February 12, 2020

The Honorable Anne R. Kaiser, Chair
Ways and Means Committee
House Office Building, Rm. 131
Annapolis, MD 21401
Re: HB 295 Corporate Income Tax – Combined Reporting - Oppose

Dear Chair Kaiser and members of the Committee:

The Maryland Association of CPAs represents nearly 9,000 Certified Public Accountants throughout the state. These CPAs are in public practice, private industry, government, non-profit, and education. MACPA members have reviewed HB 295 and we offer the following comments.

It was evident from data gathered from corporations by the Comptroller's office that combined reporting is a change which positively impacts some businesses while negatively impacting other businesses. As CPAs, we represent businesses in both categories and, as such, do not take a position to support or oppose the adoption of combined reporting into Maryland law. Rather, our focus is to ensure that any legislation on this topic is both enforceable and comprehensible in order for our members to effectively compute this tax for clients. While we are neutral with regard to the enactment of combined reporting, we oppose this bill due to the complexity and problems that would result from unclear aspects of the language and also the effective date. Therefore, we respectfully request that the committee issue an unfavorable report for HB 295.

As written, the bill will result in a great deal of uncertainty and unpredictability as to whether the CPA and his/her client have calculated the combined reporting income tax in the way the legislature intends and in the same way that the Comptroller's audit staff will expect. Portions of the bill's language are unclear, e.g. the procedures for calculating the Maryland allocated income for the combined group and its individual members. Certain critical components of a combined reporting method are not specified in the bill, e.g. the definition of a "unitary business", and the handling of losses and credits of members of the group. Without clarity in the statute, the implementation of combined reporting will be problematic; and without specificity in the statute, the Comptroller's office will require time to address all of these issues and make its own determinations for each.

Even beyond interpreting the legislation, there will still be significant work to be done by the Comptroller's office, and by taxpayers and tax preparers. The Comptroller's office must prepare draft regulations, allow for the required public comment period, and finalize the regulations. They must train their auditors and taxpayer-assistance staff, and must develop administrative protocols such as forms, instructions, and computer programming changes, in order to accommodate the new filing method. Other states can be used as models, but these processes must still be made specific to Maryland.

Taxpayers and tax practitioners will need to become educated about the new statute and regulations and forms. Many will have to modify or acquire new tax preparation software. They will have to study the detailed operations of each and every corporation in order to make the fact-driven and interpretive determinations of which corporations are properly includable in a "unitary" combined reporting group, and they will have to collect data they never had to prepare before, for correct preparation of the income tax return. Organizations such as MACPA will need to actively publicize the new requirements and provide educational programs to its members and their clients to help prepare for these processes.

Maryland and many nearby states have always been separate entity states, so combined reporting is a new concept to many Maryland taxpayers and tax practitioners. Combined reporting will have implications for all corporate groups no matter the size of their businesses, and it is the small and medium sized corporations, of whom there are many with operations in Maryland, that will find the new administrative requirements most burdensome. Providing sufficient time for educating them would make for a better transition to the new law.

An implementation date impacting tax years after December 31, 2020 as proposed by HB 295 is an inadequate timeframe to properly address all of the issues which will need to be handled. A proper implementation timeline would allow at least two years of preparation time, i.e. tax years after December 31, 2021.

The Maryland Business Tax Reform Commission, in recommending that combined reporting not be adopted during the 2011 General Assembly session, stated that "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." If it is to be done, a change to combined reporting should allow enough time to do it properly. After its two year study, the Commission's report also stated 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." Without opposing or supporting the adoption of combined reporting, we respectfully observe that HB 295 does not effectively deal with the complex technical issues or the required time for implementing combined reporting. We therefore recommend an unfavorable report for HB 295.

Thank you very much for the opportunity to offer these comments for your consideration.

Sincerely,

J. Thomas Hood, III, CPA CEO & Executive Director
cc: Nick Manis, Manis Canning & Associates