MARYLAND
Chamber of Commerce

**LEGISLATIVE POSITION:**
**UNFAVORABLE**
**Senate Bill 360**
**Corporate Tax Fairness Act of 2022**
**Senate Budget & Taxation Committee**

**Thursday, February 9, 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 5,500 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 360 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 is not a guarantee for increased 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, resulting in winners and losers. Any resulting tax increase will ultimately be felt most by in-state consumers, who will contend with higher prices for goods and services and labor -- through fewer jobs and 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 combined reporting method. In fact, during their 2021 legislative interim, the Virginia General Assembly's Combined Reporting Workgroup determined that combined reporting was not a more efficient system of deterring abusive tax planning beyond their existing tax policy requiring add-backs of certain intercompany transactions – the exact same policy and authority already granted to Maryland's Comptroller. They further found that combined reporting would not cause a sea change in tax revenue collected with their results showing 13% of taxpayers would pay more in tax under combined reporting, 14% would pay less, and 73% would pay roughly the same in tax. Further reinforcing the understanding that combined reporting simply shifts the tax burden among certain industries, creating winners and losers. It would be detrimental for Maryland to employ a new taxation system that will harm the attraction and retention of businesses, and cost Marylander's access to new jobs and economic opportunities.

Furthermore, we are still dealing with the impacts of the State's switch to single sales factor which only becomes fully phased in as of this year. In fact, this committee has heard legislation to provide deferred tax relief to those businesses that experienced detrimental impacts as a result of the shifting tax burden created by that policy. Now is not the time to implement yet another change in State tax policy.

Additionally, SB 360 seeks to institute a rule requiring the reapportionment on the sales of tangible personal property to be included in the numerator of the sales factor for property that is delivered or shipped to a purchaser within the state from outside the state or on goods shipped from Maryland to a state where those goods are not taxable. This is commonly referred to as the "throwback rule." The bottom-line objective is to collect corporate income taxes off sales from outside the state on goods that originate in Maryland but are then not taxable in that other state.

The "throwback rule" is seen by some as a magic fix for taxing "nowhere income," and the primary concerns remain that this scheme will create tax inequality and competitive disadvantage for Maryland businesses. In some cases, the "throwback rule" can even result in double taxation. For small, export-oriented Maryland businesses, this would have an outsized effect since they are less likely to have a nexus (e.g., facilities) in other states, meaning a larger portion of their income could become subject to this proposed additional taxation.

Finally, like combined reporting, Maryland's own Business Tax Reform Commission previously considered this issue and ultimately recommended the "throwback rule" not be adopted because it represents a tax on product originators, thereby discouraging investment and business location in Maryland. Again, none of Maryland's neighbors--Pennsylvania, Delaware, Virginia or West Virginia--utilize a throwback rule. It is simply good tax policy that a company's tax liability in one state should not be measured by their tax liability in another state.

Beyond all of this, we are in the midst of an anemic economic recovery. 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 implementing these new tax measures would clearly have a negative impact on job creators and the economy.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 360**.