



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