

Minnesota revenue notice

Revenue Notice # 91-19 Aggregation of Capital Gains and Losses Not Permitted

(Update: Revenue Notice #91-19 has been revoked by Revenue Notice #92-14.)

Affiliated corporations filing returns on the basis of a combined report may not aggregate capital gains and losses.

Although Minnesota adopted federal taxable income as the definition of Minnesota net income in 1987, the law does not reference Section 1502 of the Internal Revenue Code, which allows an affiliated group of corporations to file a consolidated return.

When Minnesota adopted federal taxable income, the legislature did not change the general principle of combined returns. Combined reporting is required by Minn. Stat. Sec. 290.17, subd. 4(j). Combined reporting differs from consolidated returns in that a combined report determines the income of a unitary business attributable to the in-state activities of the taxpaying corporation. A consolidated return consolidates the income of more than one corporation in order to tax the aggregate income of all the corporations. In a combined report, the net income of each corporation in the unitary group is combined instead of combining each item of income or expense separately, as in a consolidated return.

The law provides two modifications to the amount of capital gains included in federal taxable income under Minn. Stat. Sec. 290.01, subds. 19c(8) and 19d(5). These modifications refer only to IRC Sec. 1211, which provides that a capital loss of a corporation may only be allowed to the extent there are capital gains of the same corporation, and to IRC Sec. 1212, which provides for the carryback and carryforward of capital gains. Neither section mentions the aggregation of capital gains and losses.

It is the position of the Commissioner of Revenue that a corporation, filing on the basis of a combined report, may deduct capital losses only against the capital gains realized by that corporation. The aggregation of capital gains and losses among members of an affiliated group of corporations so that a capital loss of one corporation offsets the capital gain of another is not permitted.

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JJS