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## *Prospects are varied for 2012 combined reporting legislative proposals*



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With the 2012 legislative season well under way, legislators in at least eight states have introduced bills that would implement combined or consolidated reporting. Outlined below are the most recent proposals and an analysis of potential future actions.

### Alabama

Introduced on February 2, 2012, Alabama [H.B. 199](#) would define "unitary business" and would require taxpayers that are part of a unitary business to file a combined return. For purposes of Alabama law, "unitary business" would be defined as "a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts." This definition is identical to the one included in the [Multistate Tax Commission's model statute for combined reporting](#). In addition, Alabama's definition of unitary business would be "interpreted broadly, limited only by the boundaries imposed by the U.S. Constitution."

In Alabama, the combined report would also include those members of the unitary business "commercially domiciled in a non-U.S. jurisdiction designated a tax haven by the Organization for Economic Cooperation and Development." Alabama



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taxpayers included in a combined report would calculate their Alabama taxable income by "apportioning the combined group's income to Alabama using a formula that measures the taxpayer's Alabama source apportionment data relative to the combined group's apportionment data from all sources."

The legislation does not address the election to file an Alabama consolidated return that is available to Alabama affiliated groups filing a federal consolidated return.

Ultimately, the legislation leaves the task of fully developing the combined reporting regime to the commissioner.

"This is the fourth consecutive year that a combined reporting bill has been introduced in Alabama," notes Kelly Smith, PwC SALT Partner in Atlanta, GA. "Historical evidence would suggest this bill does not have a good chance of passage. Nonetheless, taxpayers who would be adversely affected by the legislation would be wise to stay close to it, and the fact that the bill also includes partial decoupling provisions for bonus depreciation and the 199 deduction may affect its likelihood of passage. What will be most interesting is how accurate any fiscal note would be given that Alabama only recently increased the weighting of the sales factor and implemented market based sourcing effective in 2011."

## Florida

Citing the "competitive disadvantage" Florida corporations experience as a result of a "separate accounting system," the Florida Senate introduced legislation, [S.B. 1590](#), on January 12, 2012, that would adopt a "combined system of income tax reporting."

The proposed legislation would modify the definition of taxpayer to include all corporations "that are members of a water's edge group" and would define water's edge group as "a group of corporations related through common ownership whose business activities are integrated with, dependent upon, or contribute to a flow of value among members of the group."

The proposed legislation also lays out rules for determining the members of the water's edge group and provides detailed requirements for using the water's edge reporting method to determine the group's taxable business profits. The legislation further provides that a water's edge group will be required to file a domestic disclosure spreadsheet in addition to its return. If enacted, the legislation would require the filing of a combined return for tax years beginning on or after January 1, 2013.

However, as Jay Koren, PwC SALT Partner in Miami, FL notes, "similar legislation is introduced each legislative session. With a Republican House and Senate, combined reporting would be perceived as an overall increase in taxes and so the likelihood of this legislation passing this session is slim. Instead, the focus is on tax relief, as last year the Governor proposed to eliminate the income tax and this year he is proposing to increase the corporate exemption from \$25,000 to \$50,000, which would drop the tax rolls by several thousand taxpayers."

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## Kentucky

Kentucky first adopted nexus consolidation filing requirements in 2005. [H.B. 162](#), introduced on January 3, 2012, would repeal these requirements for tax years beginning on or after January 1, 2012.

"This legislation would take Kentucky back to the filing requirements that were in place prior to the Tax Modernization Act of 2005, which brought about the mandatory nexus consolidation rules," observes Chris Gilbert, PwC Director in Louisville, KY. "It is very unlikely that this legislation will find any support, especially since the Governor has recently established a special committee to look at tax reform options for Kentucky. The committee's report is not expected until late 2012, so any significant legislation is unlikely until after that report is issued and considered."

## Maryland

Introduced on February 2, 2012, Maryland [H.B. 941](#) would require "an affiliated group of corporations engaged in a unitary business to file a combined income tax return reflecting the aggregate income tax liability of all the members of the affiliated group that are engaged in a unitary business." The proposed legislation would default to a worldwide unitary group, and provide for a water's edge election, the terms and conditions of which would be set out in regulations promulgated by the comptroller.

Interestingly, the proposed legislation states that "the regulations adopted by the comptroller shall be consistent with the 'Principles for Determining the Existence of a Unitary Business' (Reg. IV.1.(B)) adopted by the Multistate Tax Commission."

"An ongoing study, conducted for a number of years, shows that combined reporting would likely cost Maryland money," notes John Majowka, PwC SALT Director in Tyson's Corner, VA. "And while the study may be flawed, opponents of combined reporting still rely on it."

"Similar legislation has been introduced in prior years, but did not pass," adds Renee Padousis, PwC SALT Director in Tyson's Corner, VA. "In addition, this bill does not have the support of the Maryland Chamber of Commerce, which makes it even less likely to pass."

## Missouri

On February 14, 2012, [H.B. 1727](#) was introduced in the Missouri House of Representatives. The legislation would require a water's edge combined report for any corporation that is doing business in the state and that is a member of a unitary group. The proposed legislation would define "unitary group" as "a group of corporations that: are related through common ownership; and by a preponderance of the evidence as determined by a court of competent jurisdiction or the director, are economically interdependent with one another as demonstrated by the following factors: centralized management; functional integration; and economies of scale."

"In each legislative session we see a proposal to raise taxes through modification of the tax code, including proposals for combined reporting," notes Jeff Dardick, PwC SALT Partner in St. Louis, MO, "but almost all tax legislation enacted in Missouri

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over the last few years has been focused on reducing the state corporate tax burden (e.g., elimination of the Missouri Franchise Tax). This proposed legislation is particularly counter to this trend as it also includes proposals to negate conformity to federal legislation enacted since 2004, including bonus depreciation and NOL carryforwards, and makes other changes to Missouri's elective single sales factor apportionment rules."

## New Mexico

Introduced on December 15, 2011, and as further amended prior to passage by narrow votes in the legislature, [S.B. 9](#) would require that "a unitary corporation that provides retail sales in a facility of more than thirty thousand square feet under one roof" file a combined return with other unitary corporations. If enacted, the effective date of the legislation would be January 1, 2013.

Governor Martinez is expected to veto the legislation, based on prior statements in opposition to combined reporting.

## Oklahoma

For taxable years beginning on or after January 1, 2013, [S.B. 1562](#), introduced on February 6, 2012, would require "all entities that are part of an affiliated group engaged in a unitary business" to file a combined report "based on the combined group's business." The proposed legislation would define "unitary business" in the same manner as the Multistate Tax Commission's model statute.

## Virginia

Introduced on January 20, 2012, [H.B. 1267](#) would require combined reporting for any taxpayer engaged in a unitary business with one or more other corporations. The combined group would be determined on a worldwide basis; however, the proposed legislation would provide a water's edge election. The election would be binding for ten years.

The proposed legislation also addresses the sharing of tax credits and provides that "any credit earned by one member of the group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the group or applied in whole or in part against the total income of the combined group." Other tax attributes, including net operating losses and post-apportionment deductions, may not be shared among combined group members under the proposed legislation.

If enacted, combined reporting would be required in Virginia for taxable years beginning on or after January 1, 2013. However, on February 10, the House Finance Committee voted to continue the legislation to 2013.

"As noted, the bill has been pushed back to 2013 and even then, passage is unlikely," states John Majowka, PwC SALT Director in Tyson's Corner, VA.

## PwC Observes

"Businesses want certainty," notes Bryan Mayster, PwC Managing Director in Washington, DC. "States looking to attract business should also want certainty in their tax code. Combined reporting will not bring certainty to a state. It will most

likely have a negative impact on attracting business and may not bring in any additional revenue. So with that in mind, it is not surprising that many of these proposals will not make it out of committee."

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