# Communities United Testimony in Support - SB0511.d
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Position: FAV

2221 Maryland Ave, Baltimore 21217
COMMUNITIES UNITED
marylandcu.org

**Testimony in Support of Senate Bill 511- Corporate Fair Tax Act**
**Budget and Taxation Committee**

Baltimore's premiere organizing and advocacy non-profit of low to moderate-income persons most impacted by systems of injustice proudly submits this written testimony of our support in the State of Maryland.

Since 2010, all we have been doing is organizing community members in communities and neighborhoods that are underfunded, over-policed, under-educated and under resources. Most of our members and their families live in food deserts, in poorly maintained housing, including public housing, sending their children to schools that lack proper basic modern updates: heating, cooling, well-maintained bathrooms and school supplies. Everything about their lives reminds them that the state and city do not value their lives. Even so, they have fought beside one another with us for community schools, safe housing, fair wages and accessible healthcare. We stand together demanding shifts in Maryland's tax law to put the burden on those able to pay.

All Marylanders deserve and need a world-class education system. We must not continue to prioritize tax breaks that benefit powerful special interests but do nothing to help our economy. We urge our legislators to commit to our families, communities and students as well as the future of our economy. Our students cannot wait.

We humbly, yet stridently ask that this committee takes a stand for those who need it most. We have a solution, and that is revisions to make our tax code fair.

**<u>Communities United urges a favorable report on Senate Bill 511.</u>**

**SB 511 Corporate Tax Fairness Act of 2021.pdf**
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**TESTIMONY TO THE SENATE BUDGET AND TAXATION COMMITTEE**

**SB 511 – Corporate Fairness Act of 2021**

**POSITION: Support**

**BY: Lois Hybl and Richard Willson – Co-Presidents**

**Date: February 3, 2021**

Promoting a sound economy and maintaining an equitable and flexible system of taxation are among the League's basic principles. LWVMD's positions include support for an equitable and efficient fiscal structure.

Maryland League members understand the importance of the relationship between various revenue sources available to the state government and the services provided by those revenues. A sound revenue system must allow the State to invest in essential public goods such as education, transportation, and health care. In all three of these areas there has been serious underinvestment as demonstrated in public health with this pandemic; our roads, bridges, and transit; and the findings of the Kirwan Commission.

Combined Reporting and the Throwback Rule both are designed to assure that our State receives its fair share of corporate taxes from corporate sales. A basic principle of a fair tax is that similar persons should pay similar amounts. The distinctions being made between large, multi-state corporations and local businesses for shifting the attribution of profits is just not fair.

Maryland should join the many other states that use a similar law to help support necessary public investment.

We urge a favorable report on SB 511.

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

## SEIU Testimony In Favor of SB511 Corporate Tax Fai

Uploaded by: Cavanagh, Terry

Position: FAV

**SEIU MARYLAND & DC STATE COUNCIL**
1410 Bush Street, Suite F, Baltimore, Maryland 21230

Testimony in **SUPPORT of Senate Bill 511**
Corporate Tax Fairness Act of 2021

Senate Budget and Taxation Committee
February 3, 2021
1:30 PM

Presented to: Guy Guzzone, Chairman
By: Terry Cavanagh, Executive Director

SEIU Maryland & DC State Council urges a **Favorable Report to SB 511.**

With over two million members, SEIU is the largest union in North America. We are uniting workers in health care, public services, including public education, and property services to improve lives and the services we provide. In the Maryland, Washington, DC, and Virginia area, we represent over 50,000 workers.

Our members work hard and pay their taxes.

Many of our members or their families operate small businesses. They pay their taxes there.

Given the current state of the economy and the disparity of wealth between struggling small businesses and wildly profitable large corporations, the time has come to close the corporate tax loopholes and adopt "combined reporting". A majority of states have adopted combined reporting and none have reversed course. We could have adopted this many years ago, but the corporate lobbyists have stymied legislation year after year. Now is the time to finally act.

How can we ask working families to pay more in taxes or accept reduced services or schools that are not prepared to offer world-class and world-competing schools, while large corporations pay little or no taxes in Maryland?

How do we tell a struggling small business, that may be hanging on through the pandemic, that their large corporate competitors, are being given an advantage by their state government?

Every year when this bill is introduced, the corporate lobbyists testify about how the sky will fall if this is adopted. How no corporation will either keep jobs in Maryland, or increase investment in Maryland. If this is true, they wouldn’t invest in any of the dozens of states that have adopted combined reporting.  Have they?

Make the Tax System fairer by closing corporate tax loopholes and pass SB 511.

**We ask a Favorable Report on SB 511.** Thank you.

**SB 511 - Corporate Tax Fairness Act of 2021.pdf**
Uploaded by: Edwards, Donna
Position: FAV

# MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

Office. (410) 269-1940 • Fax (410) 280-2956

*President*
Donna S. Edwards

*Secretary-Treasurer*
Gerald W. Jackson

**SB 511 – Corporate Tax Fairness Act of 2021**
**Senate Budget and Taxation Committee**
**February 3, 2021**

**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 511 – Corporate Tax Fairness Act of 2021. My name is Donna S. Edwards, 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, and 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 an analysis by the Maryland Center on Economic Policy, it would bring in $120 million, annually, in state revenues[1]. We are facing a structural budget deficit that must be addressed and cannot be balanced with spending cuts. More budget cuts cost the jobs of Maryland workers in public and private sectors, while eliminating the investments in education and transportation that we need to prosper in the future. With increased revenue through combined reporting, we can start to close our budget gap without having to sacrifice services to the people of Maryland.

[1] http://fairfundingmd.org/bill-list/

In addition to enacting combined reporting in Maryland, it is also time to address 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. SB 511 closes this corporate loophole ensuring 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 511 puts Maryland small businesses on an equal footing with their large competitors, ensuring every entity is paying taxes on income earned. By not closing this loophole, Maryland is being shorted millions of dollars in revenue on an annual basis. That shortfall in tax revenue must be picked up by the workers of Maryland, and it is time to provide them with relief by holding multi-state corporations accountable.

SB 511 brings fairness to our tax code. It takes the pressure off hard working tax paying Marylanders and asks multi-national corporations to start pulling their weight.

**For these reasons, we urge a favorable report on SB 511.**

**PGCYD Press Release 1_21_21 (1).pdf**
Uploaded by: Elliott, Richard DeShay
Position: FAV

**NEWS RELEASE**
FOR IMMEDIATE RELEASE
2021 LEGISLATIVE SESSION

**Contact: Martin Mitchell**
President
410-493-7966/president@pgcyd.com

## Prince George's County Young Democrats

**Prince George's County, MD** - The membership of the Prince George's County Young Democrats Legislative Committee have unanimously supported the following coalitions and policy resolutions.

**Coalitions**

- **Medical Aid in Dying (MAID) Bill Coalition**
- **Essential Worker's Coalition**
- **Maryland Rise - Paid Family Leave Coalition**

**Policy Resolutions**

**In Support Of:**

- **The expulsion of Delegate Mary Ann Lisanti. Lisanti referred to District 25 as a "nigger district" in the company of several state legislators. She was censured for this act in February 2019 but has refused to resign.**
- **The renaming of the House Office Building to honor Congressman Elijah Cummings. Former Chair of the Legislative Black Caucus of Maryland, first Black legislator to be named Speaker Pro Tempore, Congressman from Maryland's 7th Congressional District from 1996-2019, Chair of the Oversight & Reform Committee during the Trump presidency, and leading figure in Trump's impeachment by the House of Representatives.**
- **Banning the Maryland state government and local governments from the sale or purchase of items produced by prison labor unless paid prevailing wages.**
- **The Housing Justice package (HB52; HB18/SB154; HB104/SB401). Sponsored by Delegates Vaughn Stewart, Jheanelle K. Wilkins, Melissa Wells, Wanika Fisher and Senators Jill P. Carter, Will Smith, Charles Sydnor, & Shelly Hettleman.**
- **The Tax Fairness package (HB215; HB262; HB319; HB201). Sponsored by Delegate Julie Palakovich Carr to make Maryland's local property taxes & capital gains taxes are assessed in a progressive manner that lowers the burden for working families and ends tax loopholes in "opportunity zones" & carried interest.**
- **HB120/SB178. Sponsored by Delegate Gabriel Acevero & Senator Jill P. Carter, to expand public transparency of police data.**
- **HB15. Sponsored by Delegate Joseline Peña-Melnyk, to create a Governor's Office of Immigrant Affairs.**

***Written By:***
Phylicia Henry, *Chair of Legislative Affairs as a Whole.*
Janna Parker, *Chair of County Affairs.*
Richard DeShay Elliott, *Chair of State Affairs.*

*Interested members of the general public are encouraged to join the Prince George's County Young Democrats, regardless of geographic location, as long as they meet two criteria: they are registered Democrats or Independents, and they are below the age of 40.*

***PGCYD.COM***

- **HB28. Sponsored by Delegate Joseline Peña-Melnyk, to require Implicit Bias Training for medical professionals.**
- **HB309. Sponsored by Delegate Joseline Peña-Melnyk, to require a racial and ethnic health breakdown in state medical data.**
- **HB227. Sponsored by Delegate Nick Charles, to establish civil liability for improper police calls.**
- **HB82. Sponsored by Delegate Wanika Fisher, to amend the Maryland Constitution to guarantee a clean and safe environment for all Marylanders. HB82**
- **HB375. Sponsored by Delegate Kriselda Valderrama, to expand paid family leave in Maryland.**
- **HB124. Sponsored by Delegate Kriselda Valderrama, to protect employees from aerosol-transmitted diseases, including COVID-19.**
- **HB411. Sponsored by Delegate Nicole Williams, to prohibit sexual contact between law enforcement and those under arrest. HB411**
- **HB63. Sponsored by Delegate Nicole Williams, to prohibit state expenditures on magnetic levitation transportation systems. HB63**
- **HB171. Sponsored by Delegate Alonzo Washington, to study school discipline statistics in Maryland. HB171**
- **HB206. Sponsored by Delegate Alonzo Washington. to expand Early Voting hours in Maryland.**
- **HB153. Sponsored by Delegate Julian Ivey, to expand vote by mail in Maryland.**
- **HB24. Sponsored by Delegate Julian Ivey, to make primary and general Election days as state holidays in Maryland.**
- **HB336/SB276. Sponsored by Delegate Julian Ivey & Senator Jill P. Carter. to ban private police departments for universities.**
- **HB168/HB221. Sponsored by Delegates Julian Ivey & Veronica Turner, to address credit discrimination in motor vehicle insurance.**
- **HB51. Sponsored by Delegate Veronica Turner to require environmental justice analysis during the zoning process for landfills.**
- **HB172. Sponsored by Delegate Mary Legman to require combined reporting of corporate income taxes, as is practice in 29 states and DC.**
- **HB341. Sponsored by Delegate Mary Lehman, to begin the tabulation of absentee ballots 14 days before Election Day, as is practice in Arizona.**
- **HB524. Sponsored by Delegate Mary Lehman, to require the presentation of rental licensing during court proceedings involving rental properties.**
- **HB194. Sponsored by Delegate Melissa Wells, to require implicit bias training for police officers.**
- **HB413. Sponsored by Delegate Melissa Wells, to require implicit bias training for**

**judges.**

- **HB355/SB37. Introduced by Delegate Sheila Ruth & Senator Jill P. Carter, to ensure electronic collection of ballot signatures and expand the public's ability to gather signatures.**
- **HB89/SB397. Sponsored by Delegate Jheanelle K. Wilkins & Senator Jill P. Carter, to shorter incarceration sentences with academic options.**
- **HB222/SB224. Sponsored by Delegate Jheanelle K. Wilkins & Senator Chris West, to ensure that incarcerated individuals are aware of their voting rights and are given the opportunity to vote.**
- **HB155/SB98. Sponsored by Delegate Jheanelle K. Wilkins & Senator Cory McCray, to ban discrimination in pre-k programs and schools.**
- **HB41. Sponsored by Delegate Stephanie Smith, to establish a state banking taskforce.**
- **HB320. Sponsored by Delegate Stephanie Smith, to ease the transfer of credits.**
- **Legislation to shield eviction proceedings from the general public and protect the credit and financial history of tenants. Sponsored by Delegate Nicole Williams.**

**Favorable With Amendments**

- **HB238. Sponsored by Delegate Melissa Wells, to automatically expunge certain crimes after a certain period of time, expanding job opportunities for returning citizens.**
  **Amendment, introduced by Janna Parker:**
  **"Crimes that have been expunged or not found guilty for, should be retroactively removed from the Maryland CaseSearch database."**
- **HB269. Sponsored by Delegate Melissa Wells, to create urban agriculture grants.**
  **Amendment, introduced by Richard DeShay Elliott:**
  **"Prince George's County will be included in the implementation of this bill, following upcoming rezoning"**

**In Opposition Of:**

- **The nomination of Bryon Bereano to the Circuit Court. Prince George's County voters did not nominate him to the Court in the 2020 elections. His Senate confirmation should be denied.**

"The members of PGCYD remain committed to amplifying their voices on potential policy decisions that could impact their communities and daily life.  We look forward to working with our elected leaders to ensure that public policy presented before us, is for us and for the betterment of everyone, and not just a select few", Henry said.

###

***Written By:***

Phylicia Henry, *Chair of Legislative Affairs as a Whole.*
Janna Parker, *Chair of County Affairs.*
Richard DeShay Elliott, *Chair of State Affairs.*

*Interested members of the general public are encouraged to join the Prince George's County Young Democrats, regardless of geographic location, as long as they meet two criteria: they are registered Democrats or Independents, and they are below the age of 40.*

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**SB511_FAV_Mazerov.pdf**
Uploaded by: Mazerov, Michael
Position: FAV

Center on Budget and Policy Priorities

1275 First Street NE, Suite 1200
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

**Testimony Of**
**Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities**

**Before the**
**Maryland Senate Budget and Taxation Committee**

**Hearing on S.B. 511, Combined Reporting**
**February 3, 2021**

Chair Guzzone, and Members of the Budget and Taxation Committee, I am Michael Mazerov, a Senior Fellow with the State Fiscal Policy division of the Center on Budget and Policy Priorities in Washington, D.C. The Center is a non-partisan research and policy institute that pursues federal and state policies designed to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways. We apply our expertise in budget and tax issues and in programs and policies that help low-income people to help inform debates and achieve better policy outcomes. I appreciate the opportunity to submit testimony in support of S.B. 511, Senator Pinsky's bill to mandate the use of combined reporting for the corporate income tax.

## Combined Reporting Is Needed to Nullify Forms of Corporate Tax Sheltering to Which Maryland Remains Vulnerable

Combined reporting remains an essential tax policy reform for Maryland if it is to have a fair and robust corporate income tax. Year in and year out, the state suffers significant erosion of its corporate tax base because of corporate tax avoidance techniques that exploit the absence of combined reporting. Several of these strategies cannot be stopped at all — or in a sufficiently cost-effective manner for it to be realistic — through any policy reform <u>other</u> than combined reporting.

Let me give you one example, which goes by the name of "entity isolation." That strategy is used when, for example, an out-of-state manufacturer with Maryland sales needs to have some physical presence in Maryland (for example, to train its customers' employees how to use its products), but the manufacturing itself is done outside the state. The corporation forms a separate subsidiary to employ the people that must enter Maryland, but the profit on the sale in Maryland of the manufactured items themselves remains locked in the out-of-state manufacturing arm that Maryland cannot tax because of a federal law that bars the state from taxing companies that only solicit sales here (Public Law 86-272). Entity isolation is Corporate Tax Avoidance 101, it is perfectly legal, and it prevents Maryland from taxing profits that are earned through sales to Maryland customers. Maryland enormously increased the incentive for out-of-state manufacturers to shelter their income in this way when it enacted a single sales factor apportionment formula for them two decades ago.

We know that entity isolation is a widespread corporate tax shelter that is likely costing Maryland substantial revenues thanks to the data that the state compiled for several years from hypothetical (or "pro-forma") combined reporting returns mandated by 2007 legislation. Those data showed that the so-called "Finnigan" version of combined reporting would have raised substantially more revenue for the state than would the alternative, so-called "Joyce" approach. The Finnigan version of combined reporting embodied in S.B. 511 nullifies entity isolation, while the Joyce approach does so only partially.

**Combined Reporting Will Help Level the Playing Field – Especially for Small Corporations**

Needless to say, not many small businesses have the resources or sophistication to set up and operate the kinds of tax avoidance strategies just described that require multistate operations or the formation of subsidiaries in low- or no-tax states. But small corporations often compete with large corporations that can do this. Large corporations that are willing and able to engage in this kind of aggressive tax avoidance may be able to attract capital at a lower cost than their in-state competitors or use their tax savings to undercut the prices of smaller corporations. By nullifying many forms of tax avoidance, combined reporting can thus help smaller, locally based corporations compete on a more level playing field and thereby preserve more local jobs.

Furthermore, by no means do even all large corporations engage in aggressive income-shifting strategies. They may not be well-positioned to do so because, for example, they do not own significant valuable intangible assets, or because they are service businesses that are not covered by Public Law 86-272 and cannot easily engage in "entity isolation." Or it may simply be the case that the company's culture does not prioritize aggressive tax avoidance. Regardless, states simply should not maintain a tax structure that gives unfair advantage to those companies most willing and able to push the envelope, but that is precisely what not requiring combined reporting does.

**Not Requiring Combined Reporting Is Inconsistent with States' Use of Formula Apportionment to Tax Multistate Corporations**

Tax avoidance potential aside, not requiring combined reporting is fundamentally inconsistent with the way states tax multistate corporations. As you know, states do not seek to measure the profits realized on the sale of specific items within their borders. This would require the tracking of the receipts from the in-state sale of specific products and the specific expenses incurred in supplying those goods and services. Not only would that be an administrative nightmare for companies to comply with and for states to audit, it would also be fraught with conflict because there is no objective way to assign to a specific state overhead expenses that are shared among all production locations or the savings in expenses arising from economies of scale. That is why states use a formula to assign to themselves a reasonable share of the nationwide profit of a multistate corporation. But not requiring combined reporting is conceptually inconsistent with formula apportionment. As soon as a state recognizes for tax purposes the profit reported by geographically isolated entities merely because they are separately incorporated, it has nullified what it was trying to achieve through the use of formula apportionment.

As it did decades earlier with respect to formula apportionment, the U.S. Supreme Court twice upheld the constitutionality of combined reporting as a reasonable and fair means of determining the share of a multistate corporation's income a state may tax. The same cannot be said of some of the other approaches to preventing abusive interstate income-shifting that are sometimes put forward as alternatives to combined reporting – such as trying to tax directly the royalty income of a Delaware intangible holding company.

**A Growing Number of States Are Recognizing the Benefits of Combined Reporting**

Whether or not to require combined reporting is a key policy choice that is relevant to the tax systems of 45 states plus the District of Columbia (all states except Nevada, Ohio, South Dakota, Washington, and Wyoming). More than three-fifths of those jurisdictions — 28 plus DC — have recognized the compelling case for combined reporting and now require it. Twelve states and DC have enacted combined reporting in the last 15 years – a rapid rate of adoption for such a significant chance in state tax policy. Combined reporting has long been required and non-controversial in many generally Republican-controlled states, including Alaska, Arizona, Utah, Idaho, Montana, Kansas, and Nebraska. It was a Republican Governor, Jim Douglas, who started the post-2004 wave of combined reporting adoption with his (fulfilled) recommendation that Vermont switch. Combined reporting was enacted under Republican Governor Matt Bevin and a Republican-controlled Kentucky legislature in 2018.

**Combined Reporting and State Economic Growth**

Over the many years that the adoption of combined reporting has been considered in Maryland, members of this committee have undoubtedly heard claims that it would discourage corporations from investing in the state in the future and perhaps even cause corporations already here to leave. These claims simply should be given little credence. Between 2008 and 2010 I conducted research in four states to document all the states in which the largest private sector employers in those states maintained physical facilities, unquestionably subjecting them to those states' corporate income taxes. The most recent study I did looked at Maryland's largest 120 largest corporations (as measured by their Maryland employment). I found that a large majority of those companies quite willingly subjected themselves to combined reporting in other states:

- At least 108 of the 120 largest Maryland employers maintained facilities in at least one combined reporting state or were members of a corporate group that had a facility in at least one combined reporting state. The "compliance burdens" and additional tax liability arising from combined reporting could not be that unreasonable if these companies — or the parent corporation that controls their decision-making — willingly maintained a facility in one or more combined reporting states.

- A large majority of the corporations I examined maintained facilities in <u>multiple</u> combined reporting states. Three-fourths of them — 90 out of 120 — had facilities in five or more combined reporting states. More than half — 67 out of 120 — had facilities in ten or more such states, and more than one-fourth — 34 out of 120 — had facilities in 20 or more combined reporting states.

- Eighteen companies had facilities in <u>all 23</u> states that mandated combined reporting at that time.

- Ninety-three had a facility in California, the state that pioneered combined reporting and — as any corporate tax manager will attest — enforces it most aggressively.

- Thirty-two of the companies maintained their headquarters in combined reporting states.

I found comparable results in my Iowa, North Carolina, and New Mexico studies, as did two other organizations that conducted similar research in Connecticut and Wisconsin.

If corporations willingly subjected themselves to combined reporting in other states year-in and year-out, there simply is no reason to believe that they would shun Maryland as a place to invest were it to adopt combined reporting.

I have also looked at the record of combined reporting states in retaining manufacturing jobs. This may be a reasonable indicator of whether combined reporting has a negative impact on the attractiveness of a state for investment, since manufacturers in theory do not need to be as close to their customers as retailers, construction contractors, and other types of service businesses need to be and therefore can choose to locate where state and local tax policies are more to their liking. These data show that combined reporting states do no worse in manufacturing job retention and growth than separate filing states do. (I excluded from this analysis those states that do not levy a corporate income tax at all.)

Four of the five states with the highest rate of manufacturing job growth over the 10 years prior to the pandemic required combined reporting throughout the period, as did the state with the highest rate of manufacturing job growth – Michigan. Twenty-one states with corporate income taxes experienced at least 10 percent manufacturing job growth over the past 10 years. Eleven of the 21 had combined reporting in effect throughout the period, and a twelfth state had enacted but not yet implemented it. Thirty-six states had net positive manufacturing job growth over the past 10 years; 19 of them had combined reporting in effect throughout. In short, there is no obvious correlation between a state's adoption of combined reporting and its relative success in attracting or retaining the most potentially footloose firms and their jobs.

Nor does academic research demonstrate that combined reporting has an adverse impact on state economic performance. For example, a 2007 study concluded that "there is no evidence that these [combined reporting] requirements diminish economic activity in states." A 2012 study actually found that "States with more aggressive corporate income taxes, specifically those that include combined reporting requirements, tend to have higher entrepreneurship rates." A 2014 study concluded that "Combined reporting has no discernable effect on personal income, G[ross]S[tate]P[roduct], or employment after controlling for tax rates, apportionment, and throwback rules." A 2016 study found that "Other tax policy measures (the throwback rule, required combined reporting, the personal income tax, and corporate license fees) are typically statistically insignificant" in affecting corporate investment in states. As with many subjects, studies can be found on both sides of the question; a 2003 study found that "The effect of the income tax burden on [corporate investments in] property is more pronounced for states mandating [combined] unitary taxation (although it should be noted that the analysis only covered a period up to 1996 and misclassified three combined reporting states as having not adopted the policy.)

There is a good explanation for why combined reporting does not appear to have a significant impact on state economic and job growth one way or the other. All state and local taxes paid by corporations represent on the order of 2-4 percent of their total expenses, on average. State corporate income tax generally represent less than 10 percent of that already small share. And most states that have prepared estimates predict that requiring combined reporting will boost corporate tax collections between 10 and 20 percent. It therefore should not be surprising that the evidence just cited suggests that combined reporting has not been a disincentive for corporations to continue investing and creating jobs in states that adopt it.

**The Alleged "Complexity" of Combined Reporting**

Corporate opponents of combined reporting also object that combined reporting is complex and burdensome to comply with, particularly because of the subjectivity entailed in determining which subsidiaries of a multi-corporate group are and are not engaged in a so-called "unitary business" with the parent and/or subsidiaries subject to corporate income tax in a state. Such a claim compares combined reporting to the current system under which the state is largely powerless to stop many forms of interstate income shifting. If the state actually had the resources and attempted to adjust the prices that one member of a corporate group located in Maryland charged and/or paid other out-of-state members for intra-corporate sales of goods and services to prevent such shifting, then the subjectivity, litigation, and compliance burden flowing from such an effort would exceed that of combined reporting many times over.

Corporations already file consolidated tax returns for federal tax purposes and consolidated financial statements for financial reporting purposes; they know how to do the accounting. The only potential complexity that arises from combined reporting is determining which corporations are and are not part of the unitary group. As discussed previously, most major corporations are filing combined reporting-based tax returns in numerous states, so they appear to be figuring out how to do that. That said, Maryland could consider emulating Massachusetts and several other states by allowing corporations to make a long-term election to determine the combined group strictly base on common ownership with no subjective determination of whether a particular subsidiary is part of a "unitary business." Such an election eliminates <u>any</u> argument that combined reporting imposes a significant or unreasonable compliance burden on corporations. (It must be offered as an election because the courts have held that combined reporting can only be mandated when the related corporations are economically integrated or "unitary.")

Regarding the issue of <u>state</u> enforcement burdens, it is only necessary to observe that small population states with small revenue department staffs – states like Alaska, Idaho, Montana, New Hampshire, and Maine – have managed to successfully administer combined reporting-based corporate income tax structures for decades.

Finally, opponents of combined reporting sometimes argue that combined reporting will be burdensome and should not be enacted in a state because other combined reporting states have divergent laws concerning which kinds of corporate subsidiaries are included in the combined group and other fine points of the policy. This is a red herring and, quite frankly, a disingenuous argument. Maryland cannot be responsible for divergent policy choices that other states have made nor should it reject an otherwise sound tax policy change because of those choices. The multistate corporate tax community is free at any time to encourage combined reporting states to harmonize their combined reporting laws to reduce business compliance burdens.

**Now Is the Time**

The enactment of combined reporting can make an important contribution to preserving Maryland's tax base from further erosion and ensuring that multistate and multinational corporations compete on a level playing field with their counterparts that do not seek to push the tax-avoidance envelope and with wholly in-state corporations. It will generate additional revenue with which to finance public investments in education, as proposed by this bill. Additional investment in education is critical to Maryland's economic future, and it will benefit Maryland businesses as well as Maryland families. Maryland's adoption of combined reporting is long overdue.

I therefore urge the committee to favorably report S.B. 511. I thank the Committee for the opportunity to submit written testimony. I may be reached at mazerov@cbpp.org if Committee members have any questions.

## MD BUSINESSES IN SUPPORT OF SB511.pdf
Uploaded by: Munroe, Brandon
Position: FAV

SB511- Corporate Income Tax – Combined Reporting and Subtraction Modification for Combined Groups of Corporations- SUPPORT
Budget and Tax Committee
February 3, 2021

Dear Chair Guy Guzzone and Budget and Taxation Committee Members,

Thank you and your committee for your consideration of this important issue that will mean so much to Maryland businesses!

Maryland's current tax code is unfair, giving advantages to large, multi-state corporations that pay no tax on income made in our state. As a Maryland business owner, we pay taxes on our business income and so should multi-state companies based in Maryland.

It's time to close corporate tax loopholes that disproportionately benefit large, multi-state corporations and their shareholders. These companies should pay their fair share in our state and contribute to the public services -- like infrastructure and public safety -- they rely on to succeed. Local Maryland businesses can't take advantage of these tax gimmicks and that's unfair.

Maryland is leaving billions on the table by failing to close these corporate loopholes while local business owners are bearing the burden of funding important public services like schools and infrastructure. We can do better by closing corporate tax loopholes. Maryland should join the 24 states (and the District of Columbia) that have combined reporting, requiring multi-state businesses to pay state taxes on income.

| | |
|---|---|
| Mayson-Dixon | Jayson Williams |
| Well-Paid Maids | Aaron Seyedian |
| Dover Chiropractic | Dr. Laura Dover |
| Therapy LLC | Joi Gaddy |
| Red Canoe Cafe | Josie Rhodes |
| Baltimore Bicycle Works | Bernardo Vigil Rendon |
| Atwater's | Ned Atwater |
| Chop Shop | Lisa Hawks |
| Zeke's Coffee | Thomas Rhodes |
| Gap Self Storage | Lauren Miller |
| Charmington's | Amanda Rothschild |

**SB511AtwatersSupport.docx.pdf**
Uploaded by: Munroe, Brandon
Position: FAV

**SB511- SUPPORT**

Ned Atwater
**Atwater's**
nedatwater@atwatersfood.com

**SB511**- Corporate Income Tax – Combined Reporting and Subtraction Modification for Combined Groups of Corporations- **SUPPORT**

*Budget and Taxation Committee*
*February 3, 2021*

Dear Chair Guy Guzzone and Budget and Taxation Committee Members,

Maryland's current tax code is unfair, giving advantages to large, multi-state corporations that pay no tax on income made in our state. As a Maryland business owner, I pay taxes on my business income and so should multi-state companies based in Maryland.

Shouldn't it be companies doing business in MD? It's time to close corporate tax loopholes that disproportionately benefit large, multi-state corporations and their shareholders. These companies should pay their fair share in our state and contribute to the public services -- like infrastructure and public safety -- they rely on to succeed. Local Maryland businesses can't take advantage of these tax gimmicks and that's unfair.

Thank you and your committee for your consideration of this important issue that will mean so much to Maryland businesses!

**SB511BicycleWorksSupport-2.pdf**
Uploaded by: Munroe, Brandon
Position: FAV

BALTIMORE BICYCLE WORKS

**SB511- SUPPORT**
Bernardo Vigil Rendon
**Baltimore Bicycle Works**

bernardo@baltimorebicycleworks.com

**SB511**- Corporate Income Tax – Combined Reporting and Subtraction Modification for Combined Groups of Corporations- **SUPPORT**
*Budget and Taxation*
*February 3, 2021*

Dear Chair Guy Guzzone and Budget and Taxation Committee Members,

Maryland's current tax code is unfair, giving advantages to large, multi-state corporations that pay no tax on income made in our state. As a Maryland business owner, I pay taxes on my business income and so should multi-state companies based in Maryland like UnderArmour and Marriott.

Being in the bicycle industry means we're already competing with large multi-state entities like Target and REI which have no base in our community. These companies massively benefit from tax loopholes all the while providing substandard versions of our services without paying their fair share of taxes. It makes sense that these multi-state corporations that are in the same business should pay their fair share in taxes like we do.

Maryland is leaving billions on the table by failing to close these corporate loopholes while local business owners are bearing the burden of funding important public services like schools and infrastructure.  We can do better by closing corporate tax loopholes. Maryland should join the 24 states (and the District of Columbia) that have combined reporting, requiring multi-state businesses to pay state taxes on income.

**SB511CharmingtonSupport.docx.pdf**
Uploaded by: Munroe, Brandon
Position: FAV

**SB511- SUPPORT**
Amanda Rothschild
**Charmington's Cafe**
cafe@charmingtons.com

**SB511**- Corporate Income Tax – Combined Reporting and Subtraction Modification for Combined Groups of Corporations- **SUPPORT**

*Budget and Taxation*
*February 3, 2021*

Dear Chair Guy Guzzone and Budget and Taxation Committee Members,

Thank you and your committee for your consideration of this important issue that will mean so much to Maryland businesses!

Maryland's current tax code is unfair, giving advantages to large, multi-state corporations that pay no tax on income made in our state. As a Maryland business owner, I pay taxes on my business income and so should multi-state companies based in Maryland.

Charmington's is a small cafe in Baltimore City that has served its community since 2010, providing food and communal space for neighbors, good jobs for our employees, and taxpayer funding that supports Baltimore and the state at large. We're sensitive to the needs of our community because we *are* part of the community.

During the COVID-19 pandemic, we've adapted again and again despite lack of access to many of the resources large corporations have to buffer lost income, create delivery systems, or manage online sales. One of the biggest threats to our business is the fact that so many of our community members are also suffering financially due to the pandemic. A healthy tax base is absolutely necessary to the functioning of our communities, right now to lift an unprecedented weight off our public service systems, and moving forward to encourage thriving communities with a diversity of commerce options. Now more than ever, we need to close the tax loophole that allows large corporations to siphon earnings out of the state. You have an opportunity *today* with this bill to be a leader not just for small businesses, but for all Marylanders.

It's time to close corporate tax loopholes that disproportionately benefit large, multi-state corporations and their shareholders. These companies should pay their fair share in our state and contribute to the public services -- like infrastructure and public safety -- they rely on to succeed. Local Maryland businesses can't take advantage of these tax gimmicks and that's unfair.

# SB511DoverSupport.pdf
Uploaded by: Munroe, Brandon
Position: FAV

**SB511- SUPPORT**

Dr. Laura Dover
**Dover Chiropractic**
Dr.Dover@towsonfamilychiro.com

**SB511**- Corporate Income Tax – Combined Reporting and Subtraction Modification for Combined Groups of Corporations- **SUPPORT**

*Budget and Taxation*
*February 3, 2021*

Dear Chair Guy Guzzone and Budget and Taxation Committee Members,

Thank you and your committee for your consideration of this important issue that will mean so much to Maryland businesses!

Maryland's current tax code is unfair, giving advantages to large, multi-state corporations that pay no tax on income made in our state. As a Maryland business owner, I pay taxes on my business income and so should multi-state companies based in Maryland.

It's time to close corporate tax loopholes that disproportionately benefit large, multi-state corporations and their shareholders. These companies should pay their fair share in our state and contribute to the public services -- like infrastructure and public safety -- they rely on to succeed. Local Maryland businesses can't take advantage of these tax gimmicks and that's unfair.

Maryland is leaving billions on the table by failing to close these corporate loopholes while local business owners are bearing the burden of funding important public services like schools and infrastructure. We can do better by closing corporate tax loopholes. Maryland should join the 24 states (and the District of Columbia) that have combined reporting, requiring multi-state businesses to pay state taxes on income.

**SB511MaysonDixonSupport.pdf**
Uploaded by: Munroe, Brandon
Position: FAV

**SB 511 - SUPPORT**
Jayson Williams
Mayson-Dixson Companies

jayson@maysondixon.com

**SB 511**- Corporate Income Tax – Combined Reporting and Subtraction Modification for Combined Groups of Corporations- **SUPPORT**
*Budget and Tax Committee*
*February 1, 2021*

Dear Chair Guzzone and Budget and Tax Committee Members,

Thank you and your committee for your consideration of this important issue that will mean so much to Maryland businesses.

Maryland's current tax code is unfair, giving advantages to large, multi-state corporations that pay no tax on income made in our state. As a Maryland business owner, I pay taxes on my business income and so should multi-state companies based in Maryland.

In fact, when I started each of my four companies in Maryland I considered establishing them with out of state headquarters -- I choose not to do so because I believe in investing fully in my home state of Maryland.

It's time to close corporate tax loopholes that disproportionately benefit large, multi-state corporations and their shareholders. Maryland is leaving billions on the table by failing to close these corporate loopholes while local business owners are bearing the burden of funding important public services like schools and infrastructure.

We can do better by closing corporate tax loopholes. Maryland should join the 24 states (and the District of Columbia) that have combined reporting, requiring multi-state businesses to pay state taxes on income.

I respectfully urge a favorable report on SB 511

**SB511ZekesSupport.pdf**
Uploaded by: Munroe, Brandon
Position: FAV

**SB511 SUPPORT**

Thomas Rhodes
**Zeke's Coffee**
zekesfreaks@gmail.com

**SB511** Corporate Income Tax – Combined Reporting and Subtraction Modification for Combined Groups of Corporations- **SUPPORT**
*Budget and Taxation*
*February 3, 2021*

Dear Chair Guy Guzzone and Budget and Taxation Committee Members,

For nearly 15 years, my wife Amy and I have devoted ourselves to building our business, Zeke's Coffee. We started in our garage, and our daughter used to decorate our coffee bags with her collection of ink stamps at the Baltimore Farmers Market. The work paid off. Today, we have more than two dozen employees, and our coffee sells throughout the mid-Atlantic region and beyond to New York and Pittsburgh.

Along the way, we have been proud to give back to the community – supporting countless local fundraisers or donating coffee to food pantries. I also give back to the community by paying taxes on our business income. Nobody likes paying taxes, but I appreciate the need to provide the things that make our communities stronger. We know that when we pay taxes we are contributing to a better Baltimore and a better state.

But I have learned that our state tax system is stacked against small businesses like mine. We are obliged to pay corporate income taxes, but many large multi-state corporations have found loopholes that allow them to avoid paying Maryland corporate income tax.

I was shocked to learn that about a third of the 150 largest corporations in Maryland pay nothing in state taxes in a given year, even though they are making big profits in our state and taking advantage of the public services we all chip in for.

This is incredibly frustrating to me and, I'm sure, many other small business owners who faithfully pay taxes to support schools, roads, healthcare and other state priorities. Companies who profit from selling a cup of coffee should pay the same share of corporate income taxes on those profits if they are a local coffee shop like mine or Starbucks. But, that isn't the way Maryland's tax law works currently.

There is legislation pending in the General Assembly to close these loopholes. One would require multi-state corporations to practice combined tax reporting, which means they would have to account for profits they generated in Maryland and pay corporate income taxes on them. Ask any small business owner if these loopholes are fair, and the answer will be a loud no.

We know we must pay income tax; we just want the state to treat all businesses the same, whether they're making profits of $10 billion a year or $10,000. Beyond the issue of fairness, our state must have the resources we need to support those dealing with the COVID-19 outbreak – both individuals and businesses who have been struggling the past 10 months. And we have many unmet needs across the state, whether it's making our schools better, rejuvenating struggling communities or improving our public transportation.

All of that takes money. We should require the big corporations to pay their fair share of taxes to generate additional resources. According to legislative analysts, closing these corporate loopholes would add more than $300 million each year to our state budget. Do that and you will make a huge difference to Maryland's small businesses like ours.

**SB511Pinsky.pdf**
Uploaded by: Pinsky, Paul
Position: FAV

**PAUL G. PINSKY**
*Legislative District 22*
Prince George's County

*Chair*
Education, Health, and
Environmental Affairs Committee

Miller Senate Office Building
11 Bladen Street, Suite 2 West
Annapolis, Maryland 21401
301-858-3155 · 410-841-3155
800-492-7122 *Ext.* 3155
*Fax* 301-858-3144 · 410-841-3144
Paul.Pinsky@senate.state.md.us

*The Senate of Maryland*
ANNAPOLIS, MARYLAND 21401

# Corporate Tax Fairness Act of 2021

SB 511

Senate Budget and Taxation Committee

February 3, 2021

**SB 511 – Corporate Tax Fairness Act of 2021**

*Senate Bill 511* – 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 Tax Years 2006 and 2007, prior to the recession, average tax revenue would have been $170,241,000. From 2012 – 2022 average tax revenue would have been $94,955,124.

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

*Texas uses a franchise tax. Ohio uses 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 | 2020 |
| 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 | Democratic | 2018 |
| Michigan | Republican | Democratic | 2009 |
| Montana | Republican | Republican | Before 2004 |
| New Hampshire | Democratic | 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. # Ohio uses 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**

COMPTROLLER of MARYLAND
Serving the People

**Peter Franchot**
*Comptroller*

**Andrew M. Schaufele**
*Director*
*Bureau of Revenue Estimates*

January 20, 2021

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 2017 and 2018 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 2017 and 2018 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). 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. Emmanuel Welsh
Sharonne Bonardi

# Corporate Income Taxes Paid

Private Sector Taxpayers with Largest Payrolls
Tax Years 2018* and 2017

**Tax Year 2018**

| Industry Sector | Income Tax | Accounts Total | Accounts Taxpaying |
|---|---|---|---|
| Manufacturing | $48,176,830 | 20 | 16 |
| Trade,Transp., Utilities | 8,911,974 | 12 | 6 |
| Retail | 33,709,213 | 15 | 15 |
| Financial, Banking | 43,068,920 | 21 | 17 |
| Other | 65,565,776 | 82 | 48 |
| Grand Total | $199,432,713 | 150 | 102 |

| Payroll Rank | Income Tax | Accounts Total | Accounts Taxpaying |
|---|---|---|---|
| First 25 | $83,516,149 | 25 | 18 |
| Second 25 | 36,612,083 | 25 | 16 |
| Third 25 | 17,376,653 | 25 | 16 |
| Fourth 25 | 28,671,799 | 25 | 19 |
| Fifth 25 | 11,571,934 | 25 | 13 |
| Sixth 25 | 21,684,097 | 25 | 20 |
| Grand Total | $199,432,713 | 150 | 102 |

**Tax Year 2017**

| Industry Sector | Income Tax | Accounts Total | Accounts Taxpaying |
|---|---|---|---|
| Manufacturing | $31,497,162 | 21 | 13 |
| Trade,Transp., Utilities | 11,710,724 | 10 | 6 |
| Retail | 18,173,161 | 15 | 12 |
| Financial, Banking | 63,058,979 | 19 | 14 |
| Other | 49,242,410 | 85 | 50 |
| Grand Total | $ 173,682,436 | 150 | 95 |

| Payroll Rank | Income Tax | Accounts Total | Accounts Taxpaying |
|---|---|---|---|
| First 25 | $85,072,808 | 25 | 16 |
| Second 25 | 23,751,294 | 25 | 16 |
| Third 25 | 11,197,589 | 25 | 15 |
| Fourth 25 | 14,929,488 | 25 | 14 |
| Fifth 25 | 12,960,436 | 25 | 19 |
| Sixth 25 | 25,770,821 | 25 | 15 |
| Grand Total | $173,682,436 | 150 | 95 |

* Tax year 2018 is preliminary

Bureau of Revenue Estimates, Office of the Comptroller
January 2021

*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** - 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, store, warehouse, 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), 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
North Dakota
Oklahoma
Oregon
Rhode Island
Tennessee
Utah
Vermont
West Virginia
Wisconsin

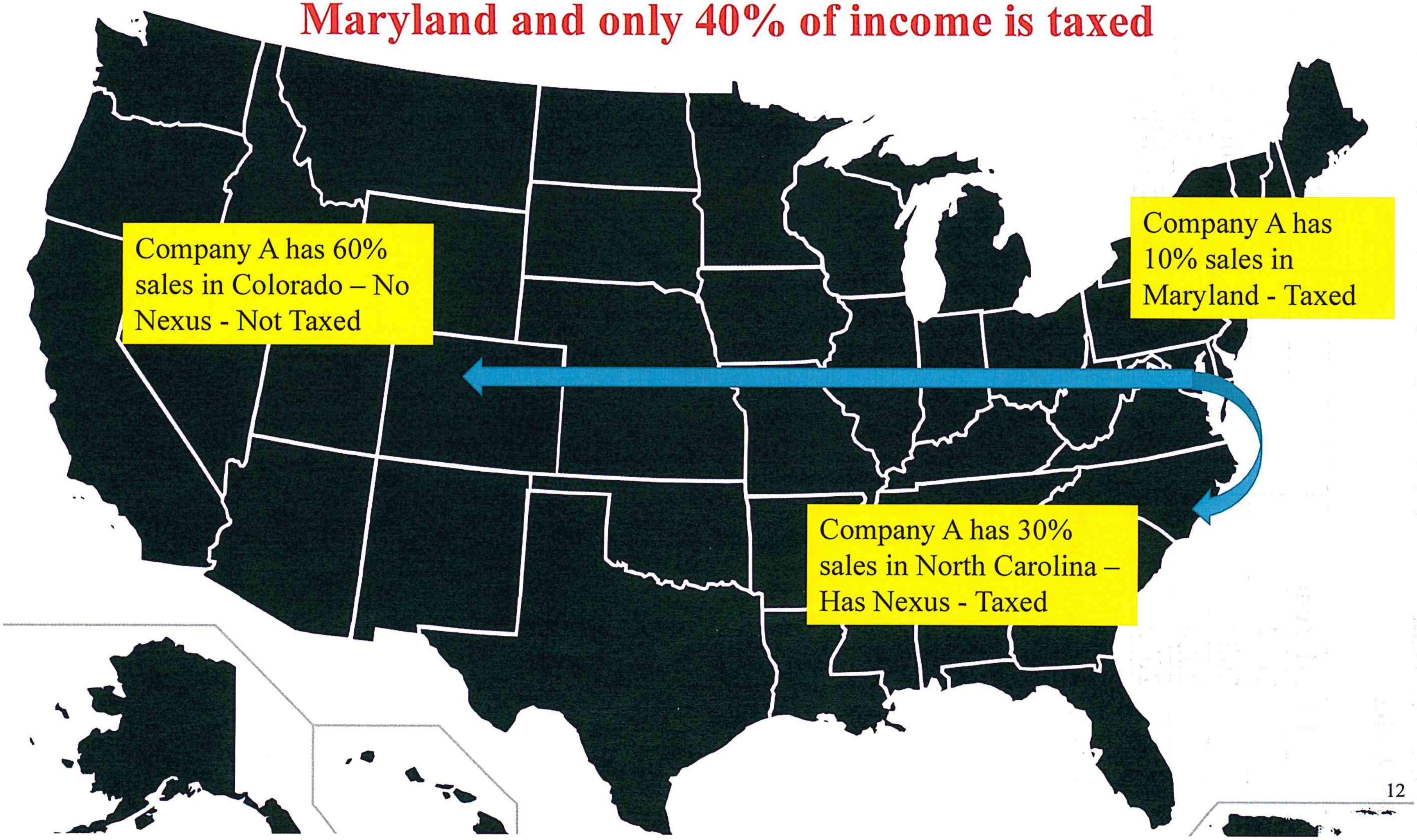
**SB 311 of 2020 Fiscal Note, Exhibit 1*

**Estimated Additional Revenue Under Throwback Rule FY 2022 - 2025**

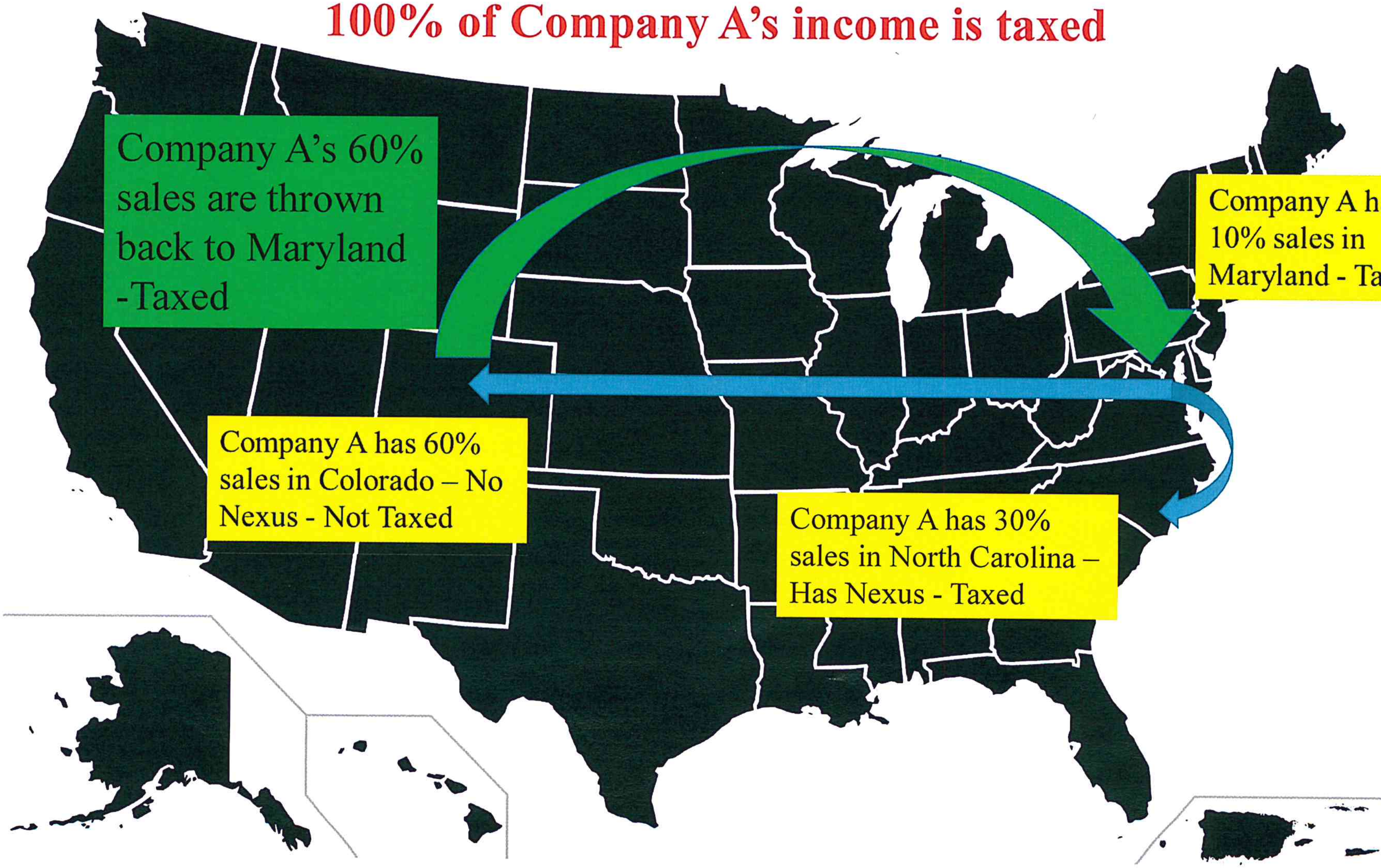
| Fiscal Year | Total |
|---|---|
| 2022 | $50.6 million |
| 2023 | $46.5 million |
| 2024 | $47.0 million |
| 2025 | $47.5 million |

**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



**Written SB 511 Tax Fairness.pdf**
Uploaded by: Riley, Denise
Position: FAV

A Union of Professionals
AFT-Maryland

5800 Metro Drive, Suite 100 • Baltimore, MD 21215-3226
410/764-3030 • fax: 410/764-3008
md.aft.org

Marietta English
PRESIDENT

Kenya Campbell
SECRETARY-TREASURER

**Written Testimony to the Senate Budget & Taxation Committee**
**SB 511 - Corporate Tax Fairness Act of 2021**
**February 3, 2021**

**SUPPORT**

Good afternoon Chair Guzzone and members of the Committee. On behalf of our more than 20,000 state, municipal, and public education workers, AFT-Maryland asks for a favorable report on SB 511.

As the statewide organization for the Baltimore Teachers Union (BTU), as well as unions representing thousands of state employees, AFT-Maryland has a long history of supporting bills 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 and equitable.

Maryland can simply no longer afford to allow the wealthy and most privileged who do business in our state exploit outdated tax loopholes. Many large, profitable businesses operating in Maryland take advantage of loopholes that deprive schools, infrastructure, health care and other essential needs for the people of Maryland.

What is even worse, the state's own evaluations show these loopholes are not creating jobs. All they do is give even more money to larger firms and allow them to not pay their fair share of taxes.

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 corporations above the needs of its own residents. It is for these reasons that we ask for a favorable report on SB 511.

Marietta English
President

**SB 511_MDCEP_FAV.pdf**
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Position: FAV

# Closing Corporate Tax Loopholes Would Enable Maryland to Invest in our Future

## Position Statement in Support of Senate Bill 511

*Given before the Senate Budget and Taxation Committee*

Senate Bill 511 would close two loopholes that allow large, multistate corporations to artificially lower their tax responsibilities in Maryland. Allowing these special tax breaks makes it harder to invest in the pillars of Maryland's economy, such as health care and education. It also puts small, Maryland-based businesses at a disadvantage. The Maryland Center on Economic Policy supports Senate Bill 511 because it would improve provisions of our tax system that shield corporate profits from taxation in different ways.

One provision of Senate Bill 511 would require corporations to include all parent and subsidiary companies operating in the United States when calculating their corporate income tax responsibility, a reform known as combined reporting. Combined reporting closes the door to a range of currently legal accounting tactics businesses use to avoid paying taxes to Maryland.[i] For example, a company may establish a subsidiary in a state with a lower tax rate and shift its earnings there on paper by purchasing goods from the subsidiary at artificially high prices. Combined reporting essentially treats a parent company and its subsidiaries as one corporation for state income tax purposes. Doing so prevents companies from reducing their taxable revenue by artificially shifting it out of state.

Combined reporting helps put smaller corporations with no presence outside of Maryland on a more equal tax footing with larger companies that operate in many states. Main Street businesses—which are responsible for most of the job creation in Maryland—cannot afford to spend millions developing these complicated tax avoidance structures, but their large competitors can, and in doing so gain an unfair advantage. This bill would level the playing field for local business, protecting local jobs.

Senate Bill 511 would also close a loophole that shields some corporate profits from taxation. When a company does business in multiple states, the states must determine how its income should be divided when calculating the company's tax responsibility. Like most states, Maryland does this 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 each dollar of a business's profits. However, due to a federal law passed in the 1950s, when a company located in Maryland makes sales into another state, this income is sometimes not subject to taxation by any state. It becomes "nowhere income."

Senate Bill 511 would ensure that each dollar of corporate income in Maryland is subject to taxation by a single state, without double taxation or nowhere income. Specifically, when a Maryland corporation sells goods into states that do not have jurisdiction to tax those sales, the bill would assign the resulting income to Maryland for the purpose of calculating the company's tax bill. This practice is often called the throwback rule, because profits are "thrown back" to the state where a business is located. Adopting the throwback rule would put small companies that primarily do business inside Maryland on more equal footing with large corporations that sell into other states.

Passing Senate Bill 511 would put Maryland in good company. Both combined reporting and the throwback rule are well established across the country. Based on analysis from past years most states that levy a corporate income tax already use either the throwback rule or a similar "throw out" rule that achieves the same end using a different formula. As of recently, 28 states plus the District of Columbia use combined reporting —a diverse group that include Alaska, California, Kentucky, Massachusetts, and West Virginia. Because it is so common, most large corporations that would be subject to these provisions already have significant experience complying with it elsewhere.[ii] Based on analysis collected in years past ninety percent of the largest employers in Maryland already operate—or are part of a corporate family that operates—in combined reporting states. Most of these companies operate in California, the strictest combined reporting state of all. Three fourths of them operate in multiple combined reporting states.

Legislative analysts estimate from past years show that Senate Bill 511 would increase state revenues by more than $170 million per year once fully implemented, enabling the state to invest more in education and other essential services that will strengthen our economy in the long run.[iii] Cleaning up our tax code by removing special interest tax breaks is the best way to raise the resources Maryland needs to build world-class public schools, a healthy population, and modern transportation infrastructure.

Maryland has a lot to offer as a place to do business, and will retain these advantages with corporate tax reforms that support increased investments in the foundation of our economy. As of the last few years we have the highest median household income among the 50 states.[iv] Our workforce is highly educated, with the second-highest share of advanced degree holders. College graduates have moved into Maryland at higher rates in recent years than into most other states.[v] We have the more millionaires per capita than all but three states—all of which require combined reporting.[vi] And our mix of taxes and services is among the most favorable to businesses, according to the accounting and consulting firm Ernst and Young.[vii]

Senate Bill 511 represents an important step forward for Maryland's revenue system. If enacted, it would help us make the investments needed to build Maryland's future prosperity.

**For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Budget and Taxation Committee make a favorable report on Senate Bill 511.**

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## Equity Impact Analysis: Senate Bill 511

*Bill summary*

Senate Bill 511 closes two loopholes that currently allow large, multistate corporations to reduce their tax responsibility in Maryland. Enacting combined reporting would require corporations to include all parent and subsidiary companies operating in the United States when calculating their corporate income tax responsibility, preventing the use of complex accounting tactics to artificially shift profits into lower-tax jurisdictions.

Enacting the throwback rule would require Maryland-based corporations to attribute to Maryland any profits from sales into states where they are not taxable because of a lack of legal nexus. This would ensure that each dollar in profits is attributed to exactly one state for tax purposes, eliminating so-called "nowhere income."

*Background*

Both combined reporting and the throwback rule are well established across the country.

- Most states that levy a corporate income tax already use either the throwback rule or a similar "throw out" rule that achieves the same end using a different formula.
- As of late twenty-eight states plus the District of Columbia use combined reporting—a diverse group that include Alaska, California, Kentucky, Massachusetts, and West Virginia. Because it is so common, most large corporations that would be subject to these provisions already have significant experience complying with it elsewhere.[viii] Based on analysis collected in years past ninety percent of the largest employers in Maryland already operate—or are part of a corporate family that operates—in combined reporting states. Most of these companies operate in California, the strictest combined reporting state of all. Three fourths of them operate in multiple combined reporting states.

*Equity Implications*

- Corporate tax loopholes primarily benefit the small number of wealthy households that hold the bulk of corporate stock and other financial assets. Multiple intersecting areas of historical and continuing racist policy have made household wealth in the United States heavily lopsided. Analysis in recent years shows that the wealthiest 10 percent of white households nationwide (about 6 percent of all households) control nearly two-thirds of all built-up wealth.[ix] Closing corporate tax loopholes would ensure that our tax code does not place greater responsibilities on people who derive their income from work than on those whose income comes from wealth, and thereby lower one barrier that holds back many Marylanders of color.
- Closing corporate tax loopholes would generate revenues that could be invested in things like world-class schools, sufficient child care assistance, and reliable transit. Investing in these basics strengthens our economy and can dismantle the economic barriers that too often hold back Marylanders of color.

*Impact*

Senate Bill 511 would likely **improve racial and economic equity** in Maryland.

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[i] Michael Mazerov, "State Corporate Tax Shelters and the Need for 'Combined Reporting,'" Center on Budget and Policy Priorities, 2007, https://www.cbpp.org/research/state-corporate-tax-shelters-and-the-need-for-combined-reporting?fa=view&id=777

[ii] Mazerov, Michael and Mark Enriquez, "Vast Majority of Large Maryland Corporations are Already Subject to 'Combined Reporting' in Other States," Center on Budget and Policy Priorities, November 9, 2010, http://www.cbpp.org/cms/?fa=view&id=3317.

[iii] Heather MacDonagh, "Fiscal and Policy Note: Senate Bill 311," Department of Legislative Services, 2020, http://mgaleg.maryland.gov/2020RS/fnotes/bil_0001/sb0311.pdf

[iv] 2017 American Community Survey one-year estimates.

[v] Quoctrung Bui, "The States That College Graduates Are Most Likely to Leave," *The New York Times*, Nov. 22, 2016, https://www.nytimes.com/2016/11/22/upshot/the-states-that-college-graduates-are-most-likely-to-leave.html

[vi] Jeff Clabaugh, "Maryland Loses No. 1 Spot for Millionaires; DC Is No. 2," *WTOP*, January 30, 2019, https://wtop.com/business-finance/2019/01/maryland-loses-no-1-spot-for-millionaires-dc-is-no-2/

[vii] "Total State and Local Business Taxes: State-by-State Estimates for Fiscal Year 2016," Ernst & Young LLP, 2017, https://www.ey.com/Publication/vwLUAssets/ey-total-state-and-local-business-taxes-2016/$File/ey-total-state-and-local-business-taxes-2016.pdf

[viii] Mazerov, Michael and Mark Enriquez, "Vast Majority of Large Maryland Corporations are Already Subject to 'Combined Reporting' in Other States," Center on Budget and Policy Priorities, November 9, 2010, http://www.cbpp.org/cms/?fa=view&id=3317.

[ix] 2016 Survey of Consumer Finances.

**SB 511 - Fair Funding Coalition - Fav.pdf**
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Position: FAV

MARYLAND
FAIR FUNDING
COALITION

**Testimony in Support of Senate Bill 511**
**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 SB511, 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. With a wide range of state services stretched thin as a result of the pandemic, 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 511**

**AFSCME-FAV-SB511.pdf**
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Position: FAV

190 West Ostend St., #201
Baltimore, MD 21230
Phone: 410.547.1515
Fax: 410.837.5436

Patrick Moran - President

**Testimony**
**SB511- Corporate Tax Fairness Act of 2021**
**Budget & Taxation Committee**
**February 3, 2021**
**Support**

AFSCME Maryland representing state and Higher Education employees stand in supports of SB 511. This bill applies a "throwback" rule in determining whether sales are considered in the State for purposes of the State's corporate income tax apportionment formula and closes a tax loophole that currently allows investment fund managers to pay the lower capital gains tax rate on the portion of their compensation that is based on the success of the funds that they manage. This is the only industry that receives such tax benefits for its employees.

This legislation would close another loophole that shields some corporate profits from taxation. Maryland's corporate income tax is calculated using a formula that considers how much of a company's sales are in Maryland. This system helps to prevent multiple states from taxing a business's profits. However, due to a federal law passed in the 1950s, when a company located in Maryland makes sales into another state, this income is sometimes not taxed by *any* state and It becomes "nowhere income."

Proposed legislation would ensure that each dollar of corporate income in Maryland is subject to taxation by a single state, without double taxation or nowhere income. Specifically, when a Maryland-based corporation sells goods into states that do not have jurisdiction to tax those sales, the bill would assign the resulting income to Maryland for the purpose of calculating the company's tax bill. This practice is often called the throwback rule, because profits are "thrown back" to the state where a business is located. Adopting the throwback rule would put small companies that primarily do business inside Maryland on more equal footing with large corporations that sell into other states. SB511 would also close this loophole by allowing the state to collect revenue from Maryland taxpayers that would go to the federal government if it accurately classified carried interest as ordinary income.

Most states that levy a corporate income tax already use the throwback rule, from nearby West Virginia to states like California. While the bill would increase some corporations' tax responsibilities, it is not likely to have a significant effect on their bottom lines. State taxes are only a small part of most companies' costs.

We must begin to seek other ways of increasing revenues in Maryland to meet the needs of its citizens. Today, we see state employees working more with less and enduring short-staffing and excessive overtime due to lack of revenues. Legislation like SB511 attempts to further that quest to look closely at Maryland's tax structure and give away.

For these reasons, we urge the committee a favorable report on SB 511.

**SB511 UPS.pdf**
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Position: FWA

**SB511 Corporate Tax Fairness Act of 2021**

**Support w/ Amendment**

On behalf of United Parcel Service (UPS), we respectfully request additional language (provided on the next page) be added on pg. 9 after line 26. This amendment would provide certainty to transportation taxpayers as the state transitions to unitary combined filing. It allows taxpayers to avoid disagreement and potential costly litigation in rules interpretation with the Comptroller's Office. It will take time for the Comptroller's Office to develop rules governing the implementation of combined unitary reporting – legislative apportionment certainty will allow the Comptroller's Office to focus on other matters – including internal systems, changes and training. Other states have taken 3 to 5 years to feel fully comfortable with the transition.

30 other states utilize forms of mileage apportionment to apportion the income of transportation companies – these states include California and Illinois. This methodology was recently implemented in New Jersey when the state moved to combined unitary filing, effective 1/1/19. We have always considered this a fair representation of economic activity, but it has only recently become available to us due to advances in technology, which resulted in more sophisticated and detailed information received regarding our operations.

Mileage is a fair representation of the economic activity of a transportation company. In combined unitary filing, ton miles equalizes the various transportation modes – aircraft versus tractor trailer versus small delivery van – and can be utilized by companies providing multiple lines of transportation services. An air mile and a ground mile each have a vastly different impact on income, and incorporating tonnage is important to bridge that gap.

We are not against combined unitary reporting – merely want certainty in how we apportion to Maryland – this certainty is something we strive for across all states.

Axel Carrion
VP Public Affairs
accarion@ups.com

Tyler Bennett
Compass Government Relations Partners
tbennett@compassadvocacy.com
410-428-2301

**IF THE COMBINED GROUP IS ENGAGED IN THE TRANSPORTATION OF FREIGHT BY AIR OR GROUND, THE COMBINED GROUP'S MARYLAND APPORTIONMENT FACTOR IS A FRACTION:**

1. **THE NUMERATOR OF WHICH IS THE TON MILES TRAVELLED BY THE COMBINED GROUP'S MOBILE ASSETS IN THIS STATE.**
2. **THE DENOMINATOR OF WHICH IS THE TON MILES TRAVELLED BY THE COMBINED GROUP'S MOBILE ASSETS EVERYWHERE.**
3. **THIS SUBPARAGRAPH SHALL APPLY IF THE 50 PERCENT OR MORE OF THECOMBINED GROUP'S MARYLAND MODIFIED INCOME IS DERIVED FROM THE TRANSPORTATION OF FREIGHT BY AIR OR GROUND.**

# GBA Testimony_ SB 511 Final.pdf

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## Testimony on Maryland SB 511

Senate Budget & Taxation Committee

February 3, 2021

DRAFT

Thank you Chair Guzzone, Senate Budget & Taxation Committee Members, and Senator Pinsky.

On behalf of the Global Business Alliance (GBA), I urge the committee to consider the potential negative impacts of SB 511. This bill, as currently written, would make Maryland less competitive for foreign direct investment (FDI) and further hinder economic recovery efforts during such an unpredictable time.

GBA represents 200 American companies with a global heritage, including over 60 Maryland employers. You can find out more information about our members as well as ways they are helping combat COVID-19. International companies employ nearly 117,000 jobs in Maryland with 23 percent of these jobs in manufacturing. Over the past five years, employment from international companies has grown by 15 percent, which out-paced the state's overall private-sector growth of seven percent.[1] Nationally, on average, these firms pay American workers nearly $83,000 annually in wages and benefits.

## Key Concerns & Potential Impacts

While we appreciate the strain that state government budgets have experienced due to the pandemic, we are concerned that one of the bill's provisions targeting foreign unitary members with any U.S. source income is extraordinarily sweeping. Of the more than 20 states that have implemented combined reporting, no state has employed a U.S. source income provision.

Under SB 511, as currently written, a taxpayer's combined return would have to include "income derived from or attributable to sources within the United States." Taxing this U.S.-source income could lead to the following consequences:

- **Hurt Efforts to Attract and Retain International Companies**: Taxing U.S.-source income would lead to extraterritorial double taxation, as this income is already taxed by the country in which it is received. This double taxation would make investments and expansions in Maryland more expensive for major employers.

[1] All statistics in this testimony are the latest available data from the U.S. Department of Commerce, Bureau of Economic Analysis (BEA) data released November 2020.

- **Damage Competitiveness**: Taxing U.S.-source income would differ from the "effectively connected income" (ECI) standard utilized by the Internal Revenue Code and many states to tax non-U.S. companies.[2] This would misalign Maryland's tax approach with other state and federal tax norms.

- **Increase Complexity Without Strong Water's Edge:** As written, SB 511 would distort traditional norms of the water's edge methodology by including foreign affiliates with income "derived from or attributable to sources within the United States" in the combined group. Every state with combined reporting has opted for a true water's edge methodology which does not simply include all US source income as income of unitary non-U.S. companies. This approach creates significant complexity and compliance burdens, where reporting misaligns with other state requirements and the federal corporate income tax.

- **Create Disputes with Treaty Partners**: Bilateral tax treaties ensure Maryland employers do not face double taxation on U.S.-source income. In the past, some foreign governments have enacted retaliatory action in response to states seeking to adopt a tax structure without a true water's edge system.

- **Override Addback Exceptions**: Maryland already addresses abusive related party transactions with expense deduction "addback" rules. These rules provide specific exceptions for legitimate business transactions including an exception for those located in treaty countries. The US source income provision effectively overrides the exceptions to the expense deduction addback rules.

## Conclusion

Without a modest modification to either delete the U.S. source income provision or add an effectively connected income (ECI) standard, this legislation could put the state at a competitive disadvantage to its neighboring states. The Global Business Alliance can be a resource to answer any questions you may have or assist with modifications that will keep Maryland a competitive place to do business.

Thank you for the opportunity to weigh in on SB 511. Please let us know if we can can be of further assistance. Please contact Meredith Beeson, Director of State Affairs at mbeeson@globalbusiness.org or (202) 770-5141.

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[2] To name a few states that use the ECI standard, see West Virginia § 11-24-13f(a)(4); District of Columbia §47-1810.07(a)(2)(D); and New York S.B. 6359, A.8559 (Chapter 59).

# 020121 COST Testimony in Opposition to SB 511 (MUC

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**Stephanie T. Do**
*Senior Tax Counsel*
(202) 484-5228
sdo@cost.org

February 1, 2021

Maryland General Assembly
Senate Budget and Taxation Committee

**Re: In Opposition to Senate Bill 511, Mandatory Unitary Combined Reporting**

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

Thank you for the opportunity to provide testimony today on behalf of the Council On State Taxation (COST) in opposition to Senate Bill 511 (S.B. 511), Corporate Tax Fairness Act of 2021, which would impose mandatory unitary combined reporting (MUCR).

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 would: (1) create revenue volatility, (2) pick winners and losers among taxpayers, and (3) lead to additional litigation and administrative costs.

The economic volatility created by the COVID-19 pandemic further augments MUCR's harmful impacts, which if enacted will be forced upon many businesses struggling to weather the pandemic. Any incremental costs and compliance burdens imposed on recovering businesses are unfair and unwarranted. Now is not the time to add extra strain.

## 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 over 500 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. Many COST members have operations in Maryland that would be negatively impacted by this legislation.

## 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.*

## Problems with Mandatory Unitary Combined Reporting

One of the most controversial business tax policy issues currently debated by state legislators, tax administrators, and business taxpayers is the breadth of a state's 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 MUCR have experienced lower job growth than have states that use separate entity reporting. From 1982-2006, job growth was 6% lower in states with MUCR than states without 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

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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.

revenue, and 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. Maryland presently has five years of data on combined reporting, and, depending on which type of apportionment is used, 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 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, *i.e.*, it is <u>not</u> used in 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

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[4] *Ibid*. 3, p. 34.
[5] Andrew Schaufele, Director, MD Bureau of Revenue and Estimates, Report on Combined Reporting to Governor, President and Speaker, March 1, 2013.
[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.

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]

- **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

Studies show that MUCR is the most costly way for the State to raise revenue because of its negative impact on job creation. In addition, the General Assembly's own commission, which was tasked with studying how to improve the State's economy, stated that MUCR should be expressly rejected because the legislature's continued consideration of MUCR discourages business investment in the State.[8] MUCR will not help Maryland attract jobs or investment and should not be adopted. This is magnified by the negative economic consequences of the COVID-19 pandemic, augmenting the difficulties and challenges businesses operating in Maryland already face.

For all of these reasons, COST urges members of the committee to please vote "no" on S.B. 511.

Respectfully,

Stephanie T. Do

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

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[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.

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

**NEER SB 511 (B&T Heaing-Combined Reporting) (2021-**
Uploaded by: Garagiola, Rob
Position: UNF

NEXTera ENERGY RESOURCES

SB 511
Oppose (with Amendments)/
Senate Budget and Taxation

**Corporate and Business Entities – Combined Reporting**
**Comments on the "Corporate Tax Fairness Act of 2021"**

## Company Overview

NextEra Energy Resources, LLC, (together with its affiliated entities, "NextEra Energy Resources" or "NEER"), is a clean energy leader and is one of the largest wholesale generators of electric power in the U.S., with approximately 21,900 megawatts of total net generating capacity, primarily in 37 states and Canada as of year-end 2019. NextEra Energy Resources, together with its affiliated entities, is the world's largest generator of renewable energy from the wind and sun and a world leader in energy storage. The business operates clean, emissions-free nuclear power generation facilities in New Hampshire and Wisconsin as part of the NextEra Energy nuclear fleet. NextEra Energy Resources, LLC is a subsidiary of Juno Beach, Florida-based NextEra Energy, Inc. (NYSE: NEE). For more information, please visit www.NextEraEnergyResources.com.

## OPPOSITION to SENATE BILL 511

**Purpose:** Senate Bill ("HB") 511 proposes a significant change to Maryland's system of taxing businesses. Specifically, SB 511 would implement the unitary combined reporting method ("combined reporting method") by replacing the current separate entity filing method. The bill would require the combined reporting method mandatory for taxable years beginning after December 31, 2021.

NextEra Energy Resources opposes SB 511 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 being a fairer approach to the current separate reporting methodology, 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.

- 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 in 2008 and 2009, and relatively flat revenue in 2010. As such, the combined reporting method arbitrarily creates winners and losers among businesses – and could result in greater tax liability for a business one year in Maryland, but lower tax liability for the same business in Maryland in another year – which clearly leads to 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 General Assembly has already implemented reforms to address intercompany shifting of interest and intangibles (§10-306.1), and further provided the State Comptroller the authority to adjust income 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). Similar conclusions were reached by the Maryland Business Tax Reform Commission in its exhaustive 2010 study.

- Despite the recommendations of the bipartisan Augustine Commission, combined reporting continues to be introduced and debated on an annual basis. The same arguments are raised in support of enacting combined reporting in Maryland: (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.

- Maryland also adopted single sales factor apportionment for determining the Maryland corporate income tax 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 now.

- Public companies such as the parent of NEER must publish their financial results quarterly in accordance with Generally Accepted Accounting Principles (GAAP). A significant change in tax policy such as mandatory combined reporting will result in a financial statement impact in the millions to some public companies, irrespective of the impact to such companies' cash tax liability, as well as an unintended negative impact to those companies in the financial markets.

- 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 decisions. 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.

**Potential Amendments**

For the above reasons, NextEra Energy Resources continues to oppose Mandatory Unitary Combined Reporting as a matter of sound tax and fiscal policy. However, if the committee decides to proceed with Combined Reporting, we respectfully urge you to adopt the following as amendments:

1. **Deferred Tax Relief** – As noted earlier, significant tax law changes, such as those proposed by SB 511, typically require public companies to re-compute certain cumulative tax assets or liabilities previously recorded in their financial statements. The effect of that re-computation requires companies to immediately adjust tax expense under GAAP. That adjustment may impact a company's stock value and stock price, which could negatively impact the availability of capital for investment.

   Deferred tax relief has been adopted in many states as part of combined reporting, including in Connecticut, the District of Columbia, Massachusetts, Michigan, New Jersey, Kentucky and New Mexico. In short, the amendment allows the recovery of the book adjustment through a deduction to be claimed in the future that can be spread equally over a period of time selected by the General Assembly. As such, and based on experience in other states, there need be no fiscal impact associated with this provision within the budgetary window. Further, the legislature will have the opportunity, if it deems it necessary, to delay the availability of the deduction, as other states have done (CT, MA, DC).

2. **Utility Exclusion** – Under SB 511, a combined group of companies would include corporations that are public utilities, regulated by the Public Utility Commission(s) of another state with respect to the rates it charges its customers. This clearly does not reflect income earned in Maryland, as there is no relationship between a rate-regulated utility's profit paid by customers outside of Maryland and the business activities of its non-regulated affiliates in the state. A rate-regulated utility operates under franchise or similar agreements, and cannot expand geographically beyond its franchise territory without the approval of the PSC in the state in which it is legally approved to operate. Additionally, any intercompany transactions are scrutinized by its regulators. Thus, Maryland should not import the profits of a utility that are generated exclusively from utility customers in another state, and should not export the profits of a Maryland utility that are generated exclusively from Maryland customers.

In the House, HB 172, sponsored by Delegate Mary Lehman, incorporates both of these proposed amendments – the Deferred Tax Relief and Utility Exclusion provisions. Nearby New Jersey's combined reporting law incorporates both proposed provisions as well.

**Conclusion**

Finally, virtually every segment of our society has suffered as a result of the pandemic. Employers and employees alike are strained economically, having experienced a public health emergency that no one in our lifetime has experienced, nor could have anticipated. The strains on the economy and our society are no less significant today than they were last year. Now is not the time for the General Assembly to be imposing such a significant change in tax regime on businesses. In conclusion, NextEra Energy Resources respectfully encourages an unfavorable report on SB 511.

**MBIA Testimony SB 511.pdf**
Uploaded by: Graf, Lori
Position: UNF

MARYLAND BUILDING INDUSTRY ASSOCIATION
11825 West Market Place | Fulton, MD 20759 | 301-776-6242

February 3, 2021

The Honorable Guy Guzzone
Senate Budget and Taxation Committee
Miller Senate Office Building,
3 West Wing 11 Bladen St.,
Annapolis, MD, 21401

**RE: Opposition to SB 511 Corporate Tax Fairness Act of 2021**

Dear Chairman Guzzone:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in the discussion surrounding **SB 511 Corporate Tax Fairness Act of 2021**. MBIA Opposes the Act in its current version.

This bill would require that sales of tangible personal property be counted in the numerator of the sales factor and impose additional reporting requirements on corporate entities. MBIA opposes this measure because the addition of out of state entities as taxable institutions will drive up the costs of goods imported into Maryland which in turn will drive up costs to consumers in numerous industries throughout the state. During the current economic uncertainty, we feel that climbing prices would be counterproductive to the attempts to recharge the economy in the future and make it that much harder to business that are the engine of the state economy to function.

Additionally, the complex accounting required to conform to the ne reporting requirements represents a massive expense that, while larger firms may be able to comply with little problem, smaller firms without dedicated financial staff will find to be quite difficult. This measure makes no distinction between the sizes of the corporation to be regulated and this will impose a significant time and resource expense on small firms.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Senate Budget and Taxation Committee

**SB 511_Corporate Tax Fairness Act_Oppose.pdf**
Uploaded by: Griffin, Andrew
Position: UNF

MARYLAND
Chamber of Commerce

**LEGISLATIVE POSITION:**
**Unfavorable**
**SB 511—Corporate Tax Fairness Act of 2021**
**Senate Budget & Taxation Committee**

**Wednesday, February 3, 2021**

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 5,000 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees and families.

Senate Bill 511 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.

Beyond all of this, we are in the midst of a global pandemic. To say that COVID-19 has had a tremendous, detrimental impact on Maryland's economy would be an understatement, and there is plenty of reason to remain cautious and concerned about its lasting implications. Maryland businesses continue to struggle, and the Comptroller's Office has estimated that approximately 30,000 businesses have either closed or will close permanently due to the pandemic. A period of major economic downturn and future uncertainty is not the time to implement tax measures that stand to negatively impact businesses that are already struggling to overcome the impact of COVID-19.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on SB 511.

**SB 511 MACPA Written Testimony - OPPOSE 1 (1).pdf**
Uploaded by: Halpern, MB
Position: UNF

Feb. 1, 2021

The Honorable Anne R. Kaiser, Chair
Ways and Means Committee
House Office Building
Annapolis, Maryland 21401

Re: SB 511, “Corporate Tax Fairness Act of 2021” – 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 work in public practice, private industry, government, non-profit, and education.

As CPAs, we represent businesses that would be positively impacted by a change to combined reporting and others that would be negatively impacted, as was demonstrated in data collected by the Office of the Comptroller. As such, we do not take a position to support or oppose the adoption of combined reporting into Maryland law. Our focus is to ensure that any legislation enacted includes clear, unambiguous language and provides a sufficient amount of time to prepare and implement the change.

With this focus in mind, we must oppose SB 511.

The effective dates listed in SB 511 do not permit the necessary time for suitable implementation. A change to combined reporting is a significant undertaking and will certainly increase administrative complexities for taxpayers, tax preparers, and the Comptroller, with no assurance that it will generate any additional tax revenue in total. Beyond interpreting the legislation, significant advanced preparation is required. The Comptroller’s office must prepare draft regulations, allow for the required public comment period, and finalize the regulations. In anticipation of a more complex audits and appeals process, significant training is required of the state auditors and taxpayer-assistance staff. Administrative protocols including forms, instructions, and computer programming changes are necessary to accommodate the new filing method. Other states can be used as models, but these processes must still be adapted specifically to Maryland.

Certainty is a key component of a good tax system and one of the guiding principles of good tax policy. Taxpayers want to understand what the rules are so that they can comply with them and have a reasonable degree of certainty about the outcome. We’ve identified areas in SB 511 where lack of certainty could have significant implications.

SB 511 provides that a water's edge combined group includes (to the extent provided by regulations that the Comptroller adopts) an affiliated corporation that is a controlled foreign corporation. Article Tax – General 10-402.1(E)(2)(IV). 10.402.1(F)(3) provides that the Comptroller can disregard the water's edge election if a person otherwise not included in the water's edge group was availed of a substantial objective of avoiding state income tax. "Substantial objective" is a very low standard. This seems to suggest the Comptroller may elect to disregard the water's edge election if doing so increases the tax liability of the group.

The proposed language in Section 10-811 grants the Comptroller broad discretion, which does not create a climate of confidence or certainty. 10-811 also says the parent is the filing entity and all members of the group are jointly and severally liable for the tax, without any consideration of nexus. This raises significant constitutional issues.

SB 511 includes a throwback provision in proposed Section 10-402(d)(5). Given that Maryland is transitioning to a single-sales factor (which is an incentive for businesses to locate jobs and investment in the state), it seems counterintuitive to then penalize those same businesses by enacting a throwback rule. This sends a confusing message about the state's tax policy objectives.

A change in tax administration of the magnitude and complexity as proposed in SB 511 requires clarity of compliance requirements and must allow the necessary preparation time required at all levels for satisfactory implementation. For the reasons we've provided, we must respectfully request an unfavorable report for SB 511.

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

Sincerely,

MACPA State and Local Tax Advisory Committee

cc: Nick Manis, Manis Canning & Associates

# FE (Grealy) Testimony SB 511 Oppose_.pdf
Uploaded by: Mayhew, Kim
Position: UNF

Anne M. Grealy
Senior Advisor, Government &
Regulatory Affairs
68 State Circle
Annapolis, MD 21401
410.310.2544
agrealy@firstenergycorp.com

**SB 511 – Corporate Income Tax – Corporate Tax Fairness Act of 2021**
**Budget & Taxation Committee**
**Wednesday, February 3, 2021**

**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 and Maryland and is highly regulated in each of these states in which we serve customers. This regulation over companies that distribute electricity imposes strict arm's length accounting. This not only results in close monitoring but is one key reason states like New Jersey have exempted regulated utilities from their unitary taxation statutes. The type of taxation contemplated in SB 511 would overburden utility electric customers along and the Public Service Commissions in each state.

**FirstEnergy requests an Unfavorable report on SB 511 for the following reasons.**

Senate Bill ("SB") 511 proposes a dramatic change to Maryland's system of taxing businesses. Specifically, SB 511 would replace the current individual or separate entity filing method with a unitary combined reporting method ("combined reporting method").

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 511.

**SB511 - MoCo Chamber - Corporate Tax Fairness Act**
Uploaded by: Swanson, Tricia
Position: UNF

*To Lead, Advocate and Connect as the Voice of Business*

**Senate Bill 511 - Corporate Tax Fairness Act of 2021**

Budget and Tax Committee

February 3, 2021

**OPPOSE**

The Montgomery County Chamber of Commerce (MCCC), as the voice of Montgomery County business, opposes Senate Bill 511, which once again proposes adopting combined reporting.

As we have for many years, the MCCC opposes the restructuring of the corporate income tax to impose combined reporting in Maryland because of its negative impact on corporate headquartered companies. The Maryland Business Tax Reform Commission (the "Commission") was created during the 2007 Special Session to review and evaluate the State's current business tax structure and make specific recommendations for changes, including the imposition of combined reporting. The General Assembly explicitly directed the Commission to review whether to implement combined reporting in Maryland.

The Commission included an appointee of the Governor, certain State Senators and Delegates, a representative of local governments and members of the public. Between 2007 and 2011, the Commission held 28 separate meetings, heard extensive testimony, and collected substantial data concerning Maryland's tax structure and policy. The Commission issued its final report and recommendations on December 15, 2010. By a vote of 13 – 4, the Commission recommended against combined reporting in Maryland. The Commission's final report explained its reasoning in rejecting combined reporting as follows:

- **Complexity** – combined reporting is a complex change for taxpayers, tax preparers and the Comptroller's Office, introducing uncertainty during a time when the economy is struggling.

- **Shift of Tax Burden** – combined reporting shifts the tax burden, substantially in some cases, among industries and among taxpayers, resulting in winners and losers.

- **Unnecessary** – 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 add back, the captive real estate investment trust (REIT) legislation, and other measures.

- **Increased Volatility** – the Comptroller's study of recent corporate information returns indicates that combined reporting would lead to increased volatility in corporate income tax revenues, already one of the State's most volatile revenue sources.

Businesses are struggling and may struggle for some time and we would urge the State not to make dramatic changes in its tax policy. For the same reasons expressed by the Commission, **the Chamber opposes Senate Bill 511 and respectfully urges an unfavorable report.**

*The Montgomery County Chamber of Commerce (MCCC) accelerates the success of our nearly 400 members by advocating for increased business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success. Established in 1959, MCCC is an independent non-profit membership organization and is proud to be a Montgomery County Green Certified Business.*

Tricia Swanson, Vice President, Government Relations
Montgomery County Chamber of Commerce
301-738-0015 www.mcccmd.com