February 20, 2025

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

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

On behalf of CTIA®, the trade association for the wireless communications industry, I write to respectfully oppose several provisions in House Bill 1014. Specifically, this legislation that would impose mandatory unitary combined reporting (MUCR) on multistate businesses in Maryland. The bill would also impose a 2.5% income tax surcharge on corporate taxpayers resulting in a 10.5% corporate rate. This corporate tax rate would be the 2nd highest in the nation. A recent study by the Garden State Initiative in New Jersey[1] demonstrated that states that increase corporate tax rates actually see a decrease in tax revenue because businesses – and their employees - do leave the state. As New Jersey increased the Corporate Business Tax, corporations fled the state.

- The number of Fortune 500 companies headquartered in New Jersey fell from 22 in 2006 to 15 in 2021.
- The state has lost between $350 and $400 billion in personal income since 1990 due to outward migration. The state's total personal income would be about 30% larger today if not for people and businesses leaving.
- Between 2005 and 2020 New Jersey has lost population and income to all but two of the other 49 states.
- The state's population has fallen every year relative to the rest of the nation in every year for the last three decades.
- A corporate tax increase such as this would have a very negative effect on the businesses that continue to invest in provided needed broadband services in the state of Maryland.

Mandatory Unitary Combined Reporting

Proponents of HB 1014 have suggested that MUCR would improve the fairness of the corporate income tax by closing "loopholes." They further argue that MUCR would more accurately determine multistate business income attributable to economic activity in Maryland. This concept ignores the fact that Maryland already has the tools needed to prevent or remediate abuse by corporate taxpayers through the Addback Statute 10-306.1. This provision requires taxpayers to add back certain intercompany costs (e.g., intangible) that would otherwise be deductible for federal income tax purposes. This policy is meant to provide the Comptroller with the tools necessary to limit taxpayers from reducing their state income tax liability by deducting intangible expenses paid to out-of-state

[1] The Garden State Initiative Report, "The Real Cost to New Jersey of Being an Outlier: The Impact of Steep Corporate Tax Rates" March 13, 2023.

related parties. As such, any projected new revenue from combined reporting needs to be carefully reviewed because it may not result in much new revenue.

<u>MUCR can increase revenue volatility and may not generate additional revenue:</u>

Combined reporting will result in some companies paying more Maryland tax and some paying less, BUT the overall revenue impact on Maryland is not only unpredictable but could even result in a revenue loss. Thus, trying to fund some of Maryland's budget shortfall with a tax provision that results in volatile revenue, or a potential revenue loss is not prudent.

The revenue is unpredictable for several reasons including the fact that it will depend upon the complex economic relationships among the corporations included in a unitary group, the apportionment of income methodology selected by the state and the impact of the economy on each company.

Two prior Maryland commissions concluded combined reporting is bad policy with unpredictable revenue.

- In 2010 Maryland Business Tax Reform Commission recommended against implementing combined reporting because it "would lead to increased volatility in the corporate income tax."

- In January 2016, after requiring the actual filing of pro forma tax returns, the Maryland Economic Development and Business Climate Commission similarly recommended not to enact combined reporting highlighting the revenue volatility and winners and losers among corporate taxpayers, the potential for litigation and the additional administrative costs for both taxpayers and the State and the uncertainty and negative message sent to the business community.

- In 2021, Virginia looked at combined reporting by also requiring the actual filing of pro forma tax returns and came to a similar conclusion. The Virginia Combined Reporting Work Group cited the "potential damage to Virginia's business climate" with such a policy.

Ultimately, neighboring Virginia has not pursued a combined reporting tax policy, and neither should Maryland.

<u>Administrative Concerns/Amendments Needed</u>

If the Committee decides to move forward with this legislation, CTIA members have shared with the Committee several amendments that would ensure that the transition to MUCR is implemented in a way that treats businesses fairly, is not administratively burdensome, and is consistent with the federal reporting requirements. The proposed amendments would ensure that any transition to MUCR would not create unnecessary disputes between taxpayers and the Comptroller's office over the interpretation of ambiguous transition provisions.

Switching to MUCR would create significant administrative and compliance burdens for taxpayers and the Comptroller alike. First, there is little agreement among the states as to what specifically constitutes a unitary group as the concept of a "unitary business" is uniquely factual. It is suggested that an amendment be included to allow the election of the Federal Consolidated Groups which will reduce controversy.

In addition, amendments are needed to address how to bring in net operating losses (NOLs) for the unitary businesses brought into the Maryland filing. It is imperative to have a well-defined process to reduce litigation and controversy.

Another issue not addressed in this bill is how the assets being brought into the Maryland return should be valued for depreciation purposes. An amendment is needed to provide clear guidelines to allow each member of the combined group to determine its income at the time of combination by considering the Maryland adjusted basis of each asset held by such member. The provisions should specify the treatment of assets when a corporation that was not previously a Maryland taxpayer enters or is first included in a combined group. Maryland should allow a corporation that was previously not a Maryland taxpayer and part of the unitary group to default to the federal tax basis but could elect to compute a Maryland adjusted tax basis. For worldwide unitary group members, the default could be based on another worldwide combined reporting state, with an election to recompute a Maryland adjusted tax basis.

Finally, and most concerning, is how MUCR will impact on the Financial Accounting Standards Board Statement 109 (ASC 740). This is a quarterly financial statement that is required for publicly traded companies to reflect increased tax liabilities. Publicly traded companies book assets for financial reporting purposes under Generally Accepted Accounting Principles (GAAP) rules. However, Internal Revenue Service rules for recording and depreciating the same assets are different. Under ASC 740, a change to MUCR is a significant tax law change that will require companies to analyze the differences between the financial book basis of assets they own versus the income tax basis of those same assets. The cumulative effect of those differences will likely require most companies to record an additional deferred tax liability expense.

One of the most significant differences recognized by many companies occurs as a result of accelerated tax depreciation taken on depreciable assets under I.R.S. rules versus the amount that is deducted for financial book purposes. Since depreciable assets create one of the largest differences required to be accounted for under ASC 740, it is likely that this requirement to reflect the additional expense resulting from the state's proposed changes would hit capital intensive companies much harder than other companies.

The ASC 740 ramifications of the move to combined reporting should be addressed to avoid companies with significant investments in Maryland being negatively impacted twice by combined reporting changes. Not only could these companies experience an increase in their income tax liability because of these major changes, but they will also have the added financial strain of recognizing additional tax expense for financial reporting purposes.

Conclusion

Mandatory Unitary Combined Reporting is extremely complicated for corporations and the State and may not result in additional revenue, especially given Maryland's current addback statute. Coupled with the corporate tax surcharge, Maryland will become exceptionally unattractive to businesses and an outlier when compared to states like Delaware, Pennsylvania and Virginia, who have substantially lower corporate tax rates and do not impose MUCR.

If legislators agree to impose mandatory unitary combined reporting, we suggest working with the business community, particularly those who operate in multiple states and have experience dealing with combined reporting. CTIA members have drafted amendments and would be happy to share with the Committee.

Thank you for the opportunity to share our concerns about House Bill 1014.

Sincerely,

Annissa Reed

Annissa Reed
Director
State and Local Affairs