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A Washington National Tax Services (WNTS)  
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## *District of Columbia Council approves emergency legislation amending combined reporting law*

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### ***In brief***

On September 19, 2012, the District of Columbia Council approved an emergency bill amending the District's combined reporting provisions applicable for the 2011 tax year. Should the bill be approved by the Mayor, the emergency legislation will be in effect for no more than 90 days, after which temporary legislation is expected to become effective until the Council enacts permanent legislation. [Fiscal Year 2013 Budget Support Technical Clarification Emergency Act of 2012, approved 9/19/12].

### ***In detail***

#### *Proposed amendments to combined reporting*

The Council has passed "emergency" legislation (awaiting Mayoral approval) and has introduced nearly identical "temporary" legislation (scheduled for a second vote on either October 2 or 16) to make changes to the District's combined reporting provisions. Many of the proposed changes would codify guidance contained in the [final combined reporting regulations](#) issued on September 14, 2012 ([click here](#) for a summary of the combined reporting regulations).



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Significant changes in the proposed legislation include:

**Consolidated Returns.** The legislation would formally revoke the taxpayer election to file a consolidated return for tax years beginning after December 31, 2010. While the final regulations revoked the consolidated return election, it remained part of D.C. law following the enactment of combined reporting.

**Carry back of net operating losses not permitted.** The legislation would clarify that the District does not permit a carry back of net operating losses.

**Unincorporated Businesses.** The treatment of unincorporated business under the final regulations appears contradictory to current statutory language. The legislation would conform the treatment of unincorporated business to the treatment detailed in the final regulations.

**Partnerships.** The legislation addresses the treatment of partnerships that are not unincorporated businesses. The legislation would provide that "if any member owns an interest in a partnership which is not an unincorporated business . . . the income or loss of such partnership shall be apportioned to the District using the apportionment factor of the partnership, and the combined group member-partner's distributive share of such income shall be added to the combined group member-partner's income."

**Key consideration:** It appears that the proposed legislation is attempting to draw distinctions between: (1) unincorporated businesses that file a D-30; (2) partnerships that are not unincorporated businesses but yet have sufficient contacts with the District to require a D-65 filing; and (3) partnerships that have no connection with the District.

**S corporations.** An S corporation would be included within the definition of a "corporation."

**Key consideration:** This is consistent with the historical treatment of S corporations. However, the existing statute does not include S corporations in the definition of a "corporation."

**Designated Agent.** The proposed legislation would eliminate the requirement to make the designated agent election on an annual basis and would instead allow the election to continue once the initial election is made.

**Worldwide election does not automatically renew.** The proposed legislation would remove the provision that the worldwide election defaults to a new ten-year period if the election is not renewed after the ten-year period.

**Subpart F income not included.** The proposed legislation would remove Subpart F from the calculation of a water's-edge unitary combined group.

## ***D.C.'s legislative process - Why "emergency" and "temporary" legislation?***

In general, for a bill to become a law in the District it must be assigned and approved by a committee, then approved by the committee of the whole for an initial vote, then

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the bill is read a second time and subject to a second vote, then it must be approved by the Mayor, then it is subject to a 30 day Congressional review period.

To alleviate the long and time-consuming path a bill must take to become law, Congress provided a mechanism whereby the Council may enact legislation quickly, on a short-term basis. The Council may enact special "emergency" legislation without the need for committee approval, a second reading, or Congressional review. However, Mayoral review is still required. The emergency legislation may be in effect for no longer than 90 days.

While emergency legislation allows the Council to immediately address an issue, it presents a situation where the law will expire after 90 days, which generally is insufficient time for the Council to enact permanent legislation. As a solution, "temporary" legislation may be introduced at the same time as emergency legislation and it bypasses the committee process in the same manner as emergency legislation. However, unlike emergency legislation, temporary legislation must undergo a second reading, mayoral review, and the 30 day Congressional review period. Temporary legislation may remain in effect for no longer than 225 days, sufficient time for the Council to enact permanent legislation.

## ***Actions to think about***

It is unclear at this time whether these measures will actually be enrolled. However, informal discussions with the District indicate that the District intends to have the legislation apply to the 2011 tax year.

## ***Let's talk***

If you have questions about the proposed legislation or D.C. combined reporting requirements, please contact either of the following individuals:

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