

Business Corporation Tax

SECTION 44-11-45

§ 44-11-45 Combined reporting study. – (a) For the purpose of this section:

(1) "Common ownership" means more than fifty percent (50%) of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not owner or owners are members of the combined group.

(2) "Member" means a corporation included in a unitary business.

(3) "Unitary business" means the activities of a group of two (2) or more corporations under common ownership that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the broadest extent permitted under the United States Constitution.

(4) "United States" means the fifty (50) states of the United States, the District of Columbia, the United States' territories and possessions.

(b) Combined reporting.

(1) As part of its tax return for a taxable year beginning after December 31, 2010 but before January 1, 2013, each corporation which is part of an unitary business must file a report, in a manner prescribed by the tax administrator, for the combined group containing the combined net income of the combined group. The use of a combined report does not disregard the separate identities of the members of the combined group. The report shall include, at minimum, for each taxable year the following:

(i) The difference in tax owed as a result of filing a combined report compared to the tax owed under the current filing requirements;

(ii) The difference in tax owed as a result of using the single sales factor apportionment method under this paragraph as compared to the tax owed using the current three (3) factor apportionment method under § 44-11-14;

(iii) Volume of sales in the state and worldwide; and

(iv) Taxable income in the state and worldwide.

(2) The combined reporting requirement required pursuant to this section shall not include any persons that engage in activities enumerated in §§ 44-13-4, 44-14-3, 44-14-4 or 44-17-1, whether within or outside this state. Neither the income or loss nor the apportionment factors of such a person shall be included, directly or indirectly, in the combined report.

(3) Members of a 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 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 combined group net income. Such member shall also not include in the 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 chapter, "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.

(c) Any corporation which is required to file a report under this section which fails to file a timely report or which files a false report shall be assessed a penalty not to exceed ten thousand dollars (\$10,000). The penalty may be waived for good cause shown for failure to timely file.

(d) The tax administrator shall on or before March 15, 2014, based on the information provided in income tax returns and the data submitted under this section, submit a report to the chairpersons of the house finance committee and senate finance committee, and the house fiscal advisor and the senate fiscal advisor analyzing the policy and fiscal ramifications of changing the business

corporation tax statute to a combined method of reporting.

History of Section.

(P.L. 2011, ch. 151, art. 19, § 4.)