

ADMINISTRATIVE RULE REVIEW

New Rule	Rule No. 150-317-1020	
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	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE: Establish guidance to assist taxpayers in determining whether they are engaged in a unitary business under Oregon Laws 2019, chapter 122, section 58(18), as amended by Oregon Laws 2019, chapter 579, section 50, and explain filing requirements for unitary groups.

1 **150-317-1020**

2 **Factors Used in Determining Whether a Group of Persons are Engaged in a Unitary Business and**
3 **Filing Requirements for Unitary Groups**

4 (1) *Definition.* As used in this rule, the term “entity” or “business entity” refers to any individual or legal
5 entity described in Oregon Laws 2019, chapter 122, section 58(14), as amended by Oregon Laws 2019,
6 chapter 579, section 50.

7 (2) The presence of all of the factors described in Oregon Laws 2019, chapter 122, section 58(18)(a)(A)-
8 (C), as amended by Oregon Laws 2019, chapter 579, section 50, will demonstrate that a unitary business
9 exists, but the presence of one or two such factors may also demonstrate the flow of value requisite for a
10 unitary business determination.

11 (3) *The Concept of a Unitary Business.* A unitary business is a single economic enterprise that is made up
12 either of separate parts of a single entity or of a commonly controlled group of entities that are
13 sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy
14 and mutual benefit that produces a sharing or exchange of value among them and a significant flow of
15 value to the separate parts. This sharing or exchange of value may also be described as requiring that the
16 operation of one part of the business be dependent upon, or contribute to, the operation of another part of
17 the business. In other words, if the activities of one business either contribute to the activities of another
18 business or are dependent upon the activities of another business, those businesses are part of a unitary
19 business.

20 (4) *Requirement for a Unitary Business.* The sharing or exchange of value described in section (3) that
21 defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive
22 investment or from the financial strength contributed by a distinct business undertaking that has no
23 operational relationship to the unitary business. In Oregon, the unitary business principle will be applied
24 to the fullest extent allowed by the U.S. Constitution.

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- 1 (5) *Separate Trades or Businesses Conducted within a Single Entity.* A single entity may have more than
 2 one unitary business. In such cases it is necessary to determine the commercial activity attributable to
 3 each separate unitary business for purposes of sourcing commercial activity to Oregon under Oregon
 4 Laws 2019, chapter 122, section 66, as amended by Oregon Laws 2019, chapter 579, section 54, and the
 5 subtraction under Oregon Laws 2019, chapter 122, section 64, as amended by Oregon Laws 2019,
 6 chapter 579, section 53.
- 7 (6) *Unitary Business Unaffected by Formal Business Organization.* A unitary business may exist within a
 8 single entity or among a commonly controlled group of entities.
- 9 (7) *Determination of a Unitary Business.* A unitary business is characterized by significant flows of value
 10 evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980) and
 11 Oregon Laws 2019, chapter 122, section 58(18)(a)(A) to (C), as amended by Oregon Laws 2019, chapter
 12 579, section 50: centralization of management, economies of scale, and functional integration. These
 13 factors provide evidence of whether the business activities operate as an integrated whole or exhibit
 14 substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should
 15 be analyzed in combination for their cumulative effect and not in isolation. A particular business
 16 operation may be suggestive of one or more of the factors mentioned above.
- 17 (8) *Description and Illustration of Centralization of Management, Economies of Scale, and Functional*
 18 *Integration.*
- 19 (a) *Centralization of Management.* Centralization of management exists when officers, directors,
 20 partners, members, managers, or others jointly participate in the management decisions that affect the
 21 respective business activities and that may also operate to the benefit of the entire economic enterprise.
 22 Centralization of management can exist whether the centralization is effected from a parent entity to a
 23 subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from
 24 one division within a single entity to another division within an entity, or from any combination of the
 25 foregoing. Centralization of management may exist even when day-to-day management responsibility

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- 1 and accountability has been decentralized, so long as the management has an ongoing operational role
 2 with respect to the business activities. An operational role can be effected through mandates, consensus
 3 building, or an overall operational strategy of the business, or any other mechanism that establishes joint
 4 management.
- 5 (A) *Facts Providing Evidence of Centralization of Management.* Evidence of centralization of
 6 management is provided when common officers, directors, partners, members, managers, or others
 7 participate in the decisions relating to the business operations of the different segments. Centralization of
 8 management may exist when management shares or applies knowledge and expertise among the parts of
 9 the business. Existence of common officers, directors, partners, members, managers, or others, while
 10 relevant to a showing of centralization of management, does not alone provide evidence of centralization
 11 of management. Common officers are more likely to provide evidence of centralization of management
 12 than are common directors.
- 13 (B) *Stewardship Distinguished.* Centralized efforts to fulfill stewardship oversight are not evidence of
 14 centralization of management. Stewardship oversight consists of those activities that any owner would
 15 take to review the performance of or safeguard an investment. Stewardship oversight is distinguished
 16 from those activities that an owner may take to enhance value by integrating one or more significant
 17 operating aspects of one business activity with the other business activities of the owner. For example,
 18 implementing reporting requirements or mere approval of capital expenditures may evidence only
 19 stewardship oversight.
- 20 (b) *Economies of Scale.* Economies of scale refers to a relation among and between business activities
 21 resulting in a significant decrease in the average per unit cost of operational or administrative functions
 22 due to the increase in operational size. Economies of scale may exist from the inherent cost savings that
 23 arise from the presence of functional integration or centralization of management. The following are
 24 examples of business operations that can support the finding of economies of scale. The order of the list
 25 does not establish a hierarchy of importance.

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- 1 (A) *Centralized Purchasing*. Centralized purchasing designed to achieve savings due to the volume of
2 purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the
3 business engaging in the purchasing provides evidence of economies of scale.
- 4 (B) *Centralized Administrative Functions*. The performance of traditional administrative functions, such
5 as legal services, payroll services, pension and other employee benefit administration, in common among
6 the parts of the business may result in some degree of economies of scale. A business entity that secures
7 savings in the performance of corporate administrative services due to its affiliation with other business
8 entities that it would not otherwise reasonably be able to secure on its own because of its size, financial
9 resources, or available market, provides evidence of economies of scale.
- 10 (c) *Functional Integration*. Functional integration refers to transfers between, or pooling among, business
11 activities that significantly affect the operation of the business activities. Functional integration includes,
12 but is not limited to, transfers or pooling with respect to the unitary business's products or services,
13 technical information, marketing information, distribution systems, purchasing, and intangibles such as
14 patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There
15 is no specific type of functional integration that must be present. The following is a list of examples of
16 business operations that can support the finding of functional integration. The order of the list does not
17 establish a hierarchy of importance.
- 18 (A) *Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between*
19 *business activities provide evidence of functional integration*. The significance of the intercompany sales
20 to the finding of functional integration will be affected by the character of what is sold and/or the
21 percentage of total sales or purchases represented by the intercompany sales. For example, sales among
22 business entities that are part of a vertically integrated unitary business are indicative of functional
23 integration. Functional integration is not negated by the use of a readily determinable market price to
24 affect the intercompany sales, because such sales can represent an assured market for the seller or an
25 assured source of supply for the purchaser.

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- 1 (B) *Common Marketing*. The sharing of common marketing features among business entities is an
 2 indication of functional integration when such marketing results in significant mutual advantage.
 3 Common marketing exists when a substantial portion of the business entities' products, services, or
 4 intangibles are distributed or sold to a common customer, when the business entities use a common trade
 5 name or other common identification, or when the business entities seek to identify themselves to their
 6 customers as a member of the same enterprise. The use of a common advertising agency or a commonly
 7 owned or controlled in-house advertising office does not by itself establish common marketing that is
 8 suggestive of functional integration. Such activity, however, is relevant to determining the existence of
 9 economies of scale or centralization of management.
- 10 (C) *Transfer or Pooling of Technical Information or Intellectual Property*. Transfers or pooling of
 11 technical information or intellectual property, such as patents, copyrights, trademarks and service marks,
 12 trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional
 13 integration when the matter transferred is significant to the businesses' operations.
- 14 (D) *Common Distribution System*. Use of a common distribution system by the business entities, under
 15 which inventory control and accounting, storage, trafficking, or transportation are controlled through a
 16 common network provides evidence of functional integration.
- 17 (E) *Common Purchasing*. Common purchasing of substantial quantities of products, services, or
 18 intangibles from the same source by the business entities, particularly where the purchasing results in
 19 significant cost savings or where the products, services or intangibles are not readily available from other
 20 sources and are significant to each entity's operations or sales, provides evidence of functional
 21 integration.
- 22 (F) *Common or Intercompany Financing*. Significant common or intercompany financing, including the
 23 guarantee by or the pledging of the credit of, one or more business entities for the benefit of another
 24 business entity or entities provides evidence of functional integration, if the financing activity serves an

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- 1 operational purpose of both borrower and lender. Lending which serves an investment purpose of the
 2 lender does not necessarily provide evidence of functional integration.
- 3 (9) *Indicators of a Unitary Business.*
- 4 (a) *Same Type of Business.* Business activities that are in the same general line of business generally
 5 constitute a single unitary business, as, for example, a multistate grocery chain.
- 6 (b) *Steps in a Vertical Process.* Business activities that are part of different steps in a vertically structured
 7 business almost always constitute a single unitary business. For example, a business engaged in the
 8 exploration, development, extraction, and processing of a natural resource and the subsequent sale of a
 9 product based upon the extracted natural resource, is engaged in a single unitary business, regardless of
 10 the fact that the various steps in the process are operated substantially independently of each other with
 11 only general supervision from the business's executive offices.
- 12 (c) *Strong Centralized Management.* Business activities which might otherwise be considered as part of
 13 more than one unitary business may constitute one unitary business when there is a strong central
 14 management, coupled with the existence of centralized departments for such functions as financing,
 15 advertising, research, or purchasing. Strong centralized management exists when a central manager or
 16 group of managers makes substantially all of the operational decisions of the business. For example,
 17 some businesses conducting diverse lines of business may properly be considered as engaged in only one
 18 unitary business when the central executive officers are actively involved in the operations of the various
 19 business activities and there are centralized offices which perform for the business activities the normal
 20 matters which a truly independent business would perform for itself, such as personnel, purchasing,
 21 advertising, or financing.
- 22 (10) *Filing requirements.* In accordance with Oregon Laws 2019, chapter 122, section 60, persons who
 23 compose a unitary group, as defined in Oregon Laws 2019, chapter 122, section 58(18), as amended by
 24 Oregon Laws 2019, chapter 579, Section 50, shall register, file, and pay the corporate activity tax as a
 25 single taxpayer based on the commercial activity of all members of the unitary group, if at least one

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1 member of the unitary group has substantial nexus with Oregon (refer to OAR 150-317-1010: Substantial
2 Nexus).

3 (11) **Example 1:** Clarendon Corp. (Clarendon), Deanwood LLC (Deanwood), and Eisenhower
4 Partnership (Eisenhower) are members of the same unitary group. Clarendon is an engineering company
5 based in Oregon. Deanwood is headquartered outside of Oregon and sells tangible personal property
6 throughout the United States. Eisenhower, which provides consulting services to third parties, has no
7 employees or property in Oregon. During the calendar year, Clarendon realized commercial activity of
8 \$2.3 million in Oregon from transactions with persons outside the unitary group. Deanwood realized
9 commercial activity in Oregon \$230,000 from transactions with persons outside the unitary group.
10 Eisenhower provided one hour of consulting service to a third party in Oregon, from which it realized
11 \$1,000 of commercial activity. Clarendon and Deanwood each have substantial nexus with Oregon.
12 Eisenhower does not. Because they are members of a unitary group at least one of which has substantial
13 nexus with Oregon, the unitary group is required to register, file, and pay the corporate activity tax as a
14 single taxpayer on the total amount of commercial activity realized by Clarendon, Deanwood, and
15 Eisenhower.

16 **Stat. Auth.:** ORS 305.100; Oregon Laws 2019, chapter 122, section 72

17 **Stats. Implemented:** Oregon Laws 2019, chapter 122, section 58, as amended by Oregon Laws 2019,
18 chapter 579, section 50; Oregon Laws 2019, chapter 122, section 60; Oregon Laws 2019, chapter 122,
19 section 63, as amended by Oregon Laws 2019, chapter 579, section 52