

COMBINED RETURNS

39-22-303.11(A)

- 1) In any case, when two or more C corporations which are members of an affiliated group as defined in subsection 39-22-303(12), C.R.S., qualify under the provisions of subsection 39-22-303(11) to file a combined report for Colorado income tax purposes, they must do so.
- 2) Section 39-22-303(11)(a), C.R.S., provides that only those members of an affiliated group of C corporations that satisfy three of the six tests of unity as provided therein for the current tax year and the two preceding tax years may join in the filing of a combined report. Thus, corporations that were not in existence for the two preceding tax years may not join in the filing of a combined report.
- 3) In order to be included in a combined report, an affiliated C corporation must meet at least three of six tests of unity with one or more other affiliated C corporations includable in the combined report. The six tests of unity are discussed in paragraphs a) through f) following:
 - a) The first test of unity is met if 50% or more of the gross operating receipts of one affiliated C corporation is from sales or leases to another affiliated C corporation; or if 50% or more of the cost of goods sold and/or leased by one affiliated C corporation is paid to another affiliated C corporation.

Example: \$85,000 of A corporation's gross operating receipts of \$100,000 are from sales to affiliated corporation B. A and B have met the first test of unity.

Example: \$69,000 of C corporation's total costs of goods sold of \$75,000 are purchases from affiliated corporation D. C and D have met the first test of unity.
 - b) The second test of unity is met if 50% or more of the value of five or more of the listed services utilized by one C corporation during the tax year is furnished by an affiliated C corporation at less than an arm's length charge.

Example: Corporation E furnished the following services to corporation F during the tax year at the charges indicated. As a result, E and F have met the second test of unity.

Service	Total value of services provided to F from all sources	Value of services provided to F by E	Percent provided by E	Charge
Advertising and public relations	\$150,000	\$110,000	73%	\$26,000
Accounting and bookkeeping	\$80,000	\$70,000	87.5%	\$15,000
Legal services	\$50,000	\$35,000	70%	\$30,000
Personnel services	\$120,000	\$120,000	100%	-0-
Sales services	\$235,000	\$141,000	60%	\$135,000

Purchasing services	\$100,000	\$40,000	40%	\$15,000
Research and development services	\$240,000	\$240,000	100%	\$240,000
Insurance procurement and servicing exclusive of employee benefit programs	-0-	\$100,000	0%	-0-
Employee benefit programs	-0-	\$250,000	0%	-0-

- c) The third test is met if 20% or more of the long-term debt (debt lasting more than one year) is owed to or guaranteed by an affiliated corporation.
Example: Corporation G guarantees 35% of affiliated corporation H's long-term debt and 15% of corporation I's long-term debt. Corporations G and H have met the third test of unity. Corporations G and I have not met the third test of unity.
- d) The fourth test of unity is met for two affiliated C corporations if one of them substantially uses the patents, trademark, service marks, logo-types, trade secrets, copyrights, or other proprietary materials owned by the other.
- e) The fifth test of unity is met for both corporations if 50% or more of the board of directors of one affiliated C corporation are members of the board of directors or are corporate officers of another affiliated C corporation.
Example: Parent corporation J has 20 members on its board of directors. Twelve of these members are members of subsidiary corporation K's board of directors and eight are members of subsidiary corporation L's board of directors. Corporations J and K have met the fifth test of unity. Corporations J and L have not.
- f) The sixth test of unity is met for both corporations if 25% or more of the 20 highest ranking officers of one affiliated C corporation are members of the board of directors or are corporate officers of an affiliated C corporation.
Example: Five of the 20 highest ranking officers of corporation M are either officers or board members of corporation N. Corporations M and N have met the sixth test of unity.

Example: Corporation O has only 13 officers. Three of these officers were officers of P corporation and another one was a P corporation board member. Since over 25% of O corporation's highest officers ($4/13 = 30.76\%$) were either board members or officers of P corporation, corporations O and P have met the sixth test of unity.

- 4) Only those members of an affiliated group of C corporations that have met at least three of the six tests of unity within a given affiliated group of corporations may join in the filing of a combined report.

Example: Parent corporation Q has met 4 tests of unity with subsidiary corporation R, 3 tests of unity with subsidiary S, 2 tests of unity with subsidiary T, and no tests of unity with subsidiary U. R has met two tests with S and 1 test with U. S has met two tests with T and two with U. Since each member of this affiliated group has met at least three tests of unity with other members of the group, a combined report is required to be filed.

Example: Unitary affiliated group Q-U acquired unitary affiliated group V-Z on October 13, 1993. The tests of unity are met between members of group Q-U on the one hand and members of

group V-Z on the other but there have not been at least three tests of unity met between the two groups. Group Q-U would be required to file one combined report, and group V-Z would be required to file another combined report. The two groups could elect to file a consolidated return under section 39-22-305, C.R.S., if they so qualify.