

**THE MINNESOTA *AMOCO* DECISION: AN IMPORTANT UNITARY  
BUSINESS/CORPORATE TAX ISSUE SETTLED AND A LESSON IN TAX  
ASSESSMENT ANALYSIS**

*By Thomas R. Muck, Fredrikson & Byron, P.A.*

In its opinion in *Amoco Corporation and Affiliates vs. Comm’r of Rev.*, 658 N.W.2d 859 (Minn. 2003), the Minnesota Supreme Court affirmed the Minnesota Tax Court<sup>1</sup> and settled an important corporate tax issue—whether the Legislature in defining unitary business operations as those which are “of mutual benefit, dependent upon or contributory to one another” intended to impose taxation as far as the U.S. Constitution permits.

In addition, the opinions of both the Supreme Court and the Tax Court remind us of a fundamental principle for analyzing a corporate income tax assessment.

**A Lesson In Tax Assessment Analysis**

The opinions of the both the Supreme Court and the Tax Court in *Amoco* demonstrate that whether a business may be taxed as a unitary business presents two issues for analysis—a statutory issue and a constitutional issue:

1. Does the tax statute itself support the taxing authority’s position? The Legislature and only the Legislature chooses the method and scope of taxation of individuals and businesses. It expresses its intention in the tax statutes. State revenue officials have only so much authority to tax as has been conferred upon them in those statutes.

2. Is the assessment constitutional? Even if the statute supports the taxing authority’s position, the statute itself, or the statute as applied by the taxing authority, may not conform to federal (or state) constitutional limitations.

---

<sup>1</sup> *Amoco Corporation and Affiliates v. Comm’r of Rev.*, Minn. Tax Court Docket Nos. 7223-31 (February 26, 2002) 2002 WL 334103.

Where the issue is whether a corporation doing business both in Minnesota and outside it is engaged in a “unitary business,” it is easy to lose sight of the fact that such an issue presents both a statutory and a constitutional question. Tax professionals themselves often speak of “unitary business” issues but often do not distinguish the two. They are, however, quite separate.

*The Unitary Business Principle in Constitutional Law*

The unitary business principle is part of the U.S. Supreme Court’s articulation of the due process/commerce clause standard which defines the authority of a state to tax multi-state corporations—those that conduct business both in and outside the taxing state. A state may tax business activity occurring within its borders but may not tax activity outside its borders. To tax activity outside its borders, there must be a link to the instate activity. The link exists, as a constitutional matter, where the outstate business is part of a single, unitary business with the instate activity.

The unitary business principle in constitutional law has been described as follows:

Under the unitary business principle, if a taxpayer is carrying on a single “unitary” business within and without the state, the state has the requisite connection to the out-of-state activities of the business to justify inclusion in the taxpayer’s apportionable tax base of all of the property, income, or receipts attributable to the combined effect of the out-of-state and in-state activities.<sup>2</sup>

Or, to phrase the constitutional limitation as a defense, a state may not tax business activity outside its territory unless it is part of a single, unitary business with activity conducted inside it.

During the years at issue in *Amoco*, most commentators would conclude that, for constitutional purposes, the unitary business principle was articulated in the 1983 opinion of the

---

<sup>2</sup> Hellerstein & Hellerstein, State Taxation (3<sup>rd</sup> ed. 1998) p. 8-59.

Supreme Court in *Containers Corp. of America v. Franchise Tax Bd.*<sup>3</sup> The U.S. Supreme Court there said that unitary business/formulary apportionment method of taxation:

calculates the local tax base by first defining the scope of the “unitary business” of which the taxed enterprise’s activities in the taxing jurisdiction form one part, and then apportioning the total income of that “unitary business” between the taxing jurisdiction and the rest of the world on the basis of a formula taking into account objective measures of the corporation’s activities within and without the jurisdiction.<sup>4</sup>

The Container Court then described the constitutional concerns of the Due Process and Commerce Clause and the role of the unitary business principle in addressing those concerns:

The Due Process and Commerce Clauses of the Constitution do not allow a State to tax income arising out of interstate activities—even on a proportional basis—unless there is a “ ‘minimal connection’ or ‘nexus’ between the interstate activities and the taxing State, and ‘a rational relationship between the income attributed to the State and the intrastate values of the enterprise.’ ” . . . At the very least, this set of principles imposes the obvious and largely self-executing limitation that a State not tax a purported “unitary business” unless at least some part of it is conducted in the State. . . . It also requires that there be some bond of ownership or control uniting the purported “unitary business.”

In addition, the principles we have quoted require that the out-of-state activities of the purported “unitary business” be related in some concrete way to the in-state activities. The functional meaning of this requirement is that there be some sharing or exchange of value not capable of precise identification or measurement—beyond the mere flow of funds arising out of a passive investment of a distinct business operation—which renders formula apportionment a reasonable method of taxation.<sup>5</sup>

Later, in its opinion, the Supreme Court used the term “flow of value,” which has become a shorthand way of referring to “sharing or exchange of value.”<sup>6</sup>

---

<sup>3</sup> 103. S. Ct. 2933 (1983).

<sup>4</sup> 103 S. Ct. at 2940.

<sup>5</sup> 103 S. Ct. at 2940 (citations omitted) (emphasis added).

<sup>6</sup> The Supreme Court said:

*The Unitary Business Principle In Tax Statutes.*

Quite apart from the unitary business principle's role in articulating the federal constitutional limitation on state taxation, however, is its role in state tax statutes. It is used by State legislatures in framing the basic features of their corporate franchise (income) statutes. It thus becomes part of the Legislature's expression of the extent to which it desires to tax.

The Minnesota Legislature, for example, has enacted a corporate franchise (income) tax. The tax statute enacted reaches instate business activity. And, it reaches certain business activity occurring outside the borders of Minnesota.<sup>7</sup> In the 1986-90 tax years at issue in the *Amoco* case, the Legislature defined three basic scenarios. First, where the income producing activity is wholly within Minnesota it "assigns" the income to Minnesota, which means Minnesota will tax 100% of it.<sup>8</sup> Second, if the income producing activity is wholly outside Minnesota, the income is "assigned" to other states and Minnesota taxes none of it.<sup>9</sup> Third, if the income producing

---

The prerequisite to a constitutionally acceptable finding of unitary business is a flow of value, not a flow of goods. As we reiterated in *F.W. Woolworth*, a relevant question in the unitary business inquiry is whether " 'contributions to income [of the subsidiaries] result[ed] from functional integration, centralization of management, and economies of scale.' " . . . "[S]ubstantial mutual interdependence," . . . can arise in any number of ways; a substantial flow of goods is clearly one but just as clearly not the only one.

103 S. Ct. at 2947 (citations and footnotes omitted) (emphasis added).

<sup>7</sup> See, generally, Minn. Stat. § 290.17 subd. 3 (1988).

<sup>8</sup> Minn. Stat. § 290.17 subd. 3 (1988).

<sup>9</sup> Minn. Stat. § 290.17 subd. 3 (1988).

activity is in both Minnesota and other states, Minnesota taxes only part of it – it “apportions”<sup>10</sup> the income between Minnesota and the other states where the activity takes place.

Apart from the apportionment percentage itself,<sup>11</sup> the extent to which a unitary business conducted both in and outside Minnesota is taxed is determined in large part by the statutory definition of “unitary business.”

In the tax years in *Amoco*, the Legislature defined the “unitary business” it intended to reach with taxation as follows:

The term “unitary business” means business activities or operations which are of mutual benefit, dependent upon, or contributory to one another, individually or as a group.<sup>12</sup>

The statutory definition thus differs in phraseology from the *Container* constitutional law articulation of the unitary business principle. The difference underscores that the “unitary business” question is really two questions. *First*, is the business unitary within the Legislature’s definition of “unitary business”? *Second*, is it unitary in the constitutional sense?

Both the Minnesota Supreme Court, and the Tax Court which it affirmed, recognized the distinction between those two separate questions in *Amoco*.

---

<sup>10</sup> Minn. Stat. § 290.17 subd. 4(a) (1988). Minnesota includes a part of the income in the tax computation – a part which is determined by an apportionment percentage derived from a three factor apportionment formula.

<sup>11</sup> The apportionment percentage, which is applied to the total net income of the business, is determined in Minnesota by a three-factor formula. The three factors are property, payroll and sales. A percentage is derived for each by placing the Minnesota factor (e.g., Minnesota property) in the numerator and the total property in the denominator. The three percentages are then combined, with the sales factor weighted 70%. *See, generally*, Minn. Stat. § 290.191 (1998).

<sup>12</sup> Minn. Stat. § 290.17 subd. 4(b) (1988) (emphasis added).

## **An Important Tax Issue Settled**

### *The Facts And The Issue In Amoco*

Amoco, on a worldwide basis, is an integrated oil company, having subsidiaries that engage in all aspects of the oil business. Some subsidiaries explore for crude oil. Once it is discovered, others “produce” it by recovering it. Still others refine the crude oil. Finally, Amoco subsidiaries sell the refined product.

Amoco’s Minnesota operations are limited. In Minnesota, it engages only in refined product marketing. Its exploration and production operations are not in any way conducted in Minnesota. The Amoco subsidiaries which conducted those operations in other states have no tax nexus with Minnesota.

In computing an assessment of additional corporate franchise tax for Amoco, the Commissioner included in his tax computation all income from exploration and production operations on the theory that the exploration and production operations were part of a unitary business, part of which (refined product marketing) was conducted in Minnesota.

Amoco challenged the assessment and asserted that its exploration and production operations were not part of the Minnesota refined product marketing operations of Amoco under the Legislature’s statutory definition of unitary business in effect during the 1986-90 years at issue (that in-state and out-of-state activities must be of “mutual benefit,” “dependent upon” or “contributory to” one another, hereinafter referred to as the “mutual benefit” definition).<sup>13</sup>

---

<sup>13</sup> Although the taxpayer in *Amoco* did not assert a constitutional defense to the assessment, neither did it concede the constitutional issue. It observed that there is no U.S. Supreme Court opinion establishing a right to tax an oil company to the extent the Commissioner desired in the *Amoco* case; that is, on the entirety of its business operations. *Exxon Corp. v. Wisconsin Dep’t of Revenue*, 447 U.S. 207, 100 S. Ct. 2109 (1980), involved an attempt to tax exploration and production income only to the extent that the crude oil produced by Exxon was refined in its own refineries. The Wisconsin Department of Revenue itself had excluded that which was not and

*The Skelly Case and the History of the Statutory Unitary Business Definition*

The precedential foundation for the result in *Amoco* lay in an earlier case—*Skelly Oil Co. vs. Commissioner of Taxation*, 131 N.W.2d 632 (Minn. 1964), which held that an oil company’s exploration and production operations in other states were not part of a unitary business with its marketing operations in Minnesota. The facts of *Skelly* were nearly identical to *Amoco*’s. And, importantly, *Skelly* was decided under a case law definition of “unitary business” that was later codified and was in effect in the 1986-90 tax years at issue in *Amoco*.

During the 1986-90 tax years at issue,<sup>14</sup> Minnesota’s statutory definition of “unitary business” was:

The term “unitary business means business activities or operations which are of mutual benefit, dependent upon, or contributory to one another, individually or as a group.

A study of the history of Minnesota’s statutory unitary business definition reveals that it was a codification of a case law definition which had developed in the 1950’s. *Skelly* was

---

which was instead sold to third parties. See *Exxon, supra*, 447 U.S. at 226, 100 S. Ct. at 2109 (“Appellee did, in fact, exclude that income derived from the sale of crude oil and gas at the wellhead to third parties.”) The U.S. Supreme Court said in its opinion that it did not reach the issue of whether due process required the Department to do so. *Exxon, supra*, 447 S. Ct. at 227 n.10, 100 S. Ct. at 2122 n.10.

Nor, in *Mobil Oil Corp. v. Comm’r of Taxes of Vermont*, 445 U.S. 425, 100 S. Ct. 1223 (1980), did the taxpayer litigate the issue of whether and to what the extent its exploration and production activities were unitary in the constitutional sense with its refining and marketing operations. Instead, Mobil litigated the issue of whether dividend income was unique and different from ordinary operating income and lacking in nexus with Vermont, 445 U.S. 437, 100 S. Ct. at 1232.

Consequently, no U.S. Supreme Court opinion holds that an oil company may be taxed on more than the production income from crude oil used in its own refineries.

<sup>14</sup> In 1999, the definition was amended to read as follows:

The term “unitary business” means business activities or operations which result in a flow of value between them.

Minn. Laws 1999 ch. 243, art. 2, § 22.

decided in 1964 but concerned the 1951-55 tax years of the taxpayer. At the time, Minn. Stat. § 290.17(4) (1953) provided:

When a trade or business is carried on partly within and partly without this state, the entire income from such trade or business . . . shall be governed by the [income apportionment] provisions of section 290.19.  
. . . .<sup>15</sup>

The 1953 statute did not contain the term “unitary business” and, therefore, understandably, contained no definition of “unitary business.” The Supreme Court in *Skelly*, however, presumably for the purpose of construing the term “trade or business” itself referred to “unitary business” cases in Minnesota jurisprudence and relied on a definition of “unitary business” that had been developed in that Minnesota case law. Specifically, the elements of the definition came from *Western Auto Supply Co. v. Comm’r of Taxation*, 71 N.W.2d 792 (1955).

In its *Amoco* opinion, the Tax Court said:

In 1955 in *Western Auto*, we defined the term “unitary business”: a business is unitary when “the operation of the business within the state [is] ‘dependent upon or contributory to the operation of the business outside the state.’” *W. Auto Supply Co. v. Comm’r of Taxation*, 245 Minn. 346, 356, 71 N.W.2d 797, 804 (1955) (citation omitted). Further, we stressed that “[t]he test of whether a business is unitary is whether its various parts are interdependent and of mutual benefit so as to form one business unit rather than separate business entities.” *Id.* at 357, 71 N.W.2d at 805.

*Amoco*, *supra*, 658 N.W.2d at 865.

Eighteen years after *Skelly*, the Minnesota Legislature enacted the following definition of unitary business:

a number of business activities or operations which are of mutual benefit, dependent upon, or contributory to one another individually or as a group.<sup>16</sup>

---

<sup>15</sup> Minn. Stat. § 290.17(4) (1953).

<sup>16</sup> Minn. Laws 1982 ch. 2, art. 3, § 13.

The Supreme Court in *Amoco* recognized that this definition was derived from the case law definition developed in *Western Auto*. It further observed that it had remained substantially unchanged in the statutes and was in effect in the years at issue in the *Amoco* case. *Amoco, supra*, 658 N.W.2d at 866.

Thus, the stage was set for the *Amoco* case by *Skelly* in that *Skelly* involved the same facts and the same definition of unitary business under which *Skelly* had been decided, which was later codified and was in effect during the years at issue in *Amoco*.

#### *The Analysis and Holding of the Minnesota Supreme Court and Tax Court*

The Minnesota Supreme Court, affirming the Tax Court, held that under the statutory “mutual benefit” definition of unitary business, Amoco’s exploration and production operations were not part of a unitary business with its Minnesota refined product marketing operations, just as the Court had held 39 years earlier in *Skelly* under the same *Western Auto* “mutual benefit” definition prior to its codification.

There was no disagreement between the parties in *Amoco* that the “mutual benefit” definition derived from *Western Auto* or that the *Western Auto* definition had been applied in *Skelly*. Therefore, the analysis of the Supreme Court (and the Tax Court which it affirmed) consisted of its analysis of an argument of the Commissioner that, over the years since *Skelly*, the definition of unitary business, even though phrased in terms of the *Western Auto* “mutual benefit” standard, had evolved and had been equated in case law with the federal constitutional standard and that the federal criteria had been judicially adopted. *Amoco, supra*, 658 N.W.2d at 868. The Supreme Court rejected this contention, as had the Tax Court. It said that the cases<sup>17</sup>

---

<sup>17</sup> The Commissioner relied on *Hercules, Inc. v. Comm’r of Revenue*, 575 N.W.2d 111 (Minn. 1998); *Caterpillar, Inc. v. Comm’r of Revenue*, 568 N.W.2d 695 (Minn. 1997) and *Watlow Winona, Inc. v. Comm’r of Revenue*, 495 N.W.12d 427 (Minn. 1993).

relied upon by the Commissioner for his assertion that the statutory “mutual benefit” definition had been equated with the federal constitutional standard did not support him. *Amoco, supra*, 658 N.W.2d at 869. The Supreme Court held that these opinions addressed only the constitutional standard and did not equate the statutory and constitutional definitions. The Supreme Court said therefore that it had “not yet embraced the *Container Corp.* factors as part of Minnesota’s statutory standard for unitary business.” *Amoco, supra*, 658 N.W.2d at 870.

The Supreme Court then spoke very directly to the issue of whether the “mutual benefit” definition extended the definition of “unitary business” as far as the Constitution allowed. It said that it did not. Specifically, the Court remarked:

Our legislature expressly adopted a common law standard when it enacted the statute applicable to this case. While the Supreme Court has established due process limits of the unitary business principle using a test that is arguably broader than the statutory definition applicable to this case, the legislature did not change the statute to reflect the constitutional standard until 1999, after the audit period in question here. Minn. Stat. § 290.17, subd. 4(b) (2002) (defining unitary business as “activities or operations which result in a flow of value between them”). Moreover, the statutory presumption of unity also illustrates that the legislature did not intend the unitary business statute to reach the constitutional limits of taxation. Under the statutory presumption, unity is presumed whenever there is “unity of ownership, operation, and use.” Minn. Stat. § 290.17, subd. 4(c). Criteria such as: centralized management, purchasing, advertising, and accounting are evidence of a unity. *Id.* These criteria are derived from the Supreme Court’s definition of unitary business. *Butler Bros. v. McColgan*, 315 U.S. 501, 508, 62 S.Ct. 701, 86 L.Ed. 991 (1942) (discussing unity of use, management, and ownership). However, these criteria are not the ultimate test. By proving the existence of these factors, the Commissioner only establishes a presumption of unity, indicating that the presumption can be overcome by a showing of the actual statutory factors that the businesses are “of mutual benefit, dependent upon or contributory to” one another.<sup>18</sup>

Thus, the Court clarified, first, that the “mutual benefit” definition of “unitary business” does not tax to the constitutional maximum. And, further, it clarified the role of the unity presumption of Minn. Stat. § 290.17 subd. 4(c) (1988) in the analysis. The three unities

---

<sup>18</sup> *Amoco, supra*, 658 N.W.2d at 870.

(ownership, operation, and use), even if established through a showing of unitary criteria such as centralized management, purchasing, advertising or accounting, create only a presumption of unity that can be overcome, or, in other words, superseded, by a showing that the business is not unitary under the actual statutory definitional factors (“mutual benefit, dependent upon or contributory to”). The unitary business definition is thus preeminent in the analysis. The “unities” themselves are not “the ultimate test.”

The Minnesota Supreme Court in *Amoco* therefore concluded that there was sufficient evidence to support the Tax Court’s finding, under the statutory definition, that the Amoco exploration and production operations were not part of a unitary business with the Minnesota refined product marketing operations. It said:

We conclude that there is sufficient evidence to support the tax court’s conclusion that APC’s exploration and production operations were not unitary with AOC’s refining and marketing operations. As the court found, APC and AOC made their operational decisions independently. APC produced all of the crude oil it was legally permitted to produce and based its production on market demands, not on the needs of AOC. Similarly, AOC purchased crude oil based on its operational needs, not based on the production capabilities of APC. AOC also purchased the crude oil at the competitive posted field price. Moreover, on a day-to-day basis, APC and AOC operated independently from each other and Amoco Corporation.

*Amoco, supra*, 658 N.W.2d at 871.

## CONCLUSION

The *Amoco* opinion is a reminder of the correct analysis to undertake in examining a corporate income tax assessment. First, analyze the statutory words enacted by the Legislature. The taxing authority must act in accordance with the legislative mandate itself, as expressed in the tax statute. Second, analyze the constitutional issue. Even if the taxing authority does have a legislative authorization to assess, the federal or state constitutions may prohibit the tax statute on its face or prohibit the particular application of the statute by the Commissioner. And, the

*Amoco* opinion settled the important issue of whether the “mutual benefit” definition of unitary business in effect until 1999 taxed multi-state businesses to the constitutional maximum.

#2841532\1

*Thomas R. Muck is a shareholder of Fredrikson & Byron, P.A. and was counsel to Amoco in the Minnesota Amoco cases.*