

House Bill 1058

By: Representatives Williamson of the 115th, Wiedower of the 119th, Knight of the 130th,
Wilkerson of the 38th, Hatchett of the 150th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-7-21, relating to income taxation of corporations, so as remove
2 the requirement that affiliated corporations file separate income tax returns with this state
3 unless the Department of Revenue has requested or preapproved the filing of consolidated
4 returns; to authorize Georgia affiliated groups to elect to file separate or consolidated income
5 tax returns; to provide for the effect of such elections; to provide for tax liability, allocation,
6 and apportionment; to make such election irrevocable for five years; to authorize affiliated
7 groups that have filed consolidated returns to continue under the current law; to provide for
8 definitions; to provide for related matters; to provide for an effective date and applicability;
9 to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Code Section 48-7-21, relating to income taxation of corporations, is amended by revising
13 division (7)(A)(i) of subsection (b) and by adding a new paragraph to read as follows:

14 "(A)(i) Affiliated corporations which file a consolidated federal income tax return
15 must file separate income tax returns with this state unless they ~~have prior approval~~
16 ~~or have been requested~~ elect to file a consolidated return as provided in paragraph

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17 ~~(7.1) of this subsection, by the department. The commissioner shall by regulation~~
18 ~~provide the time period within which the permission must be requested. A request for~~
19 ~~permission beyond such time period will not be considered and will result in the filing~~
20 ~~of separate income tax returns for the applicable year."~~

21 "(7.1)(A) As used in this paragraph, the term:

22 (i) 'Georgia affiliated group' means a group of corporations of which each member:

23 (I) Is a member of an affiliated group as defined in 26 U.S.C. Section 1504,
24 provided that such affiliated group files a federal consolidated corporate income tax
25 return;

26 (II) Is subject to taxation under subsection (a) of this Code section;

27 (III) Is subject to Public Law 86-272 (15 U.S.C. Sections 381-384);

28 (IV) Has the same taxable year;

29 (V) Was a member of the affiliated group for the entire taxable year or was a
30 member of the affiliated group for a portion of the taxable year if the member was
31 subject to taxation under subsection (a) of this Code section during the entire
32 portion of the taxable year during which it was not a member of the federal
33 consolidated group;

34 (VI) Apportions Georgia taxable income or loss separately for each corporation,
35 unless the member is subject to paragraph (1) of subsection (b) of Code Section
36 48-7-31;

37 (VII) Allocates taxable income or loss separately for each corporation in
38 accordance with Code Section 48-7-31;

39 (VIII) Computes apportionable income or loss utilizing separate apportionment
40 factors for each corporation in accordance with Code Section 48-7-31, unless the
41 member is subject to paragraph (1) of subsection (b) of Code Section 48-7-31; and

42 (IX) Combines and reports taxable income or loss on a single return for the Georgia
43 affiliated group which includes all members of the affiliated group included on the

44 federal consolidated corporate income tax return that are eligible under this Code
45 section to be included in the Georgia affiliated group.

46 (ii) 'Georgia consolidated return' means a Georgia corporate income tax return filed
47 on or behalf of the members of a Georgia affiliated group in accordance with this
48 Code section pursuant to the election made under this subsection.

49 (B) A Georgia affiliated group may elect to file a Georgia consolidated return on an
50 originally filed return, including extensions, if applicable. Under no circumstances may
51 the department compel a taxpayer to file a Georgia consolidated return if the taxpayer
52 has not so elected.

53 (C) For purposes of allocation and apportionment, each member of a Georgia affiliated
54 group shall be considered a separate taxpayer, and any taxable loss of a member of a
55 Georgia affiliated group shall be deductible against the taxable income of any other
56 member of the Georgia affiliated group only if and to the extent such loss is
57 apportioned and allocated to Georgia.

58 (D) The tax liability of the Georgia affiliated group shall be determined by applying
59 the rate specified in subsection (a) of this Code section to the group's taxable income.
60 The separate taxable income or loss of each corporation in the Georgia affiliated group
61 shall be included in the consolidated taxable income or loss to the extent that its taxable
62 income or loss is separately apportioned or allocated to the State of Georgia, as
63 computed and determined in accordance with this chapter.

64 (E) Each corporation in a Georgia affiliated group that files a Georgia consolidated
65 return shall be jointly and severally liable for the group's Georgia income tax liability
66 with respect to the taxable year, except that any corporation which was not a member
67 of the Georgia affiliated group for the entire taxable year shall be jointly and severally
68 liable only for the portion of the tax liability attributable to that part of the year during
69 which the corporation was a member, prorated on a daily basis.

70 (F) The election provided for in this subsection is irrevocable and is binding on both
71 the department and the Georgia affiliated group for a period of five years without
72 modification, notwithstanding the powers granted to the department under this title. At
73 the end of the five-year period of filing a Georgia consolidated return, the taxpayer's
74 election shall be automatically terminated. Upon the automatic termination of such
75 election, the taxpayer may reelect to file a Georgia consolidated return.

76 (G) Notwithstanding subparagraph (F) of this paragraph, due to the material change in
77 the law and the procedure for qualification as a member of a Georgia affiliated group,
78 a Georgia affiliated group filing a Georgia consolidated return under the provisions of
79 this paragraph prior to the amendment by this Act shall have the option either to
80 terminate its election with respect to tax years after the period covered by the last
81 Georgia consolidated return due under this Code section or to continue filing a Georgia
82 consolidated return under the previous criteria.

83 (H) Nothing in this subsection shall be construed as allowing or requiring the filing of
84 combined income tax returns under the unitary business concept.

85 (I) The department shall promulgate regulations interpreting the provisions of this
86 paragraph that are consistent with applicable regulations promulgated by the United
87 States Department of the Treasury to the maximum extent possible."

88 **SECTION 2.**

89 This Act shall become effective upon its approval by the Governor or upon its becoming law
90 without such approval and shall be applicable to taxable years beginning on or after
91 January 1, 2022.

92 **SECTION 3.**

93 All laws and parts of laws in conflict with this Act are repealed.