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## The Ebb and Flow of Combined Reporting and Apportionment Legislation

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As reported in the *State Tax Return* last quarter, state and local governments continue to propose mandatory unitary combined reporting (“MUCR”) as well as allocation and apportionment changes in attempts to generate much-needed revenue. Below, we summarize some of the recent state and local legislative action in these areas.

### MUCR—Dead or Alive?

MUCR has sparked intense legislative debate nationwide in 2011, yet most MUCR proposals have garnered little, if any, real traction. Legislative bodies in Arkansas, Connecticut, Maryland, New Mexico, and Tennessee considered MUCR bills in their recent regular sessions, but all such bills died prior to adjournment. MUCR bills still pending this session include the following:

#### District of Columbia

On May 25, 2011, the Council of the District of Columbia initially approved Mayor Vincent Gray’s budget, which implements MUCR and double-weighted sales-factor apportionment for tax years beginning on or after December 31, 2010. The District’s chief financial officer estimates that MUCR is expected to generate \$22 million a year in taxes. The proposed budget is subject to a final vote by the D.C. Council on June 14, 2011, and appears likely to pass.

#### Pennsylvania

The Pennsylvania Senate (SB 679) and House of Representatives (HB 1396) are considering similar bills that would enact MUCR effective for tax years beginning on or after January 1, 2012. In addition, HR 286 would mandate a study of the effects of MUCR. The bills have not been set for hearing in their respective committees, however, and appear unlikely to pass this session.

#### Rhode Island

Rhode Island Governor Lincoln Chafee included MUCR in his proposed budget bill, H 5894. If passed, the bill would implement MUCR for tax years beginning on or after January 1, 2012. The bill is currently pending before the House Finance Committee. The 2011 Rhode Island General Assembly adjourns its regular session on July 1, 2011.

## Allocation and Apportionment Trends

The legislative trend in income apportionment towards heavier sales-factor weighting and market-based sourcing has continued. Of the pending legislation in Arizona, California, Maryland, Montana, Pennsylvania, and Virginia discussed in the *State Tax Return* last quarter,<sup>1</sup> none has become law to date.<sup>2</sup> Recently, however, additional legislation involving such allocation and apportionment changes has become law (or is currently expected to become law).

### Alabama

HB 434, which passed both houses and now awaits Governor Robert Bentley's signature, would change the formula used to apportion business income to Alabama to a double-weighted sales factor from the current equally weighted three-factor formula. Furthermore, the bill would change from "cost of performance" to "market-based sourcing" for purposes of sourcing receipts from certain sales of intangibles and services. The Legislative Fiscal Office estimates that, if signed into law, HB 434 would raise state revenue by approximately \$20 million per fiscal year.

### Michigan

On May 25, 2011, Governor Rick Snyder signed into law HB 4479, which clarifies that beginning January 1, 2011, multistate companies are not permitted to elect three-factor apportionment under the state's Multistate Tax Compact provisions. Businesses operating in other states that are subject to the Michigan Business Tax (or the newly created Corporate Income Tax) are now required to allocate and apportion their receipts using single-sales-factor apportionment.

### New Jersey

On April 28, 2011, Governor Chris Christie signed S 2753. The new law, effective upon execution by Governor Christie, phases in single-sales-factor apportionment by 2014. New Jersey's current double-weighted sales apportionment scheme is replaced with a 70 percent sales, 15 percent property, and 15 percent payroll formula for periods beginning on or after January 1, 2012, but before January 1, 2013; a 90 percent sales, 5 percent property, and 5 percent payroll formula for periods beginning on or after January 1, 2013, but before January 1, 2014; and a 100

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<sup>1</sup> Justin R. Thompson & Rachel A. Wilson, *In Search of Greener Tax Returns: States and Localities Mull Over Combined Reporting and Apportionment Changes*, JONES DAY STATE TAX RETURN (Mar. 2011).

<sup>2</sup> Arizona SB 1552, which passed the Senate but was vetoed by Governor Jan Brewer, would have allowed a multistate service provider to elect to apportion service revenues to the location where the customer receives the benefit of the service; California SB 116, which remains pending, would require taxpayers to use single-sales-factor apportionment for tax years beginning on or after January 1, 2011; Maryland SB 800, which died in committee, would have required that if the principal place from which a corporation's trade or business is directed or managed is in Maryland, then nonoperational income of the corporation must be allocated to Maryland for income tax purposes to the extent allowed under the United States Constitution; Montana SB 94, which died in process, would have shored up Montana's water's edge provisions; Pennsylvania SB 205, which remains pending, would require single-sales-factor apportionment of business income for taxable years beginning after December 31, 2008; and Virginia SB 1006, which died in committee, would have amended the manner in which the sales factor is determined, adopting market-based sourcing in place of costs of performance.

percent sales-factor apportionment formula for periods beginning on or after January 1, 2014. Governor Christie signed S 2753 despite vetoing a similar measure last session.



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