
VIRGINIA STATE BUDGET

2021 Special Session I

Budget Bill - HB1800 (Chapter 552)

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Corporate Income Tax Informational Reporting

Item 3-5.23

§ 3-5.23 CORPORATE INCOME TAX INFORMATIONAL REPORTING

A.1. Corporations that are members of a unitary business must file a report, in a manner prescribed by the Tax Commissioner, for the unitary combined group containing the unitary combined net income of such group. The report shall be based on taxable year 2019 computations and include, at a minimum the difference in tax owed as a result of filing a unitary combined report, computed according to the method or methods specified by the Tax Commissioner, compared to the tax owed under the current filing requirements.

2. "Unitary business" means a single economic enterprise made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. A "unitary business" includes that part of the business that meets the definition in this section and is conducted by a taxpayer through the taxpayer's interest in a partnership, whether the interest in that partnership is held directly or indirectly through a series of partnerships or other pass-through entities. A "unitary business" shall not include persons subject to, or that would be subject to if doing business in the Commonwealth, the insurance premiums license tax under Chapter 25 (§ 58.1-2500 et seq.), Code of Virginia, or the bank franchise tax under Chapter 12 (§ 58.1-1200 et seq.)

3. The report must be submitted to the Department of Taxation on or before July 1, 2021, which date shall not be extended.

4. Members of a unitary combined group shall exclude as a member and disregard the income and apportionment factors of any corporation incorporated in a foreign jurisdiction (a "foreign corporation") if the average of its property, payroll and sales factors outside the United States is eighty percent (80%) or more. If a foreign corporation is includible as a member in the unitary combined group, to the extent that such foreign corporation's income is subject to the provisions of a federal income tax treaty, such income is not includible in the unitary combined group net income. Such member shall also not include in the unitary combined report any expenses or apportionment factors attributable to income that is subject to the provisions of a federal income tax treaty. For purposes of this paragraph, "federal income tax treaty" means a comprehensive income tax treaty between the United States and a foreign jurisdiction, other than a foreign jurisdiction which the organization for economic co-operation and development has determined has not committed to the internationally agreed tax standard, or has committed to the international agreed tax standard but has not yet substantially implemented that standard, as identified in the then-current organization for economic co-operation and development progress report.

B. Any corporation required to submit such report to the Department of Taxation that fails to do so on or before July 1, 2021, or that makes a material omission or misstatement in connection with such report shall be subject to a penalty of \$10,000. The Tax Commissioner shall have the authority to waive such penalty upon a determination that the requirement would cause an undue hardship. All requests for waiver shall be transmitted to the Tax Commissioner in writing.

C. The Tax Commissioner shall on or before December 1, 2021, based on the information provided in income tax returns and the data submitted under this section, submit a report to the Chair of the Senate Finance and Appropriations Committee, the Chair of the House Appropriations Committee, and the Chair of the House Finance Committee.