SB 0576—SUPPORT
Don Griswold
Just SALT Policy LLC
don.griswold@justsalt.info
(703)868-7193

Testimony of Don Griswold
before the
Maryland Senate Budget and Taxation Committee
March 7, 2023
In Support of Senate Bill 576—Combined Reporting

Dear Chairman Guzzone, Vice Chair Rosapepe, Members of the Budget & Taxation Committee:

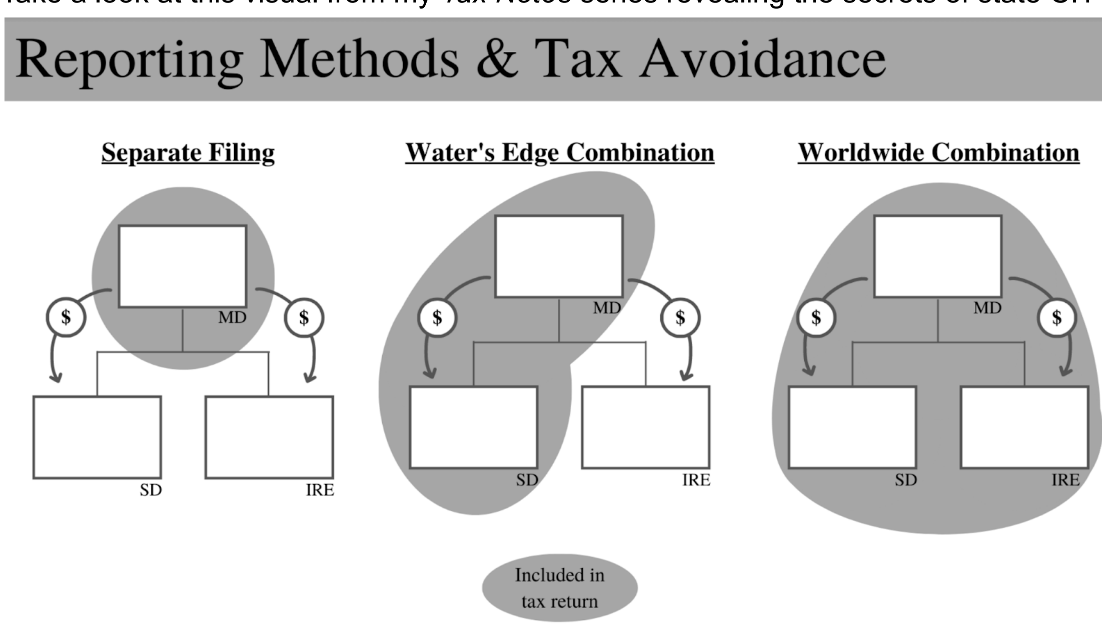
State corporate tax avoidance was my career and obsession for more than three decades. I co-built and led a 600-person "state tax minimization" function at a Big 4 accounting firm in the 1990s, creating structures that lawfully avoided many millions of dollars in corporate income tax (CIT) for my large corporate clients, mainly in states that had not enacted combined reporting —including Maryland—where corporate tax avoidance is easier than shooting fish in a barrel.

I served Berkshire Hathaway as its Executive Tax Counsel in Omaha, following years of defending my clients' tax avoidance schemes as an appellate litigator at AmLaw100 law firms, and teaching the next generation of tax lawyers as an adjunct professor at Georgetown Law.

But tax fairness and anti-corruption became my new passions when I switched sides recently. *Bloomberg* publishes my *Rethinking Tax* column; I advise civil society entities on tax justice; I launched a global tax transparency initiative at the International Anti-Corruption Conference.

And I advise state legislators just how easy it is to shut down corporate income tax dodging: Simply enact worldwide combined reporting—with no election out.

Take a look at this visual from my *Tax Notes* series revealing the secrets of state CIT avoidance:



The visual shows simple tax avoidance by a tiny corporate group—& 3 state antidotes.

<u>Corporate Structure</u>: Each box represents a corporate entity. The parent operates in Maryland. It owns two subsidiaries—one operates in South Dakota (which has no corporate income tax); the other operates in Ireland (a tax haven). Parent with subs constitute an integrated business. The structure (with avoidance scheme) is shown 3 times to illustrate 3 state antidote options.

<u>Avoidance Scheme</u>: Avoiders dodge Maryland tax with a wide diversity of complex schemes, but all involve shifting taxable profits among members of the integrated unitary business group. Avoiders simply move profits out of Maryland's tax net and into a jurisdiction where those profits are subjected to a lower (or zero) effective tax rate. That's the game. And Maryland is the loser.

<u>State Antidotes</u>: "Separate filing" is Maryland's existing reporting method under §10-811. "Water's edge combination" is SB 576's de facto proposal because it allows taxpayers to elect out of "worldwide combination" under proposed §10-402.1(C)(1) and §10-402.1(E).

Here's what you need to know about Maryland corporate income tax avoidance:

Think of it this way: An avoider essentially moves their wallet from their left pocket to the right. Tax only the left pocket and Maryland loses. But tax the whole unitary pair of pants, and the avoider's sleight of hand is fruitless; Maryland still taxes the wallet.

The visual above presents an over-simplified example of avoidance, but your largest corporate taxpayers pay millions in fees to sophisticated advisors who dream up endless variations. That was my job, for decades. You may find it useful to read my (attached) four-part series in *Tax Notes*—"Innovation Principles for Multistate CIT Planning"—which details the process by which a select group of innovators in the tax avoidance industry develop ever new schemes that keep their clients always several steps ahead of those voluntary-victim states who decline to enact worldwide combined reporting (with no election out), instead enacting partial antidotes.

The series explains the fundamental building blocks of CIT avoidance strategy development: apportionment engineering, asset placement, complexity/obfuscation, income concentration, nexus isolation, nonconformity, recharacterization, shelter entities, supply chain segregation, transfer pricing, and more. The series organizes CIT planning strategy types into six "families" — siphoning, stripping, straddling, stuffing, stashing, and secreting—and then illustrates a wide range of specific strategies (footnoting to court cases naming companies that have used them).

Here's what the visual teaches:

"Separate filing" is the method used now by Maryland, where virtually all CIT avoidance works. Your statutory rifle-shot antidotes (add-backs, transfer pricing) only nibble at the edges.

SB 576's adoption of <u>"worldwide combination" is the right approach</u>, for this would neutralize virtually all CIT avoidance—if the bill stopped there. Instead, SB 576 goes on to give half the tax dodge back to avoiders. How? By allowing avoiders a <u>"water's edge" election. Don't do that</u>. It neutralizes only the tax dodge schemes that use domestic affiliates while leaving foreign-affiliate schemes—which piggyback on the company's coexisting federal tax avoidance—untouched.

Two other matters:

Get rid of the “deferred tax liability” provision in SB 576’s proposed §10-311. It perversely reimburses tax dodgers for the economic impact of losing the tax avoidance that you’re ending. Tax laws change all the time, and taxpayers must deal with all impacts—both direct (changes to their tax liabilities) and indirect (real or imagined stock market impacts, etc).

Also, as you’re considering testimony offered by industry associations whose membership includes tax avoiders made notorious in court decisions and in the press, understand that the mission of such organizations is to preserve and protect laws that enable their avoidance.
No evidence supports their strained arguments about economic growth, complexity, uncertainty.

Conclusion

After hemming and hawing for years, Maryland should seize this opportunity now to neutralize the corporate income tax abuse that has been allowed to misdirect public resources into private pockets.

I support Senate Bill 576 as an excellent beginning.

Even if SB 576’s current water’s edge approach is all that Maryland is able to enact at present, that would represent an important step in the right direction.

But I hope that—whether here in the Budget and Taxation Committee or later in the process—you will go all the way to enacting the correct tax policy choice of worldwide combined reporting with no water’s edge election out.

Respectfully,

Don Griswold
Just SALT Policy LLC