermont and New Jersey on State Corporate Tax Reform," 60 *Tax Lawyer* 351 (2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1007466, last activated September 4, 2015

Massachusetts Budget & Policy Center for the Opportunity to Learn Campaign (MassBudget) (*Stories from the States: Wisconsin: Combined Reporting*, undated, http://www.otlcampaign.org/reports/raising-revenue/state-stories/wisconsin, last activated September 4, 2015.

Attachment 1: States Requiring Combined Reporting for Corporation Income Taxes

Alaska	Minnesota
Arizona	Montana
California	Nebraska
Colorado	New Hampshire
Connecticut	New Mexico
Hawaii	New York
Idaho	North Dakota
Illinois	Rhode Island
Kansas	Utah
Maine	Vermont
Massachusetts	West Virginia
Michigan	Wisconsin

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