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# F I S C A L   I M P A C T   R E P O R T

**SPONSOR** Wirth **ORIGINAL DATE** **LAST UPDATED** 1/31/15 **HB**

**SHORT TITLE** Unitary Corporation Combined Tax Reporting **SB** 56

**ANALYST** van Moorsel

## REVENUE (dollars in thousands)

| Estimated Revenue | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **FY15** | **FY16** | **FY17** | **FY18** | **FY19** | | |
| $0.0 | $1,070.0 | $2,460.0 | $2,080.0 | $1,830.0 | Recurring | General Fund |

(Parenthesis ( ) indicate revenue decreases

Relates to SB 57 – Unitary Corp. Combined Tax Reporting

**SOURCES OF INFORMATION**
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Finance and Administration (DFA)

## SUMMARY

Synopsis of Bill

Senate Bill 56 amends the Corporate Income and Franchise Tax Act to require a unitary corporation subject to corporate income tax (CIT) to file a combined return.

Current law permits combined filing, but only requires it for unitary corporations that provide retail sales of goods in a facility of more than 30 thousand square feet that do not also have non-retail operations in New Mexico with at least 750 employees. As this bill requires combined reporting for all corporations, the bill strikes the requirements specific to these corporations.

The provisions of SB 56 apply to taxable years beginning on or after January 1, 2016.

## FISCAL IMPLICATIONS

In estimating the impact of SB56, TRD used Tax Year 2012 New Mexico corporate income tax (CIT) data. Income tax paid by the separate corporate entities "SCE" is approximately $162

million, and approximately $137 million is paid by unitary combined and federal consolidated filers. A review of several experiences and studies on combined reporting provided estimates ranging from zero change to a 20 percent increase in revenue. TRD's analysis assumed the requirement for combined reporting would result in a 10 percent revenue increase. However, this initial rate of increase is expected to diminish as taxpayers adjust their operations and corporate structures to minimize taxation. Consensus corporate income tax growth rates were used to estimate the impact in the subsequent years. The first fiscal year impact is a partial impact.

## SIGNIFICANT ISSUES

DFA states in its analysis of the bill that mandatory combined reporting of corporate income treats a group of wholly owned or majority-owned companies and other entities (such as trusts and partnerships) as a single entity for tax purposes. In New Mexico, this would require a corporation to add its income to the income of its parent, sister, and subsidiary corporations, and then calculate its New Mexico taxable income as a share of that combined income.

DFA adds mandatory combined reporting may have the advantage of preventing unfair tax planning, such as occurs when corporations shift net losses to states with higher tax rates in an effort to minimize the overall tax burden. However, mandatory combined reporting may also discourage corporations with profitable operations in other states from locating to New Mexico. Mandatory combined reporting targets multi-state (and often multi-national) businesses doing business in New Mexico for an increased tax burden based on the income they earn both inside and outside New Mexico. This strategy may conflict with the State's economic development efforts to diversify the New Mexico economy.

Finally, DFA's analysis points out most western states with a corporate income tax currently mandate combined reporting. Many of these states also allow "single-weighted sales factor" apportionment of income for all industries, such as is being phased in in New Mexico pursuant to 2013 legislation. For companies with a large portion of sales outside the state, such as big box retailers, this method has the effect of reducing their corporate income tax liability.

DFA adds combined filing would create an administrative burden to taxpayers and TRD.

## TECHNICAL ISSUES

TRD adds in its analysis of the bill that the provisions of SB56 should include amendments to (or the repeal of) Section 7-2A-8.4 and significant amendments to NMAC 3.4.10.8, governing consolidated reporting. The analysis contends that if combined reporting is mandatory for unitary corporations, consolidated reporting could only be an elective when there is a federal consolidated group composed solely of non-unitary corporations, which would be very rare.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

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