TaxNewsFlash

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Virginia: Pro-forma combined reports due July 1, 2021; certain single-entity unitary businesses required to file

The Department of Taxation issued a set of **questions and answers** (Q&As) about required reporting when a unitary business is contained all in one corporate entity. In the Department's view, a report is required when the single corporate entity itself will likely constitute a "unitary business."

> *Any corporation currently filing in Virginia would generally be considered part of a unitary business, which may consist of a single corporate entity or multiple corporate entities.*

This rule may catch certain taxpayers off guard—such as real estate investment trusts (REITs), "blocker corporations," and nonprofit corporations, if it has been presumed that the report is required only if there are multiple corporations engaged in a unitary business. If a single corporation taxpayer previously responded to the state's questionnaire indicating that it is not engaged in a multi-state unitary business, a unitary combined report may be filed notwithstanding the previous response.

Corporations that are members of an in-state only unitary business (i.e., the entities are not doing business in any other states) are not required to file the unitary combined report.

No tax is due with the reports. The reports are for informational purposes only.

Summary

For the last few years, Virginia lawmakers have introduced proposals to move the Commonwealth to mandatory unitary combined reporting. While these proposals failed to pass again in 2021, lawmakers intended to study the fiscal impact of combined reporting. Accordingly, the Virginia budget bill requires corporations that are members of a unitary business to file reports disclosing the unitary combined net income of the combined group.

- The report is based on the 2019 tax year computations and must include, at a minimum, the difference in tax owed as a result of filing a unitary combined report compared to the tax owed under the current filing requirements.

- The report must be submitted to the Department of Taxation on or before July 1, 2021.

- The penalty for noncompliance or for filing a report that includes misstatements or materials omissions is $10,000. The Commissioner, however, may waive such penalty upon a determination that the reporting requirement caused an undue hardship.

In terms of computing the unitary combined group's income, the definition of a unitary business is broad and includes language similar to other states' definitions of a unitary business. The unitary combined group excludes entities subject to insurance premiums tax or the bank franchise tax. Foreign corporations are excluded if the average of the corporation's property, payroll, and sales factors outside the United States is 80% or more. If a foreign corporation is treated as a combined group member, the corporation's treaty-protected income will be excluded in computing combined group net income. Any expenses or apportionment factors attributable to treaty income will also be excluded.

- The report must include information about the unitary group's income, apportionment computation, tax credits, and tax liability calculation.

- The designated member of the unitary group that files the report on behalf of the group will need to provide this information as if filing a unitary combined report under **both** the *Joyce* and *Finnigan* apportionment methodologies.

- The report must also include "the same tax information as it is under the current filing requirements for all the members of the group that have nexus with Virginia."

- If a corporation filed two short-period returns for the 2019 tax year, two separate reports will need to be submitted to account for the two short-period returns.

The report is to be filed using the Department's web-upload application. On or before December 1, 2021, the Commissioner will submit a report on the combined reporting disclosures to various committees in the General Assembly.

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