State of Rhode Island and Providence Plantations

Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

Pursuant to the provisions of Rhode Island General Laws §42-35-3(a)(1) and in accordance with the Administrative Procedures Act (Chapter 42-35 of the General Laws), the Division of Taxation hereby gives notice of its intent to promulgate regulation CT 11-15, "Combined Reporting (*pro forma*)."

These rules and regulations implement RIGL § 44-11-45. That section requires that each corporation which is part of a unitary business must file a *pro forma* report, in a manner prescribed by the Tax Administrator, for the combined group containing the combined net income of the combined group. These rules and regulations are effective for tax returns filed for tax years beginning after December 31, 2010, but before January 1, 2013.

The proposed rule to be adopted, and a concise summary of non-technical requirements, are available for public inspection at www.tax.ri.gov, in person at the Rhode Island Division of Taxation, or can be requested by e-mail at mcanole@tax.ri.gov, or by calling Michael F. Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) whether the regulation, in and of itself, would have significant economic impact on small business. No alternative approach, duplication, or overlap, or significant economic impact on small business was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulation by Tuesday, November 29, 2011, to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail: mcanole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on Tuesday, November 29, 2011, at 10 a.m., at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing to Michael Canole at Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling (401) 574-8729.

Rhode Island Department of Revenue
Division of Taxation

Concise summary of all non-technical requirements, pursuant to RIGL § 42-35-3(a)(1), regarding *pro forma* combined reporting.

These rules and regulations implement RIGL § 44-11-45. That section requires that each corporation which is part of a unitary business must file a *pro forma* report, in a manner prescribed by the Tax Administrator, for the combined group containing the combined net income of the combined group. These rules and regulations are effective for tax returns filed for tax years beginning after December 31, 2010, but before January 1, 2013.

State of Rhode Island - Division of Taxation

Corporate Income Tax

Regulation CT 11-15

Combined Reporting (*pro forma*)

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PREAMBLE:

Background and Explanation of Provisions

This regulation involves the issue of combined reporting. In general, combined reporting is a method of apportioning the income of corporations among the states in which they do business. Under combined reporting, members of a group of commonly owned companies that are engaged in a unitary business must report their combined income. Of the 44 states that raise revenue with a corporate income tax, 22 states require combined reporting as part of their corporate income tax structure.[1]

For C corporations, Rhode Island General Laws (RIGL) require single entity reporting, not combined reporting. However, under legislation approved by the General Assembly and signed into law by Governor Lincoln D. Chafee on June 30, 2011, each corporation that is part of a unitary business under common ownership must file a *pro forma* report for the combined group to include the combined net income of the combined group.[2] The combined group may elect to have one entity file the combined report.

The requirement to file a *pro forma* combined report applies for two tax years – those beginning after December 31, 2010, but before January 1, 2013.

The combined report will not be an actual return. Rather, it will be a compilation of data on Schedule CRS, which shall be filed along with the Rhode Island Form 1120C. Thus, the "combined report" will not take the place of a regular return on Rhode Island Form 1120C; it will supplement Rhode Island Form 1120C.

Rhode Island law requires the filing of a *pro forma* combined report solely for information-gathering purposes: the Division of Taxation shall gather, sort and analyze the data. Based on that information, the Tax Administrator shall submit a report to certain members of the General Assembly and certain others -- on or before March 15, 2014 -- analyzing the policy and fiscal ramifications of changing the state's business corporation tax statute to a combined method of reporting.

Some entities are not required to file combined reports, including the following:

- S corporations;
- partnerships;
- disregarded entities;
- public service corporations;
- state banks;
- national banks;
- credit unions;
- insurance companies; and
- in general, any corporation incorporated in a foreign jurisdiction if the average of its property, payroll and sales factors outside the United States is 80 percent or more.

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[1] William F. Fox and LeAnn Luna, "Combined Reporting with the Corporate Income Tax," University of Tennessee, Knoxville, for the National Conference on State Legislatures Task Force on State & Local Taxation, November 2010.

[2] H 5894 Aaa, enacted June 30, 2011, establishing RIGL § 44-11-45.

RULE 1. PURPOSE

These rules and regulations implement RIGL § 44-11-45. That section states that each corporation which is part of a unitary business must file a *pro forma* report, in a manner prescribed by the Tax Administrator, for the combined group containing the combined net income of the combined group. These rules and regulations are effective for tax returns filed for tax years beginning after December 31, 2010, but before January 1, 2013.

RULE 2. AUTHORITY

These rules and regulations are promulgated pursuant to RIGL § 44-1-4. The rules and regulations have been prepared in accordance with the requirements of RIGL §§ 42-35-1 *et seq.* of the Rhode Island Administrative Procedures Act.

RULE 3. APPLICATION

These rules and regulations shall be liberally construed so as to permit the Division of Taxation to effectuate the purpose of Chapter 11 of Title 44 and other applicable state laws and regulations.

RULE 4. SEVERABILITY

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

RULE 5. DEFINITIONS

"Civil union" means a legal union between two individuals of the same sex established pursuant to RIGL § 15-3.1-1 *et seq.*

"Combined group" means 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, and that are engaged in a unitary business.

"Common ownership" means more than fifty percent (50%) 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 (as more fully explained under Rule 7 below).[3]

"Corporation" means every corporation, joint-stock company, or association, wherever incorporated, a real estate investment trust, a regulated investment company, a personal holding company registered under the Federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.*, and also a trustee or trustees conducting a business where interest or ownership is evidenced by certificates or other written instruments, deriving any

[3] RIGL § 44-11-45(a)(1).

income from sources within this state or engaging in any activities or transactions within this state for the purpose of profit or gain, whether or not an office or place of business is maintained in this state, or whether or not the income, activities, or transactions are connected with intrastate, interstate, or foreign commerce, except those specifically excluded under RIGL § 44-11-1(2)(i) through 44-11-1(2) (vii). An LLC electing to be taxed as a corporation for federal tax purposes shall be treated as a corporation for purposes of this definition.

"Designated Agent" means the member of the combined group – or the member's designee – whose responsibilities include filing the combined report. (The designated agent's responsibilities are more fully defined in Rule 13 below.)

"Division of Taxation" means the Rhode Island Department of Revenue, Division of Taxation, One Capitol Hill, Providence, R.I. 02908. The Division may also be referred to in these regulations as the "Tax Division."

"FAS 109" means Financial Accounting Standard 109, "Accounting for Income Taxes."[4]

"Federal income tax treaty" means a comprehensive income tax treaty between the United States and a foreign jurisdiction, other than a foreign jurisdiction which the Organisation for Economic Co-operation and Development has determined has not committed to the internationally agreed tax standard, or has committed to the international agreed tax standard but has not yet substantially implemented that standard, as identified in the then-current Organisation for Economic Co-operation and Development progress report.

"Foreign corporation" means, for purposes of *pro forma* combined reporting under RIGL § 44-11-45, a corporation incorporated in or organized under the laws of a jurisdiction other than the United States.

"Foreign jurisdiction" means, for purposes of *pro forma* combined reporting under RIGL § 44-11-45, a jurisdiction other than the United States.[5]

"Finnigan" means the unitary group as a whole is treated as the taxpayer for apportionment purposes; all sales of members of the unitary group attributable to Rhode Island are included in the sales factor numerator.[6]

"Internal Revenue Code" means the most current edition of Title 26 of the United States Code without regard to application of federal treaties unless expressly made applicable to states of the United States.

"Joyce" means that nexus determinations shall be made at the level of each individual entity; sales by an entity lacking nexus in Rhode Island are excluded from the numerator for Rhode Island tax purposes.[7]

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[4] Also known as FASB Accounting Standards Codification 740, or "ASC 740".

[5] The term "United States" is defined under RIGL § 44-11-45(a)(4) and elsewhere in Rule 5 of this regulation.

[6] *Appeal of Finnigan Corp.*, California State Board of Equalization, 88-SBE-022, August 25, 1988.

[7] *Appeal of Joyce, Inc.*, California State Board of Equalization, 66-SBE-070, November 23, 1966.

"Member" means a corporation included in a unitary business (as more fully explained under Rule 7, "Combined Group – Composition," and Rule 8, "Unitary Business – Further Defined," below).[8]

"OECD" means the Organisation for Economic Co-operation and Development.

"Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit,[9] and is or would be treated as a partnership for Rhode Island tax purposes.

"Person" means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership,[10] foreign limited liability partnership, association, corporation (whether or not the corporation is, or would be if doing business in this state, subject to RIGL § 44-11-1 *et seq.*), company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization of any kind.

"Tax Division" – See "Division of Taxation" above.

"Tax Administrator" means the person within the Rhode Island Department of Revenue as described in RIGL § 44-1-1 *et seq.*

"Taxpayer" means any person subject to the tax imposed by Rhode Island General Laws.

"Unitary business" means the activities of a group of two (2) 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. The term unitary business shall be construed to the broadest extent permitted under the United States Constitution.[11] [12]

"United States" means the fifty (50) states of the United States, the District of Columbia, the United States' territories and possessions.[13]

"Water's edge" means a term used in tax discussions regarding to what extent a combined group should include overseas members for purposes of combined reporting. Some states require all of a group's members worldwide to be included in the combined group. Some states allow the combined group to adopt a "water's edge" election – which, if adopted, generally limits a combined group's membership to members within the United States (up to the "water's edge"). For purposes of Rhode Island's *pro forma* combined reporting, water's edge treatment is mandatory.[14] (Additional information is in Rule 7.)

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[8] RIGL § 44-11-45(a)(2).
[9] RIGL § 7-12-17.
[10] RIGL § 7-12-13.
[11] See also Rule 7, "Combined Group – Composition," and Rule 8, "Unitary Business – Further Defined," below.
[12] RIGL § 44-11-45(a)(3).
[13] RIGL § 44-11-45(a)(4).
[14] RIGL § 44-11-45(b)(3).

RULE 6. COMBINED REPORTING

(a) As part of its tax return for a taxable year[15] beginning after December 31, 2010 but before January 1, 2013, each corporation which is part of a unitary business must file a *pro forma* report, in a manner prescribed by the Tax Administrator, for the combined group containing the combined net income of the combined group. The use of a combined report does not disregard the separate identities of the members of the combined group.

(b) The report shall include, for each taxable year, the following:

(1) Listing of companies included in the combined report, along with each company's federal Employer Identification Number (EIN);

(2) Combined federal taxable income;

(3) Combined Rhode Island deductions;

(4) Combined Rhode Island additions;

(5) Adjusted taxable income;

(6) The difference in tax owed as a result of filing a combined report compared to the tax owed under the current filing requirements;

(7) The difference in tax owed as a result of using the single sales factor apportionment method under RIGL § 44-11-45 as compared to the tax owed using the current three (3) factor apportionment method under the following:

- RIGL § 44-11-14 ("Allocation of income from business partially within state");
- RIGL § 44-11-14.1 ("Certified facility apportionment exclusion");
- RIGL § 44-11-14.2 ("Allocation and apportionment of regulated investment companies and securities brokerage services");
- RIGL § 44-11-14.3 ("Credit card banks – Allocation and apportionment of income");
- RIGL § 44-11-14.4 ("Allocation and apportionment – Retirement and pension plans");

[15] For purposes of this regulation, a taxpayer with a 52/53-week year shall be treated as having a tax year beginning date of January 1 and a tax year end date of December 31.

- RIGL § 44-11-14.5 ("International investment management service income"); and

- RIGL § 44-11-14.6 ("Allocation and apportionment – Manufacturers").

(8) Volume of sales in the state and worldwide for entities in the combined group; and

(9) Taxable income in the state and worldwide for entities in the combined group.

(c) If a combined group's member has a manufacturing operation in Rhode Island, it may elect to employ the special apportionment formula under RIGL § 44-11-14.6 – but only for that entity; it may not be used for other entities in the group (i.e., those that do not have manufacturing operations in Rhode Island).

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The examples on the following pages show how related entities might be affected by combined reporting:[16] For purposes of apportionment calculations, the denominators reflect worldwide property, payroll and sales for businesses that are included in the combined group.

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[16] Some of the examples in this section are adapted from the Fox and Luna report, *supra*.

Example # 1:

The example below compares combined reporting to separate reporting for three related entities – Echo Corp., Foxtrot Corp., and Golf Corp. – that are U.S. companies, part of a unitary business, and have common ownership.[17] Echo Corp. is a Rhode Island retailer. Foxtrot Corp. is a Rhode Island retailer. Golf Corp. is a Missouri retailer with no Rhode Island nexus and, therefore, no Rhode Island filing requirement but for combined reporting. Most sales are in the U.S., but some are to customers in foreign jurisdictions.

Apportionment:	**Echo Corp.** (Separate)	**Foxtrot Corp.** (Separate)	**Golf Corp.** (Separate)	**Combined report**
Sales Factor:				
In-state sales……	400	7,700	0	8,100
Everywhere sales……	625	15,000	50,000	65,625
Sales percentage……	64.0000%	51.3333%	0.0%	12.3429%
Property Factor:				
In-state property.....	1,000	3,000	0	4,000
Everywhere property.....	1,250	15,000	30,000	46,250
Property percentage.....	80.0000%	20.0000%	0.0%	8.6486%
Payroll Factor:				
In-state payroll.....	500	2,000	0	2,500
Everywhere payroll.....	750	9,000	15,000	24,750
Payroll percentage.....	66.6667%	22.2222%	0.0%	10.1010%
Total weighted Apportionment percentage	70.2222%	31.1852%	0.0%	10.3642%
Taxable income total	750	9,000	75,000	84,750
In-state taxable income	527	2,807	0	8,784
Total taxable income to Rhode Island	3,334			8,784

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[17] The names of corporations that are used as examples in this regulation are taken mainly from a military phonetic or spelling alphabet. They are not intended to represent the names of actual corporations.

Example # 2:

The example below compares combined reporting to separate reporting for two related entities – Alpha Corp. and Bravo Corp. – that are U.S. companies and members of a unitary group with common ownership and nexus in Rhode Island. Both entities are manufacturers with manufacturing activity within Rhode Island, and elect double-weighting of sales in the apportionment formula.[18] To reflect the double-weighting of sales, the sales factor figures for Alpha and Bravo appear twice in the table below.

Apportionment:	**Alpha Corp.** (Separate)	**Bravo Corp.** (Separate)	**Combined report**
Sales Factor: In-state sales..... Everywhere sales..... Sales percentage.....	$ 400 625 64.0000%	$ 3,850 7,500 51.3333%	$ 4,250 8,125 52.3077%
Sales Factor: In-state sales..... Everywhere sales..... Sales percentage.....	$ 400 625 64.0000%	$ 3,850 7,500 51.3333%	$ 4,250 8,125 52.3077%
Property Factor: In-state property..... Everywhere property..... Property percentage.....	1,000 1,250 80.0000%	3,000 15,000 20.0000%	4,000 16,250 24.6154%
Payroll Factor: In-state payroll..... Everywhere payroll..... Payroll percentage.....	500 750 66.6667%	2,000 9,000 22.2222%	2,500 9,750 25.6410%
Total weighted Apportionment percentage (Double-weighted sales)	68.6667%	36.2222%	38.72%
Taxable income total	750	9,000	9,750
In-state taxable income	515	3,260	3,775
Total taxable income to Rhode Island	3,775		3,775

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[18] RIGL § 44-11-14.6.

Example # 3:

The example below compares combined reporting to separate reporting for two related entities – Charlie Corp. and Delta Corp. – that are U.S. companies, part of a unitary business, have common ownership, and have nexus in Rhode Island. Delta Corp is a manufacturer with manufacturing activity within Rhode Island, and elects to use double-weighted sales in the apportionment formula.[19] To reflect the double-weighting of sales for Delta, the "sales factor" figures for Delta appear twice in the table below.[20]

Apportionment:	**Charlie Corp.** (Separate)	**Delta Corp.** (Separate)	**Combined report**
Sales Factor: In-state sales..... Everywhere sales..... Sales percentage.....	$ 400 625 64.0000%	$ 2,000 15,000 13.3333%	Combined sales factor apportionment percentage: $4,400/$30,625 = 14.3673%
Sales Factor: In-state sales..... Everywhere sales..... Sales percentage.....	n/a	$ 2,000 15,000 13.3333%	
Property Factor: In-state property..... Everywhere property..... Property percentage.....	1,000 1,250 80.0000%	12,000 15,000 80.0000%	13,000 16,250 80.0000%
Payroll Factor: In-state payroll..... Everywhere payroll..... Payroll percentage.....	500 750 66.6667%	7,000 9,000 77.7778%	7,500 9,750 76.9231%
Total weighted Apportionment percentage (Double-weighted sales)	70.2222%	46.1111%	57.0968%
Taxable income total	750	9,000	9,750
In-state taxable income	527	4,150	5,567
Total taxable income to Rhode Island	4,677		5,567

For purposes of the combined report calculation, the in-state and everywhere sales for Delta are doubled to reflect special Rhode Island apportionment treatment for manufacturers.

Add the three percentages in "combined report" column and divide by three to arrive at result.

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[19] RIGL § 44-11-14.6.

[20] For the "sales factor" section in the table's "combined report" column: Charlie's factors are counted once, Delta's twice.

(d) For apportionment purposes, the taxpayer must prepare one set of calculations using the Joyce method and another using the Finnigan method.

The following examples illustrate the difference between the Joyce and Finnigan methods for apportioning the combined income of a unitary group. For convenience, the examples use a single sales apportionment:

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Joyce example

Name of entity	Rhode Island receipts	Everywhere receipts	Nexus with Rhode Island
Hotel Corp.	50	100	Yes
India Corp.	100	200	Yes
Juliet Corp.	100	200	No
Factor total:	150	500	

Note: Joyce apportionment includes all of the apportionment factor attributes in the numerator that were derived from entities that have nexus with Rhode Island.

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Finnigan example

Name of entity	Rhode Island receipts	Everywhere receipts	Nexus with Rhode Island
Hotel Corp.	50	100	Yes
India Corp.	100	200	Yes
Juliet Corp.	100	200	No
Factor total:	250	500	

Note: Finnigan apportionment includes the same numerator factor attributes as Joyce, plus all Rhode Island factor attributes from entities that do not have nexus with Rhode Island.

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RULE 7. COMBINED GROUP -- COMPOSITION

(a) *Excluded corporations.* A combined group shall exclude:

(1) Pursuant to RIGL § 44-11-45(b)(3), any corporation incorporated in a foreign jurisdiction – a "foreign corporation"[21] – if the average of its property, payroll and sales factors outside the United States is eighty percent (80%) or more.

(A) If a foreign corporation is includible as a member in the combined group, to the extent that such foreign corporation's income is subject to the provisions of a federal income tax treaty, such income is not includible in the combined group net income. Such member shall also not include in the combined report any expenses or apportionment factors attributable to income that is subject to the provisions of a federal income tax treaty.

(i) A water's edge election is not allowed for purposes of Rhode Island *pro forma* combined reporting. Water's edge treatment is mandatory, as prescribed in RIGL § 44-11-45(b)(3). Thus, members of the combined group must exclude as a member and disregard the income and apportionment factors of any corporation incorporated in a foreign jurisdiction – a foreign corporation – if the average of its property, payroll and sales factors outside the United States is eighty percent (80%) or more.

(2) entities or persons that engage in activities enumerated under RIGL §§ 44-13-4 (Public Service Corporation Tax), 44-14-3 (Tax on State Banks), 44-14-4 (Tax on National Banks), or 44-17-1 (Taxation of Insurance Companies), whether within or outside Rhode Island. Furthermore, neither the income or loss nor the apportionment factors of such a person or entity shall be included – directly or indirectly – in the combined report.

(3) Corporations that are not taxable under the Internal Revenue Code.

(b) Pass-through entities, including but not limited to partnerships, limited liability companies not taxed as corporations under federal law, and S corporations are not themselves members of the combined group. However, the combined group's share of the pass-through entity's income, normally reported on federal Schedule K-1, should be reported as part of the combined group's income.[22]

(c) *Fifty percent test.* The fifty percent ownership test is satisfied in the following circumstances:

(1) A parent corporation and one or more corporations or chains of corporations which are connected through voting stock ownership with the parent, whether such ownership is direct or indirect, but only if --

[21] Please see Rule 5 for definition of "foreign corporation".

[22] Pass-through entities still have a separate filing requirement for Rhode Island, including the Form RI 1065 for partnerships, Form RI-1120S for franchise tax for S corporations, and annual fee for LLCs not tax as C corporations.

(A) the parent owns more than 50 percent of the outstanding voting stock of at least one corporation, and,

(B) more than 50 percent of the outstanding voting stock of each of the corporations, other than the parent, is owned directly or indirectly by one or more of the other corporations.

(2) Any two or more corporations, if over 50 percent of the outstanding voting stock of each of the corporations is owned, or indirectly owned, by the same person.

(3) Any two or more corporations, over 50 percent of whose voting stock is cumulatively owned (without regard to the indirect ownership rules described below in paragraph (d)(1)) by, or for the benefit of, members of the same family.

Members of the same family include an individual, his or her spouse, a party to a civil union, ancestors, brothers or sisters, lineal descendants, and their respective spouses.

(d) Except as otherwise provided, voting stock is "owned" when title to the stock is directly held or if the voting stock is indirectly owned.

(1) An individual indirectly owns voting stock that is owned by any of the following:

(A) his or her spouse (other than a spouse who is legally separated from the individual);

(B) party to a civil union;

(C) his or her children, grandchildren, and parents;

(D) an estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse, party to a civil union, children, grandchildren or parents.

(2) voting stock owned by a partnership, other than a limited partnership, is indirectly owned by a partner in proportion to the partner's capital interest in the partnership. For this purpose, a partnership other than a limited partnership is treated as owning proportionately the stock owned by any other partnership or limited partnership in which it has a tiered interest. Voting stock owned by a limited partnership is indirectly owned by the general partner who has authority to determine how the stock is voted. (This section shall also apply to LLCs.)

(3) voting stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is indirectly owned by any shareholder owning over 50 percent of the voting stock of the corporation.

(e) In determining ownership, effective control over election of the board of directors will be considered. For example, a group of shareholders acting in concert who collectively

own over 50 percent of the voting stock of each of two or more corporations will be considered to be common owners of more than 50 percent of the voting stock of each of those corporations. "Voting stock" refers only to those shares of voting stock having the power to elect the corporation's board of directors. If the power otherwise held in corporate stock to vote the membership of the board is transferred to another, other than a transfer of proxy only, the holder of that power will be considered to be the owner of that stock to the exclusion of the transferor of such power.

(f) In addition to the tests in paragraph (c), the Tax Administrator may consider any other circumstance that tends to demonstrate that the 50 percent direct or indirect common ownership test was met or was not met.

(g) Membership in a combined group shall be treated as terminated in any year, or fraction thereof, in which the conditions of paragraph (c) are not met, except as follows:

(1) when stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in an affiliated group shall not be terminated if the requirements of paragraph (c) are again met immediately after the sale, exchange, or disposition.

RULE 8. UNITARY BUSINESS -- FURTHER DEFINED

(a) A "unitary business," as defined in Rule 5, means the activities of a group of two (2) 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. A determination under this regulation of whether an entity forms part of a unitary business with another is determined based on the facts and circumstances of each case. To the extent compatible with Rhode Island law, any legal or factual determination relevant to the existence or nonexistence of a unitary business will favor consistency with legal and factual determinations of other unitary states. *Pro forma* combined reporting under RIGL § 44-11-45 is required only in those instances in which a unitary business exists.

(b) Under Rhode Island General Laws, the term "unitary business" shall be construed "to the broadest extent permitted under the United States Constitution."[23] Therefore, if the corporation meets either of the tests set forth in this rule, the corporation is deemed to be part of the unitary business.

(c) **Interdependence of functions test.** One or more related business organizations engaged in business activity both within and without the state are unitary if there exists interdependence in their functions. This test adopts the decisional law of the United States Supreme Court with respect to the constitutional prerequisites for requiring unitary combination. The Court has variously expressed the constitutional test, holding that a finding of unitary relationship requires "contribution or dependency" between businesses;

[23] RIGL § 44-11-45(a)(3).

"substantial mutual interdependency" or "flow of value"; functional integration, centralized management or economy of scale.[24]

These concepts collectively express the Court's view of the constitutional parameters of required combination. Rhode Island's "interdependence of functions test" extends as far as, but no further than, the constitutional limits found by the Court.

(d) The following circumstances, together with those identified below in subdivision (e), indicate that an interdependence of functions exists:

(1) **Same Line of Business.** The principal activities of the entities are in the same general line of business. Examples of the same line of business are manufacturing, wholesaling, and retailing of tangible personal property; transportation or finance.

(A) In determining whether two entities are in the same general line of business, consideration shall be given to the nature and character of the basic operations of each entity, including, but not limited to, sources of supply, goods or services produced or sold, labor force, and market.

(B) Two entities are in the same general line of business when their operations are sufficiently similar to reasonably conclude that the entities are likely to depend upon or contribute to one another.

(2) **Vertically Structured Business.** The principal activities of the entities are different steps of a vertically structured business. Illustrations of such different steps are exploration, mining and drilling, production, refining, marketing, and transportation of natural resources.

(3) **Strong Centralized Management.** Centralized management may be evidenced by executive level policy made by a central person, board or committee and not by each entity in areas such as, but not limited to, purchasing, accounting, finance, tax compliance, legal services, human resources, health and retirement plans, product lines, capital investment and marketing.

(4) **Newly Acquired Corporations.** When a corporation acquires another corporation, the corporations shall be considered unitary as of the date of acquisition. Any party may rebut such presumption by proving that the corporations became unitary at a later date.

(5) **Newly-Formed Corporations.** When a corporation forms another corporation, a presumption exists in favor of finding unity between the two corporations as of the date of formation. Any party may rebut such presumption by proving that the corporations became unitary at a later date.

[24] Edison California Stores v. McColgan, 30 Cal.2d 472 (1947); Container Corporation of America v. Franchise Tax Board, 463 U.S. 159 (1983); Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425 (1980).

(6) **Non-Arm's-Length Prices.** Goods or services or both are supplied at non-arm's length prices between or among entities. Existence of arm's-length pricing between entities, however, does not indicate lack of unity.

(7) **Existence of Benefits from Joint, Shared or Common Activity.** A discount, cost-saving or other benefit can be shown to result from joint purchases, leaseholds, or other forms of joint, shared or common activities between or among entities.

(8) **Relationship of Joint, Shared or Common Activity to Income-Producing Operations.** In determining whether or not the fact that there exists a joint, shared, or common activity is indicative of a unitary relationship, consideration shall be given to the nature and character of the basic operations of each entity. Such consideration shall include, but not be limited to, the entity's sources of supply, its goods or services produced or sold, its labor force and market to determine whether the joint, shared or common activity is directly beneficial to, related to or reasonably necessary to the income-producing activities of the unitary business.

(9) **Exercise of Control.** The exercise of control by one entity over another entity.

(e) The "three unities test". This test adopts the state law test for unity followed in Butler Brothers.[25]

(1) **Unity of ownership.** "Unity of ownership" exists with respect to corporations when the fifty percent ownership test is met.

(2) **Unity of operations and unity of use.** These unities exist if each entity that is to be included in the unitary business benefits or receives goods, services, support, guidance or direction arising from the actions of common staff resources or common executive resources, personnel, third-party providers, or operations under the direction of such common resources. The tests are overlapping and the indicators of each test also indicate the existence of interdependence of functions. The existence or non-existence of the following factors will assist in the determination of whether unity of operations and use exist with respect to a combined group. The existence or non-existence of any one factor, by itself, is normally not determinative of whether there is a unity of operations and use. Nor is this list a limitation on the factors that may be considered in determining this:

(A) Common purchasing;

(B) Common advertising;

(C) Common employees, including sales force;

(D) Common accounting;

(E) Common legal support;

[25] Butler Brothers v. McColgan, 315 U.S. 501 (1942).

(F) Common retirement plan;

(G) Common insurance coverage;

(H) Common marketing;

(I) Common cash management;

(J) Common research and development;

(K) Common offices;

(L) Common manufacturing facilities;

(M) Common warehousing facilities;

(N) Common transportation facilities;

(O) Common computer systems and support;

(P) Financing support;

(Q) Common management, meaning that one or more officers or directors of the parent are also officers or directors of the subsidiary;

(R) Control of major policies, for example, the parent's board of directors requires that it approve any acquisition by either the parent or subsidiary of any interest in any other company, or the parent's board of directors requires that it approve any lending in excess of a minimum set amount to any one or more of either the parent or subsidiary's suppliers;

(S) Inter-entity transactions, for example, the subsidiary has licensed to parent the use of personal property developed by the subsidiary. The parent uses the property for its production;

(T) Common policy or training manuals, for example, the parent's employee handbook has been expanded to apply to all of a subsidiary's employees, or the subsidiary's employees are required to attend parent's employee training courses, or disciplinary procedures are the same for both the parent and subsidiary's employees, even if the appeal is only through their respective entities;

(U) Required budgetary approval, for example, the parent's board of directors requires that it approve the budget and expenditure plans of the subsidiary on an annual basis; and

(V) Required capital asset purchases approval, for example, the parent's board of directors requires that it approve any capital expenditures by the subsidiary in excess of a minimum set amount.

The factors listed above refer to the relationship between a parent and subsidiary. For purposes of this regulation, the factors also refer to the relationship between a brother and sister entity.

(f) **Holding Companies.** The test for a unitary business established by this rule applies in determining whether a holding company is included or excluded from a unitary business. If a holding company is organizationally between two unitary entities, such holding company does not negate unity of ownership.

(g) The following examples illustrate some of the principles set forth in Rule 8:

Example: Kilo Corp., which has its headquarters in Delaware, engages in the United States – directly and indirectly, through subsidiaries and affiliates – in the petroleum business, ranging from exploration for petroleum reserves to production, refining, transportation, and distribution and sale of petroleum and petroleum products. Its business activities in Rhode Island include the retail sale of gasoline, oil and other such products. Its business is deemed to be unitary under RIGL § 44-11-45(a)(3). *Pro forma* combined reporting is therefore required.

Example: Lima Corp. is located in Rhode Island and manufactures tin cans. A separate but related corporation is located in California and operates a sheep farm. The two corporations are under common ownership, but do not meet the tests described in (c) through (e) below – and are not part of a unitary business. Thus, a Rhode Island *pro forma* combined report need not be filed under RIGL § 44-11-45.

Example: Mike Corp. is an Illinois corporation. Its home office is in Chicago, Illinois. It is engaged in the wholesale dry goods and general merchandise business, buying from manufacturers and others and selling to retailers only. There are separate wholesale distribution operations in seven states, including Rhode Island. Each wholesale distribution operation maintains its own stock of goods, serves a separate territory, has its own sales force, handles its own sales as well as solicitation, credit and collection arrangements, and keeps its own books of account. Each wholesale distribution operation is a separate corporation, and shares common ownership with Mike Corp. Thus, the business is deemed to be unitary under RIGL § 44-11-45(a)(3), mainly because they are in the same line of business, and *pro forma* combined reporting is therefore required.

RULE 9. ELECTION TO USE FEDERAL CONSOLIDATED GROUP

(a) In determining the members of the unitary group, the taxpayer may elect to use the same members that the taxpayer includes in filing the taxpayer's federal consolidated return.[26]

(b) For purposes of this section, an affiliated group is one or more chains of includible corporations connected through stock ownership with a common parent corporation – as further defined in IRC §§ 1504 (a) and (b). The common parent must be an includible corporation and the following requirements must be met:

[26] IRC § 1501 *et seq.*

(1) The common parent must own directly stock that represents at least 80% of the total voting power and at least 80% of the total value of the stock of at least one of the other includible corporations;

(2) Stock that represents at least 80% of the total voting power, and at least 80% of the total value of the stock of each of the other corporations (except for the common parent) must be owned directly by one or more of the other includible corporations.

For this purpose, the term "stock" generally does not include any stock that:

(i) is nonvoting;

(ii) is nonconvertible;

(iii) is limited and preferred as to dividends and does not participate significantly in corporate growth; and

(iv) has redemption and liquidation rights that do not exceed the issue price of the stock (except for a reasonable redemption or liquidation premium).

(c) Thus, in place of the steps listed in this regulation for determining members of the unitary group for purposes of filing a combined report for Rhode Island, the taxpayer may instead use all of the members of its federal affiliated group, as defined in IRC § 1504, as shown on or reflected in the taxpayer's federal consolidated return.

(d) Certain taxpayers may find that such an election eases the administrative and compliance burden of identifying which members to include in the combined group for Rhode Island reporting purposes.

(e) Should the taxpayer make this election, it shall be binding for purposes of the *pro forma* Rhode Island combined report for all tax years after December 31, 2010, and before January 1, 2013.

(f) To make the election, the taxpayer shall check the appropriate box on Schedule CRS accompanying the Form RI-1120C, and also attach a statement detailing the election.

(g) The taxpayer making the election shall file, for the year concurrent with the filing of its Rhode Island combined report, a copy of the following:

1.) its federal consolidated return;

2.) any and all supporting documents, forms, schedules and statements filed with the federal consolidated return, including U.S. Form 851 ("Affiliations Schedule), and all U.S. Forms 1122 ("Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return"); and

3.) supporting statements for each corporation included on the federal consolidated return, including, for each such corporation, columns showing items of gross income and deduction, as well as a computation of taxable income.

(h) A taxpayer shall be allowed to make the election described in this rule provided that those entities with which it has an ownership stake of between 50 percent and 80 percent would not materially impact the result of the combined report were they to be included in the combined report. To help ensure that reports and returns are prepared in such a way so as to clearly reflect income, the Tax Administrator reserves the right to require the taxpayer to include in its Rhode Island *pro forma* combined report certain entities that are not included in the taxpayer's federal consolidated return, and to determine members of its combined report in accordance with Rules 7 and 8 of this regulation.

RULE 10. COMBINED NET INCOME OF GROUP

(a) In this Rule, "group" refers to the collective members of a combined group that are engaged in a unitary business and at least one of which is doing business in Rhode Island.

(b) **Determination of taxable income or loss of the group using a group report.** Except as otherwise provided in this regulation, the taxable income of the combined group shall be determined under the provisions of RIGL Chapter 44-11. The use of a group report does not disregard the separate identities of the taxpayer members of the group.

(c) **Components of income subject to tax in this state.** Each taxpayer member is responsible for tax based on its taxable income or loss apportioned to this state, which shall include a pro-rata share of a pass-through entity's income.

(d) **Determination of taxpayer's share of the taxable income of a combined group apportionable to this state.** The taxpayer's share of the taxable income apportionable to Rhode Island of each combined group of which it is a member shall be the product of:

(1) the adjusted taxable income of the combined group, determined under this regulation, and

(2) the taxpayer member's apportionment percentage, including in the numerator the taxpayer's property, payroll and sales associated with the combined group's unitary business in Rhode Island, and including in the denominator the property, payroll and sale of all members of the combined group, including the taxpayer, which property, payroll and sales are associated with the combined group's unitary business wherever located.

(e) **FAS 109 Deduction.** Under Financial Accounting Standard 109 ("FAS 109"), a corporation that is required to issue financial statements must create a liability or an asset for estimated taxes payable or refundable for the current year.

For purposes of computing taxable income under the Rhode Island *pro forma* combined report, the taxpayer shall not claim a FAS 109 deduction. Rather, the taxpayer shall add a statement to Schedule CRS describing the FAS 109 impact on the taxpayer, including a

lump sum amount. The Tax Administrator shall take the FAS 109 information into account for purposes of his 2014 report to General Assembly leaders.

(f) **Taxable year of the combined group.**

(1) The group's taxable year is determined as follows: (1) if two or more members of a group file a federal consolidated return, the group's taxable year is the taxable year of the federal consolidated group; (2) in all other cases, the taxable year is the taxable year of the designated agent.

(A) Taxpayers with a 52/53-week year ending (for example, a year ending on the Saturday closest to December 31) shall be treated for purposes of this regulation as having a tax year beginning date of January 1. For example, suppose that a corporation is a 52/53-week corporation. Its 2010 tax year ended December 30, 2010. Its 2011 tax year began December 31, 2010. However, for purposes of this regulation, its 2011 tax year will be deemed to have begun January 1, 2011, and ended December 31, 2011.

(2) **Members with different accounting periods.** If the taxable year of a member differs from the taxable year of the group, the principal Rhode Island corporation may elect to determine the portion of that member's income to be included in one of the following ways:

(A) a separate income statement prepared from the books and records for the months included in the group's taxable year; or

(B) including all of the income for the year that ends during the group's taxable year.

The same method must be used for each member with a different accounting period. Once an election is made under this section, it is the only method that may be used with respect to members of the group except upon prior approval by the Tax Administrator.

RULE 11. TREATMENT OF NOLs, CREDITS, RATE REDUCTIONS

(a) For purposes of this regulation, a tracing protocol shall apply to net operating losses (NOLs) created before tax year 2011. Such NOLs shall be allowed to offset only the income of the corporation that created the NOL; the NOL cannot be shared with other members of the combined group.[27] Under Rhode Island law,[28] no deduction is allowable for a net operating loss sustained during any taxable year in which a taxpayer was not subject to Rhode Island business corporation tax.[29] Furthermore, for the year in which the loss is allowed, such loss is limited by the amount of that corporation's federal taxable income for that year.[30]

[27] Under RIGL § 44-11-11(b)(3), net operating losses cannot be carried back to any other taxable year for Rhode Island purposes. NOLs shall only be allowable on a carry forward basis for the five (5) succeeding taxable years to the extent carried forward for federal purposes under IRC § 172, and shall not exceed the federally allowed deduction for the taxable year.

[28] RIGL 44-11-11(b)(2).

[29] RIGL chapter 44-11.

[30] See Rhode Island Reg. CT 94-06 or, if amended, the subsequent version(s).

Example # 1:

November Corp., Oscar Corp., and Papa Corp. have common ownership, are involved in a unitary business, and are members of a combined group. For Tax Year 2010, November Corp. was required to file a Rhode Island corporate income tax return, and did so. Oscar Corp. and Papa Corp. were not required to file.

November Corp. has a $200,000 NOL carryover from prior year(s). November has no other Rhode Island modifications. For Tax Year 2011 (please see table below), $100,000 of the NOL can be utilized to offset November's current year income of $100,000; the remaining $100,000 may be carried forward to subsequent years. Such treatment is allowed because November Corp. has been a Rhode Island filer for those prior years in which the losses were incurred.

Oscar Corp., prior to *pro forma* combined reporting, had no Rhode Island filing requirement. Oscar has an NOL carryover from prior years of $50,000. For Tax Year 2011, and for future tax years, Oscar's NOL is not allowed to be applied against the federal taxable income of the combined group because the loss was incurred in prior years when Oscar was not subject to Rhode Island reporting. Papa Corp. has no NOL.

Under the Rhode Island *pro forma* combined reporting regime, the unitary group must combine its income, but is allowed to use NOL carryovers only from those members that had a Rhode Island filing requirement in the year in which they incurred the loss.

Furthermore, the allowable loss that the combined group's Rhode Island member generated through Tax Year 2011 is limited by the amount of income of the Rhode Island member for tax year 2011.

Tax Year 2011				
	November Corp.	**Oscar Corp.**	**Papa Corp.**	**Combined group**
Federal taxable income	$ 100,000	$ 100,000	$ 100,000	$ 300,000
NOL carryover (from TY 2010)	(200,000)	(50,000)	0	
NOL carryover allowable deduction	(100,000)	0	0	(100,000)
Adjusted taxable income	0	100,000	100,000	200,000

In Tax Year 2012 (please see table below), assume that November, Oscar and Papa each has $50,000 in federal taxable income.

Of November's $100,000 NOL carryover, only $50,000 can be used to offset its income; the remainder of the NOL is carried to future years and applied to the extent allowable by law. Oscar's $50,000 NOL still cannot be used for Rhode Island purposes because the loss was incurred in a year prior to Oscar's being required to file with Rhode Island.

Tax Year 2012				
	November Corp.	**Oscar Corp.**	**Papa Corp.**	**Combined group**
Federal taxable income	$ 50,000	$ 50,000	$ 50,000	$ 150,000
NOL carryover	(100,000)	(50,000)	0	
NOL carryover allowable deduction	(50,000)	0	0	(50,000)
Adjusted taxable income	0	50,000	50,000	100,000

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Example # 2:

Quebec Corp., Romeo Corp., Sierra Corp., and Tango Corp. have common ownership, are involved in a unitary business, and are members of a combined group. Before Tax Year 2011, only Quebec Corp. was required to file a Rhode Island corporate income tax return, and did so. In Tax Year 2011 (please see table below), Quebec, Romeo and Sierra Corp. each has $100 million in federal taxable income; Tango Corp. has a current year net loss of $800 million.

As a result, the combined group shows a net operating loss of $500 million for Tax Year 2011. As the example illustrates, Rhode Island law allows a combined group, for purposes of *pro forma* combined reporting, to use current year losses from the combined group's members – even from members that would not otherwise have a Rhode Island filing requirement if it were not for the *pro forma* filing requirement.

Tax Year 2011					
($ in millions)	**Quebec Corp.**	**Romeo Corp.**	**Sierra Corp.**	**Tango Corp.**	**Combined group**
Federal taxable income 2011:	$ 100	$ 100	$100	($800)	($500)

In Tax Year 2012 (please see table below), the four member corporations of the combined group each has $100 million in federal taxable income, for a total of $400 million. But because the combined group had a $500 million net operating loss carryover incurred in Tax Year 2011, the first year for which Rhode Island required *pro forma* combined reporting, the group's Tax Year 2012 federal taxable income of $400 million is offset for Rhode Island tax purposes, and the group carries forward the remaining $100 million NOL.

Tax Year 2012					
($ in millions)	**Quebec Corp.**	**Romeo Corp.**	**Sierra Corp.**	**Tango Corp.**	**Combined group**
Federal taxable income 2012:	$ 100	$ 100	$100	$100	$ 400 Allowable NOL: (400) Adjusted taxable Income: $ 0

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Example # 3:

Uniform Corp., Victor Corp., and Whiskey Corp. have common ownership, are involved in a unitary business, and are a combined group under RIGL § 44-11-45.

In Tax Year 2011, Uniform and Victor Corporations have a combined federal taxable income of $200 million, which is offset by Whiskey Corp.'s current year net operating loss of $400 million. Consequently, the combined group has a $200 million net loss for 2011. The combined group carries forward a $200 million NOL – because the NOL was generated in a year in which *pro forma* combined reporting was mandatory.

Tax Year 2011				
($ in millions)	**Uniform Corp.**	**Victor Corp.**	**Whiskey Corp.**	**Combined group**
Federal taxable income 2011	$ 100	$ 100	($ 400)	($ 200) current year net loss

In Tax Year 2012, each corporation posts federal taxable income of $100 million. The group deducts its $200 million NOL carryover, generated in 2011, from its Tax Year 2012 federal taxable income of $300 million. That leaves $100 million in adjusted taxable income for 2012.

Tax Year 2012				
($ in millions)	**Uniform Corp.**	**Victor Corp.**	**Whiskey Corp.**	**Combined group**
Federal taxable income 2012	$ 100	$ 100	$ 100	$ 300
NOL carryover from 2011				200
NOL carryover allowable deduction				(200)
Adjusted taxable income				100 combined group adjusted taxable income

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(b) For purposes of this regulation, a tracing protocol shall apply to Rhode Island tax credits earned before tax year 2011. Such Rhode Island tax credits shall be allowed to offset only the tax liability of the corporation that earned the credits; the Rhode Island tax credits cannot be shared with other members of the combined group. Rhode Island tax credits earned in Tax Year 2011 may be applied to other members of the group only for purposes of Rhode Island *pro forma* combined reporting.[31]

(c) For purposes of this regulation, the tax rate reductions authorized under the Jobs Development Act[32] as well as the I-195 Redevelopment Act of 2011[33] shall be allowed against the net income of the entire combined group.

RULE 12. FILING OF REPORT

(a) The *pro forma* combined report required under RIGL § 44-11-45 must be filed, as an informational Schedule – Schedule CRS – along with the regular return, for tax years beginning after December 31, 2010, but before January 1, 2013. (Please see Rule 13, below, for appointment of a designated agent.)

[31] Tax credits from a jurisdiction other than Rhode Island cannot be applied against Rhode Island taxable income.
[32] RIGL § 42-64.5-1 *et seq.*
[33] RIGL § 42-64.14-1 *et seq.*

(b) The taxpayer shall attach Schedule CRS to the taxpayer's Rhode Island Business Corporation Tax Return, the Form RI-1120C. The Tax Administrator shall make Schedule CRS available in a timely fashion for taxpayers, their advisers, and software developers.

(c) The combined report shall be filed with the corporate tax return in accordance with RIGL § 44-11-3.

(d) The combined report shall automatically qualify for a six-month extension from the due date provided that the related corporate tax return is on extension and complies with instructions outlined in Form RI-7004.

(e) Upon written request from the taxpayer – made in duplicate – the Tax Administrator may grant an additional one-month extension.[34] In that case, the return – and Schedule CRS for *pro forma* combined reporting – would be due seven months from the normal due date of the return.[35]

RULE 13. DESIGNATED AGENT

(a) The combined group shall appoint a designated agent. The combined group may select any member of the combined group as the designated agent, subject to a limitation that the designated agent itself has a Rhode Island filing requirement under RIGL chapter 44-11.

(b) The corporation which files, or will file, the first combined report for the combined group is deemed to be appointed as the designated agent assuming it has a Rhode Island filing requirement under RIGL Chapter 44-11. The Tax Administrator reserves the right to appoint any member of the combined group to be the designated agent.

(c) The designated agent is generally required to act on behalf of the combined group in its own name in all matters relating to the combined report. This includes performing the following duties:

1. Filing the combined report, including the reporting of any separate entity items attributable to combined group members.

2. Filing any extension of time to file the combined report.

3. Filing any amended combined reports – or other filings relating to the combined report, including any separate entity items attributable to combined group members.

4. Sending and receiving all correspondence with the Tax Division regarding the combined report, except that if correspondence relates to separate entity items or a payment made by another member of the combined group, the Tax Division may send the correspondence to that other member or the designated agent, or both.

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[34] RIGL § 44-11-5.

[35] Both the usual six-month extension, and expanded extension, apply solely to the filing of the return. Payment of the tax shall continue to be due pursuant to RIGL § 44-11-6 (and other provisions as applicable).

5. Participating on behalf of the group in any investigation or hearing by the Tax Division regarding the combined report, including producing all information requested.

6. Representing the combined group in seeking from the Tax Division a waiver from the penalty for failing to file a timely report or for filing a false report.

7. Executing any and all documents relating to the combined report. (Unless the Tax Division and taxpayer agree otherwise in writing, any waiver, power of attorney, or other document executed by the designated agent relating to the combined report shall be considered executed by all members of the combined group, including any corporations that were not included in the combined report but which the department asserts are members of the combined group.)

8. Receiving notices regarding the combined report. In general, a notice received by the designated agent is considered received by all members of the combined group, including any corporations that were not included in the combined report but which the Tax Division asserts are members the combined group.

(d) In general, no person other than the designated agent shall have authority to act for or represent itself or the combined group regarding the duties listed in this Rule. A combined group member, or a corporation which the taxpayer asserts is a combined group member, may assume any of the duties of designated agent under any of the following conditions:

1. By election of the designated agent or the applicable combined group member, a combined group member may perform any of the duties listed in this Rule to the extent those duties relate to separate entity items. This may include the filing of a separate return to report the member's separate entity items.

2. If a combined report was filed, the Tax Division may allow any corporation which it asserts should be added to or eliminated from the combined group to represent itself after receipt of a written request from the corporation. However, that corporation shall still be bound by any action taken by the designated agent before the corporation's request to represent itself has been accepted by the department.

(e) If the designated agent is unable or unwilling to fulfill its obligations with respect to the combined report, is unresponsive, or has not been identified to the Tax Division, the Tax Division may appoint a new designated agent, or it may deal directly with any member of the combined group in respect to its share of the combined report items in which case each member shall have full authority to act for itself.

(f) The members of a combined group shall be jointly and severally liable for the penalty listed in Rule 14 below.

(g) The Tax Division may provide information relating to any member of the combined group to the designated agent, including information relating to the member's separate entity items.

(h) Once a member of the combined group is appointed as the designated agent, it shall remain the designated agent of that group for all future years unless the designated agent notifies the Tax Division in writing that another member of the combined group (or successor corporation of any member of the combined group) will thereafter act as designated agent, or unless the Tax Administrator chooses to name another member as the designated agent.

RULE 14. PENALTY

Any corporation which is required to file a combined report in accordance with RIGL § 44-11-45 which fails to file a timely report or which files a false report shall be assessed a penalty not to exceed ten thousand dollars ($10,000). Thus, all members of a combined group shall each be assessed a separate penalty not to exceed $10,000. Each member of the group shall be jointly and severally liable for said penalty.[36] The penalty may be waived for good cause shown for failure to timely file.

RULE 15. ADMINISTRATOR'S REPORT

The Tax Administrator shall on or before March 15, 2014, based on the information provided in income tax returns and the data submitted under these regulations, submit a report -- to the chairpersons of the House Finance Committee and Senate Finance Committee, and to the House Fiscal Advisor and the Senate Fiscal Advisor -- analyzing the policy and fiscal ramifications of changing the Rhode Island Business Corporation tax statute to a combined method of reporting in place of the current separate filing method under RIGL chapter 44-11.[37]

RULE 16. EFFECTIVE DATE

This regulation shall take effect for tax returns filed for tax years beginning after December 31, 2010, but before January 1, 2013.[38]

- DAVID SULLIVAN
TAX ADMINISTRATOR
December 31, 2011

10.28.11v3.8

[36] RIGL § 44-11-45(c).
[37] RIGL § 44-11-45(d).
[38] For taxpayers with a 52/53-week year-ending, please see Rule 10(f).

APPENDIX A: Comprehensive Example

The following comprehensive example is intended to illustrate the application of the rules set forth in this regulation.

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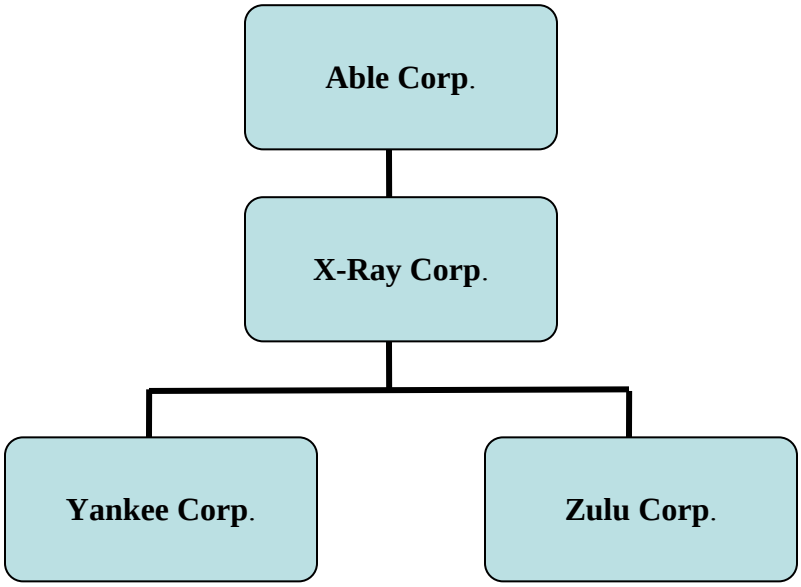
The four corporations listed below have common ownership:[39]

- X-Ray Corp. is a retailer based in Rhode Island, doing 50 percent of its business in Rhode Island.
- Yankee Corp. is a warehouse operation based in Massachusetts. It does 50 percent of its business in Rhode Island, where it has nexus and a Rhode Island filing requirement.
- Zulu Corp. is a manufacturer based in Massachusetts, has a facility in Rhode Island, and does 25 percent of its business in Rhode Island.[40]
- Able Corp., domiciled in Connecticut, is the parent company of X-Ray, which, in turn, owns Yankee and Zulu. Able does no business in Rhode Island.



Because Able Corp. has been domiciled in Connecticut, and has done no business in Rhode Island, it has not been required to file a return to Rhode Island. However, RIGL § 44-11-45 requires *pro forma* combined reporting for tax years beginning after December 31, 2010, but before January 1, 2013. Under that law, and through the application of this regulation, the four corporations in this example are deemed to be involved in a unitary business (due to common ownership, interdependence of functions, and certain other

[39] Common ownership is defined in Rule 5 of this regulation, and detailed in Rule 7.

[40] For Rhode Island apportionment purposes, Zulu Corp. chooses not to double-weight sales under RIGL § 44-11-14.6 and instead single-weights sales pursuant to RIGL § 44-11-14(a).

factors set forth in Rule 8), are members of a combined group, and must file a *pro forma* combined report.

The following table lists financial data for each of the corporations, apportionment factors on a separate entity basis, and apportionment under Rhode Island *pro forma* combined reporting. (Columns 2 through 4 are on a separate company basis. Columns 5 and 6 are informational, for use with the *pro forma* combined report. Columns 7 and 8 are combined reporting totals.)

(dollars in thousands)	**X-Ray Corp.**	**Yankee Corp.**	**Zulu Corp.**	**Able Corp.** (Joyce)	**Able Corp.** (Finnigan)	**Totals** (Joyce)	**Totals** (Finnigan)
R.I. Receipts	$ 50,000	$ 250	$ 25,000	$ 0	$ 10,000	$ 75,250	$ 85,250
Everywhere Receipts	100,000	500	100,000	250,000	250,000	450,500	450,500
Sales Factor	0.500000	0.500000	0.250000	0.000000	0.040000	0.167037	0.189234
R.I. Property	25,000	500	50,000	0	0	75,500	75,500
Everywhere Property	50,000	1,000	200,000	300,000	300,000	551,000	551,000
Property Factor	0.500000	0.5000000	0.250000	0.000000	0.000000	0.137024	0.137024
R.I. Payroll	250	250	1,000	0	0	1,500	1,500
Everywhere Payroll	500	500	4,000	25,000	25,000	30,000	30,000
Payroll Factor	0.500000	0.500000	0.250000	0.000000	0.000000	0.050000	0.050000
Total Factor	1.500000	1.500000	0.750000	0.000000	0.040000	0.354061	0.376258
R.I. Apportion. Factor	0.500000	0.500000	0.250000	0.000000	0.0133333	0.118020	0.125419

Under Rule 13 of this regulation, the corporations choose X-Ray Corp. to serve as their designated agent for the combined group.[41] Thus, X-Ray Corp. will file its own Form RI-1120C to Rhode Island and attach the new *pro forma* combined reporting schedule, Schedule CRS. Meanwhile, X-Ray, Yankee and Zulu each must file its own separate Form I-1120C to Rhode Island. Able Corp. is not required to file its own Form RI-1120C to Rhode Island.

[41] Pursuant to Rule 13(a) of this regulation, the designated agent must have a Rhode Island filing requirement under RIGL chapter 44-11. Thus, Able Corp. cannot be the designated agent.

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The remainder of this comprehensive example illustrates what the Rhode Island tax impact would be under separate entity reporting and under combined reporting.

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▪ Tax impact: Separate entity reporting

Under separate entity reporting, X-Ray, Yankee and Zulu have been filing separate returns to Rhode Island, on Form RI-1120C. Each has been reporting its own revenue, expenses and net income.

The following table shows the corporations' Rhode Island tax, calculated on a separate entity basis (*not* combined reporting). Note that X-Ray's tax is calculated at a rate of 9 percent of its $100,000 in Rhode Island adjusted taxable income, while Yankee and Zulu – both of which suffered losses – pay the minimum tax of $500 each.[42] (Able has no Rhode Island nexus, so it is not subject to Rhode Island corporate income tax.)

Tax aspects	**X-Ray Corp**	**Yankee Corp**	**Zulu Corp**
R.I. Adjusted Taxable Income	$200,000	($100,000)	($200,000)
Apportionment Factor	0.500000	0.500000	0.250000
R.I. Adjusted Taxable Income	$100,000	($50,000)	($50,000)
R.I. Tax Due	$9,000 (at 9% rate)	$500 (minimum tax)	$500 (minimum tax)
Total R.I. Tax:	$10,000		

[As a practical matter, the corporations in this example would have the option, as an affiliated group of corporations, to file a Rhode Island consolidated return in lieu of separate returns.[43] Assuming that they elect to file a Rhode Island consolidated return, X-Ray's $100,000 in Rhode Island adjusted taxable income would be offset by Yankee's $50,000 loss and Zulu's $50,000 loss. Thus, with consolidated Rhode Island adjusted taxable income of zero, each of the three corporations would pay the Rhode Island corporate minimum tax of $500. Able has no Rhode Island nexus, so it would not be subject to Rhode Island corporate income tax.]

[42] RIGL § 44-11-2(e).
[43] RIGL § 44-11-4 and R.I. Reg. CT 88-07.

▪ Tax impact: *Pro forma* combined report

The following table shows the *pro forma* tax impact of combined reporting, under both the Joyce and Finnigan methods. Note that Able's income, which was not counted under Rhode Island's separate entity reporting regime, is counted for purposes of Rhode Island *pro forma* combined reporting. Also note that, because of a lower apportionment factor, the Joyce method results in 5.9% less in Rhode Island adjusted taxable income after apportionment – and 5.9% less in Rhode Island combined tax due.

Tax items:	**Joyce method:**	**Finnigan method:**
X-Ray's Rhode Island adjusted taxable income	$ 200,000	$ 200,000
Yankee's Rhode Island adjusted taxable income	(100,000)	(100,000)
Zulu's Rhode Island adjusted taxable income	(200,000)	(200,000)
Able's Rhode Island adjusted taxable income	900,000	900,000
Combined Rhode Island adjusted taxable income	800,000	800,000
Apportionment factor	0.118020	0.125419
RI adjusted taxable income (after apportionment)	94,416	100,335
R.I. combined tax due: (at tax rate of 9%)	$ 8,497	$ 9,030

In summary, the corporations listed in this example would pay total tax of:

- $10,000 under the current separate entity system;[44]
- $8,497 under the Joyce method of combined reporting, $9,030 under Finnigan.

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The following pages are based on a preliminary version of the Schedule CRS, which is subject to revision. It uses the facts from this Appendix to populate fields in the Schedule CRS that will accompany Form RI-1120C for all corporations with a Rhode Island filing requirement. (Able, with no Rhode Island nexus, has no Rhode Island filing requirement.)

[44] If they elect to file a Rhode Island consolidated return, total tax would be $1,500.

RI-1120C page 4	Name X-Ray Corp.	Federal Employer Identification Number 00-0000000

Schedule CRS - Required Data for Combined Reporting Study

Section 1 - Combined Group Information

		Yes	No
A.	Is this company a member of a combined group of companies?	✓	
B.	Is another company the designated agent responsible for the combined group?		✓
C.	If yes, provide the federal employer identification number of the designated agent filing the combined report		
D.	Is an election being made to file based on the federal consolidated return?		✓
E.	Is a FAS 109 Deduction Statement attached?		✓
F.	If yes, provide the lump sum FAS 109 deduction amount		

Section 2 - Combined Group Calculations

1.	Combined Federal Taxable Income	1,048,500.00	
2.	Combined Deductions (Attach detailed schedule)	250,000.00	
3.	Combined Additions (Attach detailed schedule)	1,500.00	
4.	Adjusted Taxable Income - Line 1 minus Line 2 plus Line 3		800,000.00

		Rhode Island	Everywhere	Ratio
5.	Combined Average Net Book Value of Property	75,500,000.00	551,000,000.00	0.137024
6.	Combined Receipts using Joyce Method	75,250,000.00	450,500,000.00	0.167037
7.	Combined Receipts using Finnigan Method	85,250,000.00	450,500,000.00	0.189234
8.	Combined Salaries, Wages and Compensation	1,500,000.00	30,000,000.00	0.050000

		Joyce Method	Finnigan Method
9.	Combined Ratios Total Joyce Method - Add Ratios from lines 5, 6 and 8 Finnigan Method - Add Ratios from lines 5, 7 and 8	0.354061	0.376258
10.	Combined Apportionment Ratio - For each method, divide line 9 by 3.0	0.118020	0.125419
11.	Rhode Island Adjusted Taxable Income - For each method, multiply line 4 times line 10	94,416.00	100,335.00
12.	Combined Rhode Island Tax (If zero or less, enter zero.)	8,497.00	9,030.00
13.	Credits under Combined Reporting (Attach detailed schedule)	0.00	0.00
14.	Tax Due under Combined Reporting - Line 12 minus Line 13 (If zero or less, enter zero.)	8,497.00	9,030.00
15.	Tax Due using Single Sales Factor (If zero or less, enter zero.)	12,027.00	13,625.00
16.	Tax Due on actual filing (Including Rhode Island Minimum Tax for all members of the combined group)	10,000.00	10,000.00
17.	Minimum Tax for the combined group (see instructions)	1,500.00	1,500.00

		Rhode Island	Worldwide
18.	Combined Sales	85,250,000.00	450,500,000.00
19.	Taxable Income	800,000.00	1,048,500.00

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Section 3 - Listing of Companies included in this Combined Report (If more space is needed, attach a separate sheet.)

Federal ID#	Name	2011 RI Filing Requirement (Y/N)	Federal ID#	Name	2011 RI Filing Requirement (Y/N)
00-0000000	X-Ray Corp.	Y			
11-1111111	Yankee Corp.	Y			
22-2222222	Zulu Corp	Y			
33-3333333	Able Corp	N			

RI-1120C page 4	Name Yankee Corp.	Federal Employer Identification Number 11-1111111

Schedule CRS - Required Data for Combined Reporting Study

Section 1 - Combined Group Information

		Yes	No
A.	Is this company a member of a combined group of companies?	✓	
B.	Is another company the designated agent responsible for the combined group?	✓	
C.	If yes, provide the federal employer identification number of the designated agent filing the combined report	00-0000000	
D.	Is an election being made to file based on the federal consolidated return?		
E.	Is a FAS 109 Deduction Statement attached?		
F.	If yes, provide the lump sum FAS 109 deduction amount		

Section 2 - Combined Group Calculations

1.	Combined Federal Taxable Income		
2.	Combined Deductions (Attach detailed schedule)		
3.	Combined Additions (Attach detailed schedule)		
4.	Adjusted Taxable Income - Line 1 minus Line 2 plus Line 3		

		Rhode Island	Everywhere	Ratio
5.	Combined Average Net Book Value of Property			
6.	Combined Receipts using Joyce Method			
7.	Combined Receipts using Finnigan Method			
8.	Combined Salaries, Wages and Compensation			

		Joyce Method	Finnigan Method
9.	Combined Ratios Total — Joyce Method - Add Ratios from lines 5, 6 and 8; Finnigan Method - Add Ratios from lines 5, 7 and 8	0.000000	0.000000
10.	Combined Apportionment Ratio - For each method, divide line 9 by 3.0		
11.	Rhode Island Adjusted Taxable Income - For each method, multiply line 4 times line 10		
12.	Combined Rhode Island Tax (If zero or less, enter zero.)		
13.	Credits under Combined Reporting (Attach detailed schedule)		
14.	Tax Due under Combined Reporting - Line 12 minus Line 13 (If zero or less, enter zero.)		
15.	Tax Due using Single Sales Factor (If zero or less, enter zero.)		
16.	Tax Due on actual filing (Including Rhode Island Minimum Tax for all members of the combined group)		
17.	Minimum Tax for the combined group (see instructions)		

		Rhode Island	Worldwide
18.	Combined Sales		
19.	Taxable Income		

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Section 3 - Listing of Companies included in this Combined Report (If more space is needed, attach a separate sheet.)

Federal ID#	Name	2011 RI Filing Requirement (Y/N)	Federal ID#	Name	2011 RI Filing Requirement (Y/N)

RI-1120C page 4	Name Zulu Corp	Federal Employer Identification Number 22-2222222

Schedule CRS - Required Data for Combined Reporting Study

Section 1 - Combined Group Information

		Yes	No
A.	Is this company a member of a combined group of companies?	✓	
B.	Is another company the designated agent responsible for the combined group?	✓	
C.	If yes, provide the federal employer identification number of the designated agent filing the combined report	00-0000000	
D.	Is an election being made to file based on the federal consolidated return?		
E.	Is a FAS 109 Deduction Statement attached?		
F.	If yes, provide the lump sum FAS 109 deduction amount		

Section 2 - Combined Group Calculations

1.	Combined Federal Taxable Income		
2.	Combined Deductions (Attach detailed schedule)		
3.	Combined Additions (Attach detailed schedule)		
4.	Adjusted Taxable Income - Line 1 minus Line 2 plus Line 3		

		Rhode Island	Everywhere	Ratio
5.	Combined Average Net Book Value of Property			
6.	Combined Receipts using Joyce Method			
7.	Combined Receipts using Finnigan Method			
8.	Combined Salaries, Wages and Compensation			

		Joyce Method	Finnigan Method
9.	Combined Ratios Total Joyce Method - Add Ratios from lines 5, 6 and 8 Finnigan Method - Add Ratios from lines 5, 7 and 8	0.000000	0.000000
10.	Combined Apportionment Ratio - For each method, divide line 9 by 3.0		
11.	Rhode Island Adjusted Taxable Income - For each method, multiply line 4 times line 10		
12.	Combined Rhode Island Tax (If zero or less, enter zero.)		
13.	Credits under Combined Reporting (Attach detailed schedule)		
14.	Tax Due under Combined Reporting - Line 12 minus Line 13 (If zero or less, enter zero.)		
15.	Tax Due using Single Sales Factor (If zero or less, enter zero.)		
16.	Tax Due on actual filing (Including Rhode Island Minimum Tax for all members of the combined group)		
17.	Minimum Tax for the combined group (see instructions)		

		Rhode Island	Worldwide
18.	Combined Sales		
19.	Taxable Income		

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Section 3 - Listing of Companies included in this Combined Report (If more space is needed, attach a separate sheet.)

Federal ID#	Name	2011 RI Filing Requirement (Y/N)	Federal ID#	Name	2011 RI Filing Requirement (Y/N)