



General Assembly

January Session, 2009

**Raised Bill No. 807**

LCO No. 2925

\*02925\_\_\_\_\_FIN\*

Referred to Committee on Finance, Revenue and Bonding

Introduced by:  
(FIN)

**AN ACT CONCERNING COMBINED REPORTING FOR PURPOSES OF  
THE CORPORATION BUSINESS TAX.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. (NEW) (*Effective from passage and applicable to income years*  
2 *commencing on or after January 1, 2009*) (a) As used in this section:

3 (1) "Affiliated corporation" means any corporation that is a member  
4 of an affiliated group that either by itself or in conjunction with any  
5 other affiliated corporations meets any of the factors in subsection (b)  
6 of this section with a taxpayer, but does not include a passive  
7 investment company, as defined in section 12-213 of the general  
8 statutes. Limited liability companies that elect to be taxed as a  
9 corporation for federal income tax purposes may be affiliated  
10 corporations for purposes of this subdivision.

11 (2) "Affiliated group" means one or more chains of corporations that  
12 are connected through stock ownership with a common parent  
13 corporation if: (A) Stock possessing more than fifty per cent of the  
14 voting power of all classes of stock and more than fifty per cent of each  
15 class of the nonvoting stock of each of the corporations, except the

16 common parent corporation, is owned directly by one or more of the  
17 other corporations; and (B) the common parent corporation owns  
18 directly stock possessing more than fifty per cent of the voting power  
19 of all classes of stock and more than fifty per cent of each class of the  
20 nonvoting stock of at least one of the other corporations. As used in  
21 this subsection, "stock" does not include nonvoting stock which is  
22 limited and preferred as to dividends; employer securities, as used in  
23 Section 409A of the Internal Revenue Code, while such securities are  
24 held under a tax credit employee stock ownership plan; or qualifying  
25 employer securities, as used in Section 4975(e)(8) of the Internal  
26 Revenue Code, while such securities are held under an employee stock  
27 ownership plan which meets the requirements of Section 4975(e)(7) of  
28 the Internal Revenue Code.

29 (3) "Related entity" means any partnership, limited liability  
30 company, S corporation, REIT or other pass-through entity, if the  
31 taxpayer or one or more affiliated corporations, or both the taxpayer  
32 and one or more affiliated corporations, own directly or indirectly,  
33 beneficially or constructively, in the aggregate, at least fifty per cent of  
34 the interest in such partnership, limited liability company, S  
35 corporation, REIT or other pass-through entity.

36 (4) "Taxpayer" means any corporation that is subject to tax under  
37 chapter 208 of the general statutes.

38 (b) Every taxpayer that has one or more of the factors listed in  
39 subsection (c) of this section with an affiliated corporation or a related  
40 entity during the taxpayer's income year shall file a combined report  
41 with one or more affiliated corporations, as required by subsection (d)  
42 of this section, and compute their aggregate net income or loss, as  
43 required by subsection (e) of this section, apportioning their aggregate  
44 net income or loss, as required by subsection (f) of this section, and  
45 paying the tax due, as required by subsection (g) of this section.

46 (c) A combined report shall be filed whether or not an "arm's length  
47 charge", within the meaning of United States Treasury Regulation

48 Section 1.482-2(b)(3), for any of the following factors is established and  
49 whether or not a valid business purpose can be established for the  
50 arrangement. The existence of one or more of the following factors  
51 requires the filing of the combined report:

52 (1) Fifty per cent or more of the taxpayer's gross income is derived  
53 from transacting or conducting any business with one or more  
54 affiliated corporations or related entities, or fifty per cent or more of  
55 the gross income of any one affiliated corporation or related entity is  
56 derived from transacting or conducting any business with the  
57 taxpayer, or with the taxpayer and one or more affiliated corporations  
58 or related entities.

59 (2) Three or more of the following services are provided between  
60 the taxpayer and one or more affiliated corporations or related entities:  
61 Advertising services; public relations services; accounting and  
62 bookkeeping services; centralized cash management services;  
63 distribution services; legal services; personnel services; manufacturing  
64 services; sales services; purchasing services; research and development  
65 services; management services; collection services; insurance  
66 procurement and servicing, exclusive of employee benefit programs;  
67 and employee benefit programs including pension, profit-sharing and  
68 stock purchase plans.

69 (3) Twenty per cent or more of the debt of the taxpayer is owed to  
70 one or more affiliated corporations or related entities, or twenty per  
71 cent or more of the debt owed to the taxpayer is owed by one or more  
72 affiliated corporations or related entities.

73 (4) The taxpayer transfers, sells or exchanges income-producing  
74 property other than cash that serves an operational function, including  
75 real property, accounts receivable, securities, patents, trademarks,  
76 copyrights or other like property, to an affiliated corporation or related  
77 entity, and subsequently the taxpayer, either directly or indirectly,  
78 receives income or moneys attributable to such income-producing  
79 property.

80 (d) The combined report that is required under this section shall  
81 include the taxpayer and all affiliated corporations. When a  
82 corporation in the affiliated group has an interest in a related entity  
83 and that related entity satisfies one or more of the factors enumerated  
84 in subsection (b) of this section, such corporation shall be treated as an  
85 affiliated corporation and must be included in the combined report.

86 (e) All corporations included in the combined report shall compute  
87 an aggregate net income or loss, by treating such corporations as if  
88 they were one corporation, and by eliminating intercorporate  
89 dividends. The corporations that are included in the combined report  
90 shall not be subject to the provisions of section 12-218c of the general  
91 statutes, as amended by this act. The Commissioner of Revenue  
92 Services shall establish by regulation, adopted in accordance with the  
93 provisions of chapter 54 of the general statutes, the manner in which  
94 tax credits, net operating losses and net operating loss carryovers shall  
95 apply in the combined report.

96 (f) The corporations that are included in the combined report shall  
97 apportion their aggregate net income or loss to this state by treating all  
98 included corporations as if they were one corporation, and the  
99 provisions of section 12-223b of the general statutes, as amended by  
100 this act, shall apply. The commissioner shall establish by regulation,  
101 adopted in accordance with the provisions of chapter 54 of the general  
102 statutes, the method by which the combined apportionment shall be  
103 computed when the apportionment methodology of the included  
104 corporations is not the same.

105 (g) The taxpayer and all affiliated corporations shall pay the tax  
106 computed under this section. All taxpayers included in the combined  
107 report shall be jointly and severally liable for the tax computed under  
108 this section.

109 (h) If the corporations subject to the combined tax calculated under  
110 this section determine that such tax unfairly attributes an undue  
111 proportion of their total income or minimum tax base to this state, said

112 corporations may submit a petition in writing to the Commissioner of  
113 Revenue Services for approval of an alternate method of determining  
114 the combined measure of their tax under this section not later than  
115 sixty days prior to the due date of the return to which the petition  
116 applies, determined with regard to any extension of time for filing  
117 such return. Said commissioner shall consider approval of the petition  
118 only in the event that the petitioners have clearly established to the  
119 satisfaction of said commissioner that all the corporations included in  
120 such combined return are, in substance, parts of a unitary business  
121 engaged in a single business enterprise, that there are substantial  
122 intercorporate business transactions among such included  
123 corporations and that the proposed alternate method of apportionment  
124 accurately reflects the activity, business, income or capital of the  
125 taxpayers within the state.

126 (i) (1) If any member of the affiliated group or any related entity  
127 does not have any of the factors set forth in subsection (c) of this  
128 section and the commissioner determines that such corporation must  
129 be included in the alternate combined report in order to accurately  
130 reflect the activity, business, income or capital of the taxpayer within  
131 this state, the commissioner is authorized and empowered, in his or  
132 her discretion, provided such discretion is not arbitrarily, capriciously,  
133 or unreasonably exercised, to require such affiliated corporation to be  
134 included in the combined report.

135 (2) If the commissioner determines that any affiliated corporation  
136 required to be included in the combined report pursuant to subsection  
137 (d) of this section should be excluded from the combined report in  
138 order to accurately reflect the activity, business, income or capital of  
139 the taxpayer within this state, the commissioner is authorized and  
140 empowered, in his or her discretion, provided such discretion is not  
141 arbitrarily, capriciously, or unreasonably exercised, to exclude such  
142 affiliated corporation from the combined report.

143 Sec. 2. Subdivision (2) of subsection (b) of section 12-217n of the

144 general statutes is repealed and the following is substituted in lieu  
145 thereof (*Effective July 1, 2009, and applicable to income years commencing*  
146 *on or after January 1, 2009*):

147 (2) "Combined return" shall mean a combined corporation business  
148 tax return under section [12-223a] 1 of this act.

149 Sec. 3. Subsection (e) of section 12-217t of the general statutes is  
150 repealed and the following is substituted in lieu thereof (*Effective July*  
151 *1, 2009, and applicable to income years commencing on or after January 1,*  
152 *2009*):

153 (e) In the case of taxpayers filing a combined return pursuant to  
154 section [12-223a] 1 of this act, the credit provided by this section shall  
155 be allowed on a combined basis, such that the amount of personal  
156 property taxes paid by such taxpayers with respect to such equipment  
157 may be claimed as a tax credit against the combined tax liability of  
158 such taxpayers as determined under this chapter. Credits available to  
159 taxpayers which are subject to tax under this chapter but not subject to  
160 tax under chapter 207, 208a, 209, 210, 211 or 212 or the tax imposed on  
161 health care centers under the provisions of section 12-202a shall be  
162 used prior to credits of companies included in such combined return  
163 which are also subject to tax under said chapter 207, 208a, 209, 210, 211  
164 or 212 or the tax imposed upon health centers pursuant to the  
165 provisions of section 12-202a.

166 Sec. 4. Subsection (l) of section 12-217u of the general statutes is  
167 repealed and the following is substituted in lieu thereof (*Effective July*  
168 *1, 2009, and applicable to income years commencing on or after January 1,*  
169 *2009*):

170 (l) (1) In the case of a financial institution included in a combined  
171 return under section [12-223a] 1 of this act, a credit allowed under  
172 subsection (b) or (f) of this section may be taken against the tax of the  
173 combined group. (2) The credit allowed to a financial institution under  
174 subsection (b) or (f) of this section may be taken by any corporation

175 which [is eligible to elect to file] files a combined return with a group  
176 with which the financial institution is eligible to file a combined return,  
177 provided the aggregate credit taken by all such corporations in any  
178 income year shall not exceed the aggregate credit for which such group  
179 would have been eligible if it had filed a combined return.

180 Sec. 5. Subsection (h) of section 12-217gg of the general statutes is  
181 repealed and the following is substituted in lieu thereof (*Effective July*  
182 *1, 2009, and applicable to income years commencing on or after January 1,*  
183 *2009*):

184 (h) The credits allowed under this section may be used by  
185 constituent corporations joining in a combined corporation business  
186 tax return under section [12-223a] 1 of this act.

187 Sec. 6. Subsection (c) of section 12-218c of the general statutes is  
188 repealed and the following is substituted in lieu thereof (*Effective July*  
189 *1, 2009, and applicable to income years commencing on or after January 1,*  
190 *2009*):

191 (c) (1) The adjustments required in subsection (b) of this section  
192 shall not apply if the corporation establishes by clear and convincing  
193 evidence that the adjustments are unreasonable, or the corporation and  
194 the Commissioner of Revenue Services agree in writing to the  
195 application or use of an alternative method of apportionment under  
196 section 12-221a. Nothing in this subdivision shall be construed to limit  
197 or negate the commissioner's authority to otherwise enter into  
198 agreements and compromises otherwise allowed by law.

199 (2) The adjustments required in subsection (b) of this section shall  
200 not apply to such portion of interest expenses and costs and intangible  
201 expenses and costs that the corporation can establish by the  
202 preponderance of the evidence meets both of the following: (A) The  
203 related member during the same income year directly or indirectly  
204 paid, accrued or incurred such portion to a person who is not a related  
205 member, and (B) the transaction giving rise to the interest expenses

206 and costs or the intangible expenses and costs between the corporation  
207 and the related member did not have as a principal purpose the  
208 avoidance of any portion of the tax due under this chapter.

209 [(3) The adjustments required in subsection (b) of this section shall  
210 apply except to the extent that increased tax, if any, attributable to such  
211 adjustments would have been avoided if both the corporation and the  
212 related member had been eligible to make and had timely made the  
213 election to file a combined return under subsection (a) of section 12-  
214 223a.]

215 Sec. 7. Subsection (a) of section 12-223b of the general statutes is  
216 repealed and the following is substituted in lieu thereof (*Effective July*  
217 *1, 2009, and applicable to income years commencing on or after January 1,*  
218 *2009*):

219 (a) Intercompany rents shall not be included in the computation of  
220 the value of property rented as a property factor in the apportionment  
221 fraction if the lessor and lessee are included in a combined return as  
222 provided in section [12-223a] 1 of this act.

223 Sec. 8. Section 12-223f of the general statutes is repealed and the  
224 following is substituted in lieu thereof (*Effective July 1, 2009, and*  
225 *applicable to income years commencing on or after January 1, 2009*):

226 Notwithstanding the provisions of sections 12-223a, as in effect on  
227 January 1, 2009, to 12-223e, inclusive, as amended by this act, for  
228 income years commencing on or after January 1, 1990, but prior to  
229 January 1, 2009, the tax due in relation to any corporations which have  
230 filed a combined return for any income year with other corporations  
231 for the tax imposed under this chapter in accordance with section 12-  
232 223a, as in effect on January 1, 2009, shall be determined as follows: (1)  
233 The tax which would be due from each such corporation if it were  
234 filing separately under this chapter shall be determined, and the total  
235 for all corporations included in the combined return shall be added  
236 together; (2) the tax which would be jointly due from all corporations

237 included in the combined return in accordance with the provisions of  
238 said sections 12-223a to 12-223e, inclusive, shall be determined; and (3)  
239 the total determined pursuant to subdivision (2) of this section shall be  
240 subtracted from the amount determined pursuant to subdivision (1) of  
241 this section. The resulting amount, in an amount not to exceed two  
242 hundred fifty thousand dollars, shall be added to the amount  
243 determined to be due pursuant to said sections 12-223a to 12-223e,  
244 inclusive, and shall be due and payable as a part of the tax imposed  
245 pursuant to this chapter.

246 Sec. 9. Subdivision (1) of subsection (m) of section 32-9t of the  
247 general statutes is repealed and the following is substituted in lieu  
248 thereof (*Effective July 1, 2009, and applicable to income years commencing*  
249 *on or after January 1, 2009*):

250 (m) (1) The Commissioner of Revenue Services may treat one or  
251 more corporations that are properly included in a combined  
252 corporation business tax return under section [12-223a] 1 of this act as  
253 one taxpayer in determining whether the appropriate requirements  
254 under this section are met. Where corporations are treated as one  
255 taxpayer for purposes of this subsection, then the credit shall be  
256 allowed only against the amount of the combined tax for all  
257 corporations properly included in a combined return that, under the  
258 provisions of subdivision (2) of this subsection, is attributable to the  
259 corporations treated as one taxpayer.

260 Sec. 10. Sections 12-223a and 12-223d of the general statutes are  
261 repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section	<i>from passage and applicable to income years commencing on or after January 1, 2009</i>	New section

Sec. 2	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-217n(b)(2)
Sec. 3	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-217t(e)
Sec. 4	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-217u(l)
Sec. 5	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-217gg(h)
Sec. 6	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-218c(c)
Sec. 7	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-223b(a)
Sec. 8	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	12-223f
Sec. 9	<i>July 1, 2009, and applicable to income years commencing on or after January 1, 2009</i>	32-9t(m)(1)
Sec. 10	<i>from passage</i>	Repealer section

**Statement of Purpose:**

To require combined reporting for purposes of the corporation business tax.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*