MDDCAFLCIO_SUPPORT_SB311

Uploaded by: EDWARDS, DONNA

Position: FAV

MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

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Donna S. Edwards

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SB 311 – Corporate Tax Fairness Act of 2020
Senate Budget and Taxation Committee
January 29, 2020

SUPPORT

Donna S. Edwards
President
Maryland State and DC AFL-CIO

Chairman and members of the Committee, thank you for the opportunity to provide testimony in support of SB 311 – Corporate Tax Fairness Act of 2020. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

Most Marylanders and small businesses already pay their fair share of taxes. Big corporations doing business and making profits in Maryland do not. Combined reporting ensures that big corporations will pay their fair share. Combined reporting allows Maryland owned small businesses to compete on an even playing field with multi-state and multi-national corporations. It removes the unfair advantage that currently exists for big corporations to engage in tax-evasion, at the expense of small businesses and Maryland's economy. Businesses that operate solely within the state cannot duplicate the tax avoidance strategies of large, multi-state corporations, and, therefore, are at a competitive disadvantage against companies with near limitless resources. Twenty-four states and the District of Columbia use combined reporting, and, according to the Fiscal and Policy Note, it would net the State an additional $86 million to $97 million, annually.

SB 311 also addresses the issue of corporate "nowhere income", where an interstate corporation sells across state lines, and the profits from those sales are not collected by any state. As proposed, the bill ensures that each dollar of corporate income in Maryland is subject to taxation by a single state – without double taxation on the profits – by assigning income to Maryland for the purpose of calculating the company's tax bill. States as varied as West Virginia and California follow this same procedure for taxing interstate business transactions. SB 311 puts Maryland small businesses on an equal footing with their large competitors, ensuring every entity is paying taxes on income earned.

We urge a favorable report on SB 311

AFT_FAV_SB311

Uploaded by: English, Marietta
Position: FAV

A Union of Professionals
AFT-Maryland

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Marietta English
PRESIDENT

Kenya Campbell
SECRETARY-TREASURER

Written Testimony from the AFT-Maryland
SB 311 – Corporate Tax Fairness Act of 2020
Senate Budget and Taxation Committee
January 29, 2020

SUPPORT

Good afternoon Mr. Chair and members of the Senate Budget and Taxation Committee. On behalf of the 20,000 state, municipal, and public education workers residing in Maryland, AFT-Maryland enthusiastically calls for a favorable report for SB 311, the bill that initiates combined reporting and the throwback rule which would close the tax loophole that allowed out-of-state corporations to use complex accounting gimmicks to avoid paying Maryland state income taxes.

As the statewide organization for the Baltimore Teachers Union, as well as unions representing thousands of state employees, AFT-Maryland has a long history of supporting bills such as these that not only make sure our state maintains the fiscal health needed to offer vital educational and residential services to Marylanders, but make sure our tax code is fair, equitable, and progressive, whereby those who are more privileged and have more resources at their disposal are asked to pay their fair share.

Members of the committee: Maryland can simply no longer afford allowing the wealthy and most privileged who do business in our state to exploit outdated income tax loopholes. For too long, while we as a state have allowed these loopholes to be exploited, our state agencies have failed to meet basic staffing needs, and, as the Kirwan Commission has pointed out, students in our state have not been receiving the resources they deserve to be successful in their education. Maryland must stop putting the priorities of out-of-state corporations above the needs of its own residents and students.

Senate Bill 311 will close these loopholes and make these out-of-state corporations pay their fair share. Using the method known as "Combined Reporting," and initiating what is known as the "Throwback Rule," it closes a loophole by which 48 of the wealthiest 150 corporations had been able to shield their taxable income in Maryland, effectively paying no taxes in the state despite doing very successful business in the state. In addition, this bill will level the playing field by requiring these businesses pay in taxes the same amount that local, competitor business based in Maryland must pay.

Currently, 24 states and the District of Columbia have enacted some form of combined reporting, and 28 states and the District of Columbia utilize the throwback rule-- The majority of these states are states where Republicans control the legislature, like Alaska, West Virginia, Kansas, Wisconsin, and others that have made the decision to close these inefficient loopholes that do little to benefit everyday Marylanders and our local businesses. Enacting this bill, and thereby closing these tax loopholes that so many other states have closed, DLS reports that we can generate hundreds of millions of dollars in revenue to meet the needs of our state agencies and educational systems. It is for these reasons that we ask that this committee give a favorable report to SB 311: the Corporate Tax Fairness Act of 2020.

SB 311 - Testimony of Support (1)

Uploaded by: Francaviglia, Joe
Position: FAV

Testimony in Support of Senate Bill 311 - Corporate Tax Fairness Act of 2020

Budget and Taxation Committee - January 29th, 2020 - 1:00 pm

Strong Schools Maryland supports Senate Bill 311, the Corporate Tax Fairness Act of 2020.

Strong Schools Maryland is a nonpartisan, nonprofit, 501(c)(3) organization whose sole mission is to establish a world-class public education system for every student in Maryland. We are composed of thousands of volunteers and supporters in nearly every county in the state. Our supporters consist of parents, grandparents, small business owners, retirees, students, teachers, and Marylanders from every background and age. We have built support for implementing and fully funding the 10-year phase in of the Kirwan Commission's recommendations.

A strong public school system is critical to the long term success of our state. In order to build strong schools in every Maryland community, we must implement a new, equitable, accountable, and sustainable funding formula based on the Kirwan Commission's recommendations. A sustainable funding source is critical in order to keep the promise our state has made to families as well as meet our constitutional obligation of a thorough and efficient public education system supported and maintained by taxation[1]. To that end, Strong Schools Maryland supports Senate Bill 311 to contribute to the several sources of revenue, both current and new, that will be required to fully fund the Kirwan recommendations.

SB 311 aligns Maryland's tax structure with at least 24 other states and ensures significant revenue will be available to help fund the generation defining reforms offered by the Kirwan Commission. In addition, SB 311 provides a sustainable funding source and levels the playing field for local Maryland businesses.

When we invest in our public schools, we make our economy stronger, we reduce crime, lower healthcare costs, and provide opportunities for all Marylanders to lead a life of their choice. It is critical that we support efforts that will help fund a public school system that will allow every child, regardless of where they live or which public school they attend, to receive a world-class education. It is not just the right and moral choice, it is the smart economic investment as well.

We urge the committee to issue a favorable report for Senate Bill 311.

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[1] Constitution of the State of Maryland, Article 8, Section 1

SB 311_ACY_Support_Gardiner
Uploaded by: Gardiner, Shamoyia
Position: FAV

To: Chair Guzzone and members of the Budget and Taxation Committee
From: Shamoyia Gardiner, Education Policy Director
Re: Senate Bill 311: Corporate Tax Fairness Act of 2020
Date: January 29, 2020
Position: Support

Advocates for Children and Youth (ACY) is a member organization of the Maryland Fair Funding Coalition. ACY generally supports the policy recommendations offered by the Commission on Innovation and Excellence in Education, including but not limited to: each of the Blueprint's four guiding principles; early supports and interventions for young children and their families; college and career readiness; additional supports and services for students who need them; additional resources, supports, and services for children living in high-need communities; equitable learning outcomes; and equitable distribution of funding across and within jurisdictions.

For years, Maryland has funded public education in a regressive manner, allocating resources to jurisdictions inequitably. This has resulted in some jurisdictions with students who face significant non-academic and academic barriers to learning being underfunded while jurisdictions with less severe student need receiving funds above and beyond what they require.[1] Disturbingly, this regressive funding model has racialized implications, with the three jurisdictions serving half of the students of color in Maryland being the most persistently underfunded: Caroline and Prince George's counties, as well as Baltimore City.[2]

Students, families, and communities in every jurisdiction of Maryland stand to benefit from the passage of the Commission's recommendations into law, **provided that they are accompanied by a sustainable, dedicated funding source.** The Blueprint for Maryland's Future Fund is integral to ushering in a new era of public education in Maryland; one which starts with a world-class system of public education and ensures equitable access to opportunities so all students thrive.

Senate Bill 311 ensures that corporations operating in Maryland are taxed on the value of all their income, generating over $200 million by FY22 alone. With the expectation that this new revenue will be directed in large part to the Blueprint for Maryland's Future Fund, ACY strongly urges a favorable report on SB 311.

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[1] The Urban Institute. "Do Poor Kids Get Their Fair Share of School Funding? https://www.urban.org/sites/default/files/publication/90586/school_funding_brief.pdf May 2017.
2 The Education Trust, 2017.

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LWVMD_FAV_SB311
Uploaded by: Maingi, Joan
Position: FAV

TESTIMONY TO THE SENATE BUDGET AND TAXATION COMMITTEE

SB 311 Corporate Tax Fairness Act of 2020

POSTION: Support

BY: Lois Hybl and Richard Willson – Co – Presidents

Date: January 29, 2020

The League of Women Voters of Maryland believes that Maryland should have an adequate and fair system of taxation. We therefore support the use of combined reporting in Maryland which would close a loophole that allows some corporations to avoid corporate income taxes and would provide additional sorely needed revenues. Currently, corporations can shift funds to other states where they will be taxed at a lower rate.

According to the Multistate Tax Commission, a national, bipartisan association of state comptrollers and revenue departments, Maryland may be losing up to 34% of the corporate income taxes we should collect each year.

Combined reporting requires corporations which do business in several states to have a single set of books, so that all of its profits are reported. Then profits can be allocated according to the usual factors of payroll, sales and property. This would level the playing field for all corporations. The current system places a heavier state tax burden on businesses, both large and small, which do business only in Maryland.

We urge a favorable report for SB 311.

121 Cathedral Street, Suite 2B, Annapolis, MD 21401
410-269-0232 * info@lwvmd.org * www.lwvmd.org

SB311_Fair Cunding Coalition_FAV

Uploaded by: Royalty, Wendy

Position: FAV

MARYLAND
FAIR FUNDING
COALITION

Testimony in Support of Senate Bill 311
Senate Budget and Taxation Committee

Combined Reporting and Ending Corporate "Nowhere Income"

The Maryland Fair Funding Coalition (MFFC) is a growing coalition of twenty-five organizations across the state who are committed to the state raising revenue to sustainably provide the resources it needs to make significant new investments in education funding and other essential services.

The MFFC supports proposals focused on eliminating loopholes and tax breaks that benefit special interests and fixing our upside-down tax code, which allows the wealthiest individuals to pay the smallest share of their income in state and local taxes. Fixing our tax system will support significant new state investments in education and ensure that large corporations and wealthy individuals are paying their share for the public services we all rely on.

Our coalition supports SB311, which closes *two* major corporate tax loopholes by: 1) enacting combined reporting, and 2) ending corporate "nowhere income."

Enacting combined reporting would change how corporate income tax is calculated and provide a more complete and accurate accounting of the profits corporations earn from their activities in Maryland than the current method. This legislation prevents companies from reducing their taxable profits by artificially shifting revenue out of state by treating a parent company and its subsidiaries as one corporation for state income tax purposes.

Additionally, this legislation ends "nowhere income," which closes another loophole that shields some corporate profits from taxation. Maryland's corporate income tax is calculated using a formula intended to measure the portion of a corporation's business activities that occur in Maryland. This system helps to prevent multiple states from taxing a business's profits. However, due to a federal law passed in the 1950's, when a company located in Maryland makes sales into another state, this income is sometimes not subject to taxation in *any* state and It becomes "nowhere income."

If enacted, these policies could generate more than $170 million in annual revenue for the state once fully implemented, which could contribute significantly to the state's share for funding the Kirwan Commission's policy proposals. With a wide range of state services stretched thin, the best way to support needed investments in education is to reform Maryland's tax code to make it more effective and more equitable.

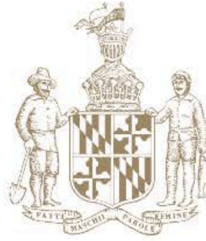
We must choose whether to commit to the investments necessary to create a world-class education system in Maryland, or to instead continue to prioritize tax breaks that benefit powerful special interests but do nothing to help our economy. Our coalition urges our legislators to commit to our students and the future of our economy. Maryland students cannot wait.

Therefore, we urge a favorable report on Senate Bill 311

SB 311_Pinsky_Sponsor
Uploaded by: Senator Pinsky, Senator Pinsky
Position: FAV

Paul G. Pinsky
Legislative District 22
Prince George's County

Chair
Education, Health, and
Environmental Affairs Committee



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The Senate of Maryland
Annapolis, Maryland 21401

Corporate Tax Fairness Act of 2020

SB 311

Senate Budget and Taxation Committee

January 29, 2020

Combined Reporting

Senate Bill 311 – Combined reporting requires companies in Maryland, doing business in more than one state, to **report the income and expenses of all related subsidiaries – regardless of where they are located.** Combined reporting requirements are currently in effect in 29 states* and Washington, D.C.

States utilizing combined reporting, tax the percentage of an *out-of-state* corporation's profits that can be legitimately attributed to a firm's *in-state* subsidiaries.

If Maryland had required combined reporting in TY's 2006 & 2007, prior to the recession, average tax revenue would have been $170,241,000. From 2012 – 2025 average tax revenue would have been $105,586,196.

Combined reporting removes an unfair advantage that large companies have over smaller companies.

*Texas uses a franchise tax. New Mexico and Ohio use a Gross Receipts Tax.

Combined Reporting States

State	Legislature Party	Governor's Party	Year Adopted
California	Democratic	Democratic	Before 2004
Colorado	Democratic	Democratic	Before 2004
Connecticut	Democratic	Democratic	2015
District of Columbia	Democratic	Democratic	2011
Hawaii	Democratic	Democratic	Before 2004
Illinois	Democratic	Democratic	Before 2004
Maine	Democratic	Democratic	Before 2004
Massachusetts	Democratic	Republican	2009
New Jersey	Democratic	Democratic	2018
New Mexico#	Democratic	Democratic	Before 2004
New York	Democratic	Democratic	2007
Oregon	Democratic	Democratic	2013
Rhode Island	Democratic	Democratic	2014
Vermont	Democratic	Republican	2004
Alaska	Republican	Republican	Before 2004
Arizona	Republican	Republican	Before 2004
Idaho	Republican	Republican	Before 2004
Kansas	Republican	Democratic	Before 2004
Kentucky	Republican	Republican	2018
Michigan	Republican	Democratic	2009
Montana	Republican	Democratic	Before 2004
New Hampshire	Republican	Republican	Before 2004
North Dakota	Republican	Republican	Before 2004
Ohio#	Republican	Republican	2005
Texas*	Republican	Republican	2008
Utah	Republican	Republican	Before 2004
West Virginia	Republican	Republican	2007
Wisconsin	Republican	Democratic	2009
Nebraska	Non-partisan	Republican	Before 2004
Minnesota	Split	Democratic	Before 2004

*Texas uses a franchise tax.

New Mexico and Ohio use a Gross Receipts Tax.

Tax Years 2006-2020 Estimated Impact of Combined Reporting

Comptroller's Corporate Income Study FY2006-2010,
Legislative Services Estimates

Tax Year	Total
2006	$196,842,047
2007	$143,640,584
2008*	($15,413,835)
2009*	($56,086,679)
2010*	$30,060,837
2011	Unavailable
2012	$107,500,000 (SB354 of 2010 fiscal note)
2013	$153,600,000 (SB305 of 2011 fiscal note)
2014	$152,900,000 (SB269 of 2012 fiscal note)
2015	$62,612,400 (SB469 of 2013 fiscal note)
2016	$66,793,965 (SB395 of 2014 fiscal note)
2017	$75,000,000 (SB179 of 2015 fiscal note)
2018	$77,900,000 (SB432 of 2016 fiscal note)
2019	$80,400,000 (SB357 of 2017 fiscal note)
2020	$80,400,000 (SB195 of 2018 fiscal note)
2021	$90,000,000 (SB377 of 2019 fiscal note)
2022	$121,800,000 (SB311 of 2020 fiscal note)
2023	$137,200,000 (SB311 of 2020 fiscal note)
2024	$133,400,000 (SB311 of 2020 fiscal note)
2025	$138,700,000 (SB311 of 2020 fiscal note)

***Coincides with nation's worst recession in over 75 years**

Peter Franchot
Comptroller

Andrew M. Schaufele
Director
Bureau of Revenue Estimates

January 8, 2020

Senator Paul G. Pinsky
James Senate Office Building, Room 220
11 Bladen Street
Annapolis, MD 21401

Dear Senator Pinsky:

This letter is in response to your request regarding the amount of corporate income taxes paid by the largest corporations in the State. The attached tables provide a variety of information about corporate income taxes paid by the 150 largest corporations in the State in 2016 and 2017 as measured by income tax withholding, including how many did not pay any tax. As you know, there are several reasons a corporation may pay no income tax in any given year. Legal reasons include: having no profits in that tax year, using carry-forward or carry-back losses to reduce income, and using income tax credits to reduce liability.

Entities identified as non-profits are excluded from consideration. The first set of tables shows tax year 2016 and 2017 statistics for the top 150 corporations, ranked by largest withholding accounts. These tables may not paint the full picture of which corporations pay tax, as there are many businesses with one dozen or more separate accounts in our system, some or all of which could be paying corporate income tax. These separate entities could be set up for management, insurance, finance or other purposes, but in the public mind they represent one "business."

Due to tax disclosure concerns raised by the Comptroller's counsel, we cannot provide the names of the corporations included in this analysis. In prior years, we have instead included a list of the top 150 companies in Maryland as measured by wages paid, reported by the Department of Labor Licensing and Regulation (DLLR), which gives an indication of the types of corporations at issue. However, DLLR informs us that their general counsel's opinion is that such information is confidential and will no longer be provided.

I hope this information is responsive to your request. If you have any questions, please do not hesitate to contact me at (410) 260-7450.

Sincerely,

Andrew M. Schaufele

cc. Len Foxwell
Sharonne Bonardi

Corporate Income Taxes Paid

Private Sector Taxpayers with Largest Payrolls
Tax Years 2017* and 2016

Tax Year 2017

Industry Sector	Income Tax	Accounts Total	Accounts Taxpaying
Manufacturing	$31,496,924	21	13
Transp, Comm, Utilities	21,485,853	18	10
Retail	18,173,161	15	12
Financial, Banking	63,054,243	19	14
Other	40,630,577	77	47
Grand Total	$174,840,758	150	96

Payroll Rank	Income Tax	Accounts Total	Accounts Taxpaying
First 25	$86,205,441	25	16
Second 25	25,170,978	25	17
Third 25	10,530,161	25	15
Fourth 25	14,213,675	25	14
Fifth 25	12,242,282	25	19
Sixth 25	26,478,221	25	15
Grand Total	$174,840,758	150	96

Tax Year 2016

Industry Sector	Income Tax	Accounts Total	Accounts Taxpaying
Manufacturing	$45,150,630	23	18
Transp, Comm, Utilities	18,159,160	18	10
Retail	20,614,976	16	13
Financial, Banking	60,034,404	19	15
Other	49,006,247	74	43
Grand Total	$192,965,416	150	99

Payroll Rank	Income Tax	Accounts Total	Accounts Taxpaying
First 25	$99,528,916	25	18
Second 25	20,551,856	25	17
Third 25	13,390,588	25	17
Fourth 25	12,512,399	25	13
Fifth 25	23,301,742	25	14
Sixth 25	23,679,914	25	20
Grand Total	$192,965,416	150	99

* Tax year 2017 is preliminary

Bureau of Revenue Estimates, Office of the Comptroller
January 2020

ITEP
INSTITUTE ON TAXATION AND ECONOMIC POLICY

Policy Brief

Informing the debate over tax policy nationwide

February 2017

Combined Reporting of State Corporate Income Taxes: A Primer

Over the past several decades, state corporate income taxes have declined markedly. One of the factors contributing to this decline has been aggressive tax avoidance on the part of large, multi-state corporations, costing states billions of dollars. The most effective approach to combating corporate tax avoidance is combined reporting, a method of taxation currently employed in more than half of the states that tax corporate income. The two most recent states to enact combined reporting are Rhode Island in 2014 and Connecticut in 2015.

In several states, including Connecticut, Illinois, Massachusetts, Rhode Island, and Vermont, lawmakers adopted the policy after first carrying out in-depth studies of its potential effects. This policy brief explains how combined reporting works.

How Combined Reporting Works

For corporations that only do business in one state, paying corporate income taxes can be simple – all of their profits are taxable in the state in which they are located. For corporations with subsidiaries in multiple states, the task of determining the amount of profits subject to taxation is more complicated. There are broadly two ways of doing this: **combined reporting**, which requires a multi-state corporation to add together profits of all of its subsidiaries, regardless of their location, into one report, and **separate accounting**, which allows companies to report the profit of each of its subsidiaries independently.

For example, if the Acme Corporation has three subsidiaries in three states, a combined reporting state would require Acme to report the profits of the four parts of the corporation as one total, on the grounds that each of the parts of the corporation contribute to its profitability. In contrast, a separate accounting state would require only those parts of the Acme Corporation that have "nexus" in that state – that is, enough in-state economic activity to be subject to the state's corporate income tax – to report their profits, even if the out-of-state parts of the corporation are responsible for the bulk of Acme's overall profits.

States with Combined Reporting, 2017
Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New York, North Dakota, Oregon, Rhode Island, Texas, Utah, Vermont, West Virginia, Wisconsin

As of 2017, twenty-five states and the District of Columbia (DC) have adopted combined reporting. The two most recent states to do so were Rhode Island in 2014 and Connecticut in 2015.

What Businesses Are Affected by Combined Reporting?

Combined reporting only affects a small sliver of all companies. Most businesses, and the vast majority of smaller businesses, are "pass-through" entities that already effectively face a form of combined reporting because they are not composed of multiple subsidiaries and all their profits are combined on the tax returns of their individual owners. Only "C-corporations," which are just 4.7 percent of U.S. businesses[i] and tend to be larger corporations, can even potentially be affected by combined reporting, as these are the only businesses that pay taxes on their profits at the entity level and have the option to subdivide their business into multiple subsidiaries in multiple states. Out of that 4.7 percent, only those that operate in multiple states, turn a profit, and are currently benefitting from separate accounting might face higher taxes as a result of combined reporting.

To get a full picture of combined reporting's effects, the state of Rhode Island required corporations to calculate their taxes using both combined reporting and separate accounting for two years, 2011 and 2012. The state found that only 28 percent of companies doing business in Rhode Island were C-Corporations, and only 29 percent of those C-Corporations would pay higher taxes under combined reporting, meaning only about 8 percent of Rhode Island businesses would see tax increases.[ii] Yet this small minority of Rhode Island businesses was responsible for $22 to $23 million of tax avoidance in 2012.

Separate Accounting Enables Tax Avoidance

In addition to allowing companies to structure their operations so that some subsidiaries avoid taxation, separate accounting enables corporations to use gimmicks to shift their profits from state to state to avoid taxation. The most infamous example of this is the passive investment company (PIC) loophole.

Here's how the PIC loophole works: suppose the Acme Corporation is based in State A, which uses separate accounting. If Acme has sales of $100 million and expenses of $70 million, its taxable profits ought to be $30 million. If Acme sets up a subsidiary – commonly referred to as a passive investment company (PIC) – in a state like Delaware that does not tax intangible property (such as trademarks and patents) and makes that subsidiary the owner of Acme's intangible property, then the subsidiary can charge Acme for the use of these trademarks. Although Acme's payment to the PIC is a transfer of funds within the company, under separate accounting this expense counts as a cost of doing business and can therefore be subtracted from Acme's income in determining its taxable profits in State A. Since the subsidiary can charge Acme whatever it wants for the use of the trademarks, Acme may actually be able to zero out its taxable profit through this sham "expense."

In the example below, Acme's subsidiary (i.e. its PIC) charges it $30 million for the use of the trademarks, which reduces Acme's taxable profit in State A to zero. Because the subsidiary exists only to lease trademarks to Acme, none of the subsidiary's sham "income" is taxable in Delaware. Furthermore, because the PIC does not have nexus in State A, Acme pays no tax to State A on the profits generated by the PIC. A wide variety of major corporations currently use the PIC loophole in separate accounting states, including Home Depot, Ikea, and Toys R Us.

How the PIC Loophole Creates a "Zero Tax" Corporation

Revenue and Expenses	Combined Reporting	Separate Accounting	
		Acme	Subsidiary
Revenues	**$100**	**$100**	
Normal Expenses	**($70)**	**($70)**	
Sham Revenues			**$30 (not taxed)**
Sham Expenses		**($30)**	
Taxable Profits	$30	$0	$0

Unfortunately, the PIC loophole is just one of many tax avoidance techniques available to corporations operating in separate accounting states. Examples include "captive real estate investment trusts (REITs)," asset-transfer shelters, and transfer-pricing shelters.

Combined Reporting: A Simple Approach to Preventing Tax Avoidance

In a combined reporting system, all income and expenses of Acme and its subsidiaries would be added together, so that PICs and other loopholes would have no impact on the company's taxable profits. For example, if Acme tried to use the PIC loophole, the subsidiary's $30 million of income from the sham transaction would be canceled out by Acme's $30 million of expenses, with a net impact of zero on Acme's taxable profits.

Of course, combined reporting is not the only option available to states seeking to prevent the use of accounting gimmicks such as the PIC loophole. States can also close these loopholes one at a time. For example, several states have enacted legislation that specifically prohibits shifting income to tax haven states through the use of passive investment corporations. The main shortcoming of this approach is that in the absence of combined reporting, multi-state corporations will always be able to develop new methods of transferring profits from high-tax to low-tax states. The only limit to the emergence of new approaches to transferring income to tax haven states is the creativity of corporate accountants. Combined reporting is a single, comprehensive solution that eliminates all potential tax advantages that can be derived from moving corporate income between states.

Worldwide Combined Reporting: Staying Ahead of the Curve

Even most states that require combined reporting could improve it further by adopting "worldwide" combined reporting. Most states limit the requirement to the "water's edge" of U.S. borders or allow corporations to choose whether to report on a worldwide or water's edge basis. Just as separate accounting allows corporations to avoid taxes by shifting income between states, the water's edge rule leaves open the possibility for companies to do so by shifting income to other countries. Worldwide combined reporting staves off this tax avoidance strategy. A second-best option is for states that currently allow a choice between worldwide and water's edge treatment to follow Montana's lead and require those choosing water's edge treatment to also report their subsidiaries located in known international tax havens.

Combined Reporting Levels the Playing Field

Combined reporting is fairer than separate accounting because it ensures that a company's tax should not change because its organizational structure changes. It creates a level playing field between smaller and larger companies: small companies doing business in only one state can't use separate accounting to reduce their tax because they have no business units in other states to shift their income to. Large, multi-state corporations will find it easier to avoid paying taxes using separate accounting because they have business units in multiple states.

Conclusion

Strategies that broaden the corporate income tax base by eliminating loopholes can ensure that profitable corporations pay their fair share for the public services they use every day, can level the playing field between multistate corporations and locally based companies that cannot avail themselves of tax avoidance schemes, and can help balance state budgets without requiring unpopular increases in tax rates. Requiring combined reporting is the single best strategy available to lawmakers seeking to stamp out accounting shenanigans by large and profitable corporations.

[i] United States Joint Committee on Taxation, Choice of Business Entity: Present Law and Data Relating to C Corporations, Partnerships, And S Corporations, April, 2015, https://www.jct.gov/publications.html?func=startdown&id=4765 .

[ii] Rhode Island Division of Taxation, Tax Administrator's Study of Combined Reporting, March 15, 2014, http://www.tax.ri.gov/Tax%20Website/TAX/reports/Rhode%20Island%20Division%20of%20Taxation%20--%20Study%20on%20Combined%20Reporting%20--%2003-17-14%20FINAL.pdf.

Throwback Rule

Nowhere Income – Nowhere Income arises when a company is not subject to a corporate income tax in one of the states into which it makes sales, either because that state does not levy such a tax or because the company does not have a sufficient level of activity in the state to be subjected to the tax, a concept known as "nexus".

*Institute on Taxation and Economic Policy

Throwback Rule – If a corporation ships property from an office, a store, a warehouse, a factory or any other place of storage in Maryland and the corporation is not taxable in the state of the purchaser (because it does not have sufficient physical presence in some states where it has sales), then that income is "thrown back" and taxed in Maryland.

States with the Throwback Rule

Alabama
Alaska
Arkansas
California
Connecticut
District of Columbia
Hawaii
Idaho
Illinois
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Missouri
Montana
New Hampshire
New Mexico
North Dakota
Oklahoma
Oregon
Rhode Island
Tennessee
Utah
Vermont
West Virginia
Wisconsin

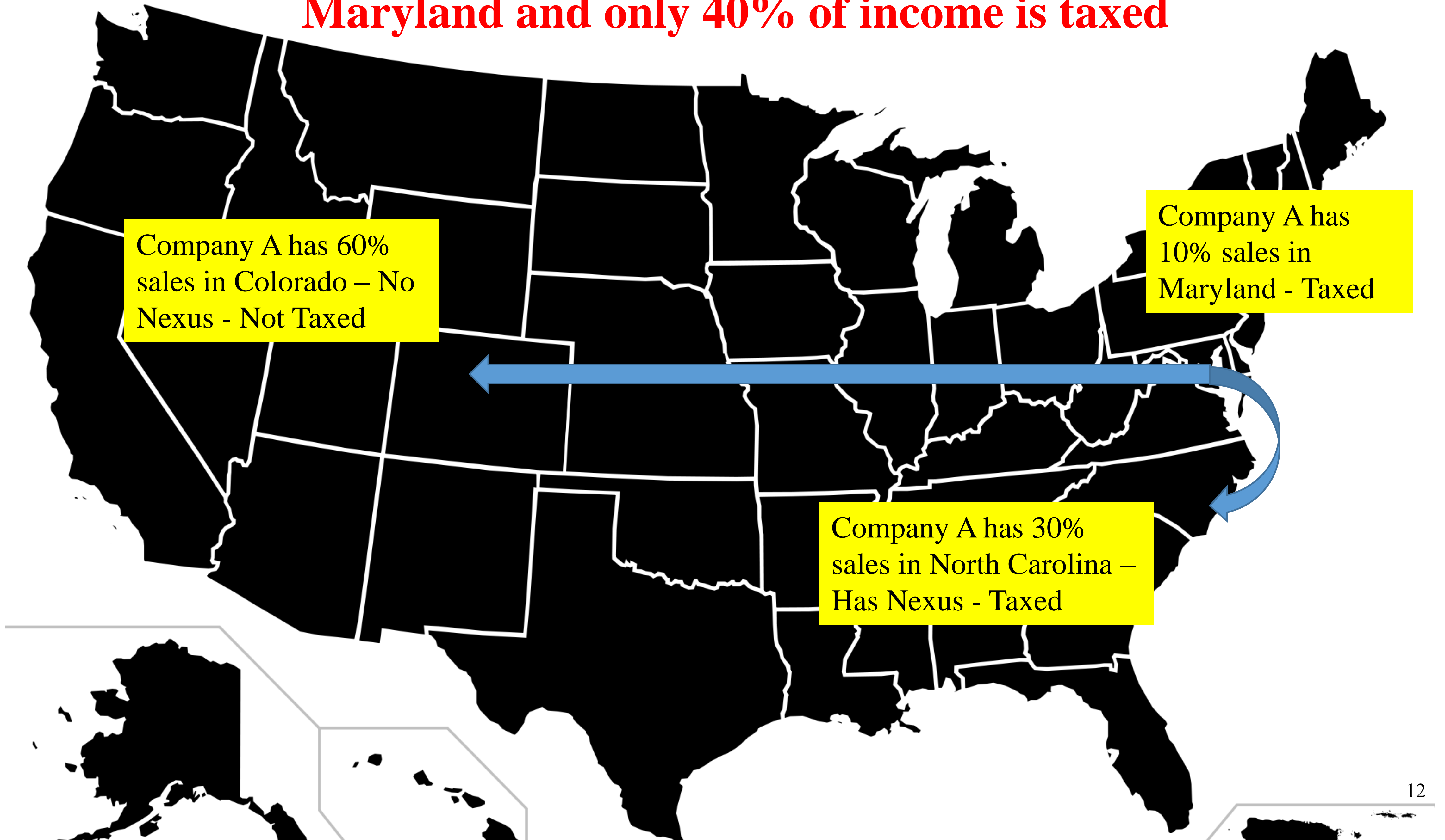
*SB 311 of 2020 Fiscal Note, Exhibit 1

Estimated Additional Revenue Under Throwback Rule FY 2022-2025

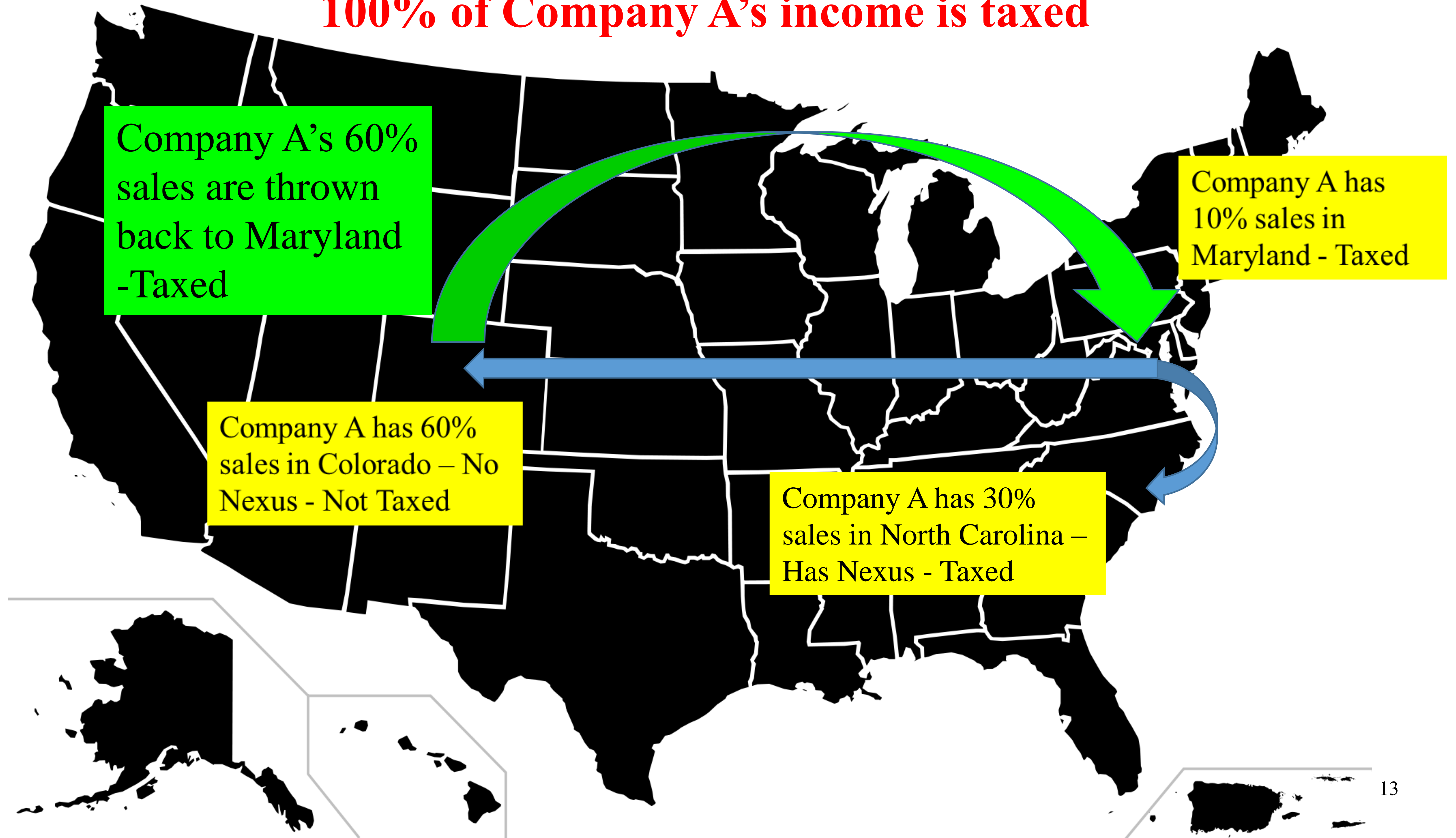
Fiscal Year	Total
2022	$50.6 million
2023	$46.5 million
2024	$47.0 million
2025	$47.5 million

*SB 311 of 2020 Fiscal Note, Exhibit 4

Current Law: Company A has Headquarters and distribution in Maryland and only 40% of income is taxed



Throwback Rule Enacted:
100% of Company A's income is taxed



SB 311_MSEA_FAV
Uploaded by: Zwerling, Samantha
Position: FAV

msea maryland state education association

EDUCATORS TOGETHER

140 Main Street
Annapolis, MD 21401-2003
marylandeducators.org

Testimony in Support of Senate Bill 311
Corporate Tax Fairness Act of 2020

Senate Budget and Taxation Committee
January 29, 2020
1:00 PM

Samantha Zwerling
Government Relations

The Maryland State Education Association supports Senate Bill 311 proposing to enact combined reporting and the throwback rule that will benefit the General Fund in ways that can be used to implement the new school funding formula our students and schools need.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for the careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

MSEA supports passage of an adequate, sustainable, predictable revenue stream that will adequately fund both the operating and construction costs of our public schools. A great public school for every child means our students have updated technology, small manageable classes, safe and modern schools, proper healthcare and nutrition, and have highly qualified and highly effective educators. The work of the Commission on Innovation and Excellence in Education (Kirwan Commission) further recommends improvements to access to Pre-K and Career Technology Education, as well as expansion of the educator workforce and increased salaries to help deliver individualized instruction and recruit and retain the best workforce in the country.

The Kirwan Commission has determined that Maryland will need to invest substantially more resources into education for our citizens become truly successful in the very competitive national and global economies. Senate Bill 311 would close corporate tax loopholes and help ensure that large corporations are paying their fair share into the services that make Maryland a great place to live, learn, and do business. This is the time to be locating and allocating more resources to education, and Senate Bill 311 is part of that funding solution. Our kids can't wait.

MSEA urges a favorable report of Senate Bill 2.

NEER_UNF_SB311
Uploaded by: Applebaum, David
Position: UNF

SB 311
Oppose / Senate Budget and Taxation

Corporate and Business Entities – Combined Reporting
"Corporate Tax Fairness Act of 2020"

Company Overview

NextEra Energy Resources, LLC, through its affiliates ("NEER"), is the world's largest generator of renewable energy from the wind and sun and a world leader in the development of battery storage. NEER's strategic focus is centered on the development, construction, and operation of long-term contracted assets throughout the U.S. and Canada, including renewable generation facilities, natural gas pipelines, and battery storage projects. With approximately 21,000 MW of total net generating capacity at December 31, 2018, NEER is one of the largest wholesale generators of electric power in the U.S., with approximately 20,400 MW of net generating capacity across 36 states, and 500 MW of net generating capacity in 4 Canadian provinces. In Maryland, NEER has long been active in meeting the wholesale and retail electricity needs of electric customers, and continues to seek solar and storage development opportunities. For more information, visit www.NextEraEnergyResources.com.

OPPOSITION to SENATE BILL 311

Purpose: Senate Bill ("SB") 311 proposes a significant change to Maryland's system of taxing businesses. Specifically, SB 311 would implement the unitary combined reporting method ("combined reporting method") by replacing the current individual or separate entity filing method. The bill would require the combined reporting method mandatory for taxable years beginning after December 31, 2020.

NEER opposes HB 311 for the following reasons:

- The unitary combined reporting taxation method arbitrarily attributes more income to Maryland than is justified by a company's economic activity within the state. While the legislation touts itself as the "Corporate Tax Fairness Act of 2020," such arbitrary assignment of income leads to inequitable results.

- The combined reporting method has historically been found to reduce economic growth in states that have a corporate income tax rate in excess of 8 percent. Maryland's corporate income tax is 8.25 percent, among the highest in the Mid-Atlantic region.

- Proponents of the combined reporting method suggest it is a simpler approach to determining corporate tax liability. However, determining the composition of the

unitary group is extremely complicated, subjective, and potentially costly for both the state and the business, often resulting in expensive, time-consuming litigation.

- Moreover, determining a revenue estimate for combined reporting is fraught with uncertainty. Pursuant to an analysis of Tax Years 2006-2010 conducted by the State Comptroller's Office, the unitary combined reporting method would have resulted in an estimated increase in revenue in 2006 and 2007, an estimated decrease in revenue 2008 and 2009, and relatively flat revenue in 2010. As such, the combined reporting method arbitrarily creates winners and losers among businesses and results in revenue volatility for the state at a time when both businesses and the state need revenue stability.

- Proponents of the combined reporting method in Maryland erroneously claim implementation of the combined reporting method will close corporate loopholes, thereby preventing multi-state companies from using tax planning or shifting revenues from Maryland to other states to avoid tax exposure. However, the Maryland legislature has already implemented reforms to resolve ambiguities associated with intercompany shifting of interest and intangibles (§10-306.1), and further provided the State Comptroller broad authority to make adjustments involving other intercompany transactions (§10-109).

- The bi-partisan Maryland Economic Development and Business Climate Commission ("Augustine Commission") has previously opposed the adoption of combined reporting in the state. In its January 2016 report, the Augustine Commission strongly opposed combined reporting (e.g., "Recommendation 5: Do not adopt combined reporting and indicate clearly the intent not to do so" (Augustine Commission Report at xii)). As the Augustine Commission Report states, "[f]or many years, the General Assembly has considered whether to impose combined reporting in Maryland. This debate causes uncertainty and sends a negative message to business considering expansion in or relocation to the State. In its effort to reform the corporate income tax and generate additional revenues, combined reporting can create revenue volatility and winners and losers among corporate taxpayers. Combined reporting can also lead to additional litigation from taxpayers and create additional administrative costs for both taxpayers and the State." (Augustine Commission Report at 38-39)

- Despite the recommendations of the bipartisan Augustine Commission, the implementation of combined reporting continues to be introduced and debated on an annual basis. The same arguments are raised in support of implementation of combined reporting in Maryland each year: (i) a majority of states have implemented combined reporting; and, (ii) combined reporting could secure additional revenue for the state.

- In the immediate region, only New Jersey and the District of Columbia have adopted combined reporting. Thus, the adoption of combined reporting could

further jeopardize the business attractiveness and competitive standing of Maryland vis-à-vis its neighbors.

- The Maryland Business Tax Reform Commission in its exhaustive 2010 study reached conclusions similar to the Augustine Commission on combined reporting, stating that "combined reporting is a complex change for taxpayers, tax preparers, and the Comptroller's office, introducing uncertainty at a time when the economy is struggling to recover from the recent recession. It would result in a shift of the tax burden, substantial in some cases, among industries and among taxpayers, resulting in winners and losers. Many of the tax avoidance measures which combined reporting is intended to prevent have already been addressed by the State through the Delaware holding company addback, the captive real estate investment trust (REIT) legislation, and other measures." (Commission at 4)

- Maryland also adopted Single Sales Factor in 2018. The impact of this equally-significant change in corporate taxation remains, at best, unclear. Thus, it would be prudent to consider combined reporting as part of a comprehensive study of state tax policy – particularly the impact on business investment in jobs and economic development -- before rushing to implement it in 2020. For example, SB 223, currently before the Senate Budget and Taxation Committee proposes to create a public-private "Commission on Tax Policy, Reform and Fairness," which would be charged with reviewing the state's tax program and reporting its findings to the Governor and the General Assembly. Senate Bill 223 represents the kind of prudent approach needed to review the state's tax program in a holistic fashion before proceeding with a significant corporate taxation change such as combined reporting.

- Companies such as NEER, which do business in multiple states, closely monitor the quality of business climate before making investment decisions. Regulatory certainty – stability of laws and regulations – is a critical factor in investment. The perennial General Assembly debate over combined reporting, "causes uncertainty and sends a negative message to businesses considering expansion in or relocation to the State" (Augustine Commission Report at 39). Given that combined reporting has an unclear financial impact to the State, NEER recommends that the Committee fully analyze the potential impacts to the business community of combined reporting before proceeding with any implementation.

In conclusion, NEER respectfully encourages an unfavorable report on SB 311.

SB311UNFAVMARRIOTT022784202001291024O2

Uploaded by: Cutler, Travis

Position: UNF

Marriott

Marriott International, Inc.
Corporate Headquarters

10400 Fernwood Road
Bethesda, MD 20817

SENATE BILL 311:
CORPORATE TAX FAIRNESS ACT 2020
SENATE BUDGET AND TAXATION COMMITTEE

STATEMENT OF OPPOSITION

January 29, 2020

Marriott International, Inc. is a global lodging leader headquartered in Bethesda, Maryland. Since its founding in the 1920s as a small restaurant chain in Washington, DC, the company has grown to comprise more than 7,000 lodging properties in 129 countries and territories, including 98 hotels in the State of Maryland. Our hotels and corporate offices in Maryland together employ over 12,000 people.

Marriott opposes SB 311, as it would create a tax regime that is unpredictable, complex to administer and a potential deterrent to growth.

Tax liability resulting from combined reporting can be unpredictable from one year to the next, making financial forecasting more difficult for a multistate company like Marriott. While Marriott's income from operations in Maryland could be relatively steady from year to year, our Maryland income tax liability could vary dramatically under combined reporting depending on the performance of units in other states with variable travel markets and levels of profitability. This unpredictability can be uniquely problematic for a public company attempting to deliver consistent shareholder value. Further, as noted by numerous analysts, this unpredictability can translate more broadly to variable state corporate income tax revenues year over year.

A combined reporting regime adds administrative complexity when making the fact-specific determination of what constitutes a unitary group each year, and when calculating combined income separately instead of relying on federal combined income. This means additional time spent by companies preparing returns, and new responsibilities for auditors now tasked with examining the operations of a multistate taxpayer and its affiliates – instead of just accounting information and tax returns.

Last, as a matter of tax and economic policy, while it is often said that combined reporting "closes loopholes," that is not the case -- it is simply a different tax calculation system. In the process of transitioning to such a system Maryland would invariably pick winners and losers. There are companies like Marriott with headquarters, deep roots and significant operations in Maryland that will be hurt by combined reporting. We ask that the General Assembly balance these impacts against perceived gains and consider other revenue proposals that might offer more stability and predictability. As written, this transition to combined reporting will hurt select Maryland-based companies just as much as companies based elsewhere.

Over the years, the state has convened a multitude of workgroups and commissions tasked with analyzing the merits of a combined reporting tax scheme. Each time the findings have fallen short of justifying such a transition here in Maryland. That remains the case in 2020. For these reasons we urge an unfavorable report on SB 311.

Thank you for your consideration.

Contact:
Travis Cutler
Director, State Government Affairs

COST Testimony in Opposition to SB311

Uploaded by: Duckman, Ashley

Position: UNF

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VF Corporation

Patrick A. Shrake
Cargill, Incorporated

Archana Warner
Exelon Corporation

Patrick J. Reynolds
Senior Tax Counsel
(202) 484-5218
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January 29, 2020

Senate Budget and Taxation Committee
Maryland General Assembly

Re: In Opposition to Senate Bill 311, Mandatory Unitary Combined Reporting

Dear Chair Guzzone, Vice Chair Rosapepe, and Members of the Committee,

Thank you for the opportunity to submit testimony on behalf of the Council On State Taxation (COST) in opposition to Senate Bill 311, the Corporate Tax Fairness Act of 2020, which would impose mandatory unitary combined reporting (MUCR) in Maryland. MUCR arbitrarily assigns income to a state, negatively impacts the real economy, has an unpredictable effect on state revenue, and imposes significant administrative burdens on both the taxpayer and the state. Further, the Maryland Economic Development and Business Climate Commission, established at the request of the General Assembly's leadership, has expressed that Maryland should not adopt MUCR because it: (1) creates revenue volatility, (2) picks winners and losers among taxpayers, and (3) leads to additional litigation and administrative costs.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

COST's Position on Mandatory Unitary Combined Reporting

The COST Board of Directors has adopted a formal policy statement on MUCR. COST's policy position is:

Mandatory unitary combined reporting ("MUCR") is not a panacea for the problem of how to accurately determine multistate business income attributable to economic activity in a State. For business taxpayers, there is a significant risk that MUCR will arbitrarily attribute more income to a State than is justified by the level of a corporation's real economic activity in the State. A switch to MUCR may have significant and unintended impacts on both taxpayers and States. Further, MUCR is an unpredictable and burdensome tax system. COST opposes MUCR.

One of the most controversial business tax policy issues currently debated by state legislators, tax administrators, and business taxpayers is how a state should determine the corporate income tax base. The first approach, "separate entity reporting," treats each corporation as a separate taxpayer. This is the method Maryland currently uses; it is also used by Maryland's regional competitor-states, including Delaware, Pennsylvania, and Virginia. The second approach, MUCR, treats affiliated corporations (parents and subsidiaries) engaged in a "unitary business" as a single group for purposes of determining taxable income.[1] MUCR has several serious flaws.

- **Reduces Jobs –** Proponents of MUCR have focused on the benefits in terms of reducing tax planning opportunities, but they fail to acknowledge the evidence that adopting MUCR hinders investment and job creation. Even if MUCR results in only a relatively small increase in net corporate tax revenue, there will be significant increases and decreases in tax liabilities for specific businesses. Depending on the industry distribution of winners and losers, adopting MUCR may have a negative impact on a state's overall economy. Moreover, economic theory suggests that any tax increase resulting from adopting MUCR will ultimately be borne by labor in the state through fewer jobs (or lower wages over time) or by in-state consumers through higher prices for goods and services.

  States that use separate entity reporting have experienced higher job growth than have states with MUCR. From 1982-2006, job growth was 6% higher in states without MUCR than in states with it (after adjusting for population changes).[2] Furthermore, MUCR has been found to reduce economic growth, especially when the tax rate exceeds 8%[3] (Maryland's rate is 8.25%).

- **Uncertain Revenue –** Implementing MUCR would have an unpredictable and uncertain effect on Maryland's revenue. The corporate income tax is the most volatile tax in every state in which it is levied, regardless of whether MUCR is employed. A study conducted by the University of Tennessee found no evidence that states with MUCR collect more revenue, and then in a later study found that MUCR may or may not increase revenue.[4] Maryland's own commission found similar uncertainty and volatility, with MUCR increasing revenue in some years and reducing it in others; after examining five years of pro forma tax returns, MUCR may have resulted in less revenue than the State's current corporate income tax structure in two or three of those years.[5] The Indiana Legislative Services Agency conducted a study in 2016 finding that any potential positive revenue

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[1] The concept of a "unitary business" is a constitutional requirement that limits the states' authority to determine the income of a multistate enterprise taxable in a state. Due to varying state definitions and case law decisions, the entities included in a unitary group are likely to vary significantly from state to state.
[2] Robert Cline, "Combined Reporting: Understanding the Revenue and Competitive Effects of Combined Reporting," Ernst & Young, May 30, 2008, p. 16.
[3] William F. Fox, LeAnn Luna, Rebekah McCarty, Ann Boyd Davis and Zhou Yang, "An Evaluation of Combined Reporting in the Tennessee Corporate Franchise and Excise Taxes," University of Tennessee, Center for Business and Economic Research, October 30, 2009, p. 39. Another study by the two lead authors commissioned by the National Conference of State Legislatures reached similar conclusions.
[4] *Ibid*. 3, p. 34.
[5] Andrew Schaufele, Director, MD Bureau of Revenue and Estimates, Report on Combined Reporting to Governor, President and Speaker Report on Combined Reporting to Governor, President and Speaker, March 1, 2013.

impact from adopting MUCR would be only short-term and would likely decline to zero in the long-term.[6]

- **Regional Outlier** – Most of the states that utilize MUCR are west of the Mississippi River or in the Northeast. Apart from the District of Columbia and West Virginia, none of Maryland's neighboring competitor states currently utilizes MUCR, not Virginia, North Carolina, Delaware, or Pennsylvania.

- **Administrative Complexity** – MUCR is, by definition, complex, requiring extensive fact-finding to determine the composition of the "unitary group" and to calculate combined income. This complexity results in unnecessary and significant compliance costs for both taxpayers and the State. Further, the bill inappropriately delegates many details of the administration of the tax that should be codified in Maryland's law. The bill does not clearly specify how the tax should be administered; instead, it gives the Comptroller broad authority to adopt regulations to enforce the collection of the tax using MUCR.

    - *Determining the Unitary Group*: The concept of a "unitary business" is uniquely factual and universally poorly defined. It is a constitutional (Due Process) concept that looks at the business as a whole rather than individual separate entities or separate geographic locations. In order to evaluate the taxpayer's determination of a unitary relationship, state auditors must look beyond accounting and tax return information. Auditors must annually determine how a taxpayer and its affiliates operate at a fairly detailed level to determine which affiliates are unitary. Auditors must interact with a corporation's operational and tax staff to gather this operational information. In practice, however, auditors routinely refuse to make a determination regarding a unitary relationship on operational information and instead wait to determine unitary relationships until after they have performed tax computations. In other words, the tax result of the finding that a unitary relationship exists (or does not exist) often significantly influences, or in fact controls the auditor's finding. Determining the scope of the unitary group is a complicated, subjective, and costly process that is not required in separate filing states and often results in expensive, time-consuming litigation.

    - *Calculating Combined Income*: Calculating combined income is considerably more complicated than simply basing the calculations on consolidated federal taxable income. In most MUCR states, the group of corporations included in a federal consolidated return differs from the members of the unitary group. In addition to variations in apportionment formulas among the states that apply to all corporate taxpayers, further compliance costs related to MUCR result from variations across states in the methods used to calculate the apportionment factors. From a financial reporting perspective, adopting MUCR is a significant change that requires states to consider ways to mitigate the immediate and negative impact those tax changes have on a company's financial reporting.[7]

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[6] A Study of Practices Relating to and the Potential Impact of Combined Reporting, Office of Fiscal and Management Analysis, Indiana Legislative Services Agency, October 1, 2016.
[7] ASC 740 (formally FAS 109) requires a recordation of tax expense under certain circumstances that can negatively impact a company's stock price and value.

- **Arbitrary –** Although proponents of MUCR argue that it helps to overcome distortions in the reporting of income among related companies in separate filing systems, the mechanics used under MUCR create new distortions in assigning income to different states. The MUCR assumption that all corporations in an affiliated unitary group have the same level of profitability is not consistent with either economic theory or business experience. Consequently, MUCR may reduce the link between income tax liabilities and where income is actually earned. Many corporate taxpayers may conclude that there is a significant risk that MUCR will arbitrarily attribute more income to a state than is justified by the level of a corporation's real economic activity in the state.

Conclusion

The General Assembly's own commission tasked with studying how to improve the State's economy stated that MUCR should be expressly rejected because its continued consideration discourages business investment in the State.[8] MUCR will not help Maryland attract jobs or investment and should not be adopted. This is especially true for an arbitrary imposition of MUCR on retail and food service businesses.

COST urges members of the committee to please vote "no" on Senate Bill 311.

Respectfully,

Patrick J. Reynolds

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

[8] Report of the Maryland Economic Development and Business Climate Commission, Phase II: Taxes, published January 19, 2016, p. 39.

MDChamber_Duckman_Unfav_SB311
Uploaded by: Duckman, Ashley
Position: UNF

LEGISLATIVE POSITION:
Unfavorable
SB 311—Corporate Tax Fairness Act of 2020
Senate Budget & Taxation Committee
Wednesday, January 29, 2020

Dear Chairman Guzzone and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 4,500 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic growth for Maryland businesses, employees and families.

Senate Bill 311 would require that certain sales of tangible personal property be included in the numerator of the sales factor used for apportioning a corporation's income to Maryland. Further, the bill would require corporations to compute their taxes using the combined reporting method--a highly complex system of determining taxable income among all states in which a company does business.

Over the last decade, combined reporting has been exhaustively researched and debated among policymakers in Annapolis and across the state. The prevailing sentiment remains that combined reporting is not an appropriate or accurate method of computing state taxable income or attributing multistate business income to economic activity in Maryland. In fact, a combined reporting system would result in significant and unintended negative consequences for business taxpayers, including competitive disadvantage, undue complexity and administrative burden, all while resulting in no guaranteed increase to state revenue.

Combined reporting will not increase state tax revenue. Proponents of combined reporting contend that it will raise millions in additional tax revenue, but there is no data to support that argument. In fact, under the previous administration, Maryland's own Business Tax Reform Commission found that instituting combined reporting "would result in a shift of the tax burden, substantial in some cases, among industries and among taxpayers, resulting in winners and losers." The Commission explained further that the reasons cited in support of combined reporting have each been addressed through other legislative vehicles adopted by the General Assembly and tougher audit methods now utilized by the Comptroller's Office.

Since 2004, the Comptroller's Office has utilized two provisions of the State's Tax Statute to correct perceived abuses of intercompany/interstate transactions. The first is the "add-back" provision that disallows deductions for certain expenses paid to related corporations in other states. The second are provisions granting the Comptroller discretionary powers to adjust amounts of income and expenses between related corporations.

Combined reporting would have a negative impact on Maryland's economy since its adoption may, in practice, increase effective corporate income tax rates. For example, even if its proponents were correct in arguing that combined reporting would result in an increase in net corporate tax revenue, there will be significant increases and decreases in tax liabilities for specific businesses, thereby resulting in winners and losers. What is more, any resulting tax increase will ultimately be felt most by in-state consumers, who will contend with higher prices for goods and services, and by labor through fewer jobs and/or lower wages over time.

Combined reporting presents a real competitive disadvantage for Marylanders. Within the region, many of our neighboring states—including Virginia, Pennsylvania and Delaware—do not utilize the mandatory combined reporting method. As a result, it would be detrimental for Maryland to employ a new taxation system that will harm the attraction and retention of businesses, and cost Marylanders access to more jobs and economic opportunities.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on SB 311.

GBC_UNF_SB311
Uploaded by: Fry, Donald
Position: UNF

POSITION STATEMENT

TESTIMONY PRESENTED TO THE SENATE BUDGET AND TAXATION COMMITTEE

SENATE BILL 311 -- CORPORATE TAX FAIRNESS ACT

January 29, 2020

DONALD C. FRY
PRESIDENT & CEO
GREATER BALTIMORE COMMITTEE

Position: Oppose

The Greater Baltimore Committee (GBC) opposes Senate Bill 311, which requires corporations to compute Maryland taxable income using the combined reporting method. At issue is competitiveness, which has long been at the forefront of debate and discussion with regard to Maryland's business climate. While Maryland has numerous competitive strengths, including a highly-skilled workforce, excellent access to health care, top-ranked universities and a good quality of life, in many annual reviews Maryland consistently ranks near the bottom on a number of key business metrics. Additionally, when compared to neighboring states, Maryland's tax structure as it relates to business growth and job creation is often viewed unfavorably.

Combined reporting has been considered and defeated for many years. In 2010, the Maryland Business Tax Reform Commission (MBTRC) evaluated the effects of implementing combined reporting. The MBTRC recommended that the Maryland General Assembly reject this policy for a number of reasons, including that many of the tax avoidance measures that combined reporting is intended to prevent had already been addressed in previous policies enacted by the legislature. In 2014 while opposing a similar bill that would have required combined reporting, the Council on State Taxation wrote that combined reporting reduces jobs, increases the administrative burden on businesses and would have an "unpredictable and uncertain effect on Maryland's revenue."

In 2015, the Maryland Economic Development and Business Climate Commission, also known as the Augustine Commission, issued a report recommending that combined reporting not be adopted in Maryland and emphasized that this intent should be clearly communicated. The report said combined reporting "…can create revenue volatility and winners and losers among corporate taxpayers." It further added, "Combined reporting can also lead to additional litigation from taxpayers and create additional administrative costs for both taxpayers and the state."

Aside from the negative consequences referenced above, combined reporting would also adversely affect Maryland's competitiveness as many states do not require this method of computing taxable income. In the Mid-Atlantic region, very few states require the combined reporting method.

As Maryland strives to be competitive in the 21st century economy, policies must reflect an understanding of the challenges faced by our State's businesses and a willingness of government to partner with the business community. Senate Bill 311 would put additional administrative burdens on businesses, which is not reflective of a state that strives to be competitive and welcoming to business growth and job creation.

This bill is inconsistent with two of the key tenets in *Gaining the Competitive Edge: Keys to Economic Growth and Job Creation in Maryland,* a report published by the GBC that identifies eight core pillars for a competitive business environment and job growth:

> **Competitive costs of doing business.** Public policies must reflect a government predisposition to nurture business growth and to avoid arbitrarily or disproportionately imposing additional overhead upon the business sector.
>
> **Tax structure that is fair and competitive.** Maryland's tax policy must be perceived by business as being competitive and devoid of elements that unreasonably target specific businesses or business sectors.

Finally, the Greater Baltimore Committee's 2020 Legislative Priorities state that a key priority is building a competitive, predictable and fair tax system. The 2020 Legislative Priorities specifically cites this proposed legislation, stating that the Maryland legislators should "Oppose the passage of destabilizing business taxation proposals that would create uncertainty, negatively affect the corporate tax structure or diminish the economic vitality of our State."

For these reasons, the Greater Baltimore Committee urges an unfavorable report on Senate Bill 311.

The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 65-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.

GREATER BALTIMORE COMMITTEE
Suite 1700. 111 South Calvert Street. Baltimore, Maryland 21202-6180
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FE SB311 ufav-01292022063025

Uploaded by: Grealey, Anne

Position: UNF

Anne M. Grealy
Senior Advisor, Government &
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68 State Circle
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agrealy@firstenergycorp.com

SB 0311 – Corporate Tax Fairness Act of 2020
Senate Budget & Taxation Committee
Wednesday, January 29, 2020

Unfavorable

Potomac Edison, a subsidiary of FirstEnergy Corp., serves about 270,000 customers in all or parts of seven Maryland counties (Allegany, Carroll, Frederick, Garrett, Howard, Montgomery and Washington Counties). FirstEnergy is dedicated to safety, reliability and operational excellence. Its ten electric distribution companies form one of the nation's largest investor-owned electric systems, serving customers in Ohio, Pennsylvania, New Jersey, West Virginia, Maryland and New York.

FirstEnergy requests an Unfavorable report on SB 311 for the following reasons.

Senate Bill ("SB") 311 proposes a dramatic change to Maryland's system of taxing businesses. Specifically, SB 311 would replace the current individual or separate entity filing method with a unitary combined reporting method ("combined reporting method"). SB 311 would require the combined reporting method mandatory for taxable years beginning after December 31, 2020.

Combined reported would competitively disadvantage Maryland. Within the region, neighboring states—including Virginia, Pennsylvania and Delaware—do not utilize the mandatory combined reporting method. Maryland's economic development would be thwarted by the adoption of a new taxation system that would harm the attraction and retention of businesses and the jobs and economic opportunities these businesses provide.

Combined reporting has been exhaustively researched and debated among policymakers in Maryland. They concluded that combined reporting is not an appropriate or accurate method of computing state taxable income or attributing multistate business income to economic activity in Maryland.

The bi-partisan Maryland Economic Development and Business Climate Commission ("Augustine Commission") has previously opposed the adoption of combined reporting in the state. In its January 2016 report, the Augustine Commission strongly opposed

combined reporting (e.g., "Recommendation 5: Do not adopt combined reporting and indicate clearly the intent not to do so" (Augustine Commission Report at xii)). As the Augustine Commission Report states, "[f]or many years, the General Assembly has considered whether to impose combined reporting in Maryland. This debate causes uncertainty and sends a negative message to business considering expansion in or relocation to the State. In its effort to reform the corporate income tax and generate additional revenues, combined reporting can create revenue volatility and winners and losers among corporate taxpayers. Combined reporting can also lead to additional litigation from taxpayers and create additional administrative costs for both taxpayers and the State." (Augustine Commission Report at 38-39)

The Maryland Business Tax Reform Commission in its exhaustive 2010 study reached conclusions similar to the Augustine Commission on combined reporting, stating that "combined reporting is a complex change for taxpayers, tax preparers, and the Comptroller's office, introducing uncertainty at a time when the economy is struggling to recover from the recent recession. It would result in a shift of the tax burden, substantial in some cases, among industries and among taxpayers, resulting in winners and losers. Many of the tax avoidance measures which combined reporting is intended to prevent have already been addressed by the State through the Delaware holding company addback, the captive real estate investment trust (REIT) legislation, and other measures." (Commission at 4)

In order to avoid the negative consequences of utilizing the mandatory combined reporting method, FirstEnergy respectfully requests an **unfavorable report** on SB 311.

MBA_UNF_SB311
Uploaded by: Murphy, Kathleen
Position: UNF

Senate Bill 311 – Corporate Tax Fairness Act of 2020

Budget and Taxation Committee
January 29, 2020

Oppose

According to the fiscal and policy note, Senate Bill 311 "applies a "throwback" rule in determining whether sales are considered in the State for purposes of the State's corporate income tax apportionment formula, beginning in tax year 2020. The Comptroller must assess interest and penalties if a corporation pays estimated tax of less than 90% of the required tax for tax year 2020. The bill also requires affiliated corporations to compute Maryland taxable income using combined reporting beginning in tax year 2021."

MBA is concerned that changing Maryland's current tax structure with the objective of increasing tax revenue may have a disastrous impact on businesses that are already struggling with a myriad of challenges. In addition, in light of the recent federal tax reform changes, MBA strongly recommends against making any significant State tax changes without first studying the impact of how such a change will impact businesses given the new federal tax environment.

Further, the vast majority of banks in Maryland are small businesses themselves, continuing to digest significant financial regulatory reform legislation and regulations enacted over the past decade at the federal level. MBA is opposed to tax changes that would compound these challenges by increasing costs and negatively impacting Maryland's businesses and economy. Many of Maryland's community banks are headquartered here yet also lend and take deposits in our surrounding states.

In 2016, after extensive consideration, the Economic Development and Business Climate Commission concluded that, *"Maryland's use of separate entity reporting under the corporate income tax is advantageous to many Maryland corporations, and the principal alternative, combined reporting, is generally considered to not be business friendly."*

The report further recommends, *"Do not adopt combined reporting and indicate clearly the intent not to do so."* MBA has a long-standing position of opposition to changing Maryland's tax law to require affiliated corporations to compute Maryland taxable income using "combined reporting." Under "combined reporting," all of a corporation's subsidiaries are included in a single return. This allows the State to subject companies with no presence in Maryland to taxation.

Combined reporting requires corporations to file a Maryland tax return that includes all of the entities in a consolidated group and not just the entities that are doing business in Maryland. This change would result in a significant increase in the regulatory burden and costs on corporations. As the fiscal note points out, corporate tax revenues fluctuate greatly with combined reporting and therefore are not a stable source of revenue for the state.

Due to the negative impact combined reporting could have on banks operating in multiple states that have, in some cases, thousands of subsidiaries and the uncertainty that such a drastic change in the corporate tax structure will actually result in stable, increased revenue, the Maryland Bankers Association urges the Committee to vote unfavorably on SB 311.

ABC_UNF_SB311
Uploaded by: Zinsmeister, Robert
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January 29, 2020

TO: SENATE BUDGET & TAXATION COMMITTEE

FROM: ASSOCIATED BUILDERS AND CONTRACTORS

RE: S.B. 311- CORPORATE TAX FAIRNESS ACT OF 2020

POSITION: OPPOSE

Associated Builders and Contractors (ABC) is opposed to S.B. 311 which is before you today for consideration. The bill would implement a combined reporting system for Maryland corporations beginning in tax year 2021. At a time when the Maryland economy is flourishing, the enactment of S.B. 311 will have a negative impact on business, job growth and the overall economic climate of Maryland.

As noted in the fiscal and policy note, outside of the District of Columbia, none of the states which Maryland competes with for business relocation or new business attraction, have this type of tax policy. This would be a major step backwards and one that the State cannot afford to do.

The General Assembly has rejected combined reporting legislation for the last several years and rightfully so. We encourage you to remain consistent regarding this major change in the tax structure.

On behalf of the over 1,500 business members of ABC, we respectfully request an unfavorable report on S.B. 311.

Robert Zinsmeister, Director
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