

CHAPTER 81-03-05.3 WORLDWIDE METHOD OF REPORTING

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81-03-05.3-01. Definitions.

As used in these sections, unless the context otherwise requires:

1. "Commissioner" means the tax commissioner of the state of North Dakota.
2. "Ownership interest" means voting interest.
3. "Taxpayer" means any corporation that is required to file an income tax return in North Dakota.
4. "Transaction" means an event that causes a change in a corporation's assets, liabilities, or owner's equity.
5. "Unitary business" means a group of corporations carrying on activities the component parts of which transfer value among themselves through the unities of ownership, operation, and use. Whether a group of corporations is engaged in a unitary business depends on the facts and circumstances of each case. However, if unity of ownership exists, any or all of the following facts and circumstances will create a presumption that the unities of operation and use exist and, therefore, that the corporations are engaged in a unitary business:
 - a. All activities of the corporations in the group are in the same general line or type of business.
 - b. The activities of the corporations in the group constitute different steps in a vertically structured enterprise.
 - c. The group of corporations is characterized by centralized management.
6. "United States" means the fifty states and the District of Columbia.
7. "Unity of operation" means that the group of corporations contributes to or receives benefits from functional integration or economies of scale.
8. "Unity of ownership" means that the corporations in the group are under the common control of a single corporation, which is also a member of the worldwide group. Control is presumed to exist when the single corporation owns, directly or indirectly, more than fifty percent of the ownership interest of another corporation.
9. "Unity of use" means that the group of corporations contributes to or receives benefits from centralized management and policy formation.
10. "Worldwide combined report" means a method of determining the amount of income which should be assigned to North Dakota on behalf of each member of the worldwide group.
11. "Worldwide group" means the group of corporations engaged in a unitary business. This group of corporations may be engaged in business activity both within and without the United States or the group may be engaged solely in business activity within the United States.

History: Effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38,57-38.1

81-03-05.3-02. Method of filing.

A taxpayer that is a member of a worldwide group shall file its North Dakota income tax return using a worldwide combined report.

History: Effective March 1, 1990.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-59

81-03-05.3-03. Elements of worldwide combined report.

1. A taxpayer that is required to file using the worldwide method of reporting shall include the income and apportionment factors of the following unitary corporations in its combined report:
 - a. A parent corporation.
 - b. Any corporation incorporated in the United States.
 - c. Any corporation incorporated in a possession of the United States as described in Internal Revenue Code sections 931 through 936.
 - d. Any domestic international sales corporation as described in Internal Revenue Code sections 991 through 994.
 - e. Any foreign sales corporation as described in Internal Revenue Code sections 921 through 927.
 - f. Any export trade corporation as described in Internal Revenue Code sections 970 through 972.
 - g. Any foreign corporation which derived gain or loss from disposing of a United States real property interest but only to the extent the gain or loss was recognized under Internal Revenue Code section 897.
 - h. Any foreign corporation.
2. The factors used to apportion the income of the worldwide group must be determined pursuant to chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59, and the following subdivisions:
 - a. Transactions between members of the worldwide group must be eliminated.
 - b. Transactions between any member of the worldwide group and a corporation that has been excluded from the group must be included.
 - c. The property, payroll, and sales of a corporation that has been excluded from the worldwide combined report must not be included in the apportionment factors of the group.
 - d. When apportionable income includes income from a corporation's ownership interest in a general partnership, the corporate partner's share of the partnership's property, payroll, and sales must be included in the group's apportionment factors.
3. Income for the worldwide group must be computed using one of the following methods:
 - a. Method one.

- (1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.
 - (2) Add book income adjusted to conform to the provisions of the Internal Revenue Code of the corporations included in the combined report which are not required to file a federal income tax return.
 - (3) Eliminate transactions between members of the worldwide group.
 - (4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3.
 - (5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.
- b. Method two.
- (1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.
 - (2) Add book income of those corporations included in the combined report which are not required to file a federal income tax return.
 - (3) Eliminate transactions between members of the worldwide group.
 - (4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3.
 - (5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.

History: Effective March 1, 1990; amended effective July 1, 2016.

General Authority: NDCC 57-38-56

Law Implemented: NDCC 57-38, 57-38.1, 57-59