

STATE OF MAINE  
KENNEBEC, ss.

MAINE BOARD OF TAX APPEALS  
DOCKET NO. BTA-2020-6

[CORPORATE TAXPAYER] AND  
SUBSIDIARIES,

Petitioner

v.

DECISION

MAINE REVENUE SERVICES,

Respondent

[Corporate Taxpayer] and its subsidiaries (collectively “Company”) appeals from an assessment of corporate income tax and interest issued by Maine Revenue Services (“MRS”) for tax years [year 2 and year 3]. The Company contends that the assessment is contrary to the applicable law and must be cancelled. Based on the law and the evidence presented, we uphold the assessment in full.

#### I. Background

At all relevant times, the Company provided a wide array of services, including [professional] services, in Maine and throughout the nation. In [year 1], the Company acquired, and subsequently wholly owned, a foreign entity (“Foreign Subsidiary”), offering [professional] services in a foreign country and exclusively to foreign customers. For the tax years at issue [year 2 and year 3], the Company elected to treat the Foreign Subsidiary as a domestic corporation for federal income tax purposes pursuant to I.R.C. § 1504(d) and included the Foreign Subsidiary in the Company’s federal consolidated income tax returns and computation of federal taxable income for the tax years at issue.

In preparing its Maine income tax returns and combined report, the Company determined that, because the Foreign Subsidiary served exclusively foreign customers in a foreign market, the [professional] business of the Foreign Subsidiary was not part of the Company's unitary business. Consequently, the Company excluded the Foreign Subsidiary from its Maine combined report and computation of Maine net income. On audit, MRS concluded that the Foreign Subsidiary was part of the Company's unitary business and issued the subject assessment for \$[amount], comprising tax of \$[amount] tax and interest of \$[amount] for tax year [year 2] and tax of \$[amount] and interest of \$[amount] for tax year [year 3]. This appeal followed.

On appeal, the Company argues that the assessment must be canceled because the Foreign Subsidiary was not part of the Company's unitary business and, alternatively, the Foreign Subsidiary is not subject to Maine tax because its income is not reportable to and apportionable by Maine under Maine's "water's edge" system of reporting and apportionment. It is the Company's burden to show that the assessment is incorrect. 36 M.R.S. § 151-D(10)(F). We consider the matter on appeal de novo as to both facts and law. *Id.* § 151(2)(G).

## II. Discussion

Annually, Maine imposes a tax on the Maine net income of "each group of corporations that derives income from a unitary business carried on by 2 or more members of an affiliated group." 36 M.R.S. § 5200(1). Every taxable corporation that is required to file a federal income tax return is also required to file a Maine return. *Id.* § 5220(5). Additionally, a corporation that "is a member of an affiliated group and that is engaged in a unitary business with one or more other members of that affiliated group shall file . . . a combined report, in accordance with [36

M.R.S.] section 5244.” *Id.* However, “[n]either the income nor the sales of a corporation that is *not* required to file a federal income tax return may be included in the combined report.”

*Id.* § 5244 (emphasis added). Because, in this case, the Foreign Subsidiary was wholly owned by the Company, the Foreign Subsidiary was a member of the Company’s affiliated group. *Id.*

§ 5102(1-B). We consider the Company’s arguments in turn, below.

A. Unitary Business

The unitary business concept ignores the separate legal existence of corporations and instead focuses on practical business realities and transfers of value among affiliated corporations. *Gannett Co., Inc. v. State Tax Assessor*, 2008 ME 171, ¶ 13, 959 A.2d 741, 748. A unitary business is “characterized by unity of ownership, functional integration, centralization of management and economies of scale.” 36 M.R.S. § 5102(10-A). Because the Foreign Subsidiary was in the same general line of business as other members of the Company’s unitary group—[professional]—there is a “strong presumption” that the Company and the Foreign Subsidiary were engaged in a single, unitary business for the period at issue. 18-125 C.M.R. ch. 801 § .02. The Company argues that, because the Company served domestic customers and the Foreign Subsidiary served exclusively foreign customers, the indicia of a unitary relationship, with the exception of unity of ownership, were not present for the period at issue.

The Company and the Foreign Subsidiary both provided [professional] services. Providing these services in different markets does not preclude the functional integration, centralization of management, and economies of scale that characterize a unitary business. The Company has not shown that the Foreign Subsidiary was not part of its unitary business during the period at issue. No adjustment on this basis is warranted.

## B. Water's Edge

Maine uses a combined reporting/formula apportionment method to determine what portion of the income of a multijurisdictional unitary business is subject to Maine tax. In apportioning the income of a unitary business, some states use a “worldwide” combined reporting and apportionment method “which employs worldwide figures in all portions of the apportionment formula.” *Irving Pulp & Paper, Ltd. v. State Tax Assessor*, 2005 Me 96, ¶ 7; 879 A.2d 15. Other states, including Maine, use a so-called “water's edge” method “which is ordinarily understood to look only within the geographic boundaries of the United States to determine any factors in the formula for apportioning corporate taxation.” *Id.*, ¶ 7, 879 A.2d 15 (citations omitted). For a unitary business, Maine’s apportionment method begins

with figures derived from corporations’ federal taxable income, *see E.I. Du Pont de Nemours & Co.*, 675 A.2d [82, 83 (Me. 1996)]; 36 M.R.S.A. §§ 5102, 5243, which is limited to income derived from United States business, *see* 26 U.S.C.A. § 882(a), (b).

*Irving* ¶ 14, 879 A.2d 15.

For the tax years at issue, the Company elected to treat the Foreign Subsidiary as a domestic corporation under I.R.C. § 1504(d). The Company argues that because the Foreign Subsidiary conducted business activities exclusively outside the geographic boundaries of the United States, its federal taxable income was not reportable to and apportionable by Maine. We disagree. As an elective domestic corporation, the Foreign Subsidiary was required to file federal income tax returns for the period at issue. *See* 26 C.F.R. § 1.6012-2(a)(1). Under Maine’s apportionment method, the federal taxable income of a domestic unitary affiliate was properly included in the apportionable net income of the Company’s unitary business. No adjustment to the assessment on this basis is warranted.

III. Decision

Based on the law and evidence presented, the Company has not shown that income from its Foreign Subsidiary was not required to be reported and apportioned to Maine. Consequently, we uphold the assessment for tax years [year 2 and year 3] in full.

The Board may, in limited circumstances, reconsider its decision on any appeal. If either party wishes to request reconsideration, that party must file a written request with the Board within 20 days of receiving this decision. Contact the Appeals Office at 207-287-2864 or see the Board's rules, available at <http://www.maine.gov/boardoftaxappeals/lawsrules/>, for more information on when the Board may grant reconsideration. If no request for reconsideration is filed within 20 days of the date of this proposed decision, it will become the Board's final administrative action. If either party wishes to appeal the Board's decision in this matter to the Maine Superior Court, that party must do so within 60 days of receiving this decision. During the 60-day period in which an appeal may be filed with the Superior Court, the Company may contact Maine Revenue Services at 207-624-9595 for the amount of tax that is currently due, together with any interest or penalties owed. After that 60-day period has expired, Maine Revenue Services will contact the Company with an updated amount of tax and any interest or penalties due at that time.

BY ORDER OF THE BOARD

Date: \_\_\_\_\_, Chair/Member