COMMONWEALTH of VIRGINIA

Department of Taxation

December 1, 2021

To: The Honorable Janet D. Howell
Chairwoman, Senate Finance and Appropriations Committee

The Honorable Luke E. Torian
Chairman, House Appropriations Committee

The Honorable Vivian E. Watts
Chairwoman, House Finance Committee

Pursuant to Item 3-5.23 of the 2021 Appropriation Act (House Bill 1800, Chapter 552 of the 2021 *Acts of Assembly*, Special Session I), corporations that are part of a unitary business were required to submit an informational report for the unitary combined group to the Department of Taxation ("the Department") in a manner prescribed by the agency no later than July 1, 2021. The Department of Taxation ("the Department") is then required to submit a report to the Chairmen of the Senate Finance and Appropriations Committee, the House Appropriations Committee, and the House Finance Committee based on the information provided by such corporations.

The attached report summarizes the information provided by corporations that complied with the reporting requirement. Based on the information provided by such corporations, it is estimated that unitary combined reporting for Taxable Year 2019 would likely generate a positive General Fund revenue impact. However, it should be noted that the estimates included in the attached report are subject to several limitations, including the fact that it is based solely on one taxable year and the likelihood that taxpayers could engage in tax planning if Virginia adopted unitary combined reporting. In the initial years of combined reporting, it is likely that any positive revenue impact could be much lower, or there could even be revenue decreases due to tax compliance issues. In addition, the fiscal implications could be impacted by policy decisions that would need to be considered prior to the adoption of combined reporting. Accordingly, we recommend that the information in the report be viewed as an indicator of the potential impact on select corporations, but not necessarily as a measure of the actual revenue impact on Virginia if mandatory combined reporting were adopted.

Please contact me if you have any questions.

Sincerely,

Craig M. Burns
Tax Commissioner

Enclosure
C: The Honorable K. Joseph Flores, Secretary of Finance

Report on Corporate Income Tax Informational Reporting Requirement Pursuant to Item 3-5.23 of the 2021 Appropriation Act

Virginia Department of Taxation

December 1, 2021

Table of Contents

Executive Summary

Pursuant to Item 3-5.23 of the 2021 Appropriation Act (House Bill 1800, Chapter 552 of the 2021 *Acts of Assembly*, Special Session I), corporations that are part of a unitary business were required to submit an informational report for the unitary combined group to the Department of Taxation ("the Department") in a manner prescribed by the agency no later than July 1, 2021.

Pursuant to the Appropriation Act requirement, affected corporations were required to submit the report based on Taxable Year 2019 computations and include tax under unitary combined reporting. The report was required to show the difference in tax owed as a result of filing a unitary combined report compared to the tax owed under current filing requirements. This reporting requirement applied regardless of whether members of a unitary combined group are currently included in Virginia income tax filings using existing methods. The deadline to submit the report was July 1, 2021, and no extensions were allowed to be granted.

The Department developed a unitary combined report template that was required to be submitted electronically via its Web Upload application. The Department also developed a detailed Unitary Combined Report Reference Guide to address questions regarding how to complete the report. See Appendix C. The Department required that each designated corporation show the difference in tax owed as a result of filing a unitary combined report under both the Joyce and Finnigan approaches compared to the tax owed under current filing requirements. Under the Joyce approach, nexus determinations were made at the level of each individual entity for apportionment purposes, and as a result, sales by an entity lacking nexus in Virginia were excluded from the sales factor numerator for Virginia income tax purposes. Under the Finnigan approach, nexus determinations were made at the level of unitary combined group as a whole, and as a result, all sales of members of the unitary combined group attributable to Virginia were included in the sales factor numerator, even if certain individual members lack nexus in Virginia if filing on a separate entity basis.

Study Limitations that May Impact Results

The results of this study are likely impacted by the following study limitations:

- The actual revenue impact would depend in part on how the law is structured. The General Assembly could elect to make different policy decisions, which could impact the revenue estimates.

- The report is based solely on one year of information, Taxable Year 2019, which may not reflect current corporate income tax revenues or the volatility of the corporate income tax.

- The study is based on unaudited data as reported by some corporations, but not all, corporations.

- The estimates set forth in this report are based solely on the information reported by companies that complied with the reporting requirement, and only to the extent that all necessary data was submitted.

- There is no valid way to extrapolate the results to all corporations, as it is unknown whether the corporations that did not submit a report would be impacted by unitary combined reporting. To the extent that such corporations would have an increase or decrease in tax liability, the estimates could change significantly.

- The study is based on pro forma reports on which no tax was due. If Virginia were to actually enact unitary combined reporting, it is likely that these taxpayers may take actions to reduce their tax, such as modifying how they report income or restructuring their activities and corporate structure.

As a result, the Department recommends that the information in this report be viewed as an indicator of the potential impact on select corporations, but not necessarily as a measure of the actual impact on Virginia revenues if mandatory combined reporting were adopted.

Results Based on Reported Information

Based solely on the information provided by the corporations that complied with this reporting requirement, it is estimated that unitary combined reporting for Taxable Year 2019 would likely generate a positive General Fund revenue impact. Table 1 displays the overall increase in corporate income tax revenues attributable to the corporations that filed the report. If Virginia had the Finnigan method of unitary combined reporting in effect during Taxable Year 2019, the reported information indicates that corporate income tax revenues attributable to these corporations would have increased by an estimated $203 million for such taxable year. If Virginia had the Joyce method of unitary combined reporting in effect during Taxable Year 2019, the reported information indicates that corporate income tax revenues attributable to these corporations would have increased by an estimated $165 million for such taxable year.

It is important to note that the estimated revenue impact reflects the corporations' income tax liability after credits. The actual fiscal year revenue impact may vary based on estimated payments, returns and payments under extension, amended returns, and the corporation's fiscal year. In addition, it is important to note that these estimates are based solely on self-reported data for corporate groups who complied with the reporting requirement, which constitutes approximately one-fifth of corporations that currently file Virginia returns.

Combined Reporting Approach	**Estimated Revenue Impact Based on Reporting Corporations**
Finnigan	$203 million
Joyce	$165 million

Table 1: Estimated Revenue Impact Attributable to Corporations Filing the Report (Taxable Year 2019)

It is also important to note that these revenue estimates are based on only one taxable year, Taxable Year 2019, and do not reflect the volatility of the corporate income tax revenue over the years. It should be noted that Taxable Year 2019 was a particularly strong year for corporate revenues, with 9.5 percent growth in FY 2019 corporate income tax revenues and 7.2 percent growth in FY 2020 corporate income tax revenues. Corporate tax revenue has historically varied greatly from year to year due to such factors as profits, net operating losses, and gross receipts. In addition, the estimates are based on the unaudited data reported by the reporting corporations, and do not reflect all corporations currently filing within Virginia. The Department received limited information and had limited time to accurately validate all of the information in the reports filed under the Finnigan and the Joyce methods. Additionally, any impact would vary based on the transitional rules that would need to be developed regarding net operating losses, eliminations, and the business interest deduction limitation.

Critically, the revenue estimates in Table 1 above may overstate the actual impact for the corporations that submitted the report because these estimates are based on pro forma reports on which no tax was due. If Virginia were to enact unitary combined reporting, it is likely that the actual revenue impact in the initial years could be a revenue loss due to compliance. As explained in prior fiscal impact statements, certain businesses would benefit from unitary combined reporting, and others would realize an increased Virginia tax liability. This has revenue implications because the Department anticipates that businesses benefitting from this change would comply immediately. In contrast, those with increased tax liabilities may resist to an unknown extent. After the initial years, it is anticipated that taxpayers generally will come into compliance, but revenues generated may not be as large as indicated on the Taxable Year 2019 reports. This is because taxpayers whose tax would otherwise increase under unitary combined reporting may adjust their tax planning to reduce their tax liability. Additionally, it is unknown whether the corporations that did not comply with the reporting requirement would estimate an increase or decrease in their tax liability under combined reporting.

Analysis of Unitary Combined Reporting

Summary of Unitary Combined Reporting

Under mandatory unitary combined reporting, a corporation is required to combine the income, expenses, gains, losses, and allocation and apportionment factors of all related corporations that are engaged in a unitary business on its corporate income tax return, regardless of the state's nexus with or the location of the corporations in the unitary group. In theory, the resulting tax burden of the unitary group is comparable to the tax burden that would result if the corporations were merged into a single firm. The U.S. Supreme Court has held that a unitary combined group is a single economic enterprise, and that a state may apportion transactions and operations within its borders to determine its taxable income. See *Mobil Oil Corp v. Commissioner of Taxes*, 445 U.S. 425 (1980). States that require unitary combined reporting generally do not provide the option to file separately. Instead, unitary combined reporting is typically mandatory in such states. There are several explanations that proponents offer for enacting unitary combined reporting, including providing an accurate measure of income, controlling income shifting, and increasing corporate income tax revenues.

There are two main approaches to apportion a unitary combined group's business apportionable income, "Joyce" and "Finnigan," named after two California administrative tax decisions from 1966 and 1978-1980, respectively. The primary difference between the two approaches is the way in which the sales factor numerator for the combined group is computed. Under both approaches, the denominator of the sales factor includes receipts of all the group members. Under the Joyce approach, nexus determinations are made at the level of each individual entity for apportionment purposes, and as a result, sales by an entity lacking nexus in the state are excluded from the sales factor numerator for state income tax purposes. Under the Finnigan approach, nexus determinations are made at the level of unitary combined group as a whole, and as a result, all sales of members of the unitary combined group attributable to the state are included in the sales factor numerator, even if certain individual members lack nexus with the state if filing on a separate entity basis. Because the General Assembly has considered legislation in the past under both the Joyce and Finnigan approaches, the Department required that the report filed by corporations include a computation of Virginia tax under both approaches.

Under current law, Virginia is not a mandatory unitary combined reporting state. Instead, Virginia allows an affiliated group of corporations to elect to file separately, on a consolidated basis, or using a Virginia combined return. Virginia's existing combined return regime differs from the unitary combined reporting. In a Virginia combined return, each corporation in an affiliated group that has nexus with Virginia determines its income, expenses, gains, losses, and allocation and apportionment factors separately. Each corporation then separately computes its individual corporate income tax liability. The final corporate income tax liability, after apportionment, of each corporation is then combined and included on one corporate income tax return. In contrast, unitary combined reporting requires the inclusion of all corporations on the report, regardless of whether they have nexus with Virginia, so long as they are in a unitary business relationship exist with at least one corporation that has nexus with Virginia.

Background of the Report

Prior to the reporting deadline, the Department sent approximately 72,000 letters to notify corporations of the new reporting requirement. These letters went to all corporations that filed 2019 Virginia corporate income tax returns and fiscal year filers that filed 2018 returns. Even though many of these taxpayers may not have been subject to the reporting requiring, sending letters to all corporate taxpayers was necessary because there is no indicator on the federal corporate income tax return or the Virginia corporate income tax return to identify a unitary combined group. If a corporation determined that it was subject to the reporting requirement, it was required to be included in a report submitted for that unitary group. Each unitary group was required to designate a corporation that would submit a report for that group electronically via the Web Upload application.

Online Questionnaire

The Department developed an optional online questionnaire to allow corporations to indicate whether they would be subject to the unitary combined reporting requirement. Of the approximately 72,000 corporations to which the Department mailed letters, the optional questionnaire was completed by 32,553 corporations (approximately 45 percent). Of the corporations that submitted the online questionnaire, 20% indicated that they would be subject to the reporting requirement and 80% indicated that they were not subject to the requirement.

	Number	Percent
Number of Virginia Corporations Receiving Mailer	71,952	100%
Questionnaire Responses from Virginia Corporations	32,553	45%
Of Those That Responded to Questionnaire:		
Indicated subject to the reporting	6,356	20%
Indicated not subject to the reporting	26,197	80%

Table 2: Mailer and Questionnaire Response Statistics

Unitary Combined Report (Pro Forma Return)

Unitary groups that were subject to the reporting requirement were required to submit a pro forma return by July 1, 2021. The unitary combined report was not an actual return. Rather, it was a compilation of data submitted electronically via the Web Upload application. It included:

- Federal taxable income
- Virginia taxable income
- Net operating loss deductions
- Virginia tax liability
- Apportioned income
- Tax credits
- Apportionment factors

In order to allow the Department to compute the change in tax liability, taxpayers were required to compute Virginia tax liability in three ways: the Joyce method, the Finnigan method, and Virginia's current tax filing requirements. See the Reference Guide in Appendix C for more details.

Methodology

Unitary combined reports were submitted by designated corporations electronically via the Department's Web Upload application. Due to the time frame for submitting such reports, the edits and validations that would normally be in place for the processing of corporate income tax returns were not available. As a result, when taxpayers uploaded reports with incorrect data, these reports were still accepted.

As a result, the first step in analyzing the report submissions was for the Department to ensure that the reports correctly stated either the group FEIN or the designated corporation FEIN that would allow the Department to compute the difference in Virginia tax liability under the Joyce and the Finnigan methods.

Then, the Department took steps to validate the information submitted by comparing it to actual return data on file. The Department retrieved the latest Virginia corporate income tax liability from actual returns for each consolidated, combined, or separate return submitted where available. For unitary groups that submitted unitary combined reports based on Taxable Year 2018 information, Taxable Year 2018 data was retrieved in lieu of Taxable Year 2019 data.

The Department made adjustments to remove duplicate, incomplete, and incorrect report data from the final estimates. For a complete unitary report, taxpayers were required to submit pro forma returns using the Joyce method, the Finnigan method, and the actual

Virginia consolidated, combined, or separate return information. The Department considered a report submission to be incomplete where the unitary group submitted an actual Virginia corporate income tax return based solely on current filing methods and without any data on how tax would be computed under the Joyce and Finnigan methods of unitary combined reporting. A report submission was also considered incomplete when a unitary group submitted a report based solely on Joyce and Finnigan and without any data on how tax was computed under Virginia's current filing methods. In cases where there were discrepancies in the data that could not be resolved, the report was excluded from the final data set.

Results Based on Reported Information

For Taxable Year 2019, the pro forma unitary combined report data indicate that the Finnigan method would increase corporate income tax revenues attributable to the reporting corporations by an estimated $203 million and the Joyce method would increase corporate income tax revenues attributable to the reporting corporations by an estimated $165 million. Table 3 shows the percentage of unitary groups that submitted a report estimated to have an increase, decrease, or no change in tax liability, based on data submitted. Although the percentages vary slightly, under both methods, approximately 62 percent of unitary groups who complied with the reporting requirement reported no change in tax liability. The percentage of unitary groups reporting an increase in tax liability is slightly higher under the Finnigan method (16.8 percent versus 15.7 percent under the Joyce method). Similarly, the percentage of unitary groups reporting a decrease in tax liability is slightly lower under the Finnigan method (21.6 percent versus 22.6 percent under the Joyce method). It should be noted that these results are based solely on unitary groups that submitted a report and is not necessarily representative of the impact on all corporations that would be impacted by unitary combined reporting.

Combined Reporting Approach	Change in Tax Liability	Number of Unitary Groups	Percent	Change in Tax Liability (in millions)
Finnigan	No Change	5,851	61.6%	-
	Increase in Tax Liability (Losers)	1,593	16.8%	$340
	Decrease in Tax Liability (Winners)	2,048	21.6%	($137)
	Total	**9,492**	**100.0%**	**$203**
Joyce	No Change	5,863	61.8%	-
	Increase in Tax Liability (Losers)	1,489	15.7%	$308
	Decrease in Tax Liability (Winners)	2,140	22.5%	($143)
	Total	**9,492**	**100.0%**	**$165**

Table 3: Estimated Change in Tax Liability (Taxable Year 2019)

Tables 4 and 5 display the estimated change in corporate income tax liability by federal taxable income, based on the information reported by the unitary groups that complied with the reporting requirement.

Federal Taxable Income	Decrease in Liability		Increase in Liability		No Change	Total	
	Count	Amount (in millions)	Count	Amount (in millions)	Count	Count	Net Change (in millions)
Less than $0	657	($27.8)	143	$3.7	3,440	4,240	($24.1)
$0 to $500K	351	($4.3)	138	$2.3	1,087	1,576	($2.0)
$500K-$1M	50	($0.5)	54	$0.3	167	271	($0.2)
$1M-$10M	329	($4.3)	262	$2.0	677	1,268	($2.3)
$10M-$25M	141	($3.9)	199	$4.0	198	538	$0.1
$25M-$100M	237	($9.2)	287	$14.7	170	694	$5.6
$100M-$250M	123	($14.8)	178	$23.7	68	369	$8.9
$250M-$500M	60	($9.1)	111	$26.2	21	192	$17.1
$500M and Over	100	($62.6)	221	$262.7	23	344	$200.1
Total	**2,048**	**($136.5)**	**1,593**	**$339.6**	**5,851**	**9,492**	**$203.1**

Table 4: Estimated Change in Tax Liability by Group's Federal Taxable Income (Finnigan Method – Taxable Year 2019)

Federal Taxable Income	Decrease in Liability		Increase in Liability		No Change	Total	
	Count	Amount (in millions)	Count	Amount (in millions)	Count	Count	Net Change (in millions)
Less than $0	664	($27.9)	135	$3.4	3,441	4,240	($24.5)
$0 to $500K	348	($4.3)	138	$2.2	1,091	1,577	($2.1)
$500K-$1M	54	($0.5)	44	$0.3	171	269	($0.2)
$1M-$10M	343	($4.4)	253	$1.9	673	1,269	($2.5)
$10M-$25M	154	($3.8)	184	$3.3	198	536	($0.5)
$25M-$100M	266	($10.0)	255	$13.3	173	694	$3.3
$100M-$250M	137	($15.2)	165	$21.6	69	371	$6.4
$250M-$500M	66	($10.6)	105	$24.5	22	193	$13.9
$500M and Over	108	($66.5)	210	$237.4	25	343	$170.9
Total	**2,140**	**($143.1)**	**1,489**	**$307.7**	**5,863**	**9,492**	**$164.6**

Table 5: Estimated Change in Tax Liability by Group's Federal Taxable Income (Joyce Method - Taxable Year 2019)

Tables 6 and 7 display the change in corporate income tax liability by industry classifications (NAICS codes) for unitary groups that complied with the reporting requirement. The agriculture industry code and the unreported NAICS code were aggregate because one of the industry reported fewer than four returns.

NAICS	Decrease in Liability		Increase in Liability		No Change	Total	
	Count	Amount (in millions)	Count	Amount (in millions)	Count	Count	Net Change (in millions)
11-Agriculture and Unreported NAICS	13	($0.4)	10	$0.7	37	60	$0.3
21-Mining, quarrying, and oil and gas extraction	9	($4.5)	6	$0.1	36	51	($4.4)
22-Utilities	10	($1.1)	6	$3.6	19	35	$2.5
23-Construction	65	($1.3)	54	$5.9	165	284	$4.6
31-33 - Manufacturing	362	($25.8)	376	$54.4	627	1,365	$28.6
42-Wholesale trade	191	($18.3)	186	$24.3	377	754	$6.0
44-45 - Retail trade	79	($12.2)	103	$46.7	159	341	$34.5
48-49 - Transportation and Warehousing	61	($2.3)	64	$3.3	137	262	$1.0
51-Information	98	($19.5)	104	$52.0	360	562	$32.5
52-Finance	318	($7.2)	140	$22.0	1,391	1,849	$14.8
53-Real Estate and Rental and Leasing	168	($5.2)	65	$3.2	491	724	($2.0)
54-Professional, Scientific, and Technical services	266	($10.6)	176	$40.2	1,059	1,501	$29.6
55-Management of Companies and Enterprises	221	($20.2)	166	$65.4	532	919	$45.2
56-Administrative and Support and Waste Management and Remediation Services	64	($2.7)	59	$5.8	142	265	$3.1
61-Educational Services	13	($0.3)	6	$0.1	44	63	($0.1)
62-Health Care and Social Assistance	49	($1.8)	22	$6.6	117	188	$4.8
71-Arts, Entertainment, and Recreation	10	($0.6)	8	$1.0	24	42	$0.4
72-Accommodation and Food Services	23	($2.1)	23	$3.6	70	116	$1.5
81-Other Services (except Public Administration)	28	($0.3)	19	$0.6	64	111	$0.3
Total	**2,048**	**($136.5)**	**1,593**	**$339.6**	**5,851**	**9,492**	**$203.1**

Table 6: Estimated Change in Tax Liability by Group's Reported NAICS Code (Finnigan Method - Taxable Year 2019)

NAICS	Decrease in Liability		Increase in Liability		No Change	Total	
	Count	Amount (in millions)	Count	Amount (in millions)	Count	Count	Net Change (in millions)
11-Agriculture and Unreported NAICS	16	($0.4)	7	$0.6	34	57	$0.2
21-Mining, quarrying, and oil and gas extraction	9	($4.5)	6	$0.1	36	51	($4.4)
22-Utilities	10	($1.1)	6	$3.6	19	35	$2.5
23-Construction	65	($1.3)	54	$5.9	165	284	$4.5
31-33-Manufacturing	400	($31.0)	333	$45.4	631	1,364	$14.4
42-Wholesale trade	208	($18.9)	171	$22.0	376	755	$3.1
44-45-Retail trade	84	($12.7)	95	$46.0	163	342	$33.2
48-49-Transportation and Warehousing	66	($2.3)	57	$2.5	139	262	$0.2
51-Information	104	($19.7)	96	$51.1	362	562	$31.3
52-Finance	324	($7.4)	130	$20.1	1,394	1,848	$12.7
53-Real Estate and Rental and Leasing	169	($5.2)	64	$3.2	492	725	($2.0)
54-Professional, Scientific, and Technical services	270	($10.6)	175	$39.8	1,057	1,502	$29.2
55-Management of Companies and Enterprises	226	($20.3)	160	$50.9	534	920	$30.6
56-Administrative and Support and Waste Management and Remediation Services	67	($2.8)	58	$6.0	140	265	$3.2
61-Educational Services	13	($0.3)	6	$0.1	44	63	($0.1)
62-Health Care and Social Assistance	50	($1.8)	20	$5.5	118	188	$3.7
71-Arts, Entertainment, and Recreation	10	($0.6)	8	$0.8	24	42	$0.2
72-Accommodation and Food Services	23	($1.7)	23	$3.6	70	116	$1.9
81-Other Services (except Public Administration)	26	($0.3)	20	$0.6	65	111	$0.2
Total	**2,140**	**($143.1)**	**1,489**	**$307.7**	**5,863**	**9,492**	**$164.6**

Table 7: Estimated Change in Tax Liability by Group's Reported NAICS Code (Joyce Method - Taxable Year 2019)

Tables 8 and 9 display the number and percentage of unitary groups that reported an increase or a decrease in the estimated corporate income tax liability within specific ranges.

Change in Tax Liability	Number of Unitary Groups	Percent	Change in Tax Liability (in millions)
Decrease of $1M and more	25	0.3%	($66)
Decrease of less than $1M	2,023	21.3%	($70)
No Change	5,851	61.6%	-
Increase of less than $1M	1,521	16.0%	$98
Increase of $1M and more	72	0.8%	$242
Total	**9,492**	**100.0%**	**$203**

Table 8: Estimated Change in Tax Liability by Specific Ranges (Finnigan Method - Taxable Year 2019)

Change in Tax Liability	Number of Unitary Groups	Percent	Change in Tax Liability (in millions)
Decrease of $1M and more	26	0.3%	($70)
Decrease of less than $1M	2,114	22.3%	($73)
No Change	5,863	61.8%	-
Increase of less than $1M	1,424	15.0%	$92
Increase of $1M and more	65	0.7%	$216
Total	**9,492**	**100.0%**	**$165**

Table 9: Estimated Change in Tax Liability by Specific Ranges (Joyce Method - Taxable Year 2019)

Table 10 shows the estimated change in corporate income tax liability for Fortune 500 corporations headquartered in Virginia that complied with the reporting requirement, based on reports filed by corporations listed on the Fortune 500 companies list.

	Change in Tax Liability	Count	Amount (in millions)
Finnigan	Decrease in Tax Liability	4	($4.6)
	Increase in Tax Liability	8	$32.3
	No Change	9	-
	Total Net Change	**21**	**$27.7**
Joyce	Decrease in Tax Liability	4	($4.5)
	Increase in Tax Liability	8	$31.3
	No Change	9	-
	Total Net Change	**21**	**$26.8**

Table 10: Estimated Change in Tax Liability
Fortune 500 Companies Headquartered in Virginia
(Taxable Year 2019 – Joyce and Finnigan)

Results Impacted by Study Limitations

The study is limited due to the following factors. First, estimates would depend in part on how the law is structured. The Department attempted to clarify the major assumptions that corporations should apply in preparing the report. However, due to the tight time frame, not every policy decision was addressed in the Reference Guide. In addition, the General Assembly could elect to make different policy decisions than those set forth in the Reference Guide. Legislative policy may vary from the assumptions utilized in reports submitted, such as whether to provide a consolidation election, and any transitional rules that would be provided to address issues, such as existing net operating losses, eliminations, and the business interest deduction limitation.

Another limitation is that the report is solely based on one year of information, Taxable Year 2019. The corporate income tax has historically been a volatile revenue source for Virginia, and corporations' revenues could significantly vary from one year to another. Taxable Year 2019 was a particularly strong year for corporate revenues, with 9.5 percent growth in FY 2019 corporate income tax revenues and 7.2 percent growth in FY 2020 corporate income tax revenues. It is also important to note that Taxable Year 2019 was pre-pandemic and the results may not reflect the actual trend in corporate income tax revenues.

The study is based on unaudited data as reported by certain corporations. Due to the time allotted for the implementation and the analysis, the Department developed a template to allow corporations to submit their pro forma returns through its Web Upload application. Some edits, validations and audits that would normally take place during the submission of an actual return were not available. In addition to time constraints for implementation and analysis, there were time constraints on the corporate reporting that could impact the accuracy of the reports.

The estimates set forth in this report are based solely on the information reported by companies that complied with the reporting requirement, and only to the extent that all necessary data was submitted. There is no valid way to extrapolate the results to all corporations, as it is unknown whether the corporations that did not submit a report would be impacted by unitary combined reporting. To the extent that such corporations would have an increase or decrease in tax liability, the estimates could change significantly.

The study is based on pro forma reports on which no tax was due. As a result, unitary groups that reported an increase in their tax under unitary combined reporting likely took no actions to reduce their tax liability because such amount was only hypothetical and did not have to be paid. In contrast, if Virginia were to actually enact unitary combined reporting, it is likely that these taxpayers may take actions to reduce their tax, such as modifying how they report income or restructuring their activities and corporate structure.

The Unitary Combined Report Reference Guide addressed some policy issues, but did not address every scenario and different companies may have reasonably applied different assumptions. In addition, the General Assembly may choose a different resolution of certain policy issues addressed in the report.

Factors such as the intangible holding company ("IHC") addition may result in distortions, since reporting an IHC addition under unitary combined reporting may result in accounting for the impact twice. While any such addback should have been eliminated to the extent it occurred between unitary combined members on the report, it is possible that some taxpayers may not have done this correctly.

VIRGINIA STATE BUDGET

2021 Special Session I

Budget Bill - HB1800 (Chapter 552)

Bill Order » Part 3: Miscellaneous » Adjustments and Modifications to Tax Collections » Item 3-5.23

Corporate Income Tax Informational Reporting

Item 3-5.23

§ 3-5.23 CORPORATE INCOME TAX INFORMATIONAL REPORTING

A.1. Corporations that are members of a unitary business must file a report, in a manner prescribed by the Tax Commissioner, for the unitary combined group containing the unitary combined net income of such group. The report shall be based on taxable year 2019 computations and include, at a minimum the difference in tax owed as a result of filing a unitary combined report, computed according to the method or methods specified by the Tax Commissioner, compared to the tax owed under the current filing requirements.

2. "Unitary business" means a single economic enterprise 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. A "unitary business" includes that part of the business that meets the definition in this section and is conducted by a taxpayer through the taxpayer's interest in a partnership, whether the interest in that partnership is held directly or indirectly through a series of partnerships or other pass-through entities. A "unitary business" shall not include persons subject to, or that would be subject to if doing business in the Commonwealth, the insurance premiums license tax under Chapter 25 (§ 58.1-2500 et seq.), Code of Virginia, or the bank franchise tax under Chapter 12 (§ 58.1-1200 et seq.)

3. The report must be submitted to the Department of Taxation on or before July 1, 2021, which date shall not be extended.

4. Members of a unitary combined group shall exclude as a member and disregard the income and apportionment factors of any corporation incorporated in a foreign jurisdiction (a "foreign corporation") if the average of its property, payroll and sales factors outside the United States is eighty percent (80%) or more. If a foreign corporation is includible as a member in the unitary combined group, to the extent that such foreign corporation's income is subject to the provisions of a federal income tax treaty, such income is not includible in the unitary combined group net income. Such member shall also not include in the unitary combined report any expenses or apportionment factors attributable to income that is subject to the provisions of a federal income tax treaty. For purposes of this paragraph, "federal income tax treaty" means a comprehensive income tax treaty between the United States and a foreign jurisdiction, other than a foreign jurisdiction which the organization for economic co-operation and development has determined has not committed to the internationally agreed tax standard, or has committed to the international agreed tax standard but has not yet substantially implemented that standard, as identified in the then-current organization for economic co-operation and development progress report.

B. Any corporation required to submit such report to the Department of Taxation that fails to do so on or before July 1, 2021, or that makes a material omission or misstatement in connection with such report shall be subject to a penalty of $10,000. The Tax Commissioner shall have the authority to waive such penalty upon a determination that the requirement would cause an undue hardship. All requests for waiver shall be transmitted to the Tax Commissioner in writing.

C. The Tax Commissioner shall on or before December 1, 2021, based on the information provided in income tax returns and the data submitted under this section, submit a report to the Chair of the Senate Finance and Appropriations Committee, the Chair of the House Appropriations Committee, and the Chair of the House Finance Committee.

Appendix B: Amendment to the Corporate Income Tax informational Reporting

§ 3-5.23 CORPORATE INCOME TAX INFORMATIONAL REPORTING

A.1. Corporations that are members of a unitary business must file a report, in a manner prescribed by the Tax Commissioner, for the unitary combined group containing the unitary combined net income of such group. The report shall be based on taxable year 2019 computations and include, at a minimum the difference in tax owed as a result of filing a unitary combined report, computed according to the method or methods specified by the Tax Commissioner, compared to the tax owed under the current filing requirements.

2. "Unitary business" means a single economic enterprise 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. A "unitary business" includes that part of the business that meets the definition in this section and is conducted by a taxpayer through the taxpayer's interest in a partnership, whether the interest in that partnership is held directly or indirectly through a series of partnerships or other pass-through entities. A "unitary business" shall not include persons subject to, or that would be subject to if doing business in the Commonwealth, the insurance premiums license tax under Chapter 25 (§ 58.1-2500 et seq.), Code of Virginia, or the bank franchise tax under Chapter 12 (§ 58.1-1200 et seq.)

3. The report must be submitted to the Department of Taxation on or before July 1, 2021, which date shall not be extended.

4. Members of a unitary combined group shall exclude as a member and disregard the income and apportionment factors of any corporation incorporated in a foreign jurisdiction (a "foreign corporation") if the average of its property, payroll and sales factors outside the United States is eighty percent (80%) or more. If a foreign corporation is includible as a member in the unitary combined group, to the extent that such foreign corporation's income is subject to the provisions of a federal income tax treaty, such income is not includible in the unitary combined group net income. Such member shall also not include in the unitary combined report any expenses or apportionment factors attributable to income that is subject to the provisions of a federal income tax treaty. For purposes of this paragraph, "federal income tax treaty" means a comprehensive income tax treaty between the United States and a foreign jurisdiction, other than a foreign jurisdiction which the organization for economic co-operation and development has determined has not committed to the internationally agreed tax standard, or has committed to the international agreed tax standard but has not yet substantially implemented that standard, as identified in the then-current organization for economic co-operation and development progress report.

B. ~~Any corporation required to submit such report to the Department of Taxation that fails to do so on or before July 1, 2021, or that makes a material omission or misstatement in connection with such a report shall be subject to a penalty of $10,000. The Tax Commissioner shall have the authority to waive such penalty upon a determination that the requirement would cause an undue hardship. All requests for a waiver shall be transmitted to the Tax Commissioner in writing.~~

C. *The Tax Commissioner shall on or before December 1, 2021, based on the information provided in income tax returns and the data submitted under this section, submit a report to the Chair of the Senate Finance and Appropriations Committee, the Chair of the House Appropriations Committee, and the Chair of the House Finance Committee.*

Appendix C: Reference Guide

The $10,000 penalty described in this Reference Guide was repealed by 2021 House Bill 7001 (Chapter 1, Special Session II). As a result, no corporation will be subject to the $10,000 penalty and there is no need to submit a waiver request.

Reference Guide: Instructions for the Unitary Combined Report (Pro Forma Return)

Pursuant to budget language enacted by the General Assembly, Item 3-5.23 of 2021 House Bill 1800 (Chapter 552, Special Session I), corporations that are part of a unitary business are generally required to submit an informational report (i.e., a pro forma return) for the unitary combined group to the Department of Taxation ("the Department") in a manner prescribed by the agency. Affected corporations are required to submit the report based on Taxable Year 2019 computations and include tax under unitary combined reporting, computed according to the methods specified by the Department. This will show the difference in tax owed as a result of filing a unitary combined report comparted to the tax owed under current filing requirements. This reporting requirement may apply regardless of whether members of a unitary combined group are currently included in Virginia income tax filings using existing methods.

The report is required to be submitted to the Department electronically on or before July 1, 2021, and no extensions may be granted. A unitary combined group should have one entity, referred to as the "Designated Corporation" (see below) file the unitary combined report on behalf of the group.

The unitary combined report will not be an actual return. Rather, it will be a compilation of data that must be submitted electronically via the Web Upload application. Thus, the combined report will not take the place of a regular return on Form 500 by the applicable due dates.

Based on the information gathered pursuant to this reporting requirement, the Department will submit a report to the Chair of the Senate Finance and Appropriations Committee, the Chair of the House Appropriations Committee, and the Chair of the House Finance Committee on or before December 1, 2021 that analyzes the fiscal ramifications of changing the state's corporate income tax law to a unitary combined method of reporting.

Unitary Business

For purposes of this reporting requirement, a "unitary business" is defined as a single economic enterprise 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. A "unitary business" includes that part of the business that meets such definition and is conducted by a taxpayer through the taxpayer's interest in a partnership, whether the interest in that partnership is held directly or indirectly through a series of partnerships or other pass-through entities. To the extent consistent with the definition above, taxpayers should follow the principles in Multistate Tax Commission Model General Allocation and Apportionment Regulations, Sec. IV.1.(b)., defining a "unitary business," including an explanation of what is meant by a "commonly controlled group."

However, for purposes of this reporting requirement, a unitary combined group excludes:

- Persons subject to, or that would be subject to if doing business in the Commonwealth, the insurance premiums license tax under Chapter 25 (§ 58.1-2500 et seq.), Code of Virginia, or the bank franchise tax under Chapter 12 (§ 58.1-1200 et seq.)

- Any corporation incorporated in a foreign jurisdiction (a "foreign corporation") if the average of its property, payroll and sales factors outside the United States is eighty percent (80%) or more.

In addition, the Department will not require the filing of a unitary combined report by corporations that are members of an in-state unitary business. An in-state unitary business is one where none of the corporations in the unitary combined group do any business in any state other than Virginia.

Because the report must be prepared according Taxable Year 2019 computations, the determination of a unitary business and unitary combined group, including what corporations are contained in such group, is made based upon Taxable Year 2019 circumstances.

Virginia Combined Return and Unitary Combined Reporting

Under current law, every corporation that is incorporated in Virginia, has registered with the State Corporation Commission for the privilege of conducting business in Virginia, or receives income from Virginia sources is generally required to file a Virginia corporation income tax return. Virginia allows an affiliated group of corporations to elect to file in one of the following ways: (i) separately, (ii) on a consolidated basis, or (iii) using a Virginia combined return.

Please note that the existing Virginia combined return regime differs from the unitary combined reporting requirement described in these instructions. In a Virginia combined return, each corporation in an affiliated group that has nexus with Virginia determines its income, expenses, gains, losses, and allocation and apportionment factors separately. Each corporation then separately computes its individual corporate income tax liability. The final corporate income tax liability, after apportionment, of each corporation is then combined and included on one corporate income tax return.

In contrast, this report is required to be filed according to unitary combined reporting. Unlike the Virginia combined return, unitary combined reporting requires the inclusion of all corporations on the report, regardless of whether they have nexus with Virginia, so long as they are in a unitary business relationship exist with at least one corporation that has nexus with Virginia.

Business Apportionable Income and Nonbusiness Nonapportionable Income

Virginia law apportions all Virginia taxable income other than dividends, which are allocated. However, unitary combined reporting generally requires apportioning only business apportionable income and allocating all other income. Therefore, for the purposes of this report, Virginia taxable income for Taxable Year 2019 should be divided into two categories, business apportionable income and nonbusiness nonapportionable income.

"Business apportionable income" means all income that is apportionable under the Constitution of the United States and is not allocated under the laws of this state, including:

- Income arising from transactions and activity in the regular course of the taxpayer's trade or business; and

- Income arising from tangible and intangible property if the acquisition, management, employment, development or disposition of the property is or was related to the operation of the taxpayer's trade or business.

For purposes of this report, a corporation must apportion its business apportionable income within or without Virginia in accordance with *Va. Code* §§ 58.1-409 through 58.1-423.

Nonbusiness nonapportionable income means all income other than business apportionable income. For this report, a corporation must allocate all of its nonbusiness nonapportionable income or loss within or without Virginia in accordance with Multistate Tax Compact Article IV.4. to IV.8, with recommended amendments proposed by the Multistate Tax Commission during annual business meetings in July 2014 and 2015.

Designated Corporation

The unitary combined group should appoint a designated corporation (also referred to as the "designated member") for purposes of filing the unitary combined report. The unitary combined group may select any member of the combined group as the designated corporation so long as such member has a Virginia filing requirement under *Va. Code* § 58.1-441. As a result, a member without nexus with Virginia may not be selected as a designated corporation.

The corporation which files, or will file, the unitary combined report for the unitary combined group is deemed to be appointed as the designated corporation assuming it has a Virginia filing requirement under *Va. Code* § 58.1-441. The Department reserves the right to appoint any member of the unitary combined group to be the designated corporation.

The designated corporation is generally required to act on behalf of the unitary combined group in its own name in all matters relating to the unitary combined report. This includes performing the following duties:

- Filing the unitary combined report, including the reporting of any separate entity items attributable to unitary combined group members and including any amended unitary combined reports.

- Sending and receiving all correspondence with the Department regarding the unitary combined report, except that if correspondence relates to separate entity items or a payment made by another member of the unitary combined group, the Department may send the correspondence to that other member or the designated corporation, or both.

- Participating on behalf of the group in any investigation or hearing by the Department regarding the unitary combined report, including producing all information requested.

- Representing the unitary combined group in seeking from the Department a waiver from the penalty for failing to file a timely report or for filing a report with a material misstatement or omission.

- Executing any and all documents relating to the unitary combined report.

- Receiving notices regarding the unitary combined report. In general, a notice received by the designated corporation is considered received by all members of the unitary combined group, including any corporations that were not included in the unitary combined report but which the Department asserts are members the unitary combined group.

In general, no person other than the designated corporation may have authority to act for or represent itself or the unitary combined group. However, if the designated corporation is unable or unwilling to fulfill its obligations with respect to the unitary combined report, is unresponsive, or has not been identified to the Department, the Department may appoint a new designated corporation, or it may deal directly with any member of the unitary combined group in respect to its share of the unitary combined report items in which case each member will have full authority to act for itself.

Separate Reports

The use of a unitary combined report does not disregard the separate identities of the members of the unitary combined group. Before completing the unitary combined report, the designated corporation should complete separate reports for each member of the unitary combined group, including those without nexus with Virginia. To complete those separate reports, the taxpayer should consult the Form 500, its schedules, and its instructions to the extent consistent with the unitary combined report, except as noted under the "Business Apportionable Income and Nonbusiness Nonapportionable Income" section above. Relevant information from those separate reports should be combined onto a unitary combined report, which is then used to compute the amount of tax owed under both the Joyce and Finnigan approaches.

The unitary combined report must be filed with the Department. Although this report must include information about how a consolidated or combined group is reporting under current law, as well as how entities that file separately under current law reported such information on their Taxable Year 2019 returns, separate report worksheets should not be filed with the Department. However, such documentation is required to be maintained as supplementary supporting information to such unitary combined report that can be provided to the Department upon request.

Corporations can use the following worksheet as a way to help complete their separate reports for Taxable Year 2019.

Separate Report Worksheet

Income and Nonrefundable Credit Information	
1. Federal Taxable Income (From Federal Return)	
2. Total Additions from Schedule 500ADJ, Section A, Line 7	
3. Total (Add Lines 1 and 2)	
4. Total Subtractions from Schedule 500ADJ, Section B, Line 10	
5. Balance (Subtract Line 4 from Line 3)	
6. Savings and Loan Association's Bad Debt Deduction (See Instructions)	
7. Virginia taxable income (Subtract Line 6 from Line 5)	
8. Nonrefundable Tax Credits (Amount from Schedule 500CR, Section 2, Part 1, Line 1B)	
9. Federal Net Operating Loss Deduction	

Allocation and Apportionment Information	
10. Nonbusiness Nonapportionable Income Not Allocable to Virginia	
11. Nonbusiness Nonapportionable Income Allocable to Virginia	
12. Total (add Lines 8 and 9)	
13. Business Apportionable Income (Subtract Line 12 from Line 7)	
14. Property Factor	
Total	
Virginia	
Percentage	
15. Payroll Factor	
Total	
Virginia	
Percentage	
16. Sales Factor	
Total	
Virginia	
Percentage	

Line Instructions for Separate Report Worksheet

Line 1-Federal Taxable Income

Enter taxable income after net operating loss deductions and special deductions for dividends as it appears on the federal income tax return filed with the Internal Revenue Service on a separate basis (or that would have been reported if it filed such a return on a separate basis). Note that a net operating loss deduction cannot reduce federal taxable income below zero for purposes of Virginia income tax. Also, since this unitary combined report is based on Taxable Year 2019 as originally reported, the separate report should not reflect any net operating loss carryback from 2020.

Line 9-Federal Net Operating Loss Deduction

Enter the amount of net operating loss deductions as it appears on the federal income tax return filed with the Internal Revenue Service on a separate basis (or that would have been reported if it filed such a return on a separate basis).

Joyce and Finnigan Approaches to Apportionment

There are two main approaches to apportion a unitary combined group's business apportionable income — "Joyce" and "Finnigan"— named after two California administrative tax decisions from 1966 and 1978-1980, respectively. The primary difference between the two approaches is the way in which the sales factor numerator for the combined group is computed. Under both approaches, the denominator of the sales factor includes receipts of all the group members. Under the Joyce approach, nexus determinations are made at the level of each individual entity for apportionment purposes, and as a result, sales by an entity lacking nexus in Virginia are excluded from the sales factor numerator for Virginia income tax purposes. Under the Finnigan approach, nexus determinations are made at the level of unitary combined group as a whole, and as a result, all sales of members of the unitary combined group attributable to Virginia are included in the sales factor numerator, even if certain individual members lack nexus in Virginia if filing on a separate entity basis.

To better understand the differences between Joyce and Finnigan, please see the Multistate Tax Commission's project webpage with reference materials for a Model Option for Combined Filing Under Finnigan Approach, particularly its Finnigan Briefing Book (June 8, 2018) offering a simple illustration of how Joyce and Finnigan work in practice. While these references materials may provide general background regarding Joyce and Finnigan, taxpayers must use these instructions and not those materials to actually complete the report.

For the purposes of this report, the unitary combined group must prepare one set of calculations using the Joyce approach for Taxable Year 2019 and another using the Finnigan approach for Taxable Year 2019. The Department will use this information in its report to explain the revenue impacts to Virginia of adopting unitary combined reporting, which would require the General Assembly to choose either the Joyce or Finnigan approach to unitary combined reporting.

Taxable Year of the Unitary Combined Group

If two or more members of a unitary combined group file a federal consolidated return, the group's taxable year is the taxable year of the federal consolidated group. However, in all other situations, the taxable year of the unitary combined group is the taxable year of the designated corporation.

No Return Filed For Taxable Year 2019

Generally, if any member of the unitary combined group is required to file a Taxable Year 2019 return with Virginia but the member has not filed such return yet, then a unitary combined report is required. In such cases, the taxpayer should first complete its Taxable Year 2019 return because information from such return is necessary to complete the unitary combined report.

However, if any member has not filed a Taxable Year 2019 Virginia return because the extended due date for such return falls after July 1, 2021, then a unitary combined report may be filed using Taxable Year 2018 computations rather than Taxable Year 2019 computations. While the budget language enacted by the General Assembly requires the use of Taxable Year 2019 computations, the Department will waive penalties on such members with extended due dates after July 1, 2021 that file their unitary combined report using Taxable Year 2018 computations so long as no material omission or misstatement is made on the report. This relief is automatic. No additional application or paperwork is required to qualify, but you must enter on Column H of the report "2018" rather than "2019" for every row and you must use only Taxable Year 2018 information for the entirety of the report. This means that, if you are taking advantage of this relief, you must compute the rows concerning both Joyce and Finnigan based upon Taxable Year 2018, and you must compute the rows concerning your current filings based upon Taxable Year 2018. In no circumstances should any row be completed using Taxable Year 2019 information if you are taking advantage of this relief.

Subtraction for Certain Federal Income Tax Treaty Income

For purposes of this reporting requirement, if any corporation incorporated in a foreign jurisdiction (a "foreign corporation") is includible as a member in the unitary combined group, to the extent that such foreign corporation's income is subject to the provisions of a federal income tax treaty, such income is not includible in the unitary combined group's net income. Such member may not include in the unitary combined report any expenses or apportionment factors attributable to income that is subject to the provisions of a federal income tax treaty. For this purpose, "federal income tax treaty" means a comprehensive income tax treaty between the United States and a foreign jurisdiction, other than a foreign jurisdiction which the organization for economic co-operation and development has determined has not committed to the internationally agreed tax standard, or has committed to the international agreed tax standard but has not yet substantially implemented that standard, as identified in the then-current organization for economic co-operation and development progress report.

This amount should be added to the total subtractions claimed on the foreign corporation's separate report and will then be a component of Net Fixed Date Conformity and Virginia Modifications on the unitary combined report.

Because the report must be prepared according Taxable Year 2019 computations, the determination of this subtraction is made based upon Taxable Year 2019.

How the Unitary Combined Report is to be Completed

The unitary combined report will take the form of an Excel spreadsheet with 36 columns and at least 3 rows. The exact number of rows required will depend on how you filed or were required to file in Virginia for Taxable Year 2019. If you were a Virginia consolidated filer for Taxable Year 2019, you will fill in three rows on the unitary combined report:

- One row will be labeled "PFJ" for "pro forma Joyce" and will contain all the unitary combined information under the Joyce approach.
- One row will be labeled "PFF" for "pro forma Finnigan" and will contain all the unitary combined information under the Finnigan approach.
- One row will be labeled "VCN" for "Virginia consolidated return" and will contain consolidated information from your current consolidated return.

Similarly, if you were a Virginia combined filer for Taxable Year 2019, you will fill in three rows on the unitary combined report:

- One row will be labeled "PFJ" for "pro forma Joyce" and will contain all the unitary combined information under the Joyce approach.
- One row will be labeled "PFF" for "pro forma Finnigan" and will contain all the unitary combined information under the Finnigan approach.
- One row will be labeled "VCB" for "Virginia combined return" and will contain all the Virginia combined info from your current Virginia combined return.

However, if you were a Virginia separate filer for Taxable Year 2019, you will fill two rows in on the unitary combined report for Joyce and Finnigan, plus a row for each separate Virginia filer. For example, if you were a Virginia separate filer with 2 affiliates (Corporation A and Corporation B), then you would fill out four rows on the unitary combined report as follows:

- One row will be labeled "PFJ" for "pro forma Joyce" and will contain all the unitary combined information under the Joyce approach.
- One row will be labeled "PFF" for "pro forma Finnigan" and will contain all the unitary combined information under the Finnigan approach.
- One row will be labeled "VSP" for "Virginia separate return" and will contain all the separate company information from your Taxable Year 2019 Corporation A separate return.
- One row will be labeled "VSP" for "Virginia separate return" and will contain all the separate company information from your Taxable Year 2019 Corporation B separate return.

Column Instructions for the Unitary Combined Report

For each row you are required to complete, please fill in all columns according the instructions below:

Column A-FEIN of the designated member of the unitary group

> Enter the Federal Employer Identification Number (FEIN) of the member of the unitary group designated to file the report on behalf of all the other members in the same unitary group. It is the common identifier that will allow the Department to group the report by unitary group. Enter this FEIN in the first row you complete, and in all additional rows you complete. Do not enter the income tax return preparer identification number. A member without nexus with Virginia may not be selected as a designated corporation.

Column B-Number of Unitary Group Members Not Filing in Virginia

Enter the number of corporations included in the unitary combined group that did not file a Virginia corporate income tax return. This is the number of corporations within the same unitary group with no nexus in Virginia.

Enter this number in the first row you complete, and in all additional rows you complete. For example, if you enter "2" in Column B, Row 1 and if you were a Virginia consolidated filer for Taxable Year 2019 who must complete three rows on the unitary combined report, then you should enter "2" in Column B, Row 2 and Column B, Row 3 as well.

Column C-Email Address

Enter the email address of the designated member to allow the Department of Taxation to contact the unitary group or the member of the unitary group that submitted the report.

Enter this number in the first row you complete, and in all additional rows you complete.

Column D-Type of Report (Must equal PFJ, PFF, VCB, VCN, or VSP)

For the first row, enter "PFJ" for "pro forma Joyce."

For the second row, enter "PFF" for "pro forma Finnigan."

If you filed a Virginia consolidated return for Taxable Year 2019, enter "VCN" for "Virginia consolidated return" for the third row of this column. If you filed a Virginia combined return for Taxable Year 2019, enter "VCB" for "Virginia combined return" for the third row of this column.

If you filed Virginia separate returns for Taxable Year 2019, include a row for each separate Virginia filer and enter "VSP" for each of these rows. For example, enter "VSP" for the third row of this column for one corporation that is part of your unitary group. Enter "VSP" for the fourth row for another corporation that is part of your unitary group. Continue doing this until there is a row for every corporation that is part of your unitary group that filed a Taxable Year 2019 return with Virginia. These rows are in addition to the first two rows for PFJ and PFF.

Column E-FEIN

For the row with PFJ entered in Column D ("the PFJ row") and the row with PFF entered in Column D ("the PFF row"), enter the FEIN of the designated member.

For all other rows, enter the FEIN of the corporation that filed the Taxable Year 2019 return with Virginia.

Column F-Corporation Name

For the PFJ row and the PFF row, enter the corporation name of the designated member.

For all other rows, enter the corporation name of the corporation that filed the Taxable Year 2019 return with Virginia.

Column G-NAICS

For the PFJ row and the PFF row, enter the NAICS of the designated member.

For all other rows, enter the NAICS of the corporation that filed the Taxable Year 2019 return with Virginia.

Column H-Taxable Year

Enter "2019" for every row in this column.

However, if a taxpayer qualifies for the relief described under "No Return Filed For Taxable Year 2019" and chooses to take advantage of such relief, enter "2018" for every row in this column.

Column I-Federal Taxable Income

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's federal taxable income from their separate reports. Note that a net operating loss deduction cannot reduce federal taxable income below zero for Virginia income tax purposes. Also, since the unitary combined report is based on Taxable Year 2019 as originally reported, it should not reflect any net operating loss carryback from 2020.

For all other rows, enter federal taxable income as reported on Line 1 of the Taxable Year 2019 return filed with Virginia.

Column J-Net Fixed Date Conformity and Virginia Modifications

For the PFJ row and the PFF row, enter on this line the sum of each member of the unitary combined group's net modifications from their separate reports. This includes both fixed date conformity modifications and Virginia modifications. A net positive modification means that the member's aggregate additions exceed its aggregate subtractions and deductions. A net negative modification means that the member's aggregate additions are less than its aggregate subtractions and deductions.

For all other rows, enter the net fixed date conformity and Virginia modifications from the Taxable Year 2019 return filed with Virginia. While the Taxable Year 2019 return does not contain a line for this information, it can be determined by reducing the additions reported on such return (Line 2 of Virginia Form 500) by any subtractions (Line 4 of Virginia Form 500) and deductions (Line 6 of Virginia Form 500).

Column K-Eliminations

For the PFJ row and the PFF row, enter any amount included in either the Federal Taxable Income or Net Fixed Date Conformity and Virginia Modifications Columns that needs to be eliminated. The principles in the federal consolidated return regulations promulgated under IRC § 1502 apply to the extent consistent with the unitary combined group membership and combined unitary reporting principles. To the extent that a transaction has already been eliminated, do not eliminate it again. For example, if income was subtracted out as part of Net Fixed Date Conformity and Virginia Modifications, do not enter it again as part of eliminations here.

For all other rows, enter the enter any amount included in either the Federal Taxable Income or Net Fixed Date Conformity and Virginia Modifications Columns that need to be eliminated. For separate filers, zero should be entered in this column.

Column L-Federal Net Operating Loss Deduction

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's federal net operating loss deduction from their separate reports.

For all other rows, enter the federal net operating loss deduction claimed in computing federal taxable income for Virginia purposes on the Taxable Year 2019 return. Because the unitary combined report is based on Taxable Year 2019 as originally reported, it should not reflect any net operating loss carryback from 2020.

Column M-Virginia Taxable Income

For the PFJ row and the PFF row, determine the sum of each member of the unitary combined group's Virginia taxable income from their separate reports. From that amount, subtract the eliminations from the Eliminations Column and enter the result here.

For all other rows, enter Virginia taxable income from Line 7 of the Taxable Year 2019 Virginia return.

Column N-Nonbusiness Nonapportionable Income Not Allocable to Virginia

For the PFJ row and the PFF row, enter any amount included in Column M above that is considered nonbusiness nonapportionable income not allocable to Virginia. Please see the "Business Apportionable Income and Nonbusiness Nonapportionable Income" section above for determining what is nonbusiness nonapportionable income and how such income is to be allocated.

For all other rows, enter total dividends from Taxable Year 2019 Schedule 500A

Column O-Nonbusiness Nonapportionable Income Allocable to Virginia

For the PFJ row and the PFF row, enter any amount included in Column M above that is considered nonbusiness nonapportionable income allocable to Virginia. Please see the "Business Apportionable Income and Nonbusiness Nonapportionable Income" section above for determining what is nonbusiness nonapportionable income and how such income is to be allocated.

For all other rows, enter Dividends Allocated to Virginia from Taxable Year 2019 Schedule 500A

Column P-Business Apportionable Income

For the PFJ row and the PFF row, subtract the sum of Columns N and O from Column M and enter the result here.

For all other rows, enter Income Apportioned to Virginia from Taxable Year 2019 Schedule 500A.

Column Q-Apportionment Percentage

Enter the unitary combined group's apportionment percentage computed under the Joyce method if "PFJ" has been entered in Column D and enter the apportionment percentage computed under the Finnigan method if "PFF" has been entered in Column D.

For the PFJ row and the PFF row, if a single factor corporation is part of a unitary combined group consisting of non-single sales factor corporations or corporations that compute their single factor on different bases, then the unitary combined group must follow the mixed apportionment factors method under 23 VAC 10-120-326 to compute Line 9, but replacing references in that regulation to "consolidated" with "unitary combined."

For all other rows, enter the Apportionment Factor Percentage from Taxable Year 2019 Schedule 500A and Line 8(b) of the Taxable Year 2019 return.

Column R-Income Apportioned to Virginia

For the PFJ row and the PFF row, multiply the Column P by Column Q.

For all other rows, enter the Income Apportioned to Virginia from Taxable Year 2019 Schedule 500A.

Column S-Income Subject to Virginia Tax

For the PFJ row and the PFF row, add Column R and Column O.

For all other rows, enter the Income Subject to Virginia tax from Taxable Year 2019 Schedule 500A and Line 8(a) of the Taxable Year 2019 return.

Column T-Tax Before Credits (Virginia Tax Rate 6%)

For the PFJ row and the PFF row, multiply Column S by 6%.

For all other rows, enter the tax before credits from Line 9 of the Taxable Year 2019 return.

Column U-Virginia Nonrefundable Credits

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's Virginia nonrefundable credits from their separate reports.

For all other rows, enter the amount shown on Line 10 of the Taxable Year 2019 return.

Column V-Corporate Telecommunications Company Tax

For the PFJ row and the PFF row, if a telecommunications company is not part of a unitary combined group, then zero should be entered in this column.

If a telecommunications company is part of a unitary combined group, then the unitary combined group must follow the method under 23VAC10-120-86 and Taxable Year 2019 Form 500T Instructions to compute Column V but replacing references in that regulation and those instructions to "consolidated" with "unitary combined" as applicable.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return. See Line 7 of Taxable Year 2019 Form 500T.

Column W-Noncorporate Telecommunications Company Tax

For the PFJ row and the PFF row, enter zero in this column.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return. See Line 10 of Taxable Year 2019 Form 500T.

Column X-Electric Suppliers Company Tax

For the PFJ row and the PFF row, if an electric supplier is not part of a unitary combined group, then enter zero in this column.

If an electric supplier is part of a unitary combined group, then the unitary combined group must follow the method under Taxable Year 2019 Schedule 500EL Instructions to compute Column X but replacing references in those instructions to "consolidated" with "unitary combined" as applicable.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return. See Taxable Year Schedule 500EL.

Column Y-Home Service Contract Provider Tax

For the PFJ row and the PFF row, if a home service contract provider is not part of a unitary combined group, then enter zero in this column.

If a home service contract provider is part of a unitary combined group, then the unitary combined group must follow the method under Taxable Year 2019 Form 500HS Instructions to compute Column Y but replacing references in those instructions to "consolidated" with "unitary combined" as applicable.

For all other rows, enter the amount shown on Line 10 of Taxable Year 2019 Form 500HS.

Column Z-Adjusted Corporate Tax

For the PFJ row and the PFF row, generally subtract Column U from Column T. However, if you completed Columns V, W, X, and/or Y and you have determined that you owe minimum tax, enter the minimum tax you owe on this line.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AA-Apportionment Method
(N= None, S = Single Factor, M = Multifactor, E= Exempt)

For the PFJ row and the PFF row, enter the apportionment method that would be used by the unitary combined group in Column Q.

If you used the mixed apportionment method, enter "M" for multifactor.

For all other rows, enter the letter that corresponds to what was reported on the Taxable Year 2019 return.

Column AB-Single Factor Method (1, 2, 3, 4, 5, 6, 7, 8 or 9)

If you did not enter "S" for a single factor apportionment method in Column AA, enter "9" for this column.

For the PFJ row and the PFF row, if you entered "S" for a single factor apportionment method in Column AA, enter one of the following numbers to designate the single factor method of apportionment used by the unitary combined group: 1 = Motor Carrier Miles, 2 = Financial Cost of Performance Factor, 3 = Construction Corp Completed Contract Basis Sales Factor, 4 = Railway Company Revenue Car Miles, 5 = Retail Company Apportionment, 6 = Debt Buyers Apportionment, 7 = Manufacturer's Modified Apportionment Method Sales Factor, 8 = Enterprise Data Center Operation. See Virginia Taxable Year 2019 Form 500A Instructions, Pages 2 through 4.

For all other rows, enter the number that corresponds to what was reported on the Taxable Year 2019 return.

Column AC-Single Factor Total

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's single factor total from their separate reports, less any intercompany sales, if applicable, from one corporation in the unitary combined group to another corporation in such group.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AD-Single Factor Virginia

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's Virginia single factor from their separate reports, less any intercompany sales, if applicable, from one corporation in the unitary combined group to another corporation in such group. This Virginia single factor should be computed under the Joyce method if "PFJ" has been entered in Column D and computed under the Finnigan method under the Finnigan column if "PFF" has been entered in Column D.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AE-Property Factor Total

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's property factor total from their separate reports.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AF-Property Factor Virginia

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's Virginia property factor from their separate reports.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AG-Payroll Factor Total

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's payroll factor total from their separate reports.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AH-Payroll Factor Virginia

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's Virginia payroll factor from their separate reports.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AI-Sales Factor Total

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's sales factor total from their separate reports, less any intercompany sales from one corporation in the unitary combined group to another corporation in such group.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Column AJ-Sales Factor Virginia

For the PFJ row and the PFF row, enter the sum of each member of the unitary combined group's Virginia sales factor from their separate reports, less any intercompany sales from one corporation in the unitary combined group to another corporation in such group. This Virginia sales factor should be computed under the Joyce method if "PFJ" has been entered in Column D and computed under the Finnigan method under the Finnigan column if "PFF" has been entered in Column D.

For all other rows, enter the amount shown on the corresponding line of the Taxable Year 2019 return.

Penalties

If the report is filed on or before the July 1, 2021 due date but the corporation made a material omission or misstatement in connection with such report, then the corporation is subject to a penalty of $10,000. If the report is filed after the July 1, 2021 due date, the corporation is subject to a penalty of $10,000. This penalty applies to each corporation separately. Thus, all members of a unitary combined group will each be assessed a separate penalty not to exceed $10,000.

Please note that it is a material omission or misstatement to complete this report based upon any taxable year other than Taxable Year 2019. However, if a taxpayer qualifies for the relief described under "No Return Filed For Taxable Year 2019," no penalty will apply for those that file their unitary combined report using Taxable Year 2018 computations so long as no material omission or misstatement is made on the report regarding Taxable Year 2018. This relief is limited only to those unitary groups (1) that have one or more members that have not filed a Taxable Year 2019 Virginia return and (2) such members have not filed due to an extended due date for their Taxable Year 2019 return that falls after July 1, 2021. All other taxpayers that complete this report based upon any taxable year other than Taxable Year 2019 will be subject to penalties.

Waiver Request

If the $10,000 penalty is imposed, you may request a waiver of such penalty. All requests for waivers must be submitted to the Department in writing at P.O. Box 1317, Richmond, VA 23218. Please describe in detail in any waiver request how the reporting requirement would have caused an undue hardship to the corporation or unitary combined group requesting such waiver.

Extension of Time to File

The Department is prohibited from extending the July 1, 2021 due date. As a result, no extensions with respect to this reporting requirement are allowed.

Additional Information

For additional information, please visit the Department's website at https://www.tax.virginia.gov/news/corporate-unitary or call (804) 367-8037.

The $10,000 penalty described in this Reference Guide was repealed by 2021 House Bill 7001 (Chapter 1, Special Session II). As a result, no corporation will be subject to the $10,000 penalty and there is no need to submit a waiver request.