



## Law

### **Penalties too punitive under new reporting law**

The Daily Record Editorial Advisory Board  
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During the ongoing financial and economic crisis, the last thing that the state of Maryland should do is use an overly heavy hand to hurt Maryland companies, but that is precisely what will happen if emergency regulations proposed by the state comptroller go into effect.

The General Assembly recently passed legislation that mandates the reporting of certain financial information for tax years beginning after Dec. 31, 2005 and before Jan. 1, 2011 by members of a unitary corporate group with at least one member in Maryland. (See below, "Which corporations are covered?")

The purpose of this law is to provide the state comptroller with enough background information to enable a comprehensive analysis to be made concerning the fiscal effect of rewriting the state's corporate tax laws in order to implement a combined reporting corporate income tax regime. In other words, the purpose of the law is simply to gather information for possible future legislation and regulation.

While the new law directed the comptroller to develop and implement an oversight and penalty system to ensure that corporations provide the required disclosure statements in a timely and accurate manner, the amount and nature of the penalties proposed by the comptroller go well beyond deterrence and instead, border on extreme retribution.

Comptroller Peter Franchot has released emergency regulations concerning reporting under this new law. It is unclear whether the regulations will be granted emergency status or otherwise become effective in their current form; however, the Web site of the state comptroller already incorporates their strictures.

According to the comptroller's Web site, all information reports for tax year 2006 (a tax year beginning after Dec. 31, 2005 and before Jan. 1, 2007) must be submitted on or before Oct. 15, 2008. With this date less than 10 days away, the publicity surrounding these new reporting requirements has been desultory, to say the least. Many affected Maryland companies probably have no knowledge of the Oct. 15 deadline.

The late filing penalties contained in the recently issued emergency regulations are extremely punitive (\$5,000 per day for the first 30 days after Oct. 15 and \$10,000 per day thereafter). The regulations provide that the comptroller will not extend the due date for filing the information reports that are due on Oct. 15, 2008. Under extenuating circumstances only, the comptroller may consider waiving or abating penalties for failure to timely file the information reports.

The effect of the proposed emergency regulations on unwary Maryland corporations could be disastrous. A Maryland company that fails to file its information report until Dec. 15, just 60 days late, would be hit with a penalty of \$450,000. In our view, the penalties proposed by the comptroller are grossly excessive.

We believe that the proposed regulations should be treated as regular regulations, subject to the normal notice and comment period, rather than emergency regulations, which provide no opportunity for the state's business community to comment on their fairness.

The existing penalty regime set forth in the Tax General Article does not use per diem penalties. The new law imposes its reporting requirement merely for purposes of evaluating a change to combined reporting, and has

nothing to do with a taxpayer's actual compliance and tax liabilities.

For that reason, a one-time fixed penalty in a modest amount, reflective of the size of the company, coupled with a one-time increased penalty for failure to comply after notice from the comptroller, would be far more reasonable and appropriate.

*Editorial Advisory Board members Alison Asti, Dan Friedman and Andy Levy did not participate in this opinion.*

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