

03.04.14

01. Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(2) "Corporate group" has the meaning stated in Tax-General Article, § 10-804.1(a)(1), Annotated Code of Maryland.

(3) "Nonoperational" means income of a corporation that is not earned as a part of the corporation's unitary business.

(4) "Unitary business" means 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 the following factors:

- (a) strong centralized management;
- (b) functional integration; and
- (c) attainment of operational economics of scale.

(5) "Water's Edge" is a method for preparing a combined income tax report.

(a) A water's edge report includes the income and activities of all members of a corporate group that are in a unitary business and are:

(i) Corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in IRC Section 936; and

(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. Any business activity in Maryland will subject a foreign corporation to Maryland income tax. The threshold test for purposes of combined reporting determines whether the foreign corporation is a member of a unitary group.

(b) There are two types of water's edge combined reports:

(i) "Joyce" or "Nexus-Based Unitary Combination": a combination of two or more corporations engaged in a unitary business that derive income from sources within and outside of Maryland, having nexus in Maryland and required to file a Maryland corporate income tax return.

(ii) "Finnigan" or "Full Unitary Combination": a combination of two or more corporations engaged in a unitary business that derive income from sources within and outside of Maryland, regardless of having nexus in Maryland.

02. Reports Required.

A. The reports described in this regulation shall be submitted electronically, consistent with the form and instructions available on the Comptroller's website at www.marylandtaxes.com.

B. Every corporate group shall file with the Comptroller the following reports:

(1) A pro forma water's edge combined corporate income tax report that reflects all of the income and expenses of each member of the corporate group computed under both the

- (a) Joyce or nexus-based unitary combination, and
- (b) Finnigan or full unitary combination.

(2) A report that reflects the dollar value of all property that is shipped from an office, store, warehouse, factory or other place of storage in this State where the purchaser is the United States government.

(3) A report that reflects the dollar value of all property that is shipped from an office, store, warehouse, factory or other place of storage in this state where the seller is not taxable in the state in which the purchaser takes possession.

(4) A report that reflects the amount and source of nonoperational income of each member of the corporate group whose commercial domicile is in this State.

C. The reports required hereunder shall be submitted for all taxable years beginning after December 31, 2005 and before January 1, 2011.

(1) The report to be submitted for a taxable year beginning after December 31, 2005 and before January 1, 2007 shall be submitted on or before October 15, 2008.

(2) The reports to be submitted for taxable years beginning after December 31, 2006 and before January 1, 2011 shall be submitted on or before seven months after the due date of the corporation's Maryland tax return for the corresponding taxable year.

D. Every report required under this regulation shall be made under oath and signed in the manner required for the signature of a tax return filed under Tax-General Article § 10-804, Annotated Code of Maryland.

03. Penalties.

A. Failure to file required reports.

(1) If a corporate group fails to file the reports required under this chapter, the Comptroller shall assess the penalties set forth herein:

(2) The penalties to be assessed are:

(a) Five Thousand Dollars (\$5,000) per day for each of the first thirty (30) days following the due date during which a report has not been filed; and

(b) Ten Thousand Dollars (\$10,000) per day for each day after the first thirty (30) days that a report has not been filed.

B. Failure to file reports accurately.

(1) If the Comptroller determines that a report filed under this chapter has not been filed accurately, the Comptroller shall provide written notice to the corporate group of the determination.

(a) The notice from the Comptroller shall identify the parts of the report determined to be inaccurate.

(b) The notice from the Comptroller shall inform the corporate group that it has twenty (20) days from the date of the Comptroller's notice to file an accurate report.

(2) If following receipt of notice from the Comptroller of an inaccurate filing, the corporate group does not file an accurate report on or before the date specified in the Comptroller's notice, then the corporate group will:

(a) be deemed to have failed to file the required report, and

(b) be subject to the penalties set forth in Part A of this regulation.

(3) For purposes of assessing the penalties under this paragraph B, the first violation will be deemed to have occurred on the first day following the due date for filing of an accurate report as specified in the notice from the Comptroller issued pursuant to § B(1) of this regulation.

C. All penalties assessed hereunder are collectible from all members of the corporate group.

D. All penalties assessed hereunder may be appealed by the corporate group by seeking revision with the Comptroller pursuant to Tax-General Article, § 13-508, Annotated Code of Maryland.

(1) All statutes and regulations applicable to the informal hearing procedures set forth in § 13-508 shall apply.

(2) After the Comptroller's hearing officer issues a notice of final determination, the provisions of Maryland law regarding administrative and judicial review shall apply.

E. For reasonable cause, the Comptroller may waive all or part of a penalty assessed under this chapter.

(1) The Comptroller's refusal to waive the penalty assessed under this regulation shall be final and not subject to appeal.

(2) The Comptroller's decision to waive a part, but not the full amount, of the penalty assessed under this regulation shall be final and not subject to appeal.