New England Combined Filing Guide: The 2017 Six-State Update

by Kathryn Michaelis, Christopher Sullivan, David Davenport, and Mary Peterson

Kathryn Michaelis

Christopher Sullivan

David Davenport

Mary Peterson

The authors are members of the Rath & Young Tax Practice with offices based in New England. Kathryn Michaelis and Chris Sullivan are shareholders based in the firm's Concord, New Hampshire, office, and both serve on the Board of Trustees of the New England State and Local Tax Forum, a non-profit organization dedicated to education in the state and local tax field.

Michaelis has been with the firm for 10 years, focusing primarily on tax matters in New Hampshire, Vermont, and Massachusetts. Before joining Rath, she was a consultant with PwC's SALT practice in Chicago, as well as a tax litigator with the Illinois Department of Revenue. She has extensive experience in multistate combination and apportionment issues at the planning, audit and appeals levels.

Sullivan has been with the firm for 20 years, representing national clients in multistate audits, appeals and litigation in New Hampshire, Vermont, and Massachusetts. He also has substantial lobbying experience on tax legislation in New Hampshire and in Washington, D.C. He is a frequent speaker on state and local tax issues, including unitary combination and foreign source income issues, at the national level.

David Davenport, based in the firm's Boston office, was formerly deputy commissioner, senior policy counsel of the Massachusetts Department of Revenue. He was part of DOR's legal executive office that represented DOR in the legislative and regulatory processes that developed and implemented both combined reporting and market-based sourcing.

Mary Peterson, based in the firm's new Montpelier, Vermont, office, was formerly commissioner of the Vermont Department of Taxes. She served in the Vermont Ways and Means Committee and participated in the passage of the Vermont combined reporting legislation in 2004.

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I. Introduction

This 2017 guide updates the New England Combined Filing Guide that we authored in 2008, when Massachusetts adopted combined filing. At the time, we offered our commentary on and comparisons of the key features of three combined reporting states — Massachusetts, New Hampshire, and Vermont.[1] As of 2016, all six New England states now mandate combined unitary reporting for business income tax purposes. Connecticut (2016) and Rhode Island (2015) were the last to join the combination movement after Massachusetts (2009) and Vermont (2006) shifted their regimes close to a decade ago to join New Hampshire and Maine, which had both implemented the measure in 1986. Now that all six states have adopted mandatory combined filing and are grappling with differing apportionment regimes, we felt obliged to update our 2008 analysis, expand our commentary to cover all six New England states, and engage in a deeper technical and policy dive into one of the most important issues in state and local tax.

As SALT practitioners who have worked extensively with combined filing rules in multiple states, we offer our analysis, commentary, and perspective to practitioners for a few key reasons. First and foremost, we enjoy engaging in state tax policy. Several of us have drafted, analyzed, or influenced combined filing provisions while serving state government in various roles. We have also served on legislative tax committees, working groups, tax liaison groups with revenue agencies, and nonprofit organizations devoted to state tax policy and education. Second, our goal is to educate tax professionals on both sides of the table about the technical nuances and differences among the states. This goal is reflected in the guide that serves as the cornerstone of this analysis. Third, we've written this update to open the dialogue among state tax practitioners, industry, and government so that we can work collaboratively toward the right answers in the state tax field from a tax policy perspective.

[1] Stanley Arnold, Christopher J. Sullivan, and Kathryn H. Michaelis,"New England Combined Filing Guide," *State Tax Notes*, Oct. 13, 2008, p. 103.

II. A Brief History Lesson on New England's Adoption of Combined Reporting

The recent flurry of combined reporting adoption in Vermont, Massachusetts, Rhode Island, and Connecticut belies another important point — Maine and New Hampshire have had combined reporting for over 30 years. Maine's law was effective January 1, 1986, and New Hampshire's system became effective June 30, 1986. Despite a long history, Maine and New Hampshire have the least amount of written guidance regarding combined reporting — showing that recent states have been quite detailed in statutes and regulations as they move to combined reporting. Additionally, Maine and New Hampshire have outlier provisions: New Hampshire's taxation of passthrough entities (PTEs) at the entity level and foreign dividend factor relief provisions and Maine's lack of an 80/20 rule and implementation of an "Augusta formula." The silver lining is that these two states not only have a depth and history of applying the combined reporting rules, but also have agency personnel that are well-versed and approachable in reaching fair resolutions in this area of the law.

To the west of the Granite State is Vermont, which enacted its statute in 2004 (effective in 2006). Interestingly, Vermont adopted many provisions directly from New Hampshire's system. Our former colleague and former commissioner of the New Hampshire Department of Revenue Administration, Stanley R. Arnold, served on the working group to develop the rules in Vermont, and one of us (Mary Peterson) was on the Vermont Ways and Means Committee helping enact the legislation in 2004. She next served as Vermont tax commissioner for six years, leading the agency during its first interpretations of the new regime.

Effective in 2009, Massachusetts's complex but well-defined combined reporting regime rocked the SALT world when it was implemented in 2009. Massachusetts provided corporations with the option of an affiliated group election, addressed apportionment for differently factored entities within the group, included some income from interest and intangibles of foreign subsidiaries in combined group income, and included S corporations in some combined groups. Rhode Island took notice of the actions in other states, requested pro forma returns to determine the fiscal

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impact of various changes,[2] and drafted its own rules, which became effective in 2015. The last to enact combination was Connecticut, and its rules became effective in 2016. Many of its provisions mirror those of Massachusetts. Because of audit cycles and then litigation cycles, the applicability, impact, and ultimate clarification of some provisions are years away. This article is part of the ongoing dialogue regarding corporate income taxation in New England.

III. From History to Theory: Defining What Is Unitary

Before jumping into our highlights and observations of the New England state tax systems, it is important to briefly shift from history to theory to understand why the combined unitary reporting principle has developed in the first place. While the state statutory tests differ somewhat, the unitary business principle has at its foundation the recognition that:

> separate accounting, while it purports to isolate portions of income received in various States, may fail to account for contributions to income resulting from functional integration, centralization of management, and economies of scale. Because these factors of profitability arise from the operation of the business as a whole, it becomes misleading to characterize the income of the business as having a single identifiable "source."[3]

As a result:

> the theory underlying unitary taxation is that "certain intangible 'flows of value' within the unitary group serve to link the various new members together as if they were essentially a single entity." Formulary apportionment of the income of a multijurisdictional (but unitary) business enterprise, if fairly done, taxes only the "income generated within a State."[4]

The U.S. Supreme Court has stated that the unitary business principle is intended to balance two federal constitutional imperatives: first, that the states have broad authority to devise methods for taxing a corporation's intrastate value or income; and second, that the states cannot tax value or income that cannot, in fairness, be attributed to the corporation's activities in the state.[5] The Court has rejected the notion that the scope of a unitary business may be defined by reference to corporate purpose without some palpable connection between the taxpayer's in-state and out-of-state activities.[6]

In clarifying where to draw the line, the Supreme Court and state tribunals have repeatedly rejected the notion that a unitary finding should result simply on a showing that a subsidiary contributes to the business or profitability of the parent or the parent's affiliated group — or that specific nonoperational ties, without more, support a unitary relationship. In *ASARCO Inc. v. Idaho State Tax Commission,* the Supreme Court rejected an expansive view of the unitary business principle founded on this basis, stating:

> This definition of unitary business would destroy the concept. The business of a corporation requires that it earn money to continue operations and to provide a return on its invested capital. Consequently all of its operations, including any investment made, in some sense can be said to be "for the purposes related to or contributing to the [corporation's] business." When pressed to its logical limit, this conception of the "unitary business" limitation becomes no limitation at all. When less ambitious interpretations are employed, the result is simply arbitrary.[7]

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[2] *See* R.I. Gen. Laws section 4-11-45. *See also* Rhode Island Department of Revenue, Division of Taxation, "Tax Administrator's Study of Combined Reporting" (Mar. 15, 2014); and Rhode Island Department of Revenue, Division of Taxation, "Combined Reporting Study" (Mar. 18, 2014).

[3] *Mobil Oil Corp. v. Commissioner of Taxes of Vermont*, 445 U.S. 425, 438 (1980) (citations omitted). The concept is discussed further in Jerome R. Hellerstein, Walter Hellerstein, and John A. Swain, *State Taxation*, Part IV, Chapter 8 (2001, with updates through Aug. 2017) (hereinafter Hellerstein).

[4] Hellerstein, *supra* note 3, at para. 8.11, citing *Barclays Bank PLC v. Franchise Tax Board*, 512 U.S. 298 (1994).

[5] *Louis Dreyfus Corporation v. Huddleston*, 933 S.W.2d 460, 466 (Tenn. App. 1996), citing *Allied-Signal Inc. v. Director, Divisionof Taxation*, 504 U.S. 768, 780 (1992).

[6] Hellerstein, *supra* note 3, at para. 8.07[3][1][iii], citing *ASARCO Inc. v. Idaho State Tax Commission*, 458 U.S. 307, 326 (1982).

[7] *ASARCO*, 458 U.S. at 326 (brackets original).

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Numerous courts have recognized that a parent corporation often provides occasional oversight regarding investments in its subsidiaries, but that does not necessarily mean the companies are unitary.[8] As Hellerstein notes:

> Minor or insubstantial transactions or interrelations between segments of a business should not suffice to render a business unitary. Rather the very concept that a business is sufficiently integrated and interdependent to warrant formulary apportionment of a multijurisdictional enterprise's entire tax base is the assumption that the interrelations and interdependence are substantial.[9]

Richard Pomp testified in a recent matter involving a parent that provided several nonoperational services to its subsidiary, observing that:

> these were no different from the type of services that most Parents provide to their subsidiaries. Any factor that describes most Parent-subsidiary relationships cannot be a unitary factor or else most Parents and their subsidiaries would be entitled or required to file a combined report.[10]

Numerous courts have found that subsidiaries (or even divisions within the same company) were non-unitary with their parent companies despite the existence of 100 percent ownership, common management, or the provision of administrative services.[11] In 2015, the Vermont Supreme Court decided to adopt a well-reasoned, restrictive approach to the unitary business principle in *AIG Insurance Management Services v. Vermont Department of Taxes*, its first unitary decision since the enactment of combined reporting.[12]

We emphasize the limitations on the scope of defining a unitary business because of the dangers we have observed in the "unitary checklist" approach, which has the tendency to overemphasize immaterial and nonoperational facts in determining a unitary relationship. These facts might include the existence of common benefit plans, overlapping officers and directors, insubstantial intercorporate lending, provision of parent administrative services (such as tax preparation), and misleading quotes from Forms 10-K regarding company "synergies." Our overriding point is to remember the foundation of the principle and to ensure that any unitary determinations comport with the constitutional limitations set forth by the Supreme Court.

IV. Key Features and Policy Considerations

With that historical and theoretical backdrop, we present a technical analysis of key features in combined reporting regimes in New England and separate those features into four categories using a framework similar to what one would use in approaching a state corporate income tax return. Those categories are:

- composition of the combined group (who's in and who's out);
- composition of the combined tax base (what's in and what's out);
- apportionment of the group's income (how much is taxable by the state and under what method); and
- other material issues (for example, treatment of PTEs, key specialized industry rules, application of credits, and some quirks and traps).

[8] *See F.W. Woolworth Co.v. Taxation and Revenue Department*, 458 U.S. 354 (1982).

[9] Hellerstein, *supra* note 3, at para. 8.09[4][b].

[10] *Rent-A-Center Inc. v. Department of Revenue*, TC-MD 111031D (Or. Tax Ct. 2014), citing Pomp's report in plaintiff's exhibits.

[11] *See, e.g., F.W. Woolworth Co.*, 458 U.S. 304; *Ash Grove Cement Co. v. Department of Revenue*, 7 Or. Tax 6 (1977); *Central National-Gottesman Inc. v. Director, Division of Taxation*, 291 N.J. Super. 277 (1996); *Louis Dreyfus*, 933 S.W.2d at 460; and *Perelman v. State of Alabama Department of Revenue*, Docket 01-592, Administrative Law Division (2002).

[12] 2015 VT 137 (2015) (affirming the decision of the Washington Civil Division of the Vermont Superior Court, which held that a subsidiary ski resort (Stowe) was not unitary with its insurance and financial parent (AIG). The court based its non-unitary holding in part on the fact that no opportunity existed for centralized management, economies of scale, or functional integration, particularly given the different lines of business between the ski resort and the insurance and financial services business. The court rejected the department's position that AIG's financial assistance to Stowe created a unitary relationship, holding that this funding only served as an investment in Stowe and not an operational function. The court also refused to place importance on the fact that AIG took a unitary position on other state tax returns. The decision is significant in that it effectively articulated the fine distinctions between facts that contribute operationally to a unitary business relationship and facts that merely reflect a parent company's investment in its subsidiary).

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Within these four categories, we have some interesting technical and policy observations to highlight.

A. The Expanding Water's Edge

In the last decade, corporate income tax discussions in state legislatures have reflected an increased focus on taxation of foreign source income (including proposed tax haven legislation in many states) as a reaction to allegations of tax avoidance through use of foreign subsidiaries. Other states have focused on different methods of taxing foreign-source income, including modifications to exemptions for foreign dividends, addbacks relating to domestic deductions from some foreign source income, and options for affiliated group and worldwide filing elections. All these movements have one common theme: expanding the water's edge to include more income in the state tax base.

The debate over the potential expansion of the water's edge to worldwide combined reporting is not new by any means. These concepts were debated in the 1980s, in the wake of *Container Corp. of America v. Franchise Tax Board*.[13] At the time, several interested parties participated in these discussions, including the Council On State Taxation, multinational corporations, state representatives, Treasury, and foreign governments. In August 1984, Treasury issued its "Final Report from the Worldwide Unitary Taxation Working Group," addressing key issues in states' attempts to impose worldwide combined reporting.[14] While agreement was reached to roll back to the water's edge, there were key disagreements on the scope and inclusion of 80/20 companies and foreign dividends. The increased importance of foreign commerce and the call by some interested parties to impose worldwide combined reporting has brought these issues back to the forefront.

New England states are still struggling with the issue of where to draw the water's edge. First, in defining the water's edge, no two of the six states are alike, which can result in a different combined group in each of the states.[15] For example, New Hampshire, Vermont, and Connecticut use an 80/20 test based on property and payroll; Massachusetts uses all three factors; Rhode Island uses just the sales factor; and Maine uses no 80/20 test. Additionally, some states use an "80 percent or more" test for determining foreign factors, while others use a "more than 80 percent" test. Other nuances exist, including:

- a state's factoring in country of incorporation as a basis for inclusion or exclusion regardless of the 80/20 calculation;
- New Hampshire's treatment of PTEs as stand-alone organizations when calculating the 80/20 test (for example, a foreign-formed, single-member limited liability company disregarded for federal income tax purposes is treated as a regarded entity for purposes of the 80/20 test);
- Vermont's two-of-three-year lookback with the current year minimum of 70 percent;
- Massachusetts's and Rhode Island's inclusion of specific foreign subsidiary income and factors from intangibles and services for which domestic members took a deduction; and
- special standards in Rhode Island and Connecticut regarding corporations in tax havens.

Second, the states differ on whether to include in the water's-edge group entities that are incorporated in countries identified as tax havens.[16] All six state legislatures have seen some level of interest in tax haven legislation over the last few years. However, only the two most recent states to adopt combined filing — Connecticut and Rhode Island — have enacted tax haven legislation. Both states use a "qualitative test," and both include a treaty exemption. New Hampshire recently rejected blacklist-based tax haven legislation.

Third, should taxpayers diverge from the water's-edge group, the available elections differ greatly among the six states. Only Massachusetts and Connecticut offer a 10-year binding worldwide election option. Within the water's edge, three of the six states offer a pure consolidated or affiliated group election:

[13] 463 U.S. 159 (1983) (upholding California's right to impose worldwide combined reporting on U.S.-based multinationals).

[14] *See* U.S. Treasury Department, "The Final Report of the Worldwide Unitary Taxation Working Group" (Aug. 31, 1984).

[15] *See* Table I, "80/20 Definition for Exclusion From Water's Edge Group."

[16] *See* Table I, "Tax Haven Provision?"

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Massachusetts (binding for 10 years), Rhode Island (binding for five years), and Connecticut (binding for 10 years). Vermont offers a unique consolidated nexus election, but the election falls under mandatory combined filing, meaning all eligible nexus members of a combined unitary group may be treated as one member in the combined unitary group, often termed a consolidated-combined election.

Fourth, the states differ on taxation of foreign dividends.[17] Four of the states — Maine, Massachusetts, Rhode Island, and Connecticut — provide some form of dividends received deduction that reduces the amount of income subject to tax. New Hampshire and Vermont exclude foreign dividends from unitary overseas business organizations from the pre-apportioned tax base and then add those dividends back in the post-apportioned tax base after applying factor modification, with a factor consisting of the domestic group numerator over the worldwide denominator.

The impact of these variances can easily result in diverse combined groups in New England, as well as significant differences in the amount of foreign-source income taxed by each state. For these reasons, the New England states offer several models for policymakers to analyze in this key area of state taxation. In addition, the variances present several traps for the unwary — traps that will be the source of continued audit and legislative tension.

B. Apportionment Sourcing: The Next Nor'easter

The New England states are not immune to the national trend of shifting to market-based sourcing for purposes of the sales factor and to greater or single weighting of the sales factor. In a sense, they are now leading the way because the Massachusetts provisions have played a key role in the development of the Multistate Tax Commission model. New Hampshire and Vermont remain holdouts in retaining cost of performance for sourcing receipts from services and intangibles.

New Hampshire is formally considering a shift to market-based sourcing, as well as other apportionment issues, as part of its legislative apportionment study committee.[18] Vermont has had some activity, but no formal push as of yet to consider a change. Regardless, cross-border issues may push both state legislatures to make the change soon, as businesses in these states feel the financial impact of sourcing most of their business income to their home state under a cost of performance method while increasing amounts of their income are being sourced to bordering destination states that have adopted market-based sourcing.

If both holdout states adopt market-based sourcing, they have several options, as evidenced by the other four states. For example, in sourcing service income for the sales factor, Maine looks to where the services are received; Massachusetts looks to where the services are delivered; Rhode Island looks to the location of benefit; and Connecticut looks to the location of customer use. The extent to which these different conceptual phrasings result in practical differences in their sourcing rules is a work in progress. The three new adopters of combined reporting — Massachusetts, Rhode Island, and Connecticut — further break out these rules regarding differing types of services by defining, for example, whether they are in-person services, services delivered to or on behalf of the customer or electronically through the customer, or professional services.

These seemingly academic distinctions have the potential to create real differences in reporting, with either over-inclusion or under-inclusion of receipts in the sales factor numerators. The lack of symmetry in New England may prompt not only tax planning opportunities but also business decisions to relocate headquarters to tax-friendly locations. For example, shifting a service provider's headquarters from a cost-of-performance state to a market-based sourcing state may produce significant savings.

With all these options, including different market-based sourcing methods, what is the right

[17] *See* Table II, "Taxation of Dividends Received from Unitary Foreign Corporations Excluded from Combined Return."

[18] The New Hampshire Apportionment Study Committee was authorized by 2017 NH Laws Ch. 106, N.H. Rev. Stat. Ann. 77-A:23. The report is due November 1, 2018.

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answer? It depends on your measuring tool. From a tax policy perspective, it makes sense for businesses that are increasingly doing business on a multistate level for there to be consistent, transparent sourcing rules. This points to continued adoption of market-based sourcing for benefits, including minimization of double inclusion of income and uniformity to allow a company's internal accounting and record systems to capture information in a consistent manner to comply with sourcing rules. From a state-centric and financial perspective, the right answer may depend on which method best supports the state's economy, which one is least susceptible to tax avoidance or manipulation, and which one avoids creating an impetus for companies to move out of the state.

One key issue is whether market-based sourcing aligns with how businesses capture information. In some systems, market-based sourcing requires tracking the customer of your customer. However, this is not only impractical (if not impossible), but it is also inconsistent with the creation of the market that relates to the taxpayer generating the receipts. We suspect that the first round of audits of these issues will bring them to the forefront and provoke legislative review.

C. Passthrough Entity Issues: The Issue for the Next Decade

As if the foregoing traditional unitary issues were not enough to tackle, another big-ticket item that needs to be addressed in the SALT world is taxation of income from PTEs. This issue has been increasingly on the radar, with cases raising important jurisdictional questions and with the federal audit partnership regulations looming on the horizon. Therefore, we must address the issue of PTEs in combined unitary reporting.

As most SALT practitioners know, the states generally diverge on whether to adopt the aggregate method or separate accounting method in apportioning and taxing a corporate partner's distributive share and determining factors of a PTE. (These methods are described in detail in footnote 1 of Table IV.) A few key sub-issues arise in this analysis, including whether:

- the aggregate method is conditioned or presumed upon a unitary relationship or ownership threshold;
- carveouts or exemptions exist for specialized entities that conduct investment or passive activities; and
- any differing treatment exists for PTEs for apportionment purposes or otherwise.

Generally, five of the six New England states will adopt an aggregate method, including the distributive share from the PTE in the corporate partner's tax base and "flowing up" the factors from the PTE into the corporate partner's apportionment formula. However, New Hampshire taxes PTEs at the entity level, as it would a corporation. Of the other five states, Massachusetts includes a rebuttable presumption of aggregate treatment for corporate general partners and for limited partners that have 50 percent or greater ownership of the PTE. The opposite presumption applies for separate accounting if these are not met.

Second, carveouts exist for distributive shares from investment-type PTEs in three states:

- in New Hampshire, qualified investment companies, which may or may not be PTEs, are exempt from the business profits tax;
- in Massachusetts, nonresident limited partners of a Massachusetts limited partnership engaged exclusively in "buying, selling, dealing in or holding securities on its own behalf" are exempt from income tax; and
- in Connecticut, income from investment partnerships is not included in the unitary base of a corporate limited partner unless common ownership exists between the general partner and the income is unitary.

Third, the states diverge on taxation of PTEs in various areas that implicate combined filing. For example, both New Hampshire and Massachusetts may include the income of S corporations in combined income, and Massachusetts taxes large S corporations at the entity level (if total receipts equal or exceed $6 million per year), thus raising some interesting closely held business issues for purposes of combination. In addition, when Rhode Island passed its combined reporting regime, it also instituted single-sales factor for C corporations and combined groups. However, it retained a three-factor formula for PTEs. Interestingly, Connecticut now has single-sales factor and

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market-based sourcing for all entities, but the effective date was January 1, 2016, for corporations and January 1, 2017, for PTEs. In another weird twist, Connecticut rules regarding throw-out of receipts from real estate dispositions differ between corporations and PTEs. As with foreign source income and apportionment issues, PTE issues will undoubtedly cause compliance and audit issues in the years to come.

V. Conclusion

In the 2000s, there was tremendous change in the New England corporate income tax landscape, with four states adopting combined reporting and four states making significant changes to apportionment sourcing. Yet even as the states become more uniform, there are important differences that must be reconciled when filing in these states. New England is a small geographic area, and it is very likely that multinational filers and even middle-market businesses operate in all six New England states. From our Concord, New Hampshire office, for example, we can drive to each of the other five state capitals in about two hours, so cross-border issues are omnipresent.

In the following tables, our goal was to capture the key features of each of the regimes so that multistate businesses and practitioners can increase compliance and planning in this important economic region of the country.

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Table I. New England Combined Filing Guide: Comparison of Key Elements

Issue[1]	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Unitary Group						
Unitary combined filing effective tax year beginning on or after	June 30, 1986[2]	January 1, 1986[3]	January 1, 2006[4]	January 1, 2009[5]	January 1, 2015[6]	January 1, 2016[7]
Unitary business definition	"One or more related business organizations engaged in business activity both within and without this state among which there exists a unity of ownership, operation and use; or an interdependence in their functions"[8]	"A business activity which is characterized by unity of ownership, functional integration, centralization of management and economies of scale"[9]	"One or more related business organizations engaged in business activity both within and outside the State among which there exists a unity of ownership, operation and use; or an interdependence in their functions"[10]	"The activities of a group of two or more corporations under common ownership that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts"[11]	"The activities of a group of two or more corporations under common ownership that are sufficiently interdependent, integrated, or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts." Regulations construe the definition as being satisfied by either the interdependence of functions test or the three unities test[12]	"A single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership, which enterprise is sufficiently interdependent, integrated or interrelated through its activities so as to provide mutual benefit and produce a significant sharing or exchange of value among such entities, or a significant flow of value among the separate parts"[13]
Common ownership requirement[14]	No percentage threshold test; unity of ownership is defined by regulation to mean the "activities outside the taxing jurisdiction, together with the in-state activities are owned either directly or indirectly by the same economic entity or group of economic entities"[15]	"a group of two or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations"[16]	"a group of two or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, or by one or more of the member corporations"[17]	"more than 50 percent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group"[18]	"more than fifty percent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not owner or owners are members of the combined group"[19]	"more than fifty percent of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group"[20]

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Table I. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue[1]	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Unitary Group						
Eligible entities included in unitary business group [Specialized industry eligibility addressed in Tables III and IV][21]	Any business organization, which is defined to include corporate and non-corporate entities (including sole proprietorships, partnerships, LLCs and federally disregarded entities); no conformity to check-the-box[22]	Any entity taxable as a C corporation for federal purposes and potentially S corporations (on amounts taxable at the federal level); full conformity to check-the-box[23]	Any entity taxable as a C corporation for federal purposes; full conformity to check-the-box[24]	Any entity taxable as a C corporation for federal purposes and any entity treated as an S corporation for federal purposes (special rules apply based on level of receipts); full conformity to check-the-box[25]	Any entity taxable as a C corporation for federal purposes; full conformity to check-the-box[26]	Any entity taxable as a C corporation for federal purposes; full conformity to check-the-box[27]
80/20 definition for exclusion from water's-edge group	Exclusion for overseas business organizations (OBOs), which are defined to mean "foreign incorporated business organizations" and "business organizations with 80 percent or more of the average of their payroll and property assignable to a location" outside the 50 states and D.C.; 80/20s are excluded only if a certification is made on intercorporate transactions[28]	No 80/20 rule — exclusion for corporations not required to file a federal tax return; use of "water's-edge" method for determining apportionable income base, which means "the income subject to apportionment is the income required to be reported on the taxpayer's federal income tax return as modified by Maine law"[29]	Exclusion for overseas business organizations (OBOs); a Vermont OBO is defined as any "business organization that ordinarily has 80 percent or more of its payroll and property" outside the 50 states and D.C.; exclusion applies if the organization meets the 80 percent test for 2 of the 3 last years and at least 70 percent for the current year[30]	Exclusion for corporations not incorporated in the United States if the average of the payroll, property and sales factors is more than 80 percent foreign, except for certain income (and related factors) from intangibles and services for which a group member took a deduction, unless complete treaty exemption from U.S. tax (all domestics included)[31]	Exclusion for corporations not incorporated in the United States (a "non US corporation") if the sales factor outside the United States is 80 percent or more, except certain income (and related factors) for intangibles and services for which a group member took a deduction and that was paid to a foreign corporation in a country not under a tax treaty or that is incorporated in a tax haven (all domestics included)[32]	Exclusion for (1) domestic corporations if 80 percent or more of payroll and 80 percent or more of property is foreign-sourced and (2) foreign corporations if more than 80 percent of property and more than 80 percent of property is foreign, unless such corporation is incorporated in a tax haven not for "legitimate business purposes"[33]
Tax haven provisions?	No. 2015 legislation failed to pass. No activity in 2016 or 2017[34]	No. 2016 legislation failed to pass. 2017 legislation failed to pass (specific countries listed)[35]	No. 2015 legislation requiring report failed to pass. No activity in 2016 or 2017[36]	No. Legislation has been introduced for several years but failed to be enacted (specific countries listed and qualitative criteria included in 2017 legislation)[37]	Yes, effective for taxable years beginning on or after Jan. 1, 2015. Qualitative test and treaty exemption exist[38]	Yes, effective for taxable years beginning on or after Jan. 1, 2015. Qualitative test and treaty exemption exist[39]
Worldwide election available?	No[40]	No[41]	No	Yes (on original return, binding for 10 years)[42]	No[43]	Yes (on original return, binding for 10 years)[44]

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Table I. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue[1]	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Unitary Group						
Consolidated / affiliated group election available?	No[45]	No[46]	No. However, consolidated nexus-only election available for taxable (nexus) companies that qualify and elect to file as part of the same federal consolidated tax return (election binding for 5 years); election applies under requirements of combined filing[47]	Yes. Affiliated group election available (on original return, binding for 10 years). Not available if a worldwide election is made[48]	Yes. Affiliated group election available (binding for 5 years unless approved by the tax commissioner)[49]	Yes (on original return, binding for 10 years)[50]
Same line of business an indication of unity?	No[51]	Yes, by regulation: strong presumption of single trade or business[52]	Yes, by regulation: indicator of interdependence in functions[53]	Yes, by regulation: likely unitary situation[54]	Yes, by regulation: indicator of interdependence in functions[55]	Yes, by special notice, as a "likely indicator"[56]
"Intrastate unitary twist"?[57]	Yes. At least one member of the group must be engaged in business activity outside New Hampshire as a prerequisite to file a combined return[58]	No (not by statute or other existing authority). However, different rates and apportionment rules exist depending on intrastate vs. interstate activity[59]	Yes. At least one member of the group must be engaged in business activity outside Vermont to file a combined return[60]	No. Intrastate unity is expressly contemplated. Special apportionment rules exist[61]	No. Intrastate unity is expressly contemplated[62]	No (not by statute or other authority)[63]

[1]This guide encompasses state business and corporate income taxes imposed on a combined unitary basis. Franchise, net worth or other non-income taxes, even when imposed by these states on the same business entities and/or on the same corporate or business tax return, are beyond the scope of this guide. Tables I through IV of this guide address the general rules applicable to eligible entities includable in a combined report; Table IV addresses other material issues pertinent to combined reporting, including variations by the states on treatment of passthrough entities, certain specialized industries, and credits.

[2]1986 N.H. Laws 153:9.

[3]1985 Me. Laws c. 675, sections 2, 5.

[4]2004 Vt. Acts & Res. No. 152:23.

[5]2008 Mass. Acts 173:101.

[6]2014 R.I. Laws 145, Art. 12, section 22.

[7]2015 Conn. Acts 15-5 section 139 (June Spec. Sess.); *see also* 2015 Conn. Acts 15-244 section 156 (Jan. Sess.). Mandatory combined reporting was contained in H.B. 7061, which was passed by the General Assembly on June 3, 2015, and was effective for tax years beginning on or after January 1, 2015. On June 29, 2015, the General Assembly passed S.B. 1502, which made additional changes and delayed the implementation of mandatory combined reporting to tax years beginning on or after January 1, 2016. Lastly, on December 8, 2015, the legislature approved S.B. 1601, which made additional changes to the combined reporting rules. *See generally,* Connecticut Special Notice No. 2016(1) Ct. Department of Rev. Services, "Combined Unitary Legislation," Mar. 2, 2016 (hereinafter 2016 Special Notice).

[8]N.H. Rev. Stat. Ann. section 77-A:1, XIV [hereinafter RSA]; *see also* N.H. Code Admin. R. Ann. Rev. 301.19 [hereinafter N.H. Admin. Rules, Rev], N.H. Admin. Rules, Rev 301.34, 301.35, 301.36, 302.11, 302.12.

[9]Me. Rev. Stat. Ann. tit. 36, section 5102(10-A) [hereinafter M.R.S.A.]; *see also* 18-125-801 Me. Code R. section .02 [hereinafter CMR], 18-125 CMR section 810.01(F).

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Table I. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue[1]	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Unitary Group						

[10]Vt. Stat. Ann. tit. 32, section 5811(23) [hereinafter V.S.A.]; *see also* 1-3-104 Vt. Code R. section 1.5862(d)-6 [hereinafter Vt. Dept. of Taxes Reg.]. Vermont authority often uses the term "affiliated group" in reference to a unitary business group, which terminology is often confusing given that Vermont law retained a consolidated filing option along with mandatory combined reporting.
[11]Mass. Gen. Laws Ann. ch. 63, section 32B(b)(1) [hereinafter M.G.L. c. 63]; *see also* 830 CMR section 63.32B.2(2); 830 CMR section 63.32B.2(3).
[12]R.I. Gen. Laws Ann. section 44-11-1(11) [hereinafter R.I.G.L.]; *see also* 60-1-240 R.I. Code R. section 5 [hereinafter R.I. Reg. CT __, Rule __]; R.I. Reg. CT 16-17, Rule 8. The term is construed to the broadest extent under the U.S. Constitution pursuant to the statutory definition. On this basis, the regulations state that the unitary test may be met by either the "[i]nterdependence of functions test" or the "[t]hree unities test." *See* R.I. Reg. CT 16-17, Rule 8(c). Please be advised that a regulatory renumbering program is ongoing in Rhode Island at the time this guide was under publication; practitioners should check the Rhode Island Secretary of State's website for updates and cross-referencing.
[13]Conn. Gen. Stat. Ann. section 12-213(a)(32) [hereinafter Conn. Gen. Stat.].
[14]The authors encourage practitioners to review the attribution and indirect ownership rules in each state in addition to the general ownership rule stated herein.
[15]N.H. Admin. Rules, Rev. 301.35.
[16]36 M.S.R.A. section 5102(1-B); *see also* 18-125 CMR section 810.01(A).
[17]32 V.S.A. section 5811(22); *see also* Vt. Dept. of Taxes Reg. section 1.5862(d)-4(a), (c), 1.5862(d)-6(d)(1).
[18]M.G.L. c. 63, section 32B(b)(2); *see also,* 830 CMR section 63.32B.2(2) (definition of commonly owned or common ownership, which addresses extensive examples of indirect ownership, direct ownership, tiered ownership, constructive ownership, and other issues).
[19]R.I.G.L. section 44-11-1(3); *see also* R.I. Reg. CT 16-17, Rules 5, 7.
[20]Conn. Gen. Stat. section 12-213(a)(31).
[21]This section examines which types of entities are eligible for inclusion in the combined group, if all other combined reporting requirements are met, based on federal income tax treatment, including C corporations, S corporations and passthrough entities (PTEs), as well as conformity to the federal check-the-box Treasury regulations (Treas. Reg. sections 301.7701 et seq.). This section does not address inclusion or exclusion based on industry-based distinctions, which is examined in Section III (apportionment) and Section IV (key specialized industries). Additional tax issues relating to PTEs are further addressed in Table IV.
[22]RSA 77-A:1, I; N.H. Admin. Rules, Rev 307.01.
[23]36 M.R.S.A. sections 5102(6), (8), (10), 5180, 5190, 5200. For S corporations, amounts taxable at the federal level include IRC section 1374 (built-in gains) and IRC section 1375 (certain passive investment income). The authors note that combination of C corporations and S corporations reflects a technical reading of the law and not necessarily common practice.
[24]32 V.S.A. sections 5811(15), 5832, 5910, 5911, 5920.
[25]M.G.L. c. 63, section 32B(c), 32D; *see also,* 830 CMR section 63.32B.2(2) (definition of corporation), (4) (corporations includable in a combined report), and 830 CMR section 62.17A.2(8), (9) (S corporations). All S corporations are eligible to be included in a combined report. An S corporation (including its QSubs) that is doing business in Massachusetts is subject to combined reporting within the meaning of M.G.L. c. 63, section 32B, when it is engaged in a unitary business with one or more other corporations, including one or more S corporations that are subject to combined reporting. *See generally* 830 CMR 63.32B.2: Combined Reporting; *see also* 830 CMR 63.32B.2(4)(a). In those cases, if the S corporation is subject to the income measure of the excise tax, it is required to be included in the combined report and to compute its net income subject to tax and its income measure consistent with the rules for combined reporting. *See generally* 830 CMR 63.32B.2(7), and (7)(l), Example 8 (discussing the rules that apply when an S corporation is to file as a member of a combined group). Where an S corporation is not itself subject to the income measure of the excise tax, it is nonetheless required to be included in a combined report if it is engaged in a unitary business with one or more other corporations that are subject to the income measure of the excise tax and any member of that group that is a C corporation. In contrast, in any instance where an S corporation is engaged in a unitary business only with one or more other S corporations, and the aggregate gross receipts of those corporations is less than $6 million (that is, no corporation in the combined group is liable for the income measure excise), the group is not required to file a combined report. *See* 830 CMR 62.17A.2(9).
[26]R.I. Reg. CT 16-17, Rule 7.
[27]Conn. Gen. Stat. sections 12-213(a)(1), (a)(29), 12-284b, 12-726.
[28]RSA 77-A:1, XV, XIX, 77-A:2-b, 77-A:6, IV; *see also* N.H. Admin. Rules, Rev. 301.13, 307.07(j).
[29]36 M.R.S.A. section 5244; 18-125 CMR sections 810.02, .03; *see also, E.I. Dupont Nemours & Co. v. State Tax Assessor*, 675 A.2d 82 (Me. 1996); *Tambrands Inc. v. State Tax Assessor*, 595 A.2d 1039 (Me. 1991); and *Maine Tax Alert*, Vol. 9, No. 4 (Sept. 1, 1999).
[30]32 V.S.A. section 5811(22), (24); Vt. Dept. of Taxes Reg. section 1.5862(d)-5.
[31]M.G.L. c. 63, section 32B(c)(3); *see also* 830 CMR section 63.32B.2(5).
[32]R.I.G.L. section 44-11-4.1(d); *see also* R.I. Reg. CT 16-17, Rule 7. If a non-U.S. corporation is includable as a member but its income is subject to a "federal income tax treaty" (a defined term), the income, expenses and apportionment factors attributable to that income are not included in the combined return. However, specific rules apply to income subject to treaties with countries that are considered tax havens. *See* R.I.G.L. section 44-11-4.1(d).

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Table I. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue[1]	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Unitary Group						

[33]Conn. Gen. Stat. section 12-218f(b). The term "tax haven" is determined by the commissioner and defined in section 12-218f(b)(4).
[34]*See* 2015 New Hampshire H.B. 2, as introduced, and H.B. 551, as introduced.
[35]*See* 2016 Maine H.B. 1110, L.D. 1634 (introduced) (provided list of countries); 2017 Maine H.P. 564, L.D. 784 (introduced).
[36]Piggybacking on the national movement to enact tax haven legislation, including failed legislative action in the New Hampshire legislature in the 2015 session, the Vermont legislature was considering a proposal in 2015 to require the Tax Commissioner to report to the legislature on or before January 15, 2016, with a recommendation as to how to "include income from tax havens in the calculation of Vermont's corporate income tax." (H. 489, as introduced). The legislation was never enacted.
[37]*See* 2017 Massachusetts S. 1548 (introduced Jan. 23, 2017) (provided qualitative test and list of countries), S. 1569 (introduced Jan. 23, 2017) (provided qualitative test and list of countries), and H. 1501 (introduced Feb. 24, 2017) (provided qualitative test).
[38]R.I.G.L. sections 44-11-1(8), 44-11-4.1(d); R.I. Reg. CT 16-17, Rule 7.
[39]Conn. Gen. Stat. section 12-218f(b)(4). *See* Connecticut H.B. 7061, Laws 2015 (enacted June 3, 2015) and S. 1601, Laws 2015 (enacted Dec. 8, 2015).
[40]RSA 77-A:2-b, II.
[41]36 M.R.S.A. section 5211(17); *E.I. Du Pont de Nemours & Co. v. State Tax Assessor*, 675 A.2d 85 (1996).
[42]M.G.L. c. 63, section 32B(c)(3); *see also* 830 CMR section 63.32B.2(5)(c) (the 10-year period includes the year of election).
[43]*See generally* R.I.G.L. section 44-11-4.1 and related administrative code.
[44]Conn. Gen. Stat. section 12-218f(b), (c).
[45]RSA 77-A:1, I.
[46]*See generally* 36 M.R.S.A. sections 5102, 1-B, 6, 10; 5200.
[47]32 V.S.A. section 5862(c)-(d). Taxpayers may elect a consolidated member filing within a combined return, which treats all nexus companies eligible for a consolidated election as one member of the combined group. Taxpayers should proceed with caution when considering the differences between combined and consolidated filings in Vermont. First, the statutory and regulatory guidance in Vermont that makes distinctions between combined filings and consolidated filings remains confusing as the terms that refer to both are often used interchangeably. This was not intentional; the consolidated election predated Vermont's shift to combined filing, and the legislature and department have yet to "clean up" the references. Moreover, over recent years, the department has also imputed a consolidated election when the combined return forms were filed in such a way as to omit details relating to specific nexus companies' apportionment. Taxpayers should be careful to strictly follow the form instructions to avoid unintended consequences and also assess the potential benefits that may be derived from a consolidated combined filing.
[48]M.G.L. c. 63, section 32B(g); *see also* 830 CMR section 63.32B.2(10), (2), (6)(b)(2) (the 10-year period includes the year of election).
[49]R.I.G.L. section 44-11-4.1(b); *see also* R.I. Reg. CT 16-17, Rule 9.
[50]Conn. Gen. Stat. section 12-218f(b), (c).
[51]*See generally* RSA 77-A:1, XIV; *see also* N.H. Admin. Rules, Rev. 301.19, 301.34, 301.35, 301.36, 302.11, 302.12.
[52]18-125 CMR 801.02.
[53]Vt. Dept. of Taxes Reg. section 1.5862(d)-6(c)(1).
[54]830 CMR section 63.32B.2(3)(b).
[55]R.I. Reg. CT 16-17, Rule 8(d)(1).
[56]2016 Special Notice.
[57]This issue identifies whether the state prohibits a combined return if no members are engaged in interstate activities (e.g., disallowance of combined reporting if all members are engaged in intrastate activity).
[58]RSA 77-A:1, XIV; *see also* N.H. Admin. Rules, Rev 301.07.
[59]36 M.R.S.A. section 5200; *see also,* 18-125 CMR 810(.05), (.06). However, note that an effective tax rate differential may exist between intrastate unitary groups and interstate unitary groups due to the different methods by which the state apportions the tax rates.
[60]32 V.S.A. section 5811(23); *see also* Vt. Dept. of Taxes Reg. section 1.5862(d)-6. It is likely that this provision was added due to the influence of neighboring New Hampshire's unitary provisions, many of which were adopted in Vermont. Stan Arnold, formerly senior tax advisor with Rath, Young & Pignatelli, and prior to then, tax commissioner for New Hampshire for 14 years, served on the working group that assisted the Vermont Department of Taxes in formulating its unitary regulations.
[61]830 CMR section 63.32B.2(7)(k); *see generally* M.G.L. c. 63, section 32B; *see also* 830 CMR section 63.32B.2(1)(b).
[62]*See* R.I. Reg. CT 16-17, Rule 8(d) (indicating that unity may exist when one or more related business organizations engaged in business activity "entirely within this state, or both within and without this state").
[63]*See* Conn. Gen. Stat. sections 12-213(a)(29), (32).

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Table II. New England Combined Filing Guide: Comparison of Key Elements

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Tax Base						
Computation of combined unitary income[1] [Note: Specialized industry tax base issues are addressed in table IV]	Pure combined — tax is imposed on combined unitary group as a whole[2]	Option to file either pure combined, wherein tax is imposed on unitary group as a whole, or separate/combined, wherein tax is imposed on each separate taxable member[3]	Separate/combined — tax is imposed on each separate taxable member[4]	Separate/combined — tax is imposed on each separate taxable member[5]	Separate/combined — tax is imposed on each separate taxable member[6]	Separate/Combined — tax is imposed on each separate taxable member[7]
Intercompany eliminations and transactions — (a) Federal consolidated return rule adoption (b) Intangible and interest addbacks	(a) Rejects federal rule. Adopts state-level eliminations rule with special rules for 80/20 companies (b) No addbacks[8]	(a) Adopts rules analogous to IRC section 1502: "Intercompany transactions must . . . be treated in a manner consistent with federal law and regulations"; federal consolidated group adjustments permitted only for transactions between unitary group members (b) No general addbacks; disallowance for loss, deductions, and expenses from ownership of financial organizations subject to the financial franchise tax[9]	(a) Adopts rules analogous to IRC section 1502[10] (b) No addbacks	(a) Adopts rules analogous to IRC section 1502 (b) Addback provisions exist but do not generally apply to members of the same combined group given intercompany eliminations (see special rules for 80/20 companies and other cases where no elimination)[11]	(a) Adopts principles set forth in IRC section 1502[12] (b) Addback provisions were repealed effective for taxable years beginning on or after Jan. 1, 2015[13]	(a) Adopts principles set forth in IRC section 1502 (b) Addback provisions exist but do not apply to members of the same combined group[14]

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Table II. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Tax Base						
Dividends treatment for: (a) Dividends received deduction (DRD) (b) Taxation of unitary foreign dividends	(a) Does not follow federal DRD. (b) Deduction permitted for "such amount of gross business profit as is attributable to foreign dividend gross-up" determined under IRC section 78; dividends from "overseas business organizations" are included in combined group income but only after factor modification[15]	(a) Does not follow federal DRD. (b) Statute allows general 50 percent DRD for apportionable dividends received from 50 percent or greater owned corporations not included in combined report; foreign factor relief may be permitted under the "*Augusta* formula"[16]	(a) Does not follow federal DRD. (b) Dividends from overseas business organizations included in combined group income but only after factor modification; express indication in regulation that inclusion of factors of lower tier foreign entities may be warranted[17]	(a) Does not follow federal DRD. (b) 95 percent DRD generally for dividends received (exclusive of liquidating distributions) where corporation owns 15 percent or more of payor's voting stock; no factor modification for dividends from excluded foreign subsidiaries[18]	(a) Generally follows federal DRD. (b) 70 percent DRD from foreign subsidiary with less than 20 percent ownership; 80 percent DRD if ownership is between 20 percent and less than 100 percent; and 100 percent DRD if subsidiary is wholly owned[19]	(a) Does not follow federal DRD. (b) 100 percent DRD for dividends received from 20 percent or greater owned domestic corporations and all foreign corporations not otherwise deducted from gross income; 70 percent DRD for dividends received from less than 20 percent owned domestic corporations; special REIT rules apply;[20] exclusion for dividends from passive investment companies[21]
Treatment of section 78 gross up: in or out?	Subtracted in determining profits/ income (see above)[22]	Subtracted in determining income[23]	Subtracted in determining income[24]	Included but may also qualify for state DRD[25]	Excluded from the definition of net income[26]	Excluded from the definition of gross income[27]
Treatment of subpart F income: in or out?	Removed from apportionable income but included as a foreign dividend[28]	Included in computation of income and eligible for 50 percent DRD and Augusta relief[29]	Removed from apportionable income but included as foreign dividend[30]	Included and eligible for DRD[31]	Initially included but then deducted as a special deduction[32]	Included as a deemed dividend and eligible for DRD[33]

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Table II. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Tax Base						
Net operating loss treatment:[34] (a) Federal or state NOL? (b) Amount limitation? (c) Carryover period (d) Application pre- or post-apportionment? (e) Quirks and/or transition rules	(a) State-specific (b) $10 million carryforward limit (c) 10-year carryforward (d) Pre-apportionment (e) Quirk: the NOLD value is diluted by it being apportioned twice[35]	(a) Starts with federal line 30 with state modifications (b) None (c) 20-year carryforward (d) Post-apportionment (e) Quirk: post-2011 recapture for previously disallowed NOLD amounts and offset of addition modifications against NOLD carryforwards[36]	(a) State-specific NOL (b) None (c) 10-year carryforward (d) Post-apportionment (e) Transition Rules: special conversion rules for 2006 (transition to combination) and 2007 (transition from federal NOL to state NOL) [37]	(a) State-specific NOL (b) None (c) 20-year carryforward (generally) (d) Post-apportionment (e) Quirks: no NOL deduction for pre- nexus periods; no NOL deduction for financial institutions, whether C corporations or S corporations[38]	(a) State-specific NOL (b) Limited by amount of federal taxable income (c) 5-year carryforward (d) Pre-appotionment (e) Transition rules: special conversion/ tracing rules for pre-2015 NOLs (e.g., pre-2015 losses only allowed to offset income of loss generator)[39]	(a) State-specific NOL (b) NOLD limited to 50 percent of apportioned net income of each company (c) 20-year carryforward (d) Post-apportionment (e) Transition rules: special rules for pre-2016 NOLs, including method of allocation of NOLs generated in pre-2016 combined and unitary returns to taxable members of a 2016 combined return[40]
Express business/ nonbusiness income distinction?	No, all income is apportionable[41]	No, all income is apportionable[42]	Yes, by regulation, which specifies that: all business receipts are apportionable; nonbusiness receipts are defined as receipts other than business receipts resulting from operations unrelated to its regular business operations; allocation of nonbusiness income[43]	No. A multistate corporation's entire net income derived from related business activities is apportionable; income from unrelated business activities is allocable (applying U.S. constitutional standards to determine whether income is allocable to Massachusetts rather than apportionable)[44]	No, all income is apportionable[45]	No, all income is apportionable[46]

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Table II. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Tax Base						

[1]Our designation "pure combined" refers to a computation whereby each member's income is included in one combined pre-apportioned tax base and is apportioned by one apportionment factor consisting of the combined numerator of all members over the combined denominator of all members to arrive at combined taxable income. In contrast, "Separate/Combined" refers to a computation whereby each member's income is included in one combined pre-apportioned tax based (as with pure combined) but is apportioned by each taxable member separately through an apportionment factor consisting of that member's stand-alone numerator over the combined denominator of all members to arrive as that member's share of taxable combined income.

[2]RSA 77-A:1, XVI, RSA 77-A:6, IV; N.H. Admin. Rules, Rev. 302.10.

[3]36 M.R.S.A section 5220(5); 18-125 CMR 810.02, .05.

[4]Vt. Dept. of Taxes Reg. section 1.5862(d)-7(d).

[5]M.G.L. c. 63, section 32B(a); 830 CMR section 63.32B.2(6)(b)(1).

[6]R.I. Reg. CT 16-17, Rule 11(d)(1); R.I. Gen Laws. Ann. section 44-11-4.1(c); R.I. Reg. CT 16-17, Appendix I; *see generally* R.I. Reg. CT 16-17, Rules 10 and 11; R.I. Reg. CT 15-04, Rules 7 and 8.

[7]Conn. Gen. Stat. section 12-218e(b)(1), (c), (e).

[8]RSA 77-A:1, XV, XVI; N.H. Admin. Rules, Rev 302.09(a), (c), 302.10(b), (c), 307.07(c).

[9]36 M.R.S.A. section 5102(8); 18-125 CMR 810.03(A), (D); 36 M.R.S.A. section 5200-A(1)(L).

[10]Vt. Dept. of Taxes Reg. section 1.5862(d)-7(e)(5).

[11]M.G.L. c. 63, section 32B(a), (f); 830 CMR section 63.32B.2(5), (13). For addback provisions generally, see M.G.L. c. 63, sections 31I(b), 31(J)(a), (K); 830 CMR section 63.31.1(1), (3); and Technical Information Release 03-19 (Sept. 19, 2003).

[12]R.I. Reg. CT 16-17, Rule 11(d)(3). See specific rules relating to captive REITs in Rule 14.

[13]R.I.G.L. section 44-11-11; L. 2014, C. 145, Art. 12, section 17 (repeal legislation); R.I. Reg. CT 16-17, Rule 14(e).

[14]Conn. Gen. Stat. sections 12-218c(c)(4), 12-218e(a)(6); see also, Office of the Commissioner Guidence OCG-3. July 14, 2017.

[15]*See* N.H. Dep't of Rev. Admin., Technical Information Release, TIR 2008-1 (Mar. 4, 2008); *see generally* RSA 77-A:4, RSA 77-A:4, XI, RSA 77-A:1, XVII, 77-A:3, II(b); *see also* N.H. Admin. Rules, Rev 304.04(b)(2).

[16]36 M.R.S.A. section 5200-A(2)(G). The *Augusta* formula relates to Maine's corporate income tax treatment of a multijurisdictional corporation's foreign source dividends. Pursuant to 36 M.S.R.A. section 5200-A(2)(G), a corporation can exclude 50 percent of dividends received from foreign unitary affiliates from its income during the tax year that is not included in its Maine combined report, but it must be phased in over 5 years. The remaining 50 percent is included in the corporation's apportionable income. Maine Tax Alert, Vol. 9 No. 4, Sept. 1, 1999. The *Augusta* formula was developed in response to *Tambrands Inc. v. State Tax Assessor*, 595 A.2d 1039 (1991), in which the Supreme Judicial Court of Maine held that a formula in which dividends paid to Tambrands by its foreign affiliates were included in Tambrands' business income, while completely excluding property, sales, and payroll from its foreign affiliates from the denominators in calculating apportionment, was constitutionally defective. The case was remanded to the state tax assessor to "include additional factors in the apportionment formula that will 'fairly represent' Tambrands's business activity, consistent with constitutional due process." *Tambrands Inc.*, 595 A.2d 1039 (1991). The state tax assessor then developed the *Augusta* formula, which uses the worldwide reporting method as a check on the fairness of the assessment of tax liability on the income of a multijurisdictional unitary business. The Supreme Judicial Court of Maine upheld this formula in *E.I. Du Pont De Nemours & Co. v. State Tax Assessor*, 675 A.2d 82 (1996). *See also Irving Pulp & Paper Ltd. v. State Tax Assessor*, 879 A.2d 15 (2005).

[17]Vt. Dept. of Taxes Reg. sections 1.5862(d)-7(f), 1.5862(d)-8(b) (*citing* Vt. Dept. of Taxes reg. section 1.5832(d)-12 for support that a taxpayer may include factors of foreign lower-tier entities if additional factor relief is appropriate).

[18]M.G.L. c. 63, sections 30(4), 38(a)(1).

[19]R.I.G.L. sections 44-11-11(a), 44-11-4.1(g); R.I. Reg. CT 16-17, Rule 14(e); Instructions to RI-1120C, Schedule B.

[20]Conn. Gen. Stat. section 12-217(a)(1)(D), (a)(3). No DRD exists for REIT dividends unless deductible under IRC section 243 or from a captive REIT or from a qualified REIT to a qualified dividend recipient.

[21]Conn. Gen. Stat. section 12-213(a)(1), (a)(9)(C).

[22]RSA 77-A:4, XI.

[23]36 M.R.S.A section 5200-A(2)(B).

[24]32 V.S.A. section 5811(18)(A)(ii)(l).

[25]*See Dow Chemical Co. v. Commissioner*, 378 Mass. 294 (1979).

[26]R.I.G.L. section 44-11-11(a)(2).

[27]Conn. Gen. Stat. section 12-213(a)(9)(B).

[28]RSA 77-A:1.

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Table II. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Composition of Tax Base						

[29]36 M.R.S.A. section 111(1-A).
[30]32 V.S.A. section 5811(18).
[31]*See Dow Chemical Co. v. Commissioner*, 378 Mass. 294 (1979).
[32]R.I.G.L. section 44-11-11.
[33]Conn. Gen. Stat. section 12-217(a)(1)(D).
[34]The NOL section addresses the following issues in each state: (a) whether the state adopts the federal line 30 NOL or has a state-specific NOL; (b) whether a qualitative limitation exists in the amount of NOL that may be carried forward from the loss generation year; (c) the period of carryback or carryforward; (d) whether the NOL deduction is applied in the carryover year before or after apportionment; and (e) state-specific limitations on application in the combined group, including any quirks or transition rules from pre-combination to post-combination returns.
[35]RSA 77-A:4, XIII; N.H. Admin. Rules, Rev 303.03.
[36]36 M.R.S.A. section 5200-A; 18-125 CMR 810.03(G), 810.08; *see also* "Modifications Related to New Operating Loses — Examples for C Corporations": Guidance Document, Maine Revenue Services, Sept. 2016.
[37]32 V.S.A. section 5811(25); Vt. Dept. of Taxes Reg. section 1.5862(d)-9(a); Vt. Dep't of Taxes, Tech. Bull. TB-36 (issued Mar. 16, 2007) and Tech. Bull. TB-40 (originally issued Jan. 7, 2008; revised Oct. 7, 2008).
[38]M.G.L. c. 63, sections 32B(f); 30(4),(5); 830 CMR section 63.32B.2(6)(b)(1), (8); 830 CMR section 63.30.2; 830 CMR section 62.17A.2 (S corporations).
[39]R.I.G.L. section 44-11-4.1(e); R.I. Reg. CT 16-17, Rule 13.
[40]Conn. Gen. Stat. section 12-217(a)(4), 12-218e(d); 2016 Special Notice, Section V and Example F (Mar. 2, 2016).
[41]*See generally* RSA 77-A:1, III, VI; RSA 77-A:3; N.H. Admin. Rules, Rev 304.01.
[42]36 M.R.S.A. sections 5210, 5211(8).
[43]32 V.S.A. section 5833(a); Vt. Dept. of Taxes Reg. section 1.5833-1(d), (e); *see* Vt. Dept. of Taxes Reg. section 1.5862(d)-3, -7(c). Nonbusiness income is allocated "to the state in which the income producing assets are located," and if "the income producing asset has no situs, the income will be allocated to the state of commercial domicile, the principle place from which the business is directed or managed." Vt. Dept. of Taxes Reg. section 1.5833-1(e).
[44]M.G.L. c. 63, section 38(a), (b); 830 CMR section 63.38.1(3)(a), (3)(d), (4). For taxpayers with business activity taxable both within and without Massachusetts, "a taxpayer's income subject to apportionment is its entire income derived from its related business activities within and outside of Massachusetts not including any allocable items of income that either are or are not subject to the tax jurisdiction of Massachusetts." 830 CMR section 63.38.1(3)(a). Further, if a taxpayer has one or more items of income derived from "unrelated business activities," which is a defined term in 830 CMR section 63.38.1(2), the items of income will be excluded from the taxpayer's taxable net income and will not be apportioned to Massachusetts "if Massachusetts does not have jurisdiction to tax the items of income under the constitution of the United States." 830 CMR section 63.38.1(3)(d).
[45]R.I.G.L. section 44-11-14; R.I. Reg. CT 15-04, Rule 6(b).
[46]*See generally* Conn. Gen. Stat. section 12-218.

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Table III. New England Combined Filing Guide: Comparison of Key Elements

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Apportionment						
Standard apportionment formula (general rule)	Three-factor, double-weighted sales factor[1]	Single-sales factor[2]	Three-factor, double-weighted sales factor[3]	Three-factor, double-weighted sales factor for all corporations except those identified in the "special industry apportionment" section below. Each taxable member's denominator includes the separate denominators of all members calculated under that member's formula.[4]	Single-sales factor (for C corporations and combined groups); three-factor formula for all other taxpayers, including S corporations, partnerships, and LLCs taxed as passthrough entities (for taxable years beginning on or after January 1, 2015)[5]	Single-sales factor for corporations (for taxable years beginning on or after January 1, 2016); single-sales factor for passthrough entities (for taxable years beginning on or after January 1, 2017).[6]
Special industry apportionment?	Elective special apportionment available if certain criteria are met for: • airlines; • financial institutions; • printers/ publishers; • railroads; • transportation; • broadcasting[7] All taxable industries included in same combined group.	Limited: • election for mutual fund service providers; • special rules regarding receipts from financial services under general sales factor; • special rules regarding Maine HMOs[8] All taxable industries except electing mutual fund service providers included in same combined group.	None.[9] However, industries such as insurance and financial companies that are individually exempt from corporate income tax, but whose unitary income is included in the combined return, are required to compute a denominator for inclusion in each taxable member's denominator.[10]	Mandatory specialized apportionment for:[11] • manufacturing corporations (single-sales factor);[12] • financial institutions (equal-weighted, three-factor formula/special adjustments are required for financial institutions' property and sales factors);[13] • mutual fund service companies (single-sales factor);[14] • pipeline companies;[15] • electricity companies;[16] • telecommunications;[17] • airlines;[18] • motor carriers;[19] • courier/delivery[20] All taxable corporations, whether or not in these specialized industries, are included within the same combined group (see note above regarding denominator computation).[21]	In limited circumstances, elective specialized apportionment for: • RICs and securities brokerage services; • credit card banks; • retirement and pension plans; • manufacturers Also, special apportionment treatment for certified facilities and income from international investment management services. All taxable industries are included within the same combined group.[22]	Mandatory specialized apportionment for: • motor carriers (passengers and property for hire); • management companies of RICs • securities brokerages; • limited partners of investment partnerships; • credit card activities by financial service companies; • anufacturers (election exception); • broadcasters/ programming All taxable industries are included within the same combined group.[23]

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Table III. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Apportionment						
Sales factor — *Joyce* or *Finnigan* rule?[24]	*Joyce*[25]	*Finnigan*[26]	*Joyce*[27]	*Finnigan*[28]	*Finnigan*[29]	Not expressly stated, but reflects *Finnigan*[30]
Sales factor — sales of tangible personal property (TPP)	Destination based[31]	Destination based[32]	Destination based[33]	Destination based[34]	Destination based[35]	Destination based[36]
Sales factor — throwback (tangible personal property sales) and throwout / exclusion rules?	Throwback: Yes. State applies *Joyce* rule for throwback (for sales originating in New Hampshire).[37] Throwout: No	Throwback: No Throwout: Throwout rule exists but only for sales of TPP.[38] *Finnigan* rule applies.	Throwback: Yes. *Joyce* rule applies for throwback (if property is shipped from an office, store, warehouse, factory or other place of storage in Vermont).[39] Throwout: No	Throwback: Yes. *Finnigan* rule applies for throwback (if property was not sold by an agent "chiefly situated at, connected with or sent out from premises" outside Massachusetts).[40] Throwout: Yes, exclusion from sales factor for sales other than sales of TPP if: taxpayer cannot ascertain (or reasonably approximate) state of assignment; or taxpayer is not taxable in state of assignment; *Finnigan* rule applies.[41]	Throwback: Yes *Finnigan* rule applies for throwback (if shipments are made from an office, store, warehouse, factory or other place of storage in Rhode Island).[42] Throwout: No	Throwback: No[43] Throwout: No general throwout rule, however, receipts from real property, TPP, and intangibles not held by the taxpayer primarily for sale to customers in the ordinary course of business are excluded from the sales factor for corporations (but included in net income). The same rule applies for passthrough entities except not for receipts from real estate dispositions.[44]
Sales factor – services[45]	Income-producing activity/cost of performance rule: services based on location of performance; other income based on where earned.[46]	Market-based sourcing rule: receipts sourced based on where services are received; if not readily determinable, to the home (for individual customer) or office (for business customer) from which services were ordered; if not readily determinable, billing location is used. Federal government purchasers: income-producing activity test.[47]	Income-producing activity/cost of performance rule for services based on location of performance; other business receipts where earned.[48]	Market-based sourcing rule: receipts sourced based on where services are delivered, generally construed to refer to location of market. Interpretation of location of delivery depends on whether service is categorized as: in-person; delivered to the customer or on behalf of the customer, or delivered electronically through the customer; or professional.[49]	Market-based sourcing rule: receipts sourced based on where the benefit is received (and proportional if both within and without). Interpretation of location of benefit depends on whether service is: in-person; delivered to the customer, or on behalf of, or delivered electronically through the customer; or professional.[50]	Market-based sourcing rule: sourced based on customer use of service (for tax years beginning on or after January 1, 2016, for corporations and January 1, 2017, for passthroughs). Detailed sourcing rules apply to individual customers vs. business customers.[51]

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Table III. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Apportionment						
Sales factor – intangibles (sales, licenses, leases)	Income-producing activity /cost of performance (per statute); location of use (per regulation)[52]	Market-based sourcing rule: based on location of use of intangible property by licensee/ purchaser; if multiple states, apportioned based on use; if federal government licensee/ purchaser: income-producing activity[53]	Income-producing activity/cost of performance (per statute); location of use for patents and copyrights, meaning the extent to which activities thereunder are carried on in Vermont (per regulation)[54]	Generally, market-based sourcing rule (for intangible licenses or license-type sales): based on use, which refers to the "location of the taxpayer's market for the use of the intangible property that is being licensed."[55] Key aspects: Marketing intangibles: assigned to MA to the extent the marketed goods or services are acquired by customers in MA. Production intangibles: assigned to MA to the extent the use for which the royalties or other fees are paid takes place in MA, with presumption of licensee's commercial domicile. Recasting: if a sale or license of intangibles resembles the sale of an electronically-delivered good or service, digital good, or software, the sourcing will be recast under special rules. Sales of intangibles are generally thrown out including: Securities, goodwill, going concern value, or workforce in place or similar. Geographic/government licenses: Examples: • Geographically-based contract right or government license: to state of geographic designation; • Covenant not to Compete: percentage of population of state specified in contract to U.S.[56]	Market-based sourcing rule: to the extent the corporation's "market for the sale is in the state." Key aspects: Marketing intangibles: assigned to R.I. to the extent the associated goods or items are used in R.I. Production intangibles: assigned to R.I. to the extent the use for which the fees are paid takes place in R.I., with the presumption of licensee's commercial domicile. Recasting: if a license of intangibles resembles the sale of an electronically-delivered good or service, the sourcing will be recast under special rules. Geographic/government licenses: Examples: • Geographically-based contract right or government license: to state of geographic designation; • Covenant not to Compete: Percentage of population of state specified in contract to U.S.[57]	Market-based sourcing rule: based on customer use (taxable years beginning on or after January 1, 2016 for corporations and taxable years beginning on or after January 1, 2017 for passthroughs).[58] Key aspects for business customers: Marketing Intangibles: assigned to CT to the extent the associated goods or items are acquired by the ultimate customers in CT Non-marketing and manufacturing intangibles: assigned to CT to the extent the use for which the fees are paid takes place in CT, presumptions apply.[59]

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Table III. New England Combined Filing Guide: Comparison of Key Elements (*Continued*)

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Apportionment						
Sales factor — treatment of software in the factor	Not expressly addressed.	Not expressly addressed.	Receipts from licensing of software based on income-producing activity/cost of performance (per statute); location of use of software (per regulation).[60]	Receipts from a license or sale of pre-written software: treated as sale of TPP (destination-based) if on a tangible medium. Receipts from a license or sale of customer software not on a tangible medium: sourcing falls under intangible rules set forth above.[61]	Receipts from a license or sale of pre-written software: treated as sale of TPP (destination-based). Receipts from a license or sale of customer software: sourcing falls under intangible rules set forth above.[62]	Not expressly addressed.

[1]RSA 77-A:3, II(a).
[2]36 M.R.S.A section 5211(8); 18-125 CMR 810.01(B).
[3]32 V.S.A, section 5833(a); Vt. Dept. of Taxes Reg. sections 1.5833-1(a), 1.5862(d)-8(a). Rule 1.5833-1 has not been updated since 1998 to reflect the double-weighting of the sales factor that went into effect for taxable years beginning on or after January 1, 2006.
[4]M.G.L. c. 63, section 2A, 38; and 830 CMR section 63.38.1. In computing each member's factor, each taxable member must determine its apportionment percentage based on its specific apportionment formula. M.G.L. c. 63, section 32B(d)(2)(i); and 830 CMR section 63.32B.2(7)(b). However, in determining each member's denominators, each member must determine the factor denominators of every member of the group based on the apportionment provisions that apply to that member, regardless of whether any particular member is taxable. M.G.L. c. 63, section 32B(d)(2)(ii); 830 Mass Code Regs. section 63.32B.2(7)(d). Thus, in calculating the property and payroll factors for a standard three-factor company, such member includes the property and payroll of all members, including members subject to a single sales factor apportionment formula. M.G.L. c. 63, section 32B(d)(2)(iii); 830 CMR section 63.32B.2(7)(d). Special apportionment rules applicable to groups that combine both financials and nonfinancials in M.G.L. c. 63, section 32B(d)(2)(ii); and 830 CMR section 63.32B.2(7)(h).
[5]R.I.G.L. section 44-11-14(b); R.I. Reg. 15-04, Rule 6(e)(2), 8; and R.I. Reg. 16-17, Rule 10(b); *See Generally* R.I. Reg. CT 15-04.
[6]References in Connecticut apportionment in this chart to corporations means any entity taxed under the Connecticut Corporate Business Tax; reference to passthroughs means any entity subject to the Connecticut Personal Income Tax. *See* Conn. Gen. Stat. section 12-218(b); *see* 2015 Conn. Pub. Acts 1, s. 40 (Dec. Spec. Sess.) and 2016 Conn. Pub. Acts 3, s. 199 (May. Spec. Sess.), which amended Conn. Gen. Stat. section 12-218.
[7]N.H. Admin. Rules, Rev. 304.06 (use of special industry apportionment provisions), 304.07 (airline), 304.08 (printing and publishing), 304.09 (television and radio broadcasting), 304.10 (financials), 304.11 (transportation other than airlines, communication and energy companies). A business organization which is a member of a combined group may elect to use of the foregoing industry specific apportionment provisions if more than 50 percent of the combined group's gross receipts for the taxable period are from sources relating to the industry identified by the rule; and total assets on the last day of the taxable period are commonly related to the industry identified by the rule.
[8]36 M.R.S.A section 5102(6) (insurance companies are subject to income tax with respect to income they receive from a Maine HMO unless the Maine HMO is separately subject to income tax); and 36 M.R.S.A. section 5212 (election for special apportionment by mutual fund service providers, and if made, results in exclusion from a combined return with other taxpayers). 18-125 CMR 801.06(F)(6), (8) (special rules for sourcing receipts from financial services, accounts receivable and collection services under the general sales factor provisions).
[9]32 V.S.A. section 5833(a); and Vt. Dept. of Taxes Reg. section 1.5833-1.
[10]Vt. Dept. of Taxes Reg. section 1.5862(d)-8(a).
[11]M.G.L. c. 63, section 38(j); and 830 CMR section 63.38.1 (apportionment regulation generally).
[12]830 CMR section 63.38.1(10) ("Section 38 Manufacturer").
[13]M.G.L. c. 63, sections 1, 2A (financial institutions).
[14]M.G.L. c. 63, section 38(m); and 830 CMR section 63.38.7 (mutual fund service corporations).
[15]830 CMR section 63.38.8 (pipeline companies).
[16]830 CMR section 63.38.10 (electricity companies).
[17]830 CMR section 63.38.11 (telecommunications industry).
[18]830 CMR section 63.38.2 (airline).
[19]830 CMR section 68.38.3 (motor carrier).

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Table III. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Apportionment						

[20]830 CMR section 63.38.4 (courier and package delivery).
[21]*See supra* note 4.
[22]R.I. Reg. CT 15-04, Rule 11, 8(b), 9(a) (in limited circumstances, taxpayers may use the specialty apportionment formulas in R.I.G.L. section 44-11-14.1 through 14.6 and Rule 11); R.I. Reg. CT 15-04, Rule 11 (special apportionment rules beginning in 2015); R.I.G.L. section 44-11-14.1 through 14.6 (special apportionment rules for regulated investment companies, securities brokerage services, credit card banks, retirement and pension plans and manufacturers; and special apportionment rules for property and payroll of certified facilities (statutorily defined) and income from international investment management services).
[23]Conn. Gen. Stat. sections 12-218(c)-(k) (specialized apportionment), 12-218b (financial service companies), 12-218(j) (manufacturers use single-sales factor except that manufacturers with 75 percent of sales from the federal government may elect a three-factor formula); *see also* "Legislative Changes Regarding Single-Sales Factor Apportionment and Market-Based Sourcing," Corporation Business Tax and Income Tax, Special Notice 2017(1) (Apr. 17, 2017), and Office of the Commission Guidance, OCG-3, July 14, 2017.
[24]*Joyce* and *Finnigan* refer to two landmark California decisions that reflect two variations on attribution of receipts to the sales factor numerator of a combined unitary group. Generally, under the *Joyce* rule, receipts are not included in the sales factor numerator unless the selling corporation itself is taxable in the state, even though other members of the combined group are taxable in that state. Under the *Finnigan* rule, a taxpayer is considered taxable in any state in which any member of its combined group is subject to tax. *See Appeal of Joyce Inc.*, 66-SBE-070 (Calif. State Bd. of Equalization 1966) (SBE held that receipts from sales of goods shipped to California customers by a seller that was part of a unitary business conducted in a state, but was not itself taxable in the state because of P.L. 86-272, could not be included in the California sales factor); and *In Appeal of Finnigan Corp.*, 88-SBE-022 (Calif. State Bd. of Equalization 1988)(wherein the SBE overruled *Joyce* in a throwback case, in holding that a subsidiary corporation making sales into destination states in which it was not individually taxable was not required to throwback sales to its sales factor numerator because its parent was taxable in the destination states; the SBE interpreted the term "taxpayer" to mean the unitary group).
[25]N.H. Admin. Rules, Rev 304.04.
[26]36 M.R.S.A. section 5211(14); 18-125 CMR 810.05(B).
[27]Instructions to Form BA-402.
[28]M.G.L. c. 63 section 32B(d)(2)(iv); Mass. Technical Information Release No. 08-11 (Aug. 15, 2008).
[29]R.I. Reg. CT 15-04, Rule 8(e); R.I. Reg. CT 16-07, Rule 10(f).
[30]2016 Special Notice.
[31]RSA 77-A:3, I(c); and N.H. Admin. Rules Rev 304.04(c).
[32]36 M.R.S.A. section 5211(15); and 18-125 CMR 801.06(D).
[33]Vt. Dept. of Taxes Reg. section 5833(a)(3); and Vt. Dept. of Taxes Reg. sections 1.5833-1(d)(2); 1.5862(d)-8(a).
[34]M.G.L. c. 63, section 32B(d)(iv), 38(f); and 830 CMR sections 63.32B.2(7)(b), 63.38.1(9)(c); *see* M.G.L. c. 63, section 32B(d)(ii), (iii).
[35]R.I.G.L.section 44-11-14(b)(1)(i); and R.I. Reg. CT 15-04, Rule 8(g), (i).
[36]Conn. Gen. Stat. sections 12-218(b)(1), 12-218e(b)(1),(3) (corporations), 12-711(c)(2)(A) (passthroughs).
[37]RSA 77-A:3, I(c); and N.H. Admin. Rules, Rev 304.04(c).
[38]36 M.R.S.A. section 5211(14), (15)(B); 18-125 CMR 801.06(A)(2), (E); *see also, Great Northern Nekoosa Corp. v. State Tax Assessor*, 675 A.2d 963 (Me. 1996).
[39]32 V.S.A. section 5833(a)(3); and Vt. Dept. of Taxes Reg. sections 1.5833(d)(2) and 1.5862(d)-8(a).
[40]M.G.L. c. 63, sections 32B(d)(iv), 38(f)(2); and 830 Code Mass. Regs. sections 63.32B.2(7)(b)-(c), and 63.38.1(9)(c)(2).
[41]830 CMR section 63.38.1(9)(d)(1)(f).
[42]R.I.G.L. section 44-11-14(b)(1); R.I. Reg. CT 15-04, Rule 8(e), (g), (i)(2); and R.I. Reg. CT 16-17, Rule 10(d), (f).
[43]*See generally* Conn. Gen. Stat. section 12-218(b)(1).
[44]See Conn. Gen. Stat. sections 12-218(b), 12-711(b), and Special Notice, *supra* note 23 (for income tax purposes (passthroughs), receipts from the sale, rental, lease or license of real property is allocated to the stat where the property is located).
[45]This section summarizes the sourcing rules for service revenue applicable to general corporations, not specialized industries or rules applicable to specialized types of services, e.g., financial service revenue.
[46]RSA 77-A:3, I(c); and N.H. Admin. Rules Rev 304.04(c).
[47]36 M.R.S.A section 5211(16-A); and 18-125 CMR 801.06(F).
[48]32 V.S.A. section 5833(a)(3); Vt. Dept. of Taxes Reg. section 1.5833-1(d)(3), (4); section 1.5862(d)-8(a). When compensation for services are in payment of services performed both within and without Vermont, sales are apportioned to Vermont if a greater proportion of the income producing activity is performed in Vermont. If this rule causes an inequitable apportionment of income, the amount attributable to Vermont is determined based on the cost of performance. Vt. Dept. of Taxes Reg. section 1.5833-1(d)(3).

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Table III. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Apportionment						

[49]830 CMR section 63.38.1(9)(d)(4).
[50]R.I.G.L. section 44-11-14(b)(1)(ii); R.I. Reg. CT 15-04, Rule 8(f), (i)(8); and R.I. Reg. CT 16-17, Rule 10(e).
[51]*See* Special Notice, *supra* note 23. Conn. Gen. Stat. sections 12-218(b)(2), (4) (corporations), 12-711(c)(2)(B) (passthroughs); and *see* Conn. Acts 16-3, section 199 (May Spec. Sess.).
[52]RSA 77-A:3, I(c); N.H. Admin. Rules, Rev 304.04(c)(6).
[53]36 M.R.S.A. section 5211(16-B); 18-125 CMR 801.06(F).
[54]32 V.S.A. section 5833(a)(3); and Vt. Dept. of Taxes Reg. section 1.5833-1(d)(1), (4), (5).
[55]M.G.L. c. 63 section 38(f); and 830 CMR section 63.38.1(9)(d)(5),(6).
[56]830 CMR section 63.38.1(9)(d)(5)(b) (marketing intangibles), (9)(d)(5)(c)(production intangibles; rules for mixed intangibles), (9)(d)(5)(e)(recast transactions; examples include license of database access, license of access to information, license of a digital good, license of software other than pre-written software that is treated as a sale of TPP), (9)(d)(5)(a)(v) (throwout rule), and (9)(d)(6) (general throwout rule for specific intangible sales; special rule for geographic/government licenses).
[57]R.I.G.L. section 44-11-14(b); R.I. Reg. CT 15-04, Rule 8(f) (market-based sourcing rule), 8(i)(8)(C)(i) (marketing intangibles), 8(i)(8)(C)(ii) and (iii) (production intangibles and mixed intangibles), 8(i)(8)(C)(iv) (recast transactions), and 8(D) (geographic / government licenses).
[58]Conn. Gen. Stat. sections 12-218(b)(4) (corporations), 12-711(c)(2)(D) (passthroughs).
[59]*See* Special Notice, *supra* note 23. For individual customers, presumption of use is based on the billing address of customer as determined when the bill is issued. *Id.*
[60]32 V.S.A. section 5833(a)(3); and Vt. Dept. of Taxes Reg. section 1.5833-1(d)(1),(4).
[61]830 CMR section 63.38.1(9)(d)(7).
[62]R.I. Reg. CT 15-04, Rule 8(i).

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Table IV. New England Combined Filing Guide: Comparison of Key Elements

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Other Material Issues						
Passthrough entities (PTEs): (a) Aggregate treatment or separate accounting for PTE income and factors?[1] (b) Express rules or exemptions for PTEs conducting investment activities?	(a) Taxes PTEs at entity level because PTEs are taxed as business organizations regardless of federal income tax treatment[2] (b) Qualified Investment Companies (QICs) are exempt from BPT (QICs may be corporate or PTE in formation)[3]	(a) Aggregate treatment[4] (b) No	(a) Aggregate treatment[5] (b) No	(a) Aggregate treatment for PTE income of corporate general partners and of corporate limited partners that have 50 percent or more ownership; rebuttable presumption of non-aggregate treatment for PTEs with corporate limited partners that have less than 50 percent ownership[6] (b) If no MA nexus, otherwise nonresident limited partners of MA LPs engaged exclusively in "buying, selling, dealing in or holding securities on its own behalf" are exempt from MA income tax[7]	(a) Aggregate treatment. However, the combined group members' sales factors do not include factors from a REIT, RIC, REMIC or FASIT[8] (b) Not for PTEs[9]	(a) Aggregate treatment. Further, a corporate partner is treated as a taxable member if unitary with other corporations subject to corporate income tax; if corporate limited partner is not unitary, it is only taxed on its distributive share (b) Income of corporate limited partner of an investment partnership is not included in the unitary base unless common ownership exists with the general partner and income is derived from the unitary business[10]
Key specialized industries — exempt or excluded from group:[11] (a) Financials[12] (b) Insurance[13] (c) Other noteworthy exemptions or exclusions	(a) All financial organizations are included and taxed under business profits tax (BPT) (no distinction from other business organizations) (b) Insurance companies are included but allowed a credit against BPT for premiums taxes paid (c) QICs are exempt[14]	(a) Financial institutions subject to Maine's financial institutions excise tax are exempt from corporate income tax (b) Insurance companies subject to Maine's premium tax (or that would be if conducting in-state business) are exempt and reinsurers of affiliated insurance companies that are not captives are exempt (c) Small business investment companies (defined by statute) are exempt[15]	(a) Banking corporations and loan associations subject to Vermont's financial institutions franchise tax are exempt from corporate income tax but included in combined group (b) Insurance companies subject to Vermont's premium tax are exempt from corporate income tax but included in combined group (c) Captive insurance companies are exempt[16]	(a) Financial institutions are included with special apportionment rules (see Table III) (b) Insurance companies subject to MA premium tax are generally exempt from corporation excise tax (c) Corporations that qualify and elect to be security corporations are excluded from the combined reporting group, and are separately subject on a stand-alone basis to excise tax at lower rates[17]	(a) Statutorily-defined financial institutions are exempt from corporate income tax because excluded from the definition of a taxable corporation (b) Insurance and surety companies are exempt from corporate income tax (c) Passive investment companies that meet the statutory definition are exempt[18]	(a) Financial institutions generally taxable as any other corporation; qualified institutions in Hartford export zone are exempt from corporation business tax (b) Insurance companies as defined in section 12-201 are exempt from corporation business tax (c) Passive investment companies are exempt from corporation business tax (and dividends received from PICs are exempt)[19]

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Table IV. New England Combined Filing Guide: Comparison of Key Elements (*Continued*)

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Other Material Issues						
Application of Credits Within the Combined Group[20]	Credits apply against portion of combined BPT liability attributable to the individual member earning the credit as determined through an apportionment method; unused business enterprise tax (BET) credit may offset liability of other taxable members [21]	Credit earned by a taxable corporation is limited to the liability of that corporation unless specifically permitted by law[22]	Any credit earned by a taxable corporation is allowed against the tax liability of that individual member of the combined group[23]	A credit earned by a taxable member is applied against the tax of that member and may be shared with other taxable members of the combined group if such sharing is consistent with the statutory requirement for claiming that credit (e.g., the other member would have been eligible to claim the credit itself). Special ordering rules apply. Credits may generally offset no more than specified percentages of a member's tax in any given year, with exceptions (e.g., 50 percent for qualified investment credits, 75 percent for qualified research credits)[24]	Pre-combination (pre-2015) credits may only offset the liability of the corporation that earned the credit (tracing protocol exists) Post-combination (2015 and after) credits may generally offset the liability of other members of the combined group; exceptions and limitations set forth in regulation[25]	Pre-combination (pre-2016) credits may only offset the liability of the corporation that earned the credit Post-combination (2016 and after) credits may generally offset the liability of other taxable members of the group. Special ordering rules apply and special rules related to R&D credit exchanges apply. Some credits may offset no more than 50.01 percent of each taxable member's tax in any given year and to no less than $250, with exceptions[26]
Express deference to multistate unitary consistency or disclosures?	No	Yes, disclosure[27]	Yes, by regulation[28]	No	Yes, by regulation[29]	No
Express presumption of instant unity or non-unity?	No	No	Yes. Rebuttable presumption of unity of newly formed entities, and non-unity for newly acquired entities[30]	Yes. Rebuttable presumption of unity of newly-formed entities, and non-unity for newly acquired entities (unless prior unitary relationship but for lack of common ownership)[31]	Yes. Rebuttable presumption of unity of newly formed entities, and of non-unity for newly acquired entities[32]	Yes. Rebuttable presumption of unity of newly formed entities, and of non-unitary for newly acquired entities[33]

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Table IV. New England Combined Filing Guide: Comparison of Key Elements (*Continued*)

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Other Material Issues						
State-specific unique combination features (e.g., the authors' reminders, repeat offenders and traps for the unwary)	• Taxation at entity-level for all business organizations, resulting in taxation at PTE level (including classification of 80/20 companies at PTE level) • Alternative tax base and credit offset between BPT and BET • Intrastate unitary twist (multistate activity required for a combined group) • Foreign factor dividend modification	• Early state to have combination and market-based sourcing • Water's-edge definition not tied to traditional 80/20 test • *Augusta* factor relief and dividends • NOL modification issues • Financial institution classification issues	• Foreign factor dividend modification (similar to N.H.) • Inclusion of exempt entities' income in combined tax base (e.g., insurance and financials) • Retention of a consolidated election under the umbrella of a combined group • Restrictive unitary interpretation from first decision (*AIG*)[34] • Minimal guidance regarding apportionment sourcing	• Apportionment blending for differently factored entities, with some special adjustments • Inclusion in combined group income of S corporation unitary income; taxation of large S corporations ($6 million or more in receipts) • Taxation of foreign intangible/interest income of certain foreign subsidiaries if no complete treaty exemption from U.S. taxation	• Differing apportionment methods between C corporations and PTEs/S corporations • Tax haven rules • Transition rules	• Differing effective dates for apportionment between corporations and PTEs • Maximum tax cap of $2.5 million • Tax haven rules • Transition rules

[1]Aggregate treatment generally refers to state corporate income taxation of the corporate partner by method of combining the corporate partner's pre-apportioned income with its distributive share of pre-apportioned income of the passthrough entity and subjecting this combined tax base to an apportionment factor that consists of the corporate partner's factors and its distributive share of the passthrough entity's factors to arrive at a post-apportioned income base. The alternate method, commonly referred to as separate accounting, generally refers to state corporate income taxation of the corporate partner by method of combining the corporate partner's post-apportioned income (e.g., the partner's income times its own apportionment factor without regard to that of the income and factors of the passthrough entity) with that of the post-apportioned income of the passthrough entity (e.g., the partner's distributive share of the PTE's own income times the PTE's own factors). Unless otherwise indicated, use of the term PTE incorporates both partnerships and multi-member LLCs taxed as partnerships. Unless otherwise indicated, use of the term "partner" incorporates a member of a LLC. Notwithstanding the foregoing, many state taxing regimes do not flush out the idiosyncrasies between partnership and LLC ownership structures. As a result, the authors caution that the organizational documents, state limited liability acts and other relevant state laws should be reviewed to determine if the state taxing regime's rules and references to partners or partnerships is applicable legally and factually to that of members and LLCs.

[2]RSA 77-A:1, I.

[3]A QIC is an entity defined by statute to mean: (a) a regulated investment company as defined in IRC section 851; (b) an organization that is an investment company under the Investment Company Act of 1940 as amended; (c) an organization that would be an investment company under the 1940 Act but for the exception as provided in section 3(c)(1) or 3(c)(7) of the Act; or (d) a qualified community development entity as defined in IRC section 45D that is owned, controlled, or managed by the New Hampshire Business Finance Authority. RSA 77-A:1, XXI. To qualify as a QIC, election and filing procedures must made. RSA 77-A:5-b.

[4]36 M.R.S.A. section 5102(8), (10); *see also* 18-125 CMR 801.07, 810.03(C).

[5]32 V.S.A. section 5811(18), 5833; and Vt. Formal Ruling No. 88-18 (1989).

[6]830 CMR sections 63.38.1(4)(c)-(d), (12). The separate accounting treatment relates to the presumption that the business activity of the limited partnership with less than 50 percent ownership is unrelated to the corporation's other business activities, rebuttable by the commissioner or the taxpayer. *Id.* 830 CMR 63.38.1(4)(d).

[7]*See* M.G.L. c. 62, section 17(b), 5A(a); 830 CMR section 62.5A.1(3)(b) (personal income tax); 830 CMR sections 63.39.1(8)(b)-(d) and 63.38.1(12)(a)(2) (corporate excise tax).

[8]R.I. Reg. CT 16-17, Rule 5, 11(e).

[9]Rhode Island exempts intangible investment corporations, but not PTEs. *See* R.I.G.L. section 44-11-1(4)(vii).

[10]Conn. Gen. Stat. sections 12-218(a), 12-218(g), 12-219a(b), 12-213(a)(32); Connecticut Special Notice No. 2016(1) (Mar. 2, 2016). An investment partnership is defined in Conn. Gen. Stat. section 12-213(26).

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Table IV. New England Combined Filing Guide: Comparison of Key Elements *(Continued)*

Issue	New Hampshire	Maine	Vermont	Massachusetts	Rhode Island	Connecticut
Other Material Issues						

[11]This issue presents a high-level overview of corporate income tax treatment of select, key industries in addition to the specialized apportionment factors presented in Table III. Because of the complexity of this area and for the sake of brevity, not all specialized industries are addressed in the chart. Moreover, the definition of specialized industries often differs from state to state. For completeness, the endnotes listed below provide citations for each state authority that addresses different tax treatment of remaining specialized industries.

[12]Because of the varying definitions that exist for entities comprising the financial industry, specific state definitional provisions cited in the endnotes should be reviewed.

[13]Insurance generally means a company that is defined as an insurance company under applicable state law and is taxed as an insurance company for federal income tax purposes, not including captive insurance companies unless otherwise indicated.

[14] *See generally* RSA 77-A:1, I, III; N.H. Admin. Rules, Rev 302.10. For insurance company credit provisions, see NH RSA 77-A:5, III and 500-A:1. For QIC provisions, refer to N.H. RSA 77-A:1, XXI, 77-A:5-b; and N.H. Admin. Rules Rev 307.08.

[15]36 M.R.S.A. sections 5220(6), 5102(6) (excluded entity list), 5201(10), 5202-A (small business investment companies); *see* 36 M.R.S.A. sections 2513, 5206, 5206-D; 24-A M.R.S.A. sections 1157, 4204, 6701. Exempt insurance companies are those subject to Maine premium tax. Note that an insurance company not otherwise subject to income tax must include income, factors, and affiliations arising from a Maine health maintenance organization (unless separately organized and subject to income tax) in the combined report as though the health maintenance organization was a separate corporation. 36 M.R.S.A. section 5102(6). Exempt financial institutions are those subject to Maine financial institutions tax.

[16]32 V.S.A. sections 5811(3), 5836 (financial institutions tax); *see* 32 V.S.A. sections 8211, 8551; 8 V.S.A. sections 4511, 4583, 6014; *see also* Vt. Dept. of Taxes Reg. section 1.5862(d)-4(b), 7(e); *see also* William F.J. Ardinger, Stanley R. Arnold, and Kathryn H. Michaelis, "An Update on Vermont's Shift to Combined Filing," *State Tax Notes*, Aug. 18, 2008, p. 502. Industries identified as "included but individually exempt from tax" in Table I are required to include their income in the combined group' apportioned tax base. Thus, for example, even though an insurance company is subject to premiums tax in Vermont, its income is included in the combined return and apportioned to other taxable members subject to corporate income tax.

[17]M.G.L. c. 63, sections 32B(a), (c)(1), (2), 30(1), (2), 38B (security corporations); *see* M.G.L. c. 63, sections 2, 2B, 20-29E, 32D, 38B, 38Y, 39; *see also* 830 CMR sections 63.32B.2(1)(d)(4), (7)(h). A financial institution is defined in M.G.L. c. 63, section 1. Generally, each included member's income is in the group's combined tax base. Special rules apply to groups that are comprised of both financials and non-financials, which is addressed in Table III (Apportionment).

[18]R.I.G.L. sections 44-11-1(2), (4) (exclusions from definition of a corporation), 44-11-4.1(a) (excluded financial institutions identified); *see* R.I.G.L. section 7-6-4 (state non-profits), section 27-25-1 (fraternal benefit societies); R.I. Reg. CT 16-17, Rule 7(k)-(l), 11 (specified excluded corporations from a combined group). PICs are defined in R.I.G.L. section 44-11-1(4)(vii).

[19]Conn. Gen. Stat. sections 12-214(a)(1)-(2), 12-201 (insurance companies), 12-249, 12-213(a)(27), (29), 12-218e(a); *and see* 2016 Special Notice. *See also* Conn. Gen. Stat. section 32-530-538 (exemptions for Hartford zones), Conn. Gen Stat. sections 12-213(a)(i), 12-213(a)(9)(c), 12-213(a)(27), and Commissioner's Special Notice 2000 (14) (Aug. 28, 2000) (PIC provisions).

[20]This issue addresses limitations on the amount of credits by a member in a combined group in any given tax year as well as the availability of sharing of credits among other members.

[21]N.H. Admin. Rules, Rev 306.06 (apportionment method); RSA 77-A:5; N.H. Admin. Rules, Rev 306 (enumerated credits); RSA 77-E:13 (application of BET against BPT).

[22]18-125 CMR 810.07.

[23]Vt. Dept. Taxes Reg. sections 1.5862(d)-9, 1.5862(d)-12.

[24]830 CMR section 63.32B.2(9). Special rules set forth application for pre-2009 credits (pre-combination years). *Id.*

[25]R.I. Reg. CT 16-17, Rule 16.

[26]Conn. Gen. Stat. sections 12-217zz, 12-218e(j), 12-217aa; Special Notice No. 2016 (page 13 and Example J).

[27]18-125 CMR 801.05.

[28]Vt. Dept. of Taxes Reg. section 1.5862(d)-6(a).

[29]R.I. Reg. CT 16-17, Rule 8(b).

[30]Vt. Dept. of Taxes Reg. section 1.5862(d)-6(c)(4), (5).

[31]830 CMR section 63.32B.2(3)(c).

[32]R.I. Reg. CT 16-17, Rule 8(g), (h).

[33]Special Notice 2016.

[34]The Vermont Supreme Court issued the state's first unitary decision on November 18, 2015, affirming the decision of the Vermont Superior Court, which held that a subsidiary ski resort (Stowe) was not unitary with its insurance and financial parent (AIG), overturning the Department's administrative hearing decision. The Court based its non-unitary holding in part on the fact that no opportunity existed for centralized management, economies of scale or functional integration, particularly given the different lines of business between Stowe and the insurance and financial services business. The Court rejected the department's position that AIG's financial assistance to Stowe created a unitary relationship, holding that such funding only served an investment in Stowe and not an operational function. The court also refused to place importance on the fact that AIG took a unitary position on other state tax returns. The decision is significant in that it was able to effectively articulate the fine distinctions between facts that contribute operationally to a unitary business relationship and facts that merely reflect a parent company's investment in its subsidiary. *See AIG Insurance Management Services Inc. v. Vermont Department of Taxes*, 2015 VT 137 (2015).

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