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HOUSE BILL NO. 1676

Offered January 17, 2020

A BILL to amend and reenact § 58.1-442 of the Code of Virginia, relating to consolidated corporate income tax returns of affiliated corporations.

Patron—Keam

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-442 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-442. Separate, combined or consolidated returns of affiliated corporations.

A. Corporations which are affiliated within the meaning of § 58.1-302 may, for any taxable year, file separate returns, file a combined return or file a consolidated return of net income for the purpose of this chapter, and the taxes thereunder shall be computed and determined upon the basis of the type of return filed. Following an election to file on a separate, consolidated, or combined basis all returns thereafter filed shall be upon the same basis unless permission to change is granted by the Department.

B. For the purpose of subsection A:

1. A consolidated return shall mean a single return for a group of corporations affiliated within the meaning of § 58.1-302, prepared in accordance with the principles of § 1502 of the Internal Revenue Code and regulations promulgated thereunder. Permission to file a consolidated return shall not be denied to a group of affiliated corporations filing a consolidated federal return solely because two or more members of such affiliated group would be required to use different apportionment factors if separate returns were filed. The Tax Commissioner shall promulgate regulations setting forth the manner in which such an affiliated group shall compute its Virginia taxable income.

2. A combined return shall mean a single return for a group of corporations affiliated within the meaning of § 58.1-302, in which income or loss is separately determined in accordance with subdivisions a through d below:

a. Virginia taxable income or loss is computed separately for each corporation;

b. Allocable income is allocated to the state of commercial domicile separately for each corporation;

c. Apportionable income or loss is computed, utilizing separate apportionment factors for each corporation;

d. Income or loss computed in accordance with items a through c above is combined and reported on a single return for the affiliated group.

C. Notwithstanding subsection A, a group of corporations may ~~apply to the Tax Commissioner for permission~~ *elect* to change the basis of the type of return filed (i) from consolidated to separate *or combined* or (ii) from separate or combined to consolidated, if such corporations are affiliated within the meaning of § 58.1-302 and the affiliated group of which they are members, as it has existed from time to time, has filed on the same basis for at least the preceding ~~20~~ *five* years. ~~Permission shall be granted if:~~

~~1. For the taxable year immediately preceding the taxable year for which the new election would be applicable, there would have been no decrease in tax liability computed under the proposed election as compared to the affiliated group's former filing method; and~~

~~2. The affiliated group agrees to file returns computing its Virginia income tax liability under both the new filing method and the former method and will pay the greater of the two amounts for the taxable year in which the new election is effective and for the immediately succeeding taxable year.~~