HB457_CorporateTax_FAV.pdf
Uploaded by: Alice Wilkerson
Position: FAV

A sustainable, just, and prosperous economic future for all Marylanders

Testimony in Support of HB 457
Corporate Tax Fairness Act
Ways and Means Committee
FAVORABLE

February 9, 2022

Dear Chair Atterbeary and Members of the Committee:

On behalf of Strong Future Maryland, we write in support of HB 457. Strong Future Maryland works to advance bold, progressive policy changes to address systemic inequality and promote a sustainable, just and prosperous economic future for all Marylanders. HB 457, closes two major corporate tax loopholes by: 1) enacting combined reporting, and 2) ending corporate "nowhere income." Both of these changes address aspects of our tax system that allow large, multi-state corporations to use accounting gimmicks to avoid paying Maryland taxes. While these practices are currently legal in Maryland, most other states have already closed these loopholes.

Enacting combined reporting would provide a more complete and accurate accounting of the profits corporations earn from their activities in Maryland than the current method of calculating the corporate income tax. This legislation would treat a parent company and its subsidiaries as one corporation for state income tax purposes, preventing companies from artificially shifting profits on paper to an out-of-state subsidiary.

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 1950s, 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." Under HB 457, any such profits would be considered income on the corporation's Maryland taxes.

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@FutureMaryland @StrongFutureMD

Maryland's current corporate tax laws give an unfair advantage to large, profitable corporations over our local Maryland businesses. As a result, about one-third of the 150 largest corporations operating in the state have paid zero income taxes in recent years, according to data from the Comptroller's Office. HB 457 would ensure all businesses operating in the state are contributing their fair share to the public services that make Maryland a great place to do business, like good public schools, colleges and universities and transportation networks.

If enacted, these policies could generate more than $170 million in annual revenue for the state once fully implemented, providing sustainable revenue that can support Marylanders needs over the long term.

We must choose whether to make a long-term commitment to good schools and other investments necessary to allow communities in all corners of the state to thrive, or to instead continue to prioritize tax breaks that benefit powerful special interests but do nothing to help our economy. We urge our legislators to commit to Maryland families and the future of our economy.

Therefore, we urge a favorable report on House Bill 457

HB0457_Combined_Reporting_and_Throwback_MLC_FAV.pd
Uploaded by: Cecilia Plante
Position: FAV

TESTIMONY FOR HB0457
CORPORATE INCOME TAX – THROWBACK RULE AND COMBINED REPORTING

Bill Sponsor: Delegate Lehman
Committee: Ways and Means
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Cecilia Plante, co-chair
Position: FAVORABLE

I am submitting this testimony in favor of HB0457 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

Our members believe that there is no better time than the present to take a hard look at how Maryland receives revenue from taxes. Specifically, how skewed taxes are skewed in favor of large corporations and away from low-income earners.

We all remember the giant tax giveaway that the Trump Administration passed in 2017. The idea, which we all understood to be false, was to 'trickle down' the giant tax cuts for corporations to low-and middle-class earners. That never happened. Corporations turned those tax breaks into stock buy-backs and bonuses for executives.

And, on top of all of that, they STILL got breaks from Maryland. Giant multi-state corporations that made huge profits from the federal tax giveaway still managed to get around paying taxes for their subsidiaries in Maryland. This needs to end.

This bill takes aim at two major 'loopholes' for large corporations - Combined Reporting and the Throwback Rule.

Combined reporting would treat a parent company and its subsidiaries as one corporation for state income tax purposes. Doing so would prevent companies from reducing their taxable profits by artificially shifting revenue on paper to out-of-state subsidiaries. Closing the combined reporting loophole would raise at least $120 million per year.

The throwback rule would close another loophole that shields some corporate profits from taxation. Closing this loophole would ensure that each dollar of corporate income in Maryland is subject to taxation by a single state, without double taxation.

Maryland's corporate income tax is calculated using a formula that considers how much of a company's sales are located in Maryland. This system helps to prevent multiple states from taxing a business's

profits. However, when a company located in Maryland makes sales into another state, this income is sometimes not taxed by any state; instead, it becomes “nowhere income.”

Maryland needs revenues to support its residents and small businesses who have suffered during the pandemic. We believe it’s time for the big corporations to step up and pay their fair share.

We support this bill and recommend a **FAVORABLE** report in committee.

HB457- Throwback and Combine Reporting -FAV.pdf

Uploaded by: Cindy Smalls

Position: FAV

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Patrick Moran - President

Testimony
HB 457- Corporate Income Tax – Throwback Rule and Combine Reporting
Ways and Means Committee
February 9th, 2022
Support

AFSCME Maryland representing state and Higher Education employees stand in supports of HB 457 which closes two major corporate tax loopholes by enacting combined reporting and ending corporate "nowhere income." Both of these changes address aspects of our tax system that allow large, multi-state corporations to use accounting gimmicks to avoid paying Maryland taxes. While these practices are currently legal in Maryland, most other states have already closed these loopholes.

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 which closes two loopholes that currently allow large, multistate corporations to reduce their tax responsibility in Maryland. The bill also enacts a combined reporting that 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 combined reporting would provide a more complete and accurate accounting of the profit's corporations earn from their activities in Maryland than the current method of calculating the corporate income tax. This legislation would treat a parent company and its subsidiaries as one corporation for state income tax purposes, preventing companies from artificially shifting profits on paper to an out-of-state subsidiary.

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."

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 HB 457 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 HB 457.

DAG-HB457.pdf
Uploaded by: Daniel Golombek
Position: FAV

Testimony in Support of HB 457

“Corporate Income Tax - Throwback Rule and Combined Reporting”

House Ways and Means Committee

February 4, 2022

TO: Chair Aterbeary, Vice Chair Washington, and members of the Ways and Means Committee

FROM: Daniel Golombek

My name is Daniel Golombek, and I am a resident of District 11. I am submitting this testimony ***in support of HB 457***, which would close two corporate tax loopholes by enacting combined reporting and the “throwback rule.”

This legislation will ensure Maryland’s tax system works for all of us, rather than giving special treatment to powerful interest groups like large corporations. It is not acceptable that one-third of the 150 largest corporations in our state pay no income tax in a given year.

This bill would level the playing field for our small local businesses and help support long-term investments in our schools, roads, parks, and other public services.

I respectfully urge the committee to support HB 457.

Thank you

Daniel Golombek
51 Southwark Bridge Way
Lutherville, MD 21093
danielgolombek@gmail.com

HB 457 Throwback Rule.pdf

Uploaded by: Denise Riley

Position: FAV

A Union of Professionals
AFT-Maryland

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Marietta English
PRESIDENT

Kenya Campbell
SECRETARY-TREASURER

Written Testimony to the House Ways and Means Committee
HB 457 - Corporate Income Tax - Throwback Rule
February 9, 2022

SUPPORT

Good afternoon Chair Atterbeary and members of the House Ways and Means Committee. On behalf of the 20,000 state, municipal, and public education workers residing in Maryland, AFT-Maryland asks for a favorable report for HB 457.

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 allowing the wealthy and most privileged who do business in our state to exploit outdated income tax loopholes. Our state agencies have failed to meet basic staffing needs, and as the Kirwan Commission has pointed out, students in our state have not been receiving the resources they deserve to be successful in their education. Maryland must stop putting the priorities of out-of-state corporations above the needs of its own residents.

HB 457 will help close the loopholes and make these out-of-state corporations pay their fair share. Currently, 28 states and the District of Columbia utilize the throwback rule, many of which are controlled by Republican legislatures.

The Maryland Department of Legislative Service reports that with this legislation we can generate hundreds of millions of dollars in revenue to meet the needs of our state agencies and educational systems.

It is for these reasons that we ask the committee for a favorable report on HB 457.

Marietta English
President

HB 457 - Throwback Rule and Combined Reporting.pdf

Uploaded by: Donna Edwards

Position: FAV

MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

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President
Donna S. Edwards

Secretary-Treasurer
Gerald W. Jackson

HB 457 – Corporate Income Tax – Throwback Rule and Combined Reporting
House Ways and Means Committee
February 9, 2022

SUPPORT

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

Madam Chair and members of the Committee, thank you for the opportunity to provide testimony in support of HB 457 – Corporate Income Tax – Throwback Rule and Combined Reporting. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

Most Marylanders and small businesses already pay their fair share of taxes. Big corporations doing business and making profits in Maryland do not. Combined reporting ensures that big corporations will pay their fair share, 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-eight states and the District of Columbia use combined reporting[1], and, according to an analysis by the Maryland Center on Economic Policy, it would bring in $120 million, annually, in state revenues[2]. While we are currently enjoying a windfall from the Federal government, we know this is only temporary. If we do not plan appropriately for the future, then we will be faced with having to make budget cuts when the Federal spigot is turned off. More budget cuts cost the jobs of Maryland workers in public and private sectors, while eliminating the investments in

[1] https://www.cbpp.org/28-states-plus-dc-require-combined-reporting-for-the-state-corporate-income-tax
[2] http://fairfundingmd.org/bill-list/

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.

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. HB 457 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. HB 457 puts Maryland small businesses on an equal footing with their large competitors, ensuring every entity is paying taxes on income earned. Failing to close this loophole results in Maryland 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.

HB 457 brings fairness to our tax code. It takes the pressure off hard working tax paying Marylanders, plans appropriately for the future when the Federal government is not backfilling our budget, and asks multi-national corporations to start pulling their weight.

For these reasons, we urge a favorable report on HB 457.

HB 457 to W&M Support Combined Reporting.pdf

Uploaded by: Henry Bogdan

Position: FAV

MARYLAND NONPROFITS
marylandnonprofits.org

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February 9, 2022

Testimony on House Bill 457
Corporate Income Tax - Throwback Rule and Combined Reporting
House Ways and Means Committee

Position: Favorable

Maryland Nonprofits is a statewide association of more than 1300 nonprofit organizations and institutions. As a member of the Fair Funding Coalition we strongly urge you to support House Bill 457 to make our system of business taxation more equitable.

House Bill 457 closes *two* major corporate tax loopholes by: 1) enacting combined reporting, and 2) ending corporate "nowhere income." Both of these changes address aspects of our tax system that allow large, multi-state corporations to use accounting gimmicks to avoid paying Maryland taxes. While these practices are currently legal in Maryland, most other states have already closed these loopholes. Of the 150 largest corporations in the State, **about one third pay zero in state taxes in a given year,** according to the Maryland Comptroller's Office.

Enacting combined reporting would provide a more complete and accurate accounting of the profits corporations earn from their activities in Maryland than the current method of calculating the corporate income tax. This legislation would treat a parent company and its subsidiaries as one corporation for state income tax purposes, preventing companies from artificially shifting profits on paper to an out-of-state subsidiary.

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 1950s, 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." Under HB 457, any such profits would be considered income on the corporation's Maryland taxes.

SPONSOR OF STANDARDS FOR EXCELLENCE

House Bill 457 would correct both of these problems, and help 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.

We urge you to give HB 457 a favorable report.

HB457 MCRC Testimony 2022.pdf

Uploaded by: Isadora Stern
Position: FAV

Testimony to the House Ways and Means Committee
HB 457: Corporate Income Tax - Throwback Rule and Combined Reporting
Position: Favorable

February 9, 2022

The Honorable Vanessa E. Atterbeary, Chair
House Ways & Means Committee
Room 131, HOB
Annapolis, MD 21401
cc: Members, Ways & Means Committee

Chair Atterbeary and Members of the Committee:

The Maryland Consumer Rights Coalition (MCRC) is a statewide coalition of individuals and organizations that advances economic rights and financial inclusion for Maryland consumers through research, education, direct service, organizing, and advocacy. Our 8,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

We are in support of HB 457. This bill closes two major corporate tax loopholes by: 1) enacting combined reporting, and 2) ending corporate “nowhere income.” Both of these changes address aspects of our tax system that allow large, multi-state corporations to use accounting gimmicks to avoid paying Maryland taxes. While these practices are currently legal in Maryland, most other states have already closed these loopholes. Enacting combined reporting would provide a more complete and accurate accounting of the profits corporations earn from their activities in Maryland than the current method of calculating the corporate income tax. This legislation would treat a parent company and its subsidiaries as one corporation for state income tax purposes, preventing companies from artificially shifting profits on paper to an out-of-state subsidiary.

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 1950s, 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.” Under HB 457, any such profits would be considered income on the corporation’s Maryland taxes.

Maryland’s current corporate tax laws give an unfair advantage to large, profitable corporations over our local Maryland businesses. As a result, about one-third of the 150 largest corporations operating in the state have paid zero income taxes in recent years, according to data from the Comptroller’s Office. HB 457 could generate more than $170 million in annual revenue for the state by ensuring all businesses operating in the state are contributing their fair share. This revenue will support public services that make Maryland a great place to do business, like good public schools, colleges and universities and transportation networks.

For these reasons we support HB457 and urge a favorable report.

Thank you,
Isadora Stern

Maryland Consumer Rights Coalition, Inc is a 501(c)(3) nonprofit organization and your contributions are tax deductible to the extent allowed by law.

HB457_MD Center on Economic Policy_FAV.pdf
Uploaded by: Kali Schumitz
Position: FAV

MDCEP
MARYLAND CENTER ON ECONOMIC POLICY
FEBRUARY 9, 2022

Closing Corporate Tax Loopholes Would Balance the Scales of our Tax Code

Position Statement in Support of House Bill 457

Given before the House Ways and Means Committee

House Bill 457 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, and primarily benefits the small minority of wealthy, overwhelmingly white households that hold the bulk of corporate stock. It also puts small, Maryland-based businesses at a disadvantage. The Maryland Center on Economic Policy supports House Bill 457 because it would improve provisions of our tax system that shield corporate profits from taxation in different ways.

One provision of House Bill 457 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.

House Bill 457 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."

House Bill 457 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 House Bill 457 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.

Analysis by the Institute on Taxation and Economic Policy finds that closing corporate tax loopholes would primarily increase the tax responsibilities of the wealthiest individuals, who today pay a smaller share of their income in state and local taxes than the rest of us do.[iii] It would also improve racial equity by raising more revenue from the small minority of wealthy, overwhelmingly white households that hold the bulk of corporate stock.[iv]

Legislative analysts estimate that House Bill 457 will increase state revenues by more than $200 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.[v] 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. We have the highest median household income among the 50 states.[vi] Our workforce is highly educated, with the second-highest share of advanced degree holders.[vii] And our mix of taxes and services is among the most favorable to businesses, according to the accounting and consulting firm Ernst and Young.[viii] The firm's analysis finds that businesses get $1.43 in benefits for every $1.00 paid in Maryland state and local taxes.

House Bill 457 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 House Ways and Means Committee make a favorable report on House Bill 457.

Equity Impact Analysis: House Bill 457

Bill summary

House Bill 457 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.[ix] 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.[x] 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

House Bill 457 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] Meg Wiehe, Aidan Davis, Carl Davis, Matt Gardner, Lisa Christensen Gee, and Dylan Grundman, “Who Pays? A Distributional Analysis of the Tax Systems in All 50 States,” Institute on Taxation and Economic Policy, 2018, https://itep.org/wp-content/uploads/whopays-ITEP-2018.pdf

[iv] Michael Leachman, Michael Mitchell, Nicholas Johnson, and Erica Williams, “Advancing Racial Equity with State Tax Policy,” Center on Budget and Policy Priorities, 2018, https://www.cbpp.org/research/state-budget-and-tax/advancing-racial-equity-with-state-tax-policy

[v] Heather MacDonagh, "Fiscal and Policy Note: House Bill 457," Department of Legislative Services, 2022, https://mgaleg.maryland.gov/2022RS/fnotes/bil_0007/hb0457.pdf

[vi] 2020 Small Area Income and Poverty Estimates.

[vii] 2019 American Community Survey one-year estimates.

[viii] "Total State and Local Business Taxes: State-by-State Estimates for Fiscal Year 2020," Ernst & Young LLP, 2021, https://www.ey.com/en_us/tax/fy-20-total-state-and-local-business-taxes

[ix] 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.

[x] Leachman et al., 2018.

HB457_MD Fair Funding Coalition_FAV.pdf
Uploaded by: Kevin Slayton
Position: FAV

MARYLAND
FAIR FUNDING
COALITION

February 9, 2022

Testimony in Support of House Bill 457
House Ways and Means Committee

Corporate Income Tax - Throwback Rule and Combined Reporting

The Maryland Fair Funding Coalition is a coalition of more than 30 organizations across the state that are committed to policies that make our tax system more equitable and allow the state to raise sufficient revenue to sustain the essential public services Maryland families and communities need to thrive.

The coalition supports proposals that eliminate loopholes and tax breaks that benefit special interests and fix 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 ensure that large corporations and wealthy individuals are paying their fair share for the public services we all rely on.

Our coalition supports HB 457, which closes *two* major corporate tax loopholes by: 1) enacting combined reporting, and 2) ending corporate "nowhere income." Both of these changes address aspects of our tax system that allow large, multi-state corporations to use accounting gimmicks to avoid paying Maryland taxes. While these practices are currently legal in Maryland, most other states have already closed these loopholes.

Enacting combined reporting would provide a more complete and accurate accounting of the profits corporations earn from their activities in Maryland than the current method of calculating the corporate income tax. This legislation would treat a parent company and its subsidiaries as one corporation for state income tax purposes, preventing companies from artificially shifting profits on paper to an out-of-state subsidiary.

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 1950s, 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." Under HB 457, any such profits would be considered income on the corporation's Maryland taxes.

Maryland's current corporate tax laws give an unfair advantage to large, profitable corporations over our local Maryland businesses. As a result, about one-third of the 150 largest corporations operating in the state have paid zero income taxes in recent years, according to data from the Comptroller's Office. HB 457 would ensure all businesses operating in the state

are contributing their fair share to the public services that make Maryland a great place to do business, like good public schools, colleges and universities and transportation networks.

If enacted, these policies could generate more than $170 million in annual revenue for the state once fully implemented, providing sustainable revenue that can support Marylanders needs over the long term.

We must choose whether to make a long-term commitment to good schools and other investments necessary to allow communities in all corners of the state to thrive, 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 Maryland families and the future of our economy.

Therefore, we urge a favorable report on House Bill 457

HB457
Uploaded by: Larry Ottinger
Position: FAV

Testimony in Support of SB 361
Corporate Income Tax – Throwback Rule and Combined Reporting
House Ways and Means Committee – Hearing on February 9, 2022

Launched in 2017, Our Maryland is a nonprofit, multi-issue online hub for promoting a just and sustainable future for all Marylanders. Our Maryland currently has close to 55,000 Facebook followers and 14,000 email subscribers. Our Maryland writes in strong support of HB 456 - Corporate Income Tax – Throwback Rule and Combined Reporting.

Tax fairness is critical to public confidence in government. The state legislature must close corporate loopholes that allow large, multi-state corporations to avoid paying their fair share of taxes to support needed public investments and services. The current system is unfair and disadvantages local, small businesses and ordinary taxpayers.

You can read more about our views in the following article published this year by *Maryland Matters* -- https://www.marylandmatters.org/2021/12/17/opinion-marylanders-want-the-ultra-wealthy-and-big-corporations-to-pay-their-fair-share/

Larry Ottinger, President
Our Maryland
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HB457 Throwback Rule and Combined Reporting Testim

Uploaded by: Mary Lehman

Position: FAV

Delegate Mary A. Lehman
Legislative District 21
Prince George's and
Anne Arundel Counties

Environment and Transportation
Committee

The Maryland House of Delegates
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HOUSE BILL 457
THROWBACK RULE AND COMBINED REPORTING

January 28, 2021

SUPPORT

Madam Chair, Mr. Vice Chair and Members of the Ways and Means Committee,

I am here today to ask your favorable consideration of HB 457. Enacting House Bill 457, throwback rule and combined reporting of corporate income changes how corporate income tax is calculated, and in doing so provides a more accurate accounting of the profits that multi-state corporations earn from their activities in Maryland.

Corporations that produce and sell goods in multiple states are required to pay state corporate income taxes based on the portion of their profits that can be attributed to the states in which they operate. Simply selling goods in a state does not alone subject a corporation to that state's corporate income tax. Under federal law, states can only tax corporations with a sufficient "nexus" to the state, which generally means a physical presence. As a result, many multi-state corporations have "nowhere" income that cannot be taxed in any state.

Nowhere income creates an opportunity for multistate corporations to avoid paying a state's income taxes. For example, if a Maryland-based company only makes 10% of its sales in Maryland, then the remaining 90% will be nowhere income that is not taxed anywhere. And yet that company takes full advantage of Maryland's infrastructure and talented workforce. This loophole hurts Maryland's small businesses because they usually pay state income tax on 100% of their profits, yet must compete with larger rivals who pay much less.

Combined reporting recognizes a multi-state parent company and its subsidiaries as one corporation for state income tax purposes. It establishes that multi-state corporations report to the state income based on the amount of Maryland business they conduct. Additionally, the

throwback rule states that if a corporation with facilities in Maryland has income that is not taxed by any state, that income is "thrown back" into Maryland, and taxed here. These strategies prevent the multi-state company from reducing its taxable profits through a range of legal accounting tactics.

IMPACT

- First and foremost, this is a fairness issue. Combined reporting helps to put larger multi-state companies on more equal tax footing with those businesses whose enterprises are in Maryland only. Main Street businesses cannot afford these complicated tax avoidance structures. In that way, large multi-state competitors gain an unfair advantage.
- Multi-state corporations and their employees consume Maryland resources and services. They use roadways and bridges and ride our mass transit. Their kids attend our public schools.
- Many local businesses in each of our own districts are struggling or have failed because of COVID-19. At the same time, many large corporations have done a very well and profits have grown.
- Combined reporting is well-established around the country - Combined reporting requirements and the throwback rule are currently in effect in 28 states each as well as the District of Columbia.
- If passed this year, HB 457 could provide at least $175-$180 million per year in additional revenue once fully phased in. Additionally, HB 457 would have no effect on local or small business.
- This bill will fund important improvements in our schools and is ever more urgent in the face of the pandemic and structural deficit our state is expected to face for years to come.
- In 2020, Delegate Stewart's throwback rule and combined reporting bill passed through the House and I urge this committee to pass it again this year.

COMBAT COUNTER CLAIMS REGARDING THROWBACK

The bill's opponents will argue that the throwback rule amounts to a large tax increase on Maryland's businesses and will cause job losses. But these apocalyptic warnings are contrary to all available academic research on this topic. There have been three rigorous studies of the impact of throwback rules on a state's economy. In 2007, a group of researchers at the University of Tennessee found throwback rules to be insignificant as a predictor of Gross State Product. In a similar study, Professor Teresa Lightner at Oklahoma State University found that

throwback rules were not significant predictors of economic growth. Professor Robert Tannenwald at Brandeis University focused specifically on manufacturing, and found that a state's business tax climate, including its adoption of a throwback rule, has "only a small, highly uncertain effect on manufacturer's capital spending." He added that "states may be more likely to stimulate their economy by enhancing public services valued by businesses." All of this research was confirmed mostly recently in 2014 by Reed College's Professor Kimberly Clausing, who found that throwback rules have no significant impact on employment or investment. Our own Department of Legislative Services has found that the bill will have minimal effect on small businesses.

The catastrophic predictions from the bill's opponents about job losses to the manufacturing and warehouse industries have not materialized in other states. In fact, many of the best states for manufacturing in the country--including California, Oregon, Kansas, Wisconsin, Alabama, and Louisiana--have throwback rules. When Indiana repealed its throwback rule in 2016, it was ranked by the Site Selection Group as the fifth best state for manufacturing; by last year, it had dropped to tenth in the same ranking. The opponents might also cite warehouse and distribution as a sector that will be devastated by this bill. But many of the states most aggressively targeted for Amazon's new distribution centers--including Illinois and Massachusetts--have throwback rules.

In closing, thank you for your consideration and I respectfully request a favorable report.

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HB457_Mazerov_FAV.pdf

Uploaded by: Michael Mazerov

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

Before the
Maryland House of Delegates Ways and Means Committee

Hearing on H.B. 457, Throwback Rule and Combined Reporting
February 9, 2022

Chair Atterbeary, and Members of the Ways and Means 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 H.B. 457, Delegate Lehman's bill to mandate the use of combined reporting and adopt the throwback rule 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 other 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 H.B. 457 nullifies entity isolation, while the Joyce approach does so only partially.

Another example of a tax avoidance strategy to which Maryland remains vulnerable because it does not require combined reporting comes from a current tax case in Florida involving Target Corporation. Target has set up a subsidiary at it headquarters location in Minnesota that employs the people who engage in such activities as market research, promotional events, advertising development, brand strategy development and implementation, and community relations. The subsidiary charges the stores fees for all these activities, which are deductible and have the effect of siphoning income out Target's stores. In a combined reporting state, this strategy leads to no tax savings, because the profit of this subsidiary will be combined prior to apportionment with the profit of the parent, which owns the stores. However, because, like Maryland, Florida does not require combined reporting, it has been forced to engage in a convoluted strategy to try to tax the income of the marketing subsidiary directly (which is what is being challenged in court). The strategy may work, because, fortuitously, this subsidiary has some employees who telework in Florida. Maryland may not be so lucky and may well be losing revenue from every Target store in the state that are also presumably paying marketing fees to the same subsidiary. It is also important to note that Maryland's "intangible addback" law, which is often cited by combined reporting opponents as wholly adequate to protect the state's tax base, is completely ineffectual under this scenario because the Target subsidiary is charging the stores a fee for marketing services, not a royalty for the use of its trademarks.

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 intangible addback laws.

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 change 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 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 multiple 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 all 23 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 state 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 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.

The Bill Should Be Amended to Drop the New Deduction for "Deferred Tax Liability"

There is one provision of this bill which I respectfully urge the Committee to remove by amendment before approving it. It would enact a new corporate income tax deduction that would eventually cause the state to forgo a significant portion of the additional revenue that would be raised by this bill, undermining its goal of funding investments in education. The deduction is intended to offset a purely paper "expense" incurred by some large corporations when the state adopts combined reporting. The corporate proponents of this new deduction claim that without it, their stockholders will unfairly suffer a "double impact" from the change. The first impact is the actual increase in Maryland income tax liability an affected corporation will experience when their tax-avoidance strategies are nullified. The second impact is an alleged drop in the corporation's stock value caused by an increase in the "deferred tax liability" reported on the corporation's financial statements. Proponents seek the new deduction to offset the alleged stock market effect — yet they have provided no evidence that the effect will actually occur. Such evidence should be readily available if the claim were true, given that a dozen states have adopted combined reporting in the past 20 years.

I have written an entire report on the subject of this proposed deduction, titled "States Should Reject Corporate Demands for "Deferred Tax" Deductions" (May 2019). It is available on the Center's website. The following are the main reasons why its enactment is completely unjustified:

- The proposed deduction is a narrow, special-interest tax break that only a handful of states have approved and none has yet implemented.

- The rationale for the deduction — that increased tax expenses reported on a corporation's financial statements would adversely affect a corporation's stock values — is implausible.

- Proponents of "deferred tax relief" have yet to provide any empirical evidence of a negative effect on stock prices.

- Congress does not include "deferred tax relief" in federal tax legislation with the same kinds of impacts on reported financial statement profits.

- Governments don't compensate corporations for the negative financial statement impacts of other changes in public policy.

Again, I respectfully urge the Committee to amend this provision out of the bill.

Adoption of Combined Reporting Is Long Overdue

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 confirmed by the fiscal note for 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.

Maryland Should Also Enact a "Throwback Rule"

H.B. 457 would also incorporate the "throwback rule" into Maryland's corporate tax code. The rule deems sales of goods ("tangible personal property") made by Maryland manufacturers, wholesalers, and retailers to be Maryland sales for corporate income tax apportionment purposes if they are delivered from Maryland into a state in which the seller does not have enough physical presence to be subject to its corporate income tax. As noted in passing above, a 1959 federal law, Public Law 86-272, decrees that a seller of tangible personal property cannot be subjected to a state's corporate income tax if it has no physical presence in the state or if its physical presence is limited to salespeople who do no more than solicit orders.

The goal of the throwback rule is to prevent corporations from having "nowhere income" – profit that can't be taxed by any state. Under Maryland's current apportionment formula, a Maryland manufacturer organized as a corporation with all its property and employees in Maryland but no physical presence in any other state would pay no taxes anywhere on any of its profit.

Public Law 87-272 enshrines bad public policy. Just as the Supreme Court finally recognized in the 2018 *Wayfair* decision that physical presence shouldn't be a requirement for sales taxation, it shouldn't be a requirement for income taxation either. Nonetheless, states are stuck with Public Law 86-272 for now. The creation of the throwback rule and its inclusion in the "Uniform Division of Income for Tax Purposes Act" reflected an agreement among the states to collectively address limits on their ability to impose income taxes on corporations with no physical presence within their borders and the "nowhere income" that results from those limits. States essentially said: "Let's make a deal. You'll tax the profits of your corporations selling into my state without a physical presence, and I'll tax the profits of my corporations selling into your state. We should roughly get the same amount of revenue, and corporations won't avoid taxes they should legitimately be paying to one of us." More than half the states with corporate income taxes honor that deal; Maryland should join them.

Individual taxpayers subject to personal income taxes can't have "nowhere income." I live in Maryland but earn my entire salary in the District of Columbia. Congress has enacted a law that says that the District is not allowed to tax my income. Do I have "nowhere income?" Of course not; Maryland taxes my entire salary. So how can it be fair that, thanks to Congress's enactment of Public Law 86-272, a Maryland manufacturer earning all its income by selling to customers located in DC can have all its income be untaxed by either Maryland or DC? Clearly, it isn't fair. I and other Maryland taxpayers pay higher taxes or experience reduced services to compensate for the revenue lost due to corporations' nowhere income. This bill eliminates this unfairness with a few simple sentences of statutory language.

Now, if the state adopts the Finnigan approach to combined reporting included in this bill, the throwback rule will be somewhat less necessary and will generate less revenue. Under Finnigan, there is no throwback if *any* member of the corporate group has nexus in a state in which it makes sales. Nonetheless, even with Finnigan-based combined reporting in effect, there can still be some states in which none of the combined group members have nexus, and throwback of sales from those states is appropriate. Likewise, under combined reporting there will still be corporations that are a single legal entity that may not have nexus in one or more states in which they have sales, and throwback is still needed to eliminate nowhere income of such corporations.

In conclusion, I respectfully urge the Committee to favorably report H.B. 457 with an amendment to remove the deduction for deferred taxes. 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.

HB457 fav testimony.pdf

Uploaded by: Myles Hicks
Position: FAV

Bill No.: HB 457
Title: Corporate Income Tax - Throwback Rule and Combined Reporting
Committee: Ways and Means Committee
Hearing Date: February 9, 2022
Position: Support

Dear Chair Atterbeary, Vice Chair Washington, and members of the Ways and Means Committee:

I am a Maryland resident in District 40 and serve as Executive Director of Maryland Rise. Maryland Rise works to ensure that our state government and economy work for the majority of residents. I am submitting this testimony in support of HB 457, the Throwback Rule and Combined Reporting. Corporate tax loopholes take away resources that could be going to our schools, transit services, COVID recovery and so much more. Most other states have closed major loopholes, but MD has not.

HB 457 will ensure Maryland's tax system works for all of us, rather than giving special treatment to powerful interest groups. It will close loopholes that benefit large, profitable corporations and their shareholders at the expense of the public services working Marylanders and small businesses expect our state to provide. It is not acceptable that one-third of the 150 largest corporations in our state pay no income tax in a given year.

The measures proposed in HB 457 are reasonable, and are already in place in most other states. It is time for Maryland to catch up. This bill would level the playing field for our small local businesses and help support long-term investments in our schools, roads, parks, and other public services.

I respectfully urge the committee to support HB 457.

Thank you,

Myles Hicks
Executive Director
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Position: FAV

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Testimony in SUPPORT of House Bill 457
Corporate Income Tax – Throwback Rule and Combined Reporting

House Ways & Means Committee
February 9, 2022

Samantha Zwerling
Government Relations

The Maryland State Education Association supports House Bill 457, which enacts combined reporting and ends corporate "nowhere income".

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

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

Implementing the Blueprint for Maryland's Future with fidelity and making up for the learning loss, and social-emotional and behavioral health impacts of the COVID-19 pandemic will take considerable resources. Thanks to the tough decisions this committee has made in the past, the Blueprint's state contributions are funded into FY27. The estimated $200 million per year generated from the implementation of this bill would go a long way in helping fund the Blueprint in the out-years and ensuring Maryland's public schools meet our expectations. HB 457 is part of that funding solution.

MSEA urges a Favorable Report on House Bill 457

House Bill 457_Favorable.pdf

Uploaded by: Shamoyia Gardiner

Position: FAV

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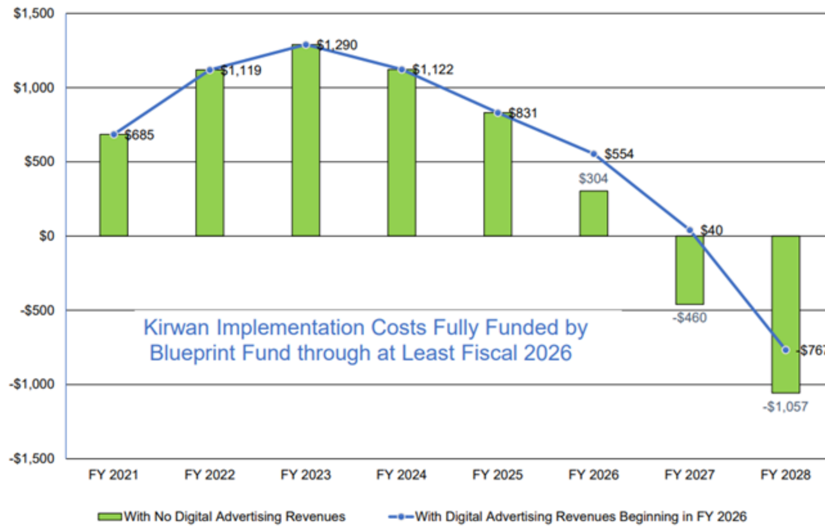
TESTIMONY IN SUPPORT

Testimony to the Ways & Means Committee
In support of
House Bill 457: Corporate Income Tax - Throwback Rule and Combined Reporting
February 9, 2022

Strong Schools Maryland urges a favorable vote on House Bill 457: Corporate Income Tax - Throwback Rule and Combined Reporting

The Blueprint for Maryland's Future envisions a world-class system of public schools for our state's students. This vision, of an investment in our public education system and a re-imagining of what is possible for our students to achieve, requires investment. House Bill 457 addresses inequity in the state's rules for corporations regarding income reporting and tax collection, all of which can produce revenue for the state's long-term and future priorities, not the least of which is the full funding and faithful implementation of the Blueprint for Maryland's Future.

House Bill 457 is projected to yield $13.2 million for the state's general fund by next fiscal year, and more than $180 million by fiscal 2027, which coincides with the Blueprint Fund's potential exhaustion that same year.



It is rare that legislation is proposed to increase the state's revenue without disproportionately negatively impacting already economically marginalized communities. House Bill 457 accomplishes this and more by leveling "playing field" of the state's tax structure, closing loopholes, and increasing Maryland's commitment to equity–which can be as simple as allotting funding to increase opportunities for our state's children to lead successful, self-determined lives. Strong Schools Maryland urges a favorable report on House Bill 457.

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If you have questions or requests for additional information, you can email:

Shamoyia Gardiner
Executive Director
shamoyia@strongschoolsmaryland.org

HB 457.pdf
Uploaded by: Shawnice King
Position: FAV

Testimony in Support of HB 457

"Corporate Income Tax - Throwback Rule and Combined Reporting" House Ways and Means Committee

February 9, 2022

FAVORABLE

TO: Chair Aterbeary, Vice Chair Washington, and members of the Ways and Means Committee
FROM: Shawnice King, Baltimore City Organizer

My name is Shawnice King. I am a resident of District 12. I am submitting this testimony in support of HB 457, which would close two corporate tax loopholes by enacting combined reporting and the "throwback rule."

About ⅓ of the 150 largest corporations in MD pay ZERO state income taxes most years. It's time to pass HB 457 to close corporate tax loopholes and ensure profitable big businesses are paying their fair share.

HB 457 will ensure Maryland's tax system works for all of us, rather than giving special treatment to powerful interest groups. It will close loopholes that benefit large, profitable corporations and their shareholders at the expense of the public services working Marylanders and small businesses expect our state to provide. It is not acceptable that one-third of the 150 largest corporations in our state pay no income tax in a given year.

The measures proposed in HB 457 are reasonable, and are already in place in most other states. It is time for Maryland to catch up. This bill would level the playing field for our small local businesses and help support long-term investments in our schools, roads, parks, and other public services.

I respectfully urge the committee to support HB 457.

Thank you,

Shawnice King

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Baltimore, MD 21218

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SEIU Testimony IN FAVOR of HB457 Combined Reportin

Uploaded by: Terry Cavanagh

Position: FAV

SEIU MARYLAND & DC STATE COUNCIL

1410 Bush Street, Suite F
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Testimony in SUPPORT of HB 457
Corporate Income Tax – Throwback Rule and Combined Reporting
House Ways and Means Committee
February 9, 2022
1:00 PM

Submitted to Atterbeary, Chairman
By Terry Cavanagh, Executive Director

SEIU Maryland & DC State Council requests a **Favorable Report on HB 457**.

With over two million members, SEIU is the largest union in North America. We are uniting workers in health care, public services, including in 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.

We are thousands of essential workers in nursing homes, hospitals, schools and public buildings. We are the broad working class. We pay our taxes, whether they be income taxes, sales taxes or property taxes.

We have supported "Combined Reporting" for many, many years. We continue to do this for a simple reason:

Many profitable corporations in Maryland do not pay their fair share in taxes.

We have all heard the arguments against Combined Reporting before.

- If this bill passes, businesses will leave the state.
- If this bill passes, businesses won't bring jobs to Maryland.
- If this bill passes, it won't raise anywhere near what proponents claim.

- If this bill passes, it may mean an actual loss of revenue.

- It's complicated and it's too hard.

- I know a guy who talked to someone in some other state and they're so happy Maryland hasn't passed this bill.

If any of this were true, it would also apply to other states. Surely at least one of those states, after seeing the results of what they had wrought, would repeal such a terrible and flawed law. Not one of the states which have adopted combined reporting, which now constitute a majority of the states, has repealed their law. Why?

What do we say to the small businesses who compete against those corporations which can apply these tax avoidance schemes, that they may not?

What do we say to those hard-working, middle and lower income Marylanders who pay their fair share of taxes when they learn that the Maryland General Assembly allows corporations year after year after year to use machinations to avoid paying their share?

We ask you to put an end to this tax avoidance scheme and pass Combined Reporting. Now.

We ask a Favorable Report on House Bill 457. Thank you.

SEIU Local 500 - House Bill 457 - Corporate Income

Uploaded by: Travis Simon

Position: FAV

Hearing Testimony February 9, 2022
House Ways and Means Committee
Service Employees International Union, Local 500, CtW, CLC

House Bill 457 – Corporate Income Tax – Throwback Rule and Combined Reporting

SUPPORT

SEIU Local 500 represents over 20,000 working people in the region. Our union represents the support staff at the Montgomery County Public School system, Family Child Care Providers, faculty and staff at institutions of higher education, staff at non-profits, and many other working people across the region.

Thousands of our members work or have worked as educators. Collectively, we have spent years teaching and caring for the future generations of our state. It is this reason we support House Bill 457, which would raise revenues from enacting combined reporting and the throwback rule to help fund our schools and other public programs. It's a measure that isn't just the right thing to do - it makes sense.

Small businesses all across our state contribute to the wellbeing of our state by helping to fund public programs. It is only fair that we ask the same of large, multi-state and multinational corporations. The current tax structure also puts Maryland-based businesses at a disadvantage who pay their fair share in taxes. The majority of other states have already taken steps to close the most common corporate income tax loopholes by enaction legislation similar to HB 457.

As a state we have undertaken the most comprehensive transformation of our education system in a generation and are continuing to come out of a global health crisis. Maryland will need to find new and innovative ways to gather the revenues necessary to adequately fund public programs. That's exactly what HB 457 offers: a way to raise revenues that gives Maryland the resources it needs to continue to provide the serves and programs greatly needed after trying times. Once fully enacted, House Bill 457 would generate more than $170 million every year.

Today, we're asking the members of the House Ways and Means Committee to consider the benefits that HB 457 will offer our state and to support this legislation. **SEIU Local 500 respectfully requests that you support HB 457 and strongly urge a favorable committee report.**

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Pia Morrison, President

HB 457_MDCC_Corporate Income Tax-Throwback Rule &

Uploaded by: Andrew Griffin

Position: UNF

LEGISLATIVE POSITION:
UNFAVORABLE
House Bill 457
Corporate Income Tax – Throwback Rule and Combined Reporting
House Ways & Means Committee

Thursday, February 9, 2021

Dear Chairwoman Atterbeary 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.

House Bill 457 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, HB 457 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 **HB 457**.

HB0457 -- Corporate Income Tax - Throwback Rule an

Uploaded by: Brian Levine

Position: UNF

House Bill 457 -- *Corporate Income Tax - Throwback Rule and Combined Reporting*
House Ways and Means Committee
February 9, 2022
Oppose

The Montgomery County Chamber of Commerce (MCCC), the voice of business in Metro Maryland, opposes House Bill 392 -- *Corporate Income Tax - Throwback Rule and Combined Reporting*. House Bill 392 alters Maryland's corporate income tax by requiring combined reporting and applying a "throwback" rule in determining whether sales are considered in the State.

MCCC opposes restructuring the corporate income tax to impose combined reporting in Maryland because of its negative impact on corporate headquartered companies. MCCC cites the recommendations of the Maryland Business Tax Reform Commission (MBTRC), which was created in 2007 to review and evaluate the State's business tax structure. The Maryland General Assembly explicitly directed the MBTRC to review whether to implement combined reporting. In its 2010 final recommendations, the MBTRC 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** – a Comptroller's study of corporate information returns indicated that combined reporting would lead to increased volatility in corporate income tax revenues, already one of the State's most volatile revenue sources.

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

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Montgomery County Chamber of Commerce
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MCCC continues to support the creation of a commission to analyze and make recommendations as to how to make Maryland's tax structure more fair, equitable, and economically competitive. This more comprehensive and strategic approach should be adopted, rather than a piecemeal approach to tax policy.

For these reasons, the Montgomery County Chamber of Commerce opposes House Bill 457 and respectfully requests an unfavorable report.

The Montgomery County Chamber of Commerce, on behalf of our nearly 500 members, advocates for growth in 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 a proud Montgomery County Green Certified Business.

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HB0457 - 2.9.22 -- Corporate Income Tax - Throwbac

Uploaded by: Donald Fry

Position: UNF

POSITION STATEMENT

TESTIMONY PRESENTED TO THE HOUSE WAYS AND MEANS COMMITTEE

HOUSE BILL 457 – CORPORATE INCOME TAX - THROWBACK RULE AND COMBINED REPORTING
Sponsor - Delegate Lehman, et al.

February 9, 2022

DONALD C. FRY
PRESIDENT & CEO
GREATER BALTIMORE COMMITTEE

Position: Oppose

The Greater Baltimore Committee (GBC) opposes House Bill 457, which (1) requires affiliated corporations to compute Maryland taxable income using combined reporting; and (2) applies a "throwback" rule in determining whether sales are considered in the State for purposes of the State's corporate income tax apportionment formula.

At issue is competitiveness, which has long been at the forefront of debate and discussion with regard to Maryland's business climate. While Maryland has numerous competitive strengths, including a highly-skilled workforce, excellent access to health care, top-ranked universities and a good quality of life, in many annual reviews the state consistently ranks near the bottom on a number of key business metrics. Additionally, when compared to neighboring states, Maryland's tax structure as it relates to business growth and job creation is often viewed unfavorably.

Combined Reporting

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

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

"Throwback Rule"

House Bill 457 applies a "throwback" rule in determining whether sales are considered in the State for purposes of the State's corporate income tax apportionment formula. The bill affects businesses that have multi-state operations and sell tangible property by significantly increasing Maryland tax liability for businesses. House Bill 457 would require a business to include in its Maryland apportionment factor sales to states in which it is not subject to

Maryland sales tax, while current law only includes sales to customers in Maryland. Under the bill, those out of state sales are included (or "thrown back") into the taxable income.

Distribution centers are an example of an industry that would be harmed by the passage of this bill. In recent years, Maryland has seen a string of success in attracting distribution centers, an industry that brings investment and good paying jobs by taking advantage of Maryland's central location in the Mid-Atlantic region. However, House Bill 457 would discourage future distribution centers from considering Maryland as a location because of the increased cost of doing business here.

Keeping Maryland Competitive

This bill would create uncertainty for Maryland businesses while adding complication to the corporate tax structure.

House Bill 457 makes Maryland a less attractive location for businesses and uncompetitive with surrounding and competitor states that do not have combined reporting or the "throwback" rule.

As Maryland strives to be competitive in the 21st century economy, policies must reflect an understanding of the challenges faced by our State's businesses and a willingness of government to partner with the business community. House Bill 457 would put additional administrative burdens on businesses, which is not reflective of a state that strives to be competitive and welcoming to business growth and job creation.

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

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

For these reasons, the Greater Baltimore Committee urges an unfavorable report on House Bill 457.

The Greater Baltimore Committee (GBC) is a non-partisan, independent, regional business advocacy organization comprised of hundreds of businesses -- large, medium and small -- educational institutions, nonprofit organizations and foundations located in Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as well as Baltimore City. The GBC is a 67-year-old, private-sector membership organization with a rich legacy of working with government to find solutions to problems that negatively affect our competitiveness and viability.

GREATER BALTIMORE COMMITTEE
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HB0457_2022_Marriott_UNF.pdf
Uploaded by: Marta Harting
Position: UNF

Marriott

Marriott International, Inc.
Corporate Headquarters

10400 Fernwood Road
Bethesda, MD 20817

HOUSE BILL 457:
CORPORATE INCOME TAX- THROWBACK RULE AND COMBINED REPORTING
WAYS AND MEANS COMMITTEE

STATEMENT OF OPPOSITION

February 9, 2022

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

Marriott opposes HB 457, as it would create a tax regime that is unpredictable, complex to administer and a potential deterrent to growth.

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

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

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

Over the years, the state has convened a multitude of workgroups and commissions tasked with analyzing the merits of a combined reporting tax scheme. Each time the findings have fallen short of justifying such a transition here in Maryland. That remains the case in 2022, a year in which the economy is still subject to extreme volatility triggered by the devastating effects of a prolonged global pandemic. For these reasons we urge an unfavorable report on HB 457.

Thank you for your consideration.

Contact:
Travis Cutler
Director, State Government Affairs

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Uploaded by: Matthew Celentano

Position: UNF

February 9, 2022

The Honorable Chair Vanessa Atterbeary
House Ways and Means Committee
Room 131
House Office Building
Annapolis, MD 21401

RE: House Bill 457 – Corporate Income Tax - Throwback Rule and Combined Reporting

Unfavorable

Dear Chair Atterbeary:

We are writing on behalf of the American Council of Life Insurers ("ACLI") and the League of Life and Health Insurers of Maryland ("League"). ACLI and the League's member companies together provide over 95% of the life, disability, long term care insurance and annuities in Maryland and nationally. We ask for your opposition to unitary/combined reporting, or in the alternative, we ask for an exemption for insurance companies from unitary/combined reporting.

The enactment of unitary/combined reporting will subject insurers to income tax **in addition to** premium taxes, which they currently pay.

Insurers should be excluded because they are currently taxed under a completely different system than non-insurers. Insurers are taxed on gross premiums received rather than net income. **Premium taxes are paid whether the business is profitable or not.** Premium taxes are also paid by both Maryland domestic and foreign (domiciled in a state other than Maryland) insurers. Because of the heavy burden posed by the upfront premium tax, insurers are exempt from corporate income tax.

The benefits to the state of Maryland of the current state insurance company premium tax system are:

1. Stable source of revenue
2. Predictable source of revenue
3. Administrative ease and legal certainty
4. Credit certainty

Life insurers paid approximately $111,000,000 in premium taxes in 2015. Obviously, health insurers and property casualty insurers paid millions of additional dollars in 2015. If life insurers had paid taxes based upon the regular business tax, they would have paid $75 million in 2015 or $36 million less than what was paid through premium taxes.

Any attempt to combine income tax with a premium tax system presents numerous problems. Probably the most critical of these problems is the impact on the national retaliatory tax system which is unique to

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The League of Life and Health Insurers of Maryland
15 School Street, Annapolis, MD 21401

the insurance industry. That system exists because the federal McCarran-Ferguson Act, 15 U.S.C. Sec. 1011 et seq. excludes the business of insurance from Commerce Clause applicability. Moreover, insurers have a different accounting system (statutory vs. GAAP) than non-insurers.

The forced combination of insurance companies with affiliated non-insurance companies would, for both the insurance industry and the state raise critical tax policy concerns, add tax burdens and uncertainties, create myriad administrative and substantive issues, and almost certainly lead to litigation.

For these reasons ACLI and the League respectfully request an unfavorable report on the provisions concerning unitary combined reporting or that insurers be expressly excluded from the application of combined/unitary reporting.

Respectfully submitted,

Matthew Celentano
American Council of Life Insurers
The League of Life and Health Insurers of Maryland

cc: Members, House Ways and Means Committee

Maryland.pdf
Uploaded by: Meredith Beeson
Position: UNF

GLOBAL BUSINESS **ALLIANCE**

Investing in America

Foreign Direct Investment Strengthens MARYLAND'S ECONOMY

QUALITY JOBS

116,700 workers in Maryland are employed as a result of international investment.

MANUFACTURING

25,800 workers in Maryland - **22 percent** of all FDI jobs in the state - are in the **manufacturing sector**.

GLOBALLY CONNECTED

Among all international employers, those from the **United Kingdom**, the **Netherlands** and **Canada** support the largest number of jobs in Maryland.

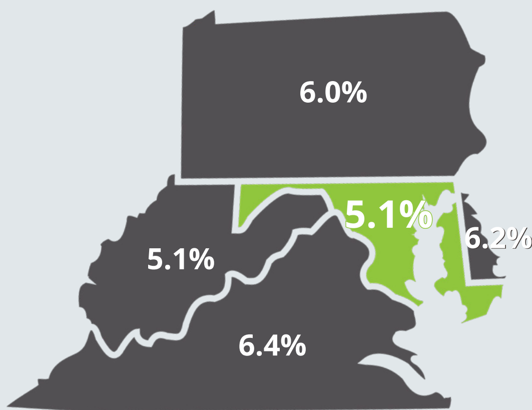
MANY EMPLOYERS

795 international employers have operations in Maryland.

INTERNATIONAL INVESTMENT CONTRIBUTES TO MARYLAND'S ECONOMY

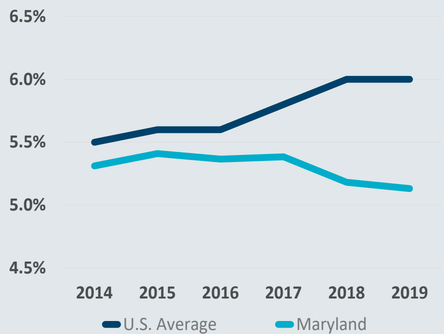
Maryland vs. Its Neighbors

FDI Jobs as a % of Total Employment



Maryland vs. USA

FDI Jobs as a % of Total Employment



Maryland trails the national average in its portion of jobs supported by FDI.

From 2009 to 2019, Maryland's FDI employment...

while the state's overall private-sector employment

DISCOVER THE FULL LIST OF GBA MEMBERS

More than 200 international companies comprise GBA's membership, representing a slice of the U.S. economy that provides over seven million high-quality jobs that pay an average of 18 percent higher compensation than the economy-wide average. Our members are some of the largest international employers in the country. Browse through our membership list using the QR code.

Figures based on the Bureau of Economic Analysis (BEA), Survey of Current Business, *Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2019*, released August 2021.

GLOBAL BUSINESS **ALLIANCE**

Investing in America

Foreign Direct Investment Strengthens AMERICA'S ECONOMY

MANUFACTURING

International companies supported **69%** of the new manufacturing jobs created in the past five years.

INNOVATION

International companies spend more than **$71 billion** on U.S. R&D activities, or **15%** of all R&D performed by U.S. companies.

EXPORTS

U.S. workers of international companies produce **24%** of U.S. exports, shipping **$397 billion** in goods to customers around the world.

SUPPLY CHAINS

For every U.S. job at an international company, **three more** are supported in the U.S. economy.

TAX

International companies pay **25%** of all federal corporate income taxes.

Record Number of FDI Jobs

7.9 MILLION Nationally, 7.9 million U.S. workers are employed by international companies.

Good Paying Jobs

$83,705 Across the nation, U.S. workers at international companies earn 18 percent higher compensation than the economy-wide average - making $83,705 annually.

Current Employers Drive Growth

50% Last year, FDI in the U.S. was driven largely - 50 percent - by reinvesting earnings from current employers, above the historic trend.

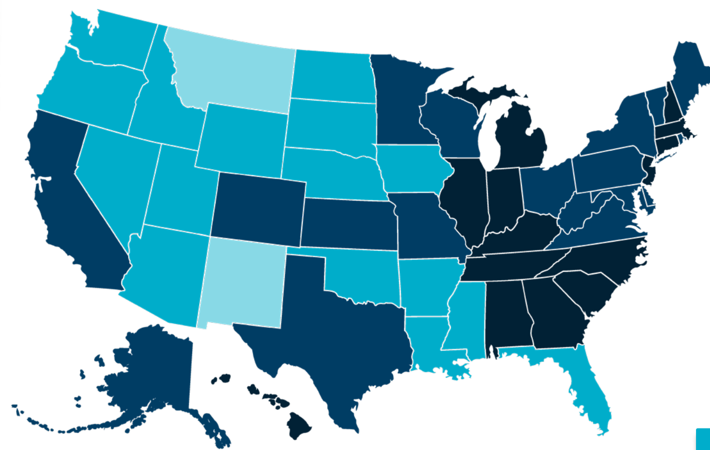
From 2014 to 2019, America's FDI employment...

20%

while the country's overall private-sector employment

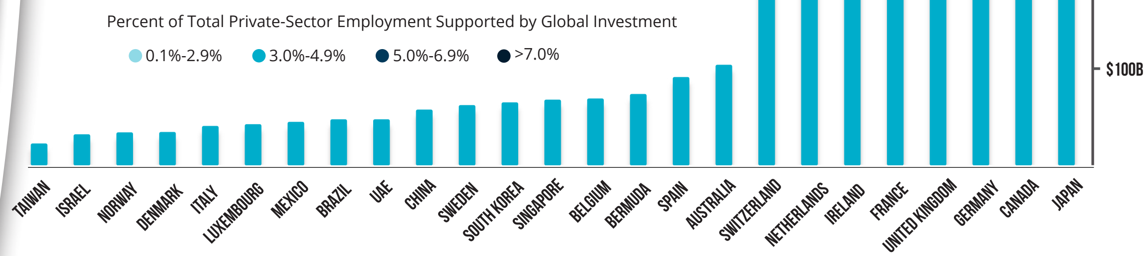
9%

Share of Foreign Direct Investment Jobs by State



Percent of Total Private-Sector Employment Supported by Global Investment

● 0.1%-2.9% ● 3.0%-4.9% ● 5.0%-6.9% ● >7.0%



Foreign Direct Investment in America by Country

Figures based on the Bureau of Economic Analysis (BEA), Survey of Current Business, *U.S. International Transactions*, released September 2021; *Activities of U.S. Affiliates of Foreign Multinational Enterprises in 2019*, released August 2021.

MD HB 457_ GBA Letter in Opposition_Final.pdf
Uploaded by: Meredith Beeson
Position: UNF

February 9, 2022

The Honorable Vanessa E. Atterbeary
Chair, House Ways and Means Committee
House Office Building, Room 131
6 Bladen Street
Annapolis, MD 21401

Subject: GBA Opposes U.S. Source Income Provision in HB 457

Chair Atterbeary and Members of the House Ways and Means Committee:

On behalf of the Global Business Alliance (GBA), I urge the committee to consider the negative impacts of HB 457, which would create an unfavorable tax environment that will deter growth and investment in the state and make Maryland an outlier from every other state in the United States that has implemented combined reporting.

GBA represents more than 200 U.S. companies with a global heritage. Nearly 800 international companies employ over 116,000 workers in Maryland and have grown their employment by 13 percent over the last ten years.[1] Nationally, on average, these firms pay American workers nearly $84,000 annually in wages and benefits, which is 18 percent higher that the economy-wide average. While nearly half of our members expect employment growth in the United States over the next six months, they also indicated that a less competitive tax environment is a key external factor that could deter investment.[2]

The provision of most concern in HB 457 is section 10-402.1(E)(2)(VI)(1) that asserts foreign unitary corporations that derive income from sources within the United States ("U.S. source income") would be required to be included in the Maryland water's edge combined group. Water's edge combined reporting in states generally limits the unitary group to only U.S. affiliates, with very specific limited exceptions. Over twenty states have implemented combined reporting, but **none** has required the inclusion of foreign entities solely based on receipt of U.S. source income.

If HB 457 is adopted in its current form, it would create an extraterritorial water's edge tax system that imposes unfair and inappropriate double taxation for international businesses located in Maryland. This approach makes the state uncompetitive and would result in the following negative consequences:

- **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.[3] If adopted, Maryland would be an outlier with other state and at odds with federal tax

[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.
[2] Inbound Investment Survey, Global Business Alliance: January 2022.
[3] 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

norms which would generally not tax such income. 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 hurts efforts to attract and retain international companies in the state.

- **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 even enacted retaliatory action in response to states seeking to adopt a tax structure without a true water's edge system.
- **Increase Complexity:** As written, this bill would distort traditional norms of the water's edge methodology by including foreign affiliates with U.S. source income in a combined group. Every state with combined reporting has opted for a true water's edge methodology which does not include all unitary foreign companies simply because they have U.S. source income. This approach creates significant complexity and compliance burdens.

Lastly, Maryland already addresses abusive related party transactions with expense deduction "addback" rules.[4] These rules provide specific exceptions for legitimate business transactions including companies' operations that may be located in treaty countries. The U.S. source income provision effectively overrides the exceptions to the expense deduction addback rules.

To ensure Maryland remains an attractive destination for investment, we encourage the removal of the U.S. source income section in HB 457. Please let us know if we can be of further assistance and see our fact sheet for more information on how international companies support Maryland.

Thank you for your consideration,

Meredith Beeson
Director of State Affairs
Global Business Alliance
mbeeson@globalbusiness.org
(202) 770-5141

New York S.B. 6359, A.8559 (Chapter 59).

[4] Maryland Tax- General Article Section 10-306.1.

HB0457_UNF_MTC_Corporate Income Tax - Throwback Ru

Uploaded by: Pam Kasemeyer

Position: UNF

MARYLAND TECH COUNCIL

TO: The Honorable Vanessa E. Atterbeary, Chair
Members, House Ways and Means Committee
The Honorable Mary A. Lehman

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine K. Krone

DATE: February 9, 2022

RE: **OPPOSE** – House Bill 457 – *Corporate Income Tax – Throwback Rule and Combined Reporting*

The Maryland Tech Council (MTC) is a collaborative community, actively engaged in building stronger life science and technology companies by supporting the efforts of our individual members who are saving and improving lives through innovation. We support our member companies who are driving innovation through advocacy, education, workforce development, cost savings programs, and connecting entrepreneurial minds. The valuable resources we provide to our members help them reach their full potential making Maryland a global leader in the life sciences and technology industries. On behalf of MTC, we submit this letter of **opposition** for House Bill 457.

House Bill 457 applies a "throwback" rule in determining whether sales are considered in the State for purposes of the State's corporate income tax apportionment formula; requires affiliated corporations to compute Maryland taxable income using combined reporting; and creates a subtraction modification against the State income tax for certain deferred tax liabilities and assets. The passage of House Bill 457 would create uncertainty for Maryland businesses while adding significant complication to the corporate tax structure. House Bill 457 makes Maryland a less attractive location for businesses and at a competitive disadvantage to competitor states without the "throwback" rule and/or combined reporting including Virginia, Pennsylvania, and North Carolina. For these reasons, MTC requests an unfavorable report.

For more information call:
Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Christine K. Krone
410-244-7000

020922 COST Testimony in Opposition to HB 457 (MUC

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February 9, 2022

Representative Vanessa Atterbeary, Chair
Representative Alonzo Washington, Vice-Chair
Maryland General Assembly
House Ways and Means Committee

Re: In Opposition to House Bill 457, Throwback Rule and Combined Reporting

Dear Chair Atterbeary, Vice-Chair Washington, 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 House Bill 457 (H.B. 457), Corporate Income Tax – Throwback Rule and Combined Reporting, which would impose a "throwback" rule for sales by Maryland corporate taxpayers and would also 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. This conclusion has been supported by Maryland's Commission in 2016 and Virginia's Work Group in 2021[1]—both validated by estimated revenue reports from actual informational unitary combined reporting filings for the respective states. 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. Virginia's Work Group, similarly established by the Virginia General Assembly, concluded that "[a]t this point in time, Virginia should not proceed with further study into the implementation of unitary combined reporting in the Commonwealth[.]"[2]

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[1] In 2021, Virginia required corporations that are members of a "unitary business" to file informational unitary combined reporting filings and the Division of Legislative Services and the Department of Taxation established a work group to study the administrative feasibility and the projected impact on Virginia's tax revenue of adopting mandatory unitary combined reporting. H.B. 1800 (Va. 2021); H.J.R. 563 (Va. 2021 Special Session 1). The 25-member work group was composed of state officials, tax administrators, business representatives and tax practitioners.

[2] Work Group to Assess the Feasibility of Transitioning to a Unitary Combined Reporting System for Corporate Income Tax Purposes, published November 1, 2021, p. 40. This recommendation was centered on "the additional complexity of combined filing compared with Virginia's current system, the uneven impact the transition may have on certain taxpayers, and the potential damage to Virginia's business climate. Additionally, Work Group members argued that current provisions in Virginia law such as its add-back statute already address the common tax shifting strategies that combined reporting is intended to remedy." *Id.* at 4.

Under a "throwback" rule, taxpayers would see their Maryland tax liability increase as their income would be assigned (apportioned) to Maryland based not only on their Maryland sales, but also on sales to customers in other states where they are not taxable. This rule violates fundamental tax principles, by levying the wrong tax at the wrong rate in the wrong state.

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 "Throwback" Rules and Mandatory Unitary Combined Reporting

The COST Board of Directors has adopted a formal policy statement on MUCR and on "throwback" and related "throwout" rules. COST's policy position on MUCR 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.*

COST's policy position on "throwback" and related "throwout" rules is:

> *Throwback and throwout laws seek to require companies to pay tax in one state on income that another state has chosen not to tax or is legally unable to tax. A company's tax liability in one state should not be measured by its tax in another state. Throwback and throwout rules also discourage investment in a state. Such rules must not be adopted and must be repealed where they presently exist.*

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.[3] 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).[4] Furthermore, MUCR has been found to reduce economic growth, especially when the tax rate exceeds 8%[5] (Maryland's rate is 8.25%).

- **Uncertain Revenue –** Implementing MUCR would have an unpredictable and uncertain effect on Maryland's revenue. The corporate income tax is the most volatile tax in every state in which it is levied, regardless of whether MUCR is employed. A study conducted by the University of Tennessee found no evidence that states with MUCR collect more revenue, and a later study found that MUCR may or may not increase revenue.[6]

  - ***Maryland*:** 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.[7]

  - ***Virginia*:** Based on informational unitary combined reporting filings for the 2019 tax year, Virginia's 2021 Work Group found that "73% of corporations showed

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[3] 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.
[4] Robert Cline, "Combined Reporting: Understanding the Revenue and Competitive Effects of Combined Reporting," Ernst & Young, May 30, 2008, p. 16.
[5] 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.
[6] *Ibid*. 3, p. 34.
[7] Andrew Schaufele, Director, MD Bureau of Revenue and Estimates, Report on Combined Reporting to Governor, President and Speaker, March 1, 2013.

essentially no change in tax liability, 13% showed an increase in tax liability, and 14% showed a decrease in tax liability before tax credits were applied."[8]

- ***Indiana*:** 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.[9]

- **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 not 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 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

[8] Work Group to Assess the Feasibility of Transitioning to a Unitary Combined Reporting System for Corporate Income Tax Purposes, published November 1, 2021, p. 17.
[9] 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.

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.[10]

- **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.

Problems with "Throwback" Sales Apportionment Rules

Generally, throwback rules require a company, when calculating its tax in a state, to include income earned in another state if that other state chooses not to tax that income or is prohibited from taxing that income by the U.S. Constitution or by federal law.

A paper by three leading state tax economists addressed the case for and against these laws.[11] They cite two frequent claims made in favor of such policies but note that "the validity of each is questionable." The first claim proponents make is that throwback laws discourage tax planning. The authors conclude, however, that such laws fail to accomplish this goal and are in fact potentially damaging to the state's economic climate "because firms are discouraged from locating in throwback states."

The second claim proponents of throwback laws make is that such laws ensure that all corporate income is taxable in some state. The authors of the paper note that throwback laws do not accomplish this goal and argue that there is "little practical reason why any state's tax policy should be based on ensuring that out-of-state activity is properly included in some state's tax base." A corporation's correct measure of tax in a state is determinable without reference to the tax a corporation pays in other states. Throwback laws tax income that is, by definition, earned outside of the state, and such laws tax that income at the wrong rate and direct the resulting revenue to the wrong state. Missouri became the most recent example of a state repealing its throwback law, beginning on or after January 1, 2020.[12]

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[10] 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. *See* Dr. Lauren Cooper and Joel Walters, "Mitigating the Impact of State Tax Law Changes on Company Financial Statements," State Tax Research Institute, June 2020.
[11] *See* Fox, Luna and Murray, "How Should a Subnational Corporate Income Tax on Multistate Businesses Be Structured?", National Tax Journal, March 2005, pp. 153-5.
[12] *See* Missouri Senate Bill 884 (2018).

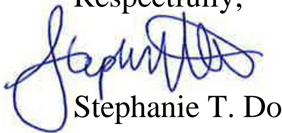
Conclusion

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.[13] MUCR will not help Maryland attract jobs or investment and should not be adopted.

"Throwback" rules penalize manufacturers for investing and producing goods in Maryland. Manufacturers in the State already face additional challenges from the COVID-19 pandemic. Imposing a throwback rule further penalizes Maryland manufacturers and other taxpayers at a time when the State should be offering greater assistance. States that do not impose throwback rules are more attractive for location and expansion. None of Maryland's neighboring states impose such a rule.

For all of these reasons, COST urges members of the committee to please vote "no" on H.B. 457.

Respectfully,



Stephanie T. Do Patrick J. Reynolds

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

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

HB 457 MACPA Written Testimony - INFORMATIONAL.pdf

Uploaded by: MB Halpern

Position: INFO

Feb. 9, 2022

The Honorable Vanessa E. Atterbeary, Chair
Ways and Means Committee
House Office Building
Annapolis, Md. 21401

Re: HB 457, “*Corporate Income Tax - Throwback Rule and Combined Reporting*” - **INFORMATIONAL**

Dear Chair Atterbeary 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.

A change to a combined reporting system would positively impact some businesses while negatively impacting others, as was demonstrated in data collected by the Office of the Comptroller. As CPAs, we represent businesses in both categories and, as such, do not take a position to support or oppose the adoption of combined reporting into Maryland law. Our focus is to ensure that any legislation enacted on this topic allows a sufficient amount of time to prepare and implement the change. The language should be both enforceable and unambiguous in order for our members to effectively compute this tax for clients.

Combined reporting creates additional complexities in corporate income tax systems and taxpayer compliance, not to mention the challenging financial statement accounting required by CPAs to assist their clients (balance sheet deferred tax accounts must be reevaluated for the change). This is the case even for companies that have no immediate cash effect from the change — e.g., if they have losses and will pay no tax under combined reporting. Other states have included provisions in their legislation that help to reduce this complexity.

Beyond interpreting the legislation, significant advanced preparation is required of the Comptroller’s office, and by taxpayers and tax preparers. The Comptroller’s office must prepare draft regulations, allow for the required public comment period, and finalize the regulations.
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.

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

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

Combined reporting is a complex change for taxpayers, tax preparers, and the Comptroller's office. Without opposing or supporting the adoption of combined reporting, we respectfully ask for your consideration of these complex compliance requirements and incorporate the necessary preparation time, we suggest at least two years, required at all levels for satisfactory implementation.

Thank you very much for the opportunity to offer these comments for your consideration. If you have any questions or if we can provide additional information, please contact Mary Beth Halpern of the MACPA at marybeth@macpa.org or 443-632-2330.

Sincerely,

MACPA State Tax Committee

cc: Nick Manis, Manis Canning & Associates