SB 444

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 444 (Senator King, *et al.*)
Budget and Taxation Ways and Means

Corporate Income Tax - Reporting and Study

This bill alters the information that corporations are required to report to the Comptroller's Office as enacted by Chapter 3 of the 2007 special session. The bill also increases the membership of the Maryland Business Tax Return Commission from 17 to 19.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Any additional expense reimbursements for commission members are assumed to be minimal and absorbable within existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill alters Chapter 3 of the 2007 special session as discussed below.

Reduces the Scope of Reporting Requirements

Under Chapter 3, corporations are required to submit information based on several factors, including whether a corporation is a member of a corporate group. The bill would mandate reporting requirements only if a corporation is a member of a corporate group that is required to file a State corporate income tax return. A corporate group does not include • a corporation that, for any reason, is not subject to federal income tax; • an insurer under Section 1-101 of the Insurance Article; or • a regulated investment company under Section 851(a) of the Internal Revenue Code.

Alters What Must Be Reported

Each corporation that is required to file a State income tax return and is a member of the group is required to file with the Comptroller:

- a *pro-forma* water's edge combined corporate income tax return in accordance with regulations adopted by the Comptroller; and
- specified information on the State income tax impacts of a single sales factor; an imposition of a throwback rule; and income apportioned to other states that might otherwise be taxed by the State (allocation of nonapportionable income).

The bill terminates the reporting requirements January 1, 2011.

Provisions Related to the Comptroller's Office

The date that the Comptroller's Office is required to annually report specified information is changed from December 1 to March 1 of each year. The bill eliminates the authority of the Comptroller to require reports and statements for tax year 2006 to be provided at a time other than when the 2007 tax return is filed.

The bill eliminates the misdemeanor penalty for willfully failing to file or filing a false statement related to the corporate reporting requirements. The Comptroller is required to develop a penalty system to ensure that corporations provide the required information.

Maryland Business Tax Reform Commission

Chapter 3 also established the Maryland Business Tax Reform Commission, which is to analyze the data reported by corporations and make tax reform recommendations to the General Assembly and the Governor. The bill increases membership of the commission from 17 to 19 by adding a representative of the Greater Baltimore Committee and a representative of an organization that represents Maryland manufacturers.

Current Law: A corporate group is defined as • an affiliated group or controlled group under Section 1504 or 1563 of the Internal Revenue Code; or • an affiliated group of corporations that is engaged in a unitary business and more than 50% of the voting stock of each member of which is directly or indirectly owned by a common owner or common owners, either corporate or noncorporate or owned by one of the members of the group.

Each corporation that is required to file a Maryland corporate income tax return and is a member of a corporate group is required to file with the Comptroller a statement • identifying each member of the corporate group and stating for each member of the group whether the member filed a Maryland corporate income tax return, the total volume of sales by the member worldwide for the taxable year, and the volume of sales made by the member in the State; and • identifying each state other than Maryland in which any member of the corporate group filed an income tax return for the taxable year and listing the members of the group that are included in the combined or consolidated group in any state that requires a combined or consolidated return.

Publicly traded corporations doing business in the State are required to report • the name and address of the principal executive office of the corporation; • the name of any corporation that owns 50% or more of the voting stock of the corporation; • the NAICS code of the corporation; and • as specified by the Comptroller, information reported on or used in preparing the corporation's Maryland corporate income tax return or the information that would be required in preparing the tax return if the corporation is not required to file a return. In lieu of the last requirement, a publicly traded corporation not required to file a Maryland corporate income tax return may submit a statement explaining why the corporation is not required to file and the amount of the corporation's total gross receipts in the State during the tax year.

Publicly traded corporations that are members of a corporate group with worldwide gross receipts in the tax year in excess of $100 million must also report • the information required above for publicly traded corporations for each member of the corporate group, whether or not the member is doing business in the State or is required to file a Maryland corporate income tax return; and • information as specified by the Comptroller for the corporation and each member of any corporate group of which the corporation is a member. Information must include • the members of the corporate group that would be included in the combined group using a "water's edge" combined reporting method and the difference in Maryland corporate income tax that would be owed under this method; • the impact on the sales factor of the corporation that would result if certain income of the corporation was included; • for any income the taxpayer has identified as not apportionable on any state income tax return the amount and source of the income, unless the principal executive office is in the State, the state to which the nonapportionable income was allocated; for corporations with the principal executive office in the State, the difference in tax owed if the corporation was required to allocate 100% of the nonapportionable income to Maryland; • the full-time equivalent employment of the corporation in the State in the current and three previous tax years; and • if the corporation is incorporated in the United States or is an affiliate, profits before tax reported to the SEC for the corporation or corporate group of which the corporation is a member.

These statements are required to be filed annually for tax year 2006 and beyond. The Comptroller is required to analyze the statements submitted and report specific information to the General Assembly by December 1 of each year.

A person who is required to file a statement and willfully fails to file the statement or files a false statement is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of $10,000.

Chapter 3 also established the 17-member Maryland Business Tax Reform Commission, which is to review the State's current business tax structure and make specific recommendations for changes that would provide for "fair and equitable taxation of corporations and other entities doing business in the State."

The commission is required to submit an interim report of its findings to the Governor and the General Assembly on or before December 15, 2010 and issue its final report on or before December 15, 2011.

Background: Corporate income tax reform activity has significantly increased in Maryland and several other states in the wake of highly publicized cases involving corporate income tax avoidance at both the federal and state levels. Corporate income tax compliance legislation enacted in 2004 and 2007 addressed two well-publicized techniques for avoiding State income tax in a "separate reporting" jurisdiction such as Maryland – Delaware Holding Companies (DHCs) and captive Real Estate Investment Trusts (REITs). In addition to this legislation, the General Assembly has considered proposals that would require combined reporting, impose an alternative minimum assessment on corporations, attempt to increase tax compliance related to offshore "tax havens," and employ throwback rules that would tax income that is not apportioned to any state.

A number of states, including Maryland, allow or require that taxes on income be computed on the basis of the books and records of separate corporate entities without regard to the fact that the entity may be a member of a commonly owned and controlled group of entities functioning as a single business. Under combined reporting, the combined income of all members of the unitary group is taken into account as the starting point for determining Maryland taxable income. The combined taxable income is then apportioned to Maryland using the combined apportionment factors of all the members of the group. Considerable debate exists over the combined reporting revenue impacts, implementation burden, and impacts on specific corporate sectors.

Chapter 3 of the 2007 special session overhauled the State's tax structure as part of a plan to address the State's structural deficit. As introduced, the Governor included a proposal to require multistate corporate groups to use the combined reporting method. In lieu of requiring combined reporting, Chapter 3 as enacted provides for enhanced reporting of corporate data to the Comptroller and also establishes a business tax study commission to review and evaluate the State's business tax structure.

The information required to be submitted under Chapter 3 is designed to enable the Comptroller to analyze the impacts of combined reporting as well as assess and enhance overall corporate tax compliance. Chapter 3 is also designed to provide data necessary to • enable a better assessment of the current statutory incidence of the corporate income tax; • analyze the impacts of other corporate income tax proposals; and • analyze the impact of changes in the corporate income tax and job growth in the State.

Additional Information

Prior Introductions: None.

Cross File: HB 664 (Delegate Barve, *et al.*) – Ways and Means.

Information Source(s): Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2008
mll/hlb Revised - Senate Third Reader - March 28, 2008

Analysis by: Robert J. Rehrmann

Direct Inquiries to:
(410) 946-5510
(301) 970-5510