

# **D.C. modifies combined reporting, decreases sales tax, and repeals/re-enacts the Compact**

August 9, 2013

## ***In brief***

On July 30, 2013, the District enacted the Fiscal Year 2014 Budget Support Emergency [Act of 2013](#) (Act), which marks the latest development in the District's attempts to implement and enforce mandatory unitary combined reporting. While many of the provisions are identical to emergency legislation passed in October 2012, taxpayers should be aware that the Act modifies statutory language related to unincorporated businesses to be consistent with how such entities are treated in the combined reporting regulations finalized in September 2012. Taxpayers that filed their 2011 and 2012 tax year returns relying on guidance from the emergency legislation should ensure that their treatment is consistent with guidance found under the regulations.

The Act also implements a sales tax reduction, the repeal/re-enactment of the Multistate Tax Compact, and other tax changes.

## ***In detail – Combined reporting changes***

### ***D.C. continues to refine combined unitary businesses authority***

On September 14, 2011, the District of Columbia enacted A19-0098, which mandated the use of combined reporting for tax years beginning after 2010 for any taxpayer engaged in a unitary business with one or more corporations that are part of a water's edge combined group. The legislation left many issues unaddressed, particularly the tax treatment of unincorporated business income of a combined group.

Proposed combined reporting regulations initially issued by the Office of Tax and Revenue on January 20, 2012, were revised and reissued on August 31, 2012, and were published as final on September 14, 2012. The combined reporting regulations provide taxpayers further guidance on several issues left open by the enacting legislation, including the determination of a unitary business and unitary presumptions, combining special apportionment formulas, and the FAS 109 deduction. ([Click here](#) for our summary of the District's combined reporting regulations).

The final regulations also detail the treatment of unincorporated business entities and partnerships. However, that treatment is largely contradictory to the statutory language of A19-0098. In an effort to rectify this inconsistency and codify the guidance contained in the final combined reporting regulations, the District passed emergency legislation, B19-0946, on October 12, 2012 amending its combined reporting laws. ([Click here](#) for our summary of the emergency legislation, including substantive changes from A19-0098).

The first version of the 2014 Budget Act was approved by the D.C. Council on May 22, 2013. The version signed by the Mayor on July 30, 2013, is substantially similar to the version approved on May 22, 2013. The changes implemented by the Act are applicable to tax years beginning after 2010.

#### ***Partnership and unincorporated business income treatment to be addressed by regulation***

While the Act closely follows provisions of the October 2012 emergency law, there is one notable difference. All references to the tax treatment of unincorporated business entities and partnerships are omitted from the Act. Instead, the Act generally provides that such treatment will be addressed by regulation. Specifically, the Act 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 this chapter.”

#### ***Other combined reporting changes***

Regarding the District’s combined reporting laws, for tax years beginning after 2010 the Act:

- modifies the definition of a ‘corporation’ to include S corporations
- includes the activity of a partnership within the definition of ‘doing business’
- excludes Qualified High Technology Companies from the definition of a ‘person,’ therefore excluding them from a combined return
- revokes the taxpayer election to file a consolidated return
- replaces references to ‘Mayor’ with ‘Chief Financial Officer’
- removes ‘international financial reporting’ from the computation of a group’s ‘net deferred tax liability’
- removes Subpart F income from the calculation of a group’s water’s-edge unitary combined income.

#### ***In detail – Sales tax rate reduction***

Beginning October 1, 2013, the District’s sales and use tax rate is reduced from 6.0% to 5.75%.

#### ***In detail – Multistate Tax Compact repeal and re-enactment***

Applicable as of July 30, 2013, and for tax years beginning after December 31, 2012, the Act repeals all provisions of the Multistate Tax Compact and re-enacts all provisions except for Articles III and IV, which allow

taxpayers to elect to apportion under the laws of the District or in accordance with UDITPA.

#### ***In detail – Other changes***

Other tax changes in the Act include requirements related to electronic submission of withholding statements, repeal of income tax on out of state municipal bonds, and a sales and use tax exemption related to restaurant utilities.

#### ***The takeaway***

The reason for the District’s emergency law and subsequent final law incorporated into the Budget Support Act is due to the unique process for passing laws in the District. To alleviate the time-consuming path a bill must take to become law (which includes a Congressional review period), the District may enact legislation quickly through ‘emergency’ legislation, which is only effective for a limited period of time.

In omitting statutory guidance regarding the tax treatment of unincorporated business entity and partnership income, the District is presumably deferring to the guidance contained in the combined reporting regulations to govern these entities and related transactions. Taxpayers that filed their 2011 and 2012 tax year returns relying on guidance from the emergency legislation should ensure that their treatment is consistent with guidance found under the regulations.

## **Let's talk**

If you have any questions about the Act or other District tax matters, please contact one of the following individuals:

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