



Business Aspects of Combined Reporting

UT LAW CLE
2016 LLCs, LPs and Partnerships

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Combined Reporting Analysis

Identify all entities subject to a “controlling interest”



Identify and exclude non-taxable entities (exclude passives on annual basis)



Determine scope of “unitary” business and split group if appropriate



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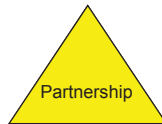
COMBINED GROUP

Combined Reporting

Definition of Controlling Interest

Controlling Interest for Partnership

> 50%, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership



Controlling Interest for Limited Liability Company

> 50%, owned directly or indirectly, of the total membership interest of the limited liability company
or
> 50%, owned directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company



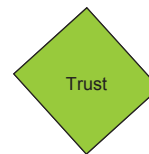
Controlling Interest for Corporation

> 50%, owned directly or indirectly, of the total combined voting power of all classes of stock
or
> 50%, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation

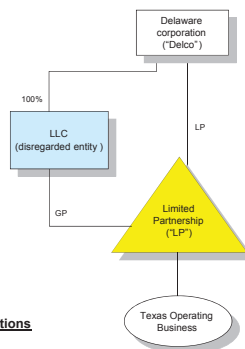


Controlling Interest for Trust

> 50%, owned directly or indirectly of the [capital, profits, or] beneficial interest in the trust



Combined Reporting



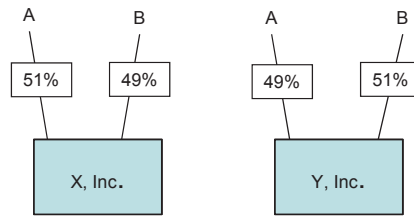
Federal Income Tax Considerations

- Limited partnership disregarded for federal income tax purposes unless corporate treatment elected. (Rev. Rul. 2004-77.)
- Operating business reported on corporate tax return of Delaware corporation.

Texas Margin Tax Considerations

- Do Delco, LLC and LP comprise a combined group?
 - §171.1014(a) ("Taxable entities" that are part of an affiliated group engaged in a unitary business are required to file a combined group report.); *see also* Comp. Rule 3.590(b)(2) ("Combined group--Taxable entities that are part of an affiliated group engaged in a unitary business and that are required to file a combined group report under Tax Code, §171.1014.")
 - Affiliated group: > 50% test (§§171.0001(1); 171.0001(8).); *see* Comp. Rule 3.590(b)(1) ("Affiliated group--Entities in which a controlling interest is owned by a common owner, either corporate or noncorporate, or by one or more of the member entities.")
 - Unitary business?
- See also* Comp. FAQs, Rule 3.581, Q&A 13 ("The taxpayer is a disregarded entity for federal purposes. Do they have to file franchise tax if they have nexus in Texas? Yes. The determination of responsibility for Texas franchise tax is based on the legal formation of an entity. An entity's treatment for federal income tax purposes does not determine its responsibility for Texas franchise tax. Therefore, each taxable entity that is organized in Texas or doing business in Texas is subject to franchise tax, even if it is treated as a disregarded entity for federal income tax purposes. The entity is required to file a separate franchise tax report unless it is a member of a combined group. If the entity is a member of a combined group, the reporting entity may include the disregarded entity with the parent's information; in that event, both entities are presumed to have nexus.")
- See also* Comp. FAQs, Rule 3.590, Q & A 9 ("Does a combined group include entities meeting the ownership and unitary criteria if the entity does not have nexus in Texas? Yes, an entity meeting the ownership and unitary criteria is included in the combined group regardless of whether the entity has nexus in Texas.")

Combined Reporting Issues

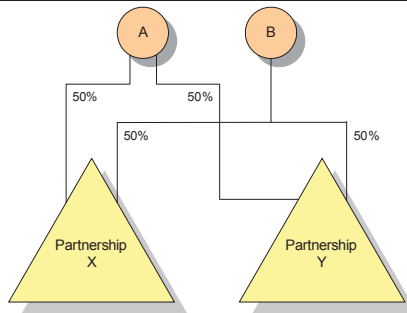


See Comp. Rule 3.590(b)(1)
("Affiliated group--Entities in which a controlling interest is owned by a common **owner**, either corporate or noncorporate, or by one or more of the member entities.")

Cf Comptroller Hearing 109,672 allowing combined reporting for "owners" with >50% ownership

Comp. Rule 3.590(b)(4)(B)(vii)

- (vii) Individual A and Individual B each owns 50% of Partnership X. Individual A and Individual B each also owns 50% of Partnership Y. Individual A and Individual B are not husband and wife. Since neither individual owns more than 50% of each partnership, neither individual has a controlling interest in the partnerships.



Combined Reporting

BLIND

To NEXUS

[Except for possible impact on unitary test]

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