

MARYLAND CORPORATE INFORMATION REPORTING FREQUENTLY ASKED QUESTIONS

The Comptroller's Office is providing the following FAQs to assist taxpayers and tax practitioners in their preparations for the upcoming information reporting. This information will be updated periodically. Red text represents clarifications, additions and substantive changes to previously published information.

General Information

Why must this information report be filed?

Legislation was passed during the 2007 special session of the Maryland General Assembly (Chapter 3 of the Acts of 2007), which was amended during the 2008 Session (Chapters 177 and 178 of the Acts of 2008), that requires some corporations to report certain information to the State of Maryland. The Comptroller's Office is required to collect, compile and analyze this information and to report to the Governor and the General Assembly the fiscal effect of implementing a combined reporting corporate income tax regime and several other corporate income tax changes, as well as other statistical information about Maryland's current corporate income tax.

Does this information reporting requirement change my tax liability or filing requirement?

No. This requirement does not alter in any way your tax liability or the normal way you have been filing the corporate income tax return.

Who Is Subject to These Requirements

Who is required to file **an information report?**

Every unitary group of corporations is required to file this information report. Corporations required to file a Maryland income tax return that are members of corporate groups, defined as "an affiliated group or controlled group under §1504 or §1563 of the Internal Revenue Code" or an affiliated group, engaged in a unitary business, with more than 50% of the voting stock of each member owned by a common owner/owners or by one or more members of the group, **must have the required information reported by one member of the unitary group.**

Is each member of the unitary group required to file an information report?

No. Only one information report should be filed for a unitary group, and all members of the group should be accounted for in that report. The corporation that files the information report for the group need not be the parent corporation, and need not have any business activity in Maryland.

While the filing requirement statutorily falls on a corporation required to file a Maryland corporate income tax return, if the required data for such a corporation is reported by the unitary group of which it is a member, that corporation will be deemed to have met the reporting requirement regardless of which member of the group actually filed the information report.

If I do not receive a Tax Alert with a tracking number from the Comptroller, must my data be reported in an information report?

Every entity meeting the criteria under “Who is required to file” is required to have its information reported by the unitary group, whether or not you have received a Tax Alert from the Comptroller. If you have not received a Tax Alert and do not meet the above criteria, no action is required.

I am a Maryland single-entity company and have received a Tax Alert from the Comptroller regarding these requirements. Must I file this information report?

If you are a single-entity company with no other company affiliations and have received the Comptroller’s Tax Alert, you must go to the Comptroller’s website one time only and affirm that you do not have to file the information report.

I am a unitary group composed of corporations which all have a 100% Maryland apportionment factor. Must I file this information report?

Yes.

I am a nonprofit Maryland company and am a member of a unitary group. Must my data be reported in an information report?

If you are a part of a unitary group and are required to file a Maryland corporate income tax return in the reporting year because you earned unrelated business income, information for your entity and related entities must be reported through the Comptroller’s website. If you earned no unrelated business income, you are not required to report information for your entity. If you received a Tax Alert from the Comptroller, however, you must go to the Comptroller’s website one time only and affirm that you do not have to file this information report.

I am a S-corporation, partnership or other pass-through entity (PTE), and am a member of a unitary group. Must my data be reported in an information report?

No. PTE data is to be reported on the reports of any C-corporations that are owners of the PTE, to the extent that activity from the PTE is reflected on the C-corporation’s Maryland corporate income tax return.

My company has been dissolved/no longer exists. Do I still need to respond to the Tax Alert from the Comptroller or these reporting requirements?

If your company existed during tax year 2006 or 2007 and met the criteria under “Who is required to file,” information for that entity must be reported. If your company did not exist or did not meet those criteria and you have received the Comptroller’s Tax Alert, you must go to the Comptroller’s website one time only and affirm that you do not have to file the information report.

Why have homeowners’ associations received the Tax Alert about this reporting requirement?

A homeowners’ association may have received this alert if it files as a C-corporation. If there are no other affiliates that are part of a unitary group, the association must go to the Comptroller’s website one time only and affirm that it does not have to file the information report.

Legislation talked about publicly traded corporations in relationship to the combined filing study. Are privately-held companies excluded from these requirements?

The legislation that was enacted during the 2007 Special Session made reference to publicly traded corporations. However, during the regular session this past spring the definition of who is required to file was reworded as shown under “Who is required to file.” There is no distinction between publicly-traded and private corporations.

I own more than one corporation in the same unitary group and more than one has received a Tax Alert from the Comptroller with a tracking number. Is there a way to show that all of them reported even though one is the primary reporting entity?

Yes. The reporting system will automatically indicate all of the entities of a unitary group that have been accounted for in one information report.

What if my company is not part of a unitary group in the first year and then in a subsequent year of the study becomes a member of a unitary group?

The first year affirmation of not being required to file the information report (required only of those who have received the Tax Alert from the Comptroller) stands only until you become subject to the reporting requirements.

Will there be a way for non-reporting members of a unitary group to check whether their data has been reported, or reported accurately, by a parent corporation or other member of the group?

No. By law, the information reported under this requirement is considered confidential tax information. Corporations that have questions about whether their information has been reported,

or whether their information has been reported accurately, must consult with their parent corporation or other members of the unitary group.

Penalties

Is there a penalty for not filing?

Yes. The penalty is \$5,000 per day for the first 30 days following the due date of the report and \$10,000 per day for each day after the first 30 days that the report has not been filed.

Submission of the Information Reports

How will the information reports be submitted?

The report will be submitted electronically, as required by law. The reporting system will be posted on the Comptroller's website (see www.marylandtaxes.com/reporting) by September 2008.

Is there a pro forma return that I must file and will I owe additional tax?

No, this is a study only. An abbreviated information "return" will be available on the Comptroller's website to be filled out and submitted directly from the website.

Are there any companies developing software to facilitate this reporting requirement?

Not at this time.

Is electronic filing required or optional for the study?

Electronic submission of this information report is required by law. The reporting system will be posted on the Comptroller's website (see www.marylandtaxes.com/reporting) by September 2008.

If I have not received a tracking number or the tracking number has been lost, can I comply with these reporting requirements using my federal employer identification number (FEIN)?

Yes. The information report can be submitted by FEIN as well as by the tracking number on the Tax Alert from the Comptroller.

When are the information reports due?

The information reports are required for tax years beginning after December 31, 2005 and before January 1, 2011. The information reports for tax year 2006 (a tax year beginning after December 31, 2005 and before January 1, 2007) must be submitted on or before October 15, 2008. The information reports for tax years 2007 through 2010 must be submitted on or before seven months after the original due date of the corporation's Maryland tax return for the corresponding tax year.

Will the Comptroller extend the October 15, 2008 or any later due date?

No, the due date will not be extended. Under extenuating circumstances only, the Comptroller may consider waiving or abating penalties for failure to timely file the information report.

Report Content

What entities are included in a water's edge report?

All members of a corporate group that are in a unitary business and are:

- i. Organized or incorporated in the United States, including those corporations qualifying for Puerto Rico and Possession Tax Credit as provided in IRC Section 936, or
- ii. Corporations organized or incorporated outside of the United States whose business activity in the United States is 20% or more of the corporation's total business activity. Foreign corporations that conduct 20% or more of their business activity in the United States, as measured by the average of the property and payroll factors, must be included 100% in a water's edge combined report.

How is unitary business defined?

A unitary business is a business in which the activities of the corporations comprising the business (whether related as a parent and subsidiary or as affiliated corporations related through common ownership) are economically interdependent as demonstrated by strong centralized management, functional integration, and attainment of operational economies of scale.

Will all entities be required to report sales, property and payroll apportionment information even if they currently apportion income on a different basis?

Yes. The information provided will be used by the Comptroller to calculate the impact of certain potential changes to tax law. Even though some types of corporations do not use the standard double-weighted three-factor apportionment formula, all entities will be required to provide information allowing the Comptroller to calculate the effect of that apportionment. Keep in mind that this is an information report only; actual apportionment and tax liability are unchanged.

Must sales that could be subject to proposed throwback/throwout rules in the future be reported?

Yes. There will be an entry to report sales of tangible personal property originating from Maryland to all states in which an entity does not have nexus for corporate income tax purposes.

How are net operating losses (NOLs) treated in the unitary group?

For purposes of the study, total NOLs and NOLs prior to the start of the relevant tax year will be reported. The Comptroller anticipates that the study will include an analysis of allowing NOLs of one entity to be used for the entire group as well as limiting the use of NOLs to the entity that incurred them.

How are eliminations handled in the study?

There will be an eliminations entry to reflect all intercompany transactions.

How will the dividends received deduction be treated in this study?

There will be a special deductions entry to report the amount from line 29B from the federal form 1120.

How should information from short tax years be reported?

If there are two short years representing a full, 12-month return, simply combine the information from the two short years and report as one year. Otherwise, report each short year separately.

If I have a significant number of entities within the unitary group, will there be an accommodation for each entity or must I summarize all the data on one entry?

There will be separate entries for each entity that is included in the group **that is required to file a Maryland corporate income tax return or makes sales into the State. Information for those members of the group that do not have to file a Maryland corporate income tax return and do not make sales into the State may be reported in the aggregate, with the exception of some identifying information for each such member of the group.** The number of entities of a unitary group that can be included in a single report is unlimited.

Will the study use apportionment information based on the Joyce or Finnigan approach?

Both. The information provided will be used by the Comptroller to calculate the impact of certain potential changes to tax law. Information for companies with and without nexus with Maryland must be reported if the companies are members of the unitary group.