

PUBLICATION

Spotlight on the District of Columbia: Council Passes Emergency Legislation Including Mandatory Unitary Combined Reporting

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On July 31, 2009, the District of Columbia City Council passed its Budget Support Emergency Act of 2009 aimed at closing a three-year \$660 million budget deficit (for the remainder of FY 2009, ending September 30, 2009, and the 2010 and 2011 fiscal years). The "Combined Reporting Reform Authorization Act of 2009" is placeholder language that authorizes implementation of mandatory unitary combined reporting for D.C. corporate income taxpayers effective for tax years starting after December 31, 2010. With this development, the District of Columbia may be poised to join seven other states that have enacted mandatory unitary combined reporting since 2004 (Massachusetts, Michigan, New York, Texas, Vermont, West Virginia and Wisconsin).

Although any affiliated group of corporations based in the United States or overseas with a member that is a D.C. taxpayer will be impacted by mandatory unitary combined reporting in D.C., government contractors may see the most significant impacts.

The budget bill has been designated "emergency legislation" by the D.C. Council. As a federal city, the District of Columbia's legislation is subject to broad congressional oversight. Emergency legislation must be transmitted to the U.S. Congress in accordance with D.C. Code § 1-206.02(c)(1) for review by Congress. This means that the combined reporting provision can become law only after the expiration of a 30 calendar day review period by the U.S. Congress (excluding Saturdays, Sundays, holidays and certain other days) after the combined reporting provision is transmitted to the U.S. Congress. At the conclusion of this 30 day period, the bill becomes law if Congress does not disapprove of the legislation. Transmittal to the U.S. Congress should not occur until after a second reading and hearing on the budget bill that is set for September 22, 2009.

Next Steps

The Council on State Taxation (COST) has organized a coalition of interested businesses and associations, of which Baker Donelson is a participant, to address D.C.'s combined reporting proposal and educate and inform policy makers of issues and how combined reporting affects different businesses. As noted, only placeholder language is currently included in the D.C. budget bill. Thus, not only will this undrafted bill significantly expand the District's corporate income tax base and apportioned income, a variety of important unitary taxation issues are yet to be addressed. A number of these issues are taxpayer-specific.

In addition, the D.C. budget bill also expands D.C.'s related party expense disallowance statute to include interest expenses paid to a related party.