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## TESTIMONY BEFORE THE JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE AND LEGISLATIVE REVIEW

October 14, 2008

### Proposed Emergency Regulations 03.04.14.00 Corporate Income Tax Reporting

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Good afternoon Senate Chair Pinsky, House Chair Healey and members of the Joint Committee. My name is Ron Wineholt, Vice President of Government Affairs, representing the Maryland Chamber of Commerce. Thank you for the opportunity to offer testimony regarding the Comptroller's proposed emergency regulations regarding corporate income tax reporting.

We are appreciative that the General Assembly established the Maryland Business Tax Reform Commission during the 2007 special session to thoroughly review Maryland's business tax structure. We recognize that the regulations before you will help to provide the data necessary for the Commission to do its work. The Comptroller's staff has worked diligently during the past 11 months, in consultation with the business community, to draft the regulations and design the website required to obtain the corporate income data.

However, for the reasons stated below, we ask that the Committee condition its approval of the regulations on the following two changes:

#### **1. Delay the effective date of the regulations by 45 days**

Maryland businesses need more time beyond the proposed October 15<sup>th</sup> deadline to reasonably and accurately provide the specific data that has been requested by the Comptroller. The proposed emergency regulations were posted to the Comptroller's website in late August and the specific data entry screens were posted on the website last month. Assembling and manually entering the required data is very time consuming at a time when many corporate tax departments are also finishing their calendar year 2007 tax returns for submission by October 15<sup>th</sup>.

Remember that the reason for the data submission is so that the Comptroller can provide fiscal estimates of the impact of combined reporting by March 1, 2009 to the Maryland Business Tax Reform Commission. That body has not yet even been appointed. We believe that businesses have not been allowed adequate time to compile the requested data and that it would be unreasonable for this Joint Committee to approve emergency regulations today for a deadline tomorrow. Regulations should be prospective in effect after reasonable notice. Therefore, we ask that the Joint Committee condition your approval of the regulations on a 45 day delayed effective date.

(over)

## 2. Revise the proposed penalties

The proposed penalties of \$5,000 to \$10,000 per day for noncompliance with the reporting requirements are unprecedented and must be revised. It is ironic that the original penalty provision in this reporting law (fine up to \$10,000 and 5 years in prison for willful failure to comply) were stricken by the General Assembly during the 2008 session as too harsh. Yet, the penalty provisions proposed in these regulations are in some respects more punitive than the penalties that were stricken, and exceed the penalties for failure to remit taxes. Even companies that timely submit the required data have concerns that, due to the complexity of the required calculations and assumptions, penalties may be imposed by the Comptroller for what amount to differences of opinion.

A more reasonable penalty provision would be based on the size of the company and require a waiver of the penalty for reasonable cause. We ask that the Joint Committee condition your approval of the regulations on a significant reduction in the proposed penalties and requiring a waiver of the penalty for good cause.

## Law

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

The Daily Record Editorial Advisory Board  
October 6, 2008

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.

Read the related piece, [Which corporations are covered?](#)

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

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