

District of Columbia Emergency Legislation Amends Combined Reporting Provisions and Repeals Multistate Tax Compact Apportionment Election Provision

August 10, 2013

Overview

Previous Legislation

On September 14, 2011, the District of Columbia (the “District”) enacted mandatory combined reporting for tax years beginning on and after December 31, 2010.¹ In addition, the District previously amended the combined reporting tax code provisions by enacting the Fiscal Year 2013 Budget Support Technical Clarification Temporary Act of 2012 (D.C. Law 19-0226) (the “2012 Temporary Act”), which became effective on March 19, 2013.²

Fiscal Year 2014 Budget Support Act of 2013

On July 30, 2013, D.C. Mayor Vincent Gray approved the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Bill 20-337) (the “Emergency Act”), which amends the District’s combined reporting provisions on a short-term basis. In addition, the Emergency Act also repeals the apportionment election provisions contained in Articles III and IV of the Multistate Tax Compact for District franchise tax purposes.

The Emergency Act became effective on July 30, 2013,³ and will expire in 90 days on October 28, 2013.⁴ While the Emergency Act and previous 2012 Temporary Act are similar, to the extent that the Emergency Act’s combined reporting provisions conflict with those contained in the 2012 Temporary Act, the Emergency Act’s provisions will be controlling.⁵

Additionally, the Fiscal Year 2014 Budget Support Act of 2013 was also approved by the D.C. Council on June 26, 2013, as permanent legislation (B20-199) (the “Permanent Act”). The Permanent Act, which is expected to contain the same provisions as the Emergency Act, would permanently amend the District’s combined reporting provisions as described in this Alert. The Permanent Act will be transmitted to Mayor Gray for his review, and upon approval be transmitted to Congress for a 30-day period of review.⁶

In this Tax Alert, we summarize certain of the amendments made by the Emergency Act affecting combined reporting and D.C. Franchise tax.

Amendments to the District’s Combined Reporting Provisions

Qualified High Technology Companies (QHTCs)

Effective for tax years beginning after December 31, 2010, a taxpayer engaged in a unitary business with one or more other “persons” is required to file a combined District Franchise Tax report (hereinafter, a “combined report”),

¹ Mandatory combined reporting was enacted by the Fiscal Year 2012 Budget Support Act of 2011 (D.C. Law 19-0021; 58 DCR 6226) (the “Original Act”) and the provisions were incorporated into the Income and Franchise Tax statutes, chapter 18 of title 47 of the District of Columbia Code. See our previous Alert at https://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/US_tax_multistate_DC_Budget%20Bill%20_Combined%20Reporting%20E_%2009-14-2011.pdf.

² As a Temporary Act, 19-0226 expires in 225 days. Equivalent language was also passed as an Emergency Bill (B19-0946) that previously expired on January 10, 2013.

³ The Emergency Act has a general effective date of October 1, 2013. However, the combined reporting amendments in the Emergency Act are effective for tax years beginning after December 31, 2010. See D.C. Bill 20-337, Title VII, Subtitle J, §7103. Also, the Multistate Tax Compact amendments in the Emergency Act are effective tax years beginning after December 31, 2012. See D.C. Bill 20-337, Title VII, Subtitle HH, §7343. See also, D.C. Bill 20-337, Title XI, §§ 11001, 11003 and D.C. Code Ann. §1-204.12(a).

⁴ D.C. Bill 20-337, Title XI, §11003. See also, D.C. Code Ann. §1-204.12(a).

⁵ The 2012 Temporary Act is scheduled to expire 225 after its effective date. See D.C. Law 19-0226, Title IV, §402. However, because the Emergency Act was enacted later in time, its provisions are controlling to the extent that they conflict with those contained in the 2012 Temporary Act.

⁶ See D.C. Bill 20-0199, Title X, § 10003. See also, D.C. Code Ann. §1-206.02(c)(1).

which includes the income and the allocation and apportionment factors of all persons that are a part of the water's-edge combined group.⁷

The Emergency Act clarifies that QHTCs are not included in the combined group. The Emergency Act amends the definition of "person" so that the term does not include a QHTC.⁸ The statute is now consistent with the final regulations⁹ that were published on September 14, 2012.¹⁰

Removal of Provisions Regarding Unincorporated Businesses and Partnerships

The Emergency Act removes certain provisions regarding unincorporated business entities and partnerships from the combined reporting statutes and grants authority to the Chief Financial Officer to adopt regulations regarding the treatment of such entities.¹¹

Specifically, the Emergency Act amends D.C. Code §47-1810.05(a)(3) by removing the provisions governing combined groups that include members who own unincorporated businesses that would be subject to the District unincorporated business franchise tax. Under the Emergency Act, D.C. Code §47-1810.05(a)(3) provides that in the case of any person entitled to the distributive share of a trade or business net income, the Chief Financial Officer shall adopt regulations as necessary to determine the methodology of including the distributive share but provide an exclusion for the portion of the distributive share that is reported by and taxed against any person under the provisions of Chapter 18 of Title 47 of the D.C. Code "to prevent double taxation or double deduction."¹²

The Emergency Act removes various other provisions related to unincorporated businesses and partnerships.¹³

Other Significant Amendments have been Extended

The Emergency Act also extends some of the significant amendments made by the 2012 Temporary Act.

For example, the Emergency Act excludes a controlled foreign corporation with Subpart F income from the combined group.¹⁴ The Emergency Act also eliminates the automatic renewal of a worldwide unitary combined reporting election in instances where the election is not withdrawn timely¹⁵ and revokes the election to file consolidated returns for tax years beginning after December 31, 2010¹⁶.

Repeal of Articles III and IV of the Multistate Compact

Effective as of July 30, 2013 and for tax years beginning after December 31, 2012, the Emergency Act repeals and reenacts D.C. Code Ann. §47-441, which contains the Multistate Tax Compact ("Compact").¹⁷ Specifically, the Emergency Act repeals Article III of the Compact, which provides taxpayers an election to apportion and allocate income in accordance with Article IV of the Compact.¹⁸ The Emergency Act also repeals Article IV of the Compact.¹⁹

⁷ D.C. Code Ann. §47-1805.02a(a), as amended by the 2012 Temporary Act and the Emergency Act, Title VII, Subtitle J, §7102(c).

⁸ D.C. Code Ann. §47-1801.04(39), as amended by the Emergency Act, Title VII, Subtitle J, §7102(b).

⁹ The District's Office of Tax and Revenue ("OTR") published its first set of proposed regulations with respect to combined reporting on January 20, 2012. On August 31, 2012, the OTR issued a second notice amending the originally proposed regulations to address public comments gathered in 2012. The regulations were finalized on September 14, 2012, and are located in the District of Columbia Municipal Regulations ("DCMR") § 9-156 through § 9-176 (hereinafter the "final regulations").

¹⁰ D.C. Mun. Regs. tit. 9, §157.3 provides that QHTCs are not included in a combined group or a combined report.

¹¹ D.C. Code Ann. §47-1810.05(a)(3), as amended by the Emergency Act, Title VII, Subtitle J, §7102(d).

¹² *Id.*

¹³ See D.C. Code Ann. §47-1801.04(10), as amended by the Emergency Act, Title VII, Subtitle J, §7102(b); D.C. Code Ann. §47-1801.04(55), as amended by the Emergency Act, Title VII, Subtitle J, §7102(b); and D.C. Code Ann. §47-1810.05(b), as amended by the Emergency Act, Title VII, Subtitle J, §7102(d).

¹⁴ D.C. Code Ann. §47-1810.07(a)(2), as amended by the Emergency Act, Title VII, Subtitle J, §7102(d).

¹⁵ D.C. Code Ann. §47-1810.07(d)(4), as amended by the Emergency Act, Title VII, Subtitle J, §7102(d).

¹⁶ D.C. Code Ann. §47-1805.02a(g), as added by the Emergency Act, Title VII, Subtitle J, §7102(c).

¹⁷ D.C. Code Ann. §47-441, as amended by the Emergency Act, Title VII, Subtitle HH, §7342(a) and (b).

¹⁸ See D.C. Code Ann. §47-441, prior to its amendment by the Emergency Act, Title VII, Subtitle HH, §7342(b).

¹⁹ D.C. Code Ann. §47-441, as amended by the Emergency Act, Title VII, Subtitle HH, §7342(b).

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