

**UPDATE ON  
2003 PROPOSED MARYLAND TAX LEGISLATION  
  
AN EXTENSIVE AND DRACONIAN REVENUE  
MEASURE HAS BEEN PASSED BY THE HOUSE**

The House of Delegates has now passed a major revenue bill that will be of great concern to all Maryland businesses. HB 753, originally styled as a tax compliance bill was massively amended on March 18 and retitled "Taxes and Revenues." The Bill combines many provisions contained in the so-called "loophole" bills (SB 392, 397, and 398 and HB 776), the "controlling interest bills" (HB 19 and SB 120), and the HMO premium tax bill (HB 636), in addition to many of the "compliance" measures contained in the original HB 753. The only significant change for the better in HB 753 is that the combined unitary reporting provisions that were in SB 398 have been excluded. Following is a brief summary of this HB 753 as passed.

- **Filing Fees for Annual Reports:** The original version of the Bill would have increased the fees for filing annual reports of corporations from \$100 to \$250 and imposed the same fees on LLCs and LLPs. In the version passed on March 19 (by a vote of 89-47) *all* fees for filings with SDAT under Corps. & Assns §1-203 have been increased drastically. With the exception of the filing of annual reports, these fees have at doubled, tripled, or worse; but the increases in filing fees for annual reports are off the charts. Previously, the statute required corporations to pay a fee of \$100 but excepted charitable institutions, nonstock corporations, savings and loans, credit institutions, and banking institutions; REITs were required to pay a fee of \$25. Under HB 753, most of the corporate exceptions would be eliminated and LLCs and LLPs would be added. Under the bill, **REITs would be required to pay an annual report fee of \$10,000**, and corporations (except for nonstock corporations, which would generally but not always include charitable corporations), banks, business trusts, credit unions, insurance companies, LLCs, LLPs, professional corporations, and savings and loan associations would be required to pay fees based on the number of employees of the entity, as follows:

<u>Employees</u>	<u>Fee</u>
0-20	\$400
21-49	\$750
50-99	\$2,000
100-499	\$10,000
500 and over	\$20,000

The new fees for corporations, banks, etc., are to be effective for annual reports filed after 12/31/03. REITs are not so fortunate, however. The \$10,000 filing fee for a REIT is effective 7/1/03.

- **Controlling Interest:** These provisions are identical to those of HB 19 and SB 120, except that they only apply if the real property involved has an aggregate value of at least \$1 million (up from \$500,000 in the earlier controlling interest bills). Thus, recordation and transfer taxes would be imposed on the sale of a controlling interest in an entity that owns real property that is worth at least \$1,000,000 and represents at least 80% of the value of the entity.

- **§482 Authority:** These provisions are essentially identical to the corresponding provisions in SB 398, authorizing the Comptroller to reallocate income, deductions, and credits among related organizations, trades, or businesses (whether or not incorporated and whether or not affiliated), but with a couple of significant changes. This provision is to be effective for all taxable years beginning after 12/31/02, but the retroactivity provisions that appeared in SB 398 have not been included. In addition, the Bill expressly instructs the Comptroller to apply administrative and judicial interpretations of §482 of the Internal Revenue Code and regulations. Finally, there is an exception for income derived from passive investments held by an out-of-state subsidiary or affiliate of a bank holding company or a bank, trust company, savings bank, or savings and loan association.
- **Nonoperational Income Provisions:** Substantially identical to SB 397, allocating a corporation's "nonoperational" income to Maryland if the principal place from which the corporation's trade or business is directed or managed is in Maryland.
- **Throwback Rule:** Identical to SB 392, these provisions would allocate to Maryland income from the sale of tangible personal property to an out-of-state buyer if the corporate seller is not subject to income taxation in the state where the buyer is located.
- **Anti-DHC Provisions:** Essentially identical to the corresponding provisions in SB 398, requiring a corporation to add back otherwise deductible intangible expenses paid or accrued in transactions with related entities.
- **Combined Unitary Reporting:** **These provisions are no longer in the Bill.** Instead, Section 7 of the Bill requires the comptroller, "in conjunction with the business community," to study and report to the Governor by December 1, 2003 on issues related to combined reporting, necessary statutory and regulatory changes that would be needed to implement combined reporting, the anticipated annual State revenue impact and the impact on Maryland businesses of combined reporting, and any other issues that should be addressed.
- **HMO Premium Tax:** These provisions are essentially identical to those in SB 636, subjecting HMOs to a 2% insurance premiums tax, but have been broadened to apply to a managed care organization authorized by Title 15, Subtitle 1 of the Health-General Article, in addition to a health maintenance organization authorized by Title 19, subtitle 1 of that Article.
- **Tax "Compliance" Provisions:** Some of the provisions included in the original version of HB 753 have been deleted – *viz.*, the provisions that would have repealed credits and discounts to vendors for collecting and remitting to the State certain taxes, fees, and surcharges, and the provisions requiring income tax withholding by the transferee on the sale of property owned by a nonresident corporation (although the similar provisions about nonresident contractors were left in the bill). All the provisions about requiring a tax clearance certificate in order to renew licenses are still there, and, with a few changes, so are the provisions dealing with disclosures the Comptroller may require from financial institutions and provisions on tax wage liens and garnishment of accounts in financial institutions. Also still in the Bill are provision adding pari-mutuel wagering to the definition

of waiving for withholding tax purposes, changes in dates for filing withholding tax returns, a change in the due date for sales and use tax returns, a reduction in the minimum amount of tax for which the Comptroller may require electronic payment.