

## Massachusetts Corporate Tax Law Changes Effective in 2009.

This summer Massachusetts enacted a law aimed at simplifying the corporate tax structure and raising revenue while cutting corporate tax rates (An Act Relative to Tax Fairness and Business Competitiveness, stat. 2008, ch. 173, signed into law July 3, 2008). The major provisions include new unitary filing requirements; conformity with the federal check-the-box rules for state tax purposes, including disregarded entity status for qualified subchapter S subsidiaries (QSubs); and corporate rate reductions. The act also codifies that corporations protected from income taxation by P.L. 86-272 may be subject to the non-income measure of the excise tax. □

### Unitary Filing

With this law, Massachusetts joins 22 other states in requiring corporations engaged in unitary business operations to file combined returns with their affiliates.

With combined reporting, a corporation required to file on a combined basis must calculate its state based taxable income on the apportionable income of the combined group, and intercompany transactions will be disregarded. Under separate filing, each company includes on its return only its own income, leaving opportunity for tax planning by locating profitable businesses in lower-tax jurisdictions.

A group of corporations with common ownership is defined as "unitary" under the act if the corporations 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" (MA Gen. Laws Ch. 63, [section]32B(b)(1)). Common ownership is defined as more than 50% of voting control, whether such ownership is direct or indirect (MA Gen. Laws Ch. 63, [section]32B(b)(2)).

## Check-the-Box Rules

Federal check-the-box rules allow unincorporated businesses to elect for federal purposes whether they would be taxed as a corporation, partnership, or disregarded entity (Regs. Secs. 301.7701-1 through -3). This has created federal and state tax classification differences; for example, QSubs must currently file separately in Massachusetts for purposes of the nonincome measure of corporate tax. In addition, Massachusetts currently has separate tax provisions for corporate trusts.

With conformity with the federal check-the-box rules, the corporate trust provisions are repealed, so beginning in 2009 the state return filed will depend on the federal tax treatment elected by the entity. Federal S corporations that were previously treated as corporate trusts in Massachusetts will be required to file as S corporations for Massachusetts purposes. In addition, QSubs will be disregarded for all Massachusetts corporate tax purposes and will no longer be required to file separate returns.

## Corporate Excise Tax Reductions

Currently, C corporations in Massachusetts are taxed on net income at a rate of 9.5%, and large S corporations are taxed at 3% if total receipts are between \$6 million and \$9 million and at 4.5% if total receipts are \$9 million and above.

Starting in 2010, the tax rates will be gradually reduced to 8% on the following schedule (MA Gen. Laws Ch. 63, [section]39):

- \* Tax years beginning on or after January 1, 2010: 8.75%.
- \* Tax years beginning on or after January 1, 2011: 8.25%.
- \* Tax years beginning on or after January 1, 2012: 8.00%.

The net income measure on large S corporations has been modified so that it is tied to the corporate rates above. Effective for tax years beginning on or after January 1, 2009, the net income measure on S corporations with \$9 million or more in total receipts will be equal to the corporate rate in effect less the individual rate then in effect. For S corporations with \$6 million or more but less than \$9 million in total receipts, the rate will be two-thirds of the rate for larger S corporations. For 2009, the rates will be as follows (MA Gen. Laws ch. 63, [section]32D(a)(ii)):

\* Total receipts of \$9 million or more: 9.5%-5.3%, or 4.2%.

\* Total receipts of at least \$6 million but less than \$9 million: 4.2% x 2/3, or 2.8%.

Financial institutions are currently taxed at 10.5%, but the tax rate will be reduced to 9% as follows (for financial institutions that are not S corporations) (MA Gen. Laws ch. 63, [section]2(b)):

\* Tax years beginning on or after January 1, 2010: 10.0%.

\* Tax years beginning on or after January 1, 2011: 9.5%.

\* Tax years beginning on or after January 1, 2012: 9.0%.

Where applicable, the act leaves the nonincome measure of the corporate excise unchanged.