

2014 -- H 7739

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO TAXATION -- COMBINED REPORTING

Introduced By: Representatives Tanzi, Valencia, Blazejewski, Ferri, and O`Grady

Date Introduced: February 27, 2014

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 44 of the General Laws entitled "TAXATION" is hereby amended by  
2 adding thereto the following chapter:

3 CHAPTER 69

4 COMBINED REPORTING

5 **44-69-1. Definitions. --** As used in this chapter, the following words and terms shall have  
6 the following meanings:

7 (1) "Person" means any individual, firm, partnership, general partner of a partnership,  
8 limited liability company, registered limited liability partnership, foreign limited liability  
9 partnership, association, corporation (whether or not the corporation is, or would be if doing  
10 business in this state, subject to chapter 30 of title 44), company, syndicate, estate, trust, business  
11 trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization of  
12 any kind;

13 (2) "Taxpayer" means and includes any corporation subject to the provisions of chapter  
14 44-11;

15 (3) "Corporation" means any corporation as defined by the laws of this state, or  
16 organization of any kind treated as a corporation for tax purposes under the laws of this state,  
17 wherever located, which if it were doing business in this state would be a "taxpayer." The  
18 business conducted by a partnership which is directly or indirectly held by a corporation shall be  
19 considered the business of the corporation to the extent of the corporation's distributive share of

1 the partnership income, inclusive of guaranteed payments to the extent prescribed by regulation;

2 (4) "Partnership" means a general or limited partnership, or organization of any kind  
3 treated as a partnership for tax purposes under the laws of this state;

4 (5) "Internal Revenue Code" means title 26 of the United States Code without regard to  
5 application of federal treaties, unless expressly made applicable to states of the United States;

6 (6) "Unitary business" means a single economic enterprise that is made up either of  
7 separate parts of a single business entity or of a commonly controlled group of business entities  
8 that are sufficiently interdependent, integrated and interrelated through their activities so as to  
9 provide a synergy and mutual benefit that produces a sharing or exchange of value among them  
10 and a significant flow of value to the separate parts. Any business conducted by a partnership  
11 shall be treated as conducted by its partners, whether directly held or indirectly held through a  
12 series of partnerships, to the extent of the partner's distributive share of the partnership's income,  
13 regardless of the percentage of the partner's ownership interest or its distributive or any other  
14 share of partnership income. A business conducted directly or indirectly by one corporation is  
15 unitary with that portion of a business conducted by another corporation through its direct or  
16 indirect interest in a partnership if the conditions of the first sentence of this section are satisfied,  
17 to wit; there is a synergy, and exchange and flow of value between the two (2) parts of the  
18 business, and the two (2) corporations are members of the same commonly controlled group;

19 (7) "Combined group" means the group of all persons whose income and apportionment  
20 factors are required to be taken into account pursuant to §§ 44-69-2(a) or 44-69-2(b) in  
21 determining the taxpayer's share of the net business income or loss apportionable to the State of  
22 Rhode Island;

23 (8) "United States" means the fifty (50) states of the United States, the District of  
24 Columbia, and United States' territories and possessions;

25 (9) "Tax haven" means a jurisdiction that, during the tax year in question has no nominal  
26 effective tax on the relevant income and:

27 (i) has laws or practices that prevent effective exchange of information for tax purposes  
28 with other governments on taxpayers benefiting from the tax regime;

29 (ii) has tax regime which lacks transparency. A tax regime lacks transparency if the  
30 details of legislative, legal or administrative provisions are not open and apparent or are not  
31 consistently applied among similarly situated taxpayers, or if the information needed by tax  
32 authorities to determine a taxpayer's correct tax liability, such as accounting records and  
33 underlying documentation, is not adequately available;

34 (iii) facilitates the establishment of foreign-owned entities without the need for a local

1 substantive presence or prohibits these entities from having any commercial impact on the local  
2 economy;

3 (iv) explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking  
4 advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from  
5 operating in the jurisdiction's domestic market; or

6 (v) has created a tax regime which is favorable for tax avoidance, based upon an overall  
7 assessment of relevant factors, including whether the jurisdiction has a significant untaxed  
8 offshore financial/other services sector relative to its overall economy.

9 **44-69-2. Combined reporting required, when -- Discretionary under certain**  
10 **circumstances. -- (a) A taxpayer engaged in a unitary business with one or more other**  
11 **corporations shall file a combined report which includes the income, determined under § 44-69-**  
12 **3(c) of this chapter, and apportionment factors, determined under §§ 44-11-14 through 44-11-**  
13 **14.6 and § 44-69-2(b), of all corporations that are members of the unitary business, and such**  
14 **other information as required by the director;**

15 (b) The director may, by regulation, require the combined report include the income and  
16 associated apportionment factors of any persons that are not included pursuant to § 44-69-2(a),  
17 but that are members of a unitary business, in order to reflect proper apportionment of income of  
18 entire unitary businesses. Authority to require combination by regulation under § 44-69-2(b),  
19 includes authority to require a combination of persons that are not, or would not be if doing  
20 business in this state, subject to chapter 44-30.

21 In addition, if the director determines that the reported income or loss of a taxpayer  
22 engaged in a unitary business with any person not included pursuant to § 44-69-2(a), represents  
23 an avoidance or evasion of tax by such taxpayer, the director may, on a case by case basis, require  
24 all or any part of the income and associated apportionment factors of such person be included in  
25 the taxpayer's combined report.

26 With respect to inclusion of associated apportionment factors pursuant to § 44-69-2(b),  
27 the director may require the exclusion of any one or more of the factors, the inclusion of one or  
28 more additional factors which will fairly represent the taxpayer's business activity in this state, or  
29 the employment of any other method to effectuate a proper reflection of the total amount of  
30 income subject to apportionment and an equitable allocation and apportionment of the taxpayer's  
31 income.

32 **44-69-3. Determination of taxable income or loss using combined report. – The use**  
33 **of a combined report does not disregard the separate identities of the taxpayer members of the**  
34 **combined group. Each taxpayer member is responsible for tax based on its taxable income or loss**

1 apportioned or allocated to this state, which shall include, in addition to other types of income,  
2 the taxpayer member's apportioned share of business income of the combined group, where  
3 business income of the combined group is calculated as a summation of the individual net  
4 business incomes of all members of the combined group. A member's net business income is  
5 determined by removing all but business income, expense and loss from that member's total  
6 income, as provided in detail below:

7 (A) Components of income subject to tax in this state; application of tax credits and post  
8 apportionment deductions:

9 (i) Each taxpayer member is responsible for tax based on its taxable income or loss  
10 apportioned or allocated to this state, which shall include:

11 (a) Its share of any business income apportionable to this state of each of the combined  
12 groups of which it is a member, determined under § 44-69-3(b);

13 (b) Its share of any business income apportionable to this state of a distinct business  
14 activity conducted within and without the state wholly by the taxpayer member, determined  
15 under §§ 44-11-14 through 44-11-14.6;

16 (c) Its income from a business conducted wholly by the taxpayer member entirely within  
17 the state;

18 (d) Its income sourced to this state from the sale or exchange of capital or assets, and  
19 from involuntary conversions, as determined under § 44-69-3(c)(ii)(G), below;

20 (e) Its income or loss allocated or apportioned in an earlier year, required to be taken into  
21 account as state source income during the income year, other than a net operating loss; and

22 (f) If the taxable income computed pursuant to § 44-69-3 results in a loss for a taxpayer  
23 member of the combined group, that taxpayer member has a state net operating loss (NOL),  
24 subject to the net operating loss limitations, and carry forward provisions of § 44-11-11. Such  
25 NOL is applied as a deduction in a prior or subsequent year only if that taxpayer has state source  
26 positive net income, whether or not the taxpayer is or was a member of a combined reporting  
27 group in the prior or subsequent year.

28 (ii) Except where otherwise provided, no tax credit or post-apportionment deduction  
29 earned by one member of the group, but not fully used by or allowed to that member, may be  
30 used in whole or in part by another member of the group or applied in whole or in part against the  
31 total income of the combined group; and a post-apportionment deduction carried over into a  
32 subsequent year as to the member that incurred it, and available as a deduction to that member in  
33 a subsequent year, will be considered in the computation of the income of that member in the  
34 subsequent year, regardless of the composition of that income as apportioned, allocated or wholly

1 within the state.

2 (B) Determination of taxpayer's share of the business income of a combined group  
3 apportionable to this state.

4 The taxpayer's share of the business income apportionable to this state of each combined  
5 group of which it is a member shall be the product of:

6 (i) The business income of the combined group, determined under such § 44-69-3(c); and

7 (ii) The taxpayer member's apportionment percentage, determined by the provisions of  
8 §§ 44-11-11 through 44-11-14.6, including in the property, payroll, and sales factor numerators  
9 the taxpayer's property, payroll and sales, respectively associated with the combined group's  
10 unitary business in this state, and including in the denominator the property, payroll and sales of  
11 all members of the combined group, including the taxpayer, which property, payroll and sales are  
12 associated with the combined group's unitary business wherever located. The property, payroll  
13 and sales of a partnership shall be included in the determination of the partner's apportionment  
14 percentage in proportion to a ratio the numerator of which is the amount of the partner's  
15 distributive share of partnership's unitary income included in the income of the combined group  
16 in accordance with § 44-69-3(ii)(c), and the denominator of which is the amount of the  
17 partnership's total unitary income.

18 (C) Determination of the business income of the combined group.

19 The business income of combined group is determined as follows:

20 (i) From the total income of the combined group determined under § 44-69-3(c)(ii),  
21 subtract any income, and add any expense or loss, other than the business income, expense or loss  
22 of the combined group;

23 (ii) Except as otherwise provided, the total income of the combined group is the sum of  
24 the income of each member of the combined group determined under federal income tax laws, as  
25 adjusted for state purposes, as if the member were not consolidated for federal purposes. The  
26 income of each member of the combined group shall be determined as follows:

27 (a) For any member incorporated in the United States, or included in a consolidated  
28 federal corporate income tax return, the income to be included in the total income of the  
29 combined group shall be the taxable income for the corporation after making appropriate  
30 adjustments under the provisions of § 44-11-11.

31 (b)(1) For any member not included in § 44-69-3(ii)(a), the income to be included in the  
32 total income of the combined group shall be determined as follows:

33 (A) A profit and loss statement shall be prepared for each foreign branch or corporation  
34 in the currency in which the books of account of the branch or corporation are regularly

1 maintained.

2 (B) Adjustment shall be made to the profit and loss statement to conform it to the  
3 accounting principles generally accepted in the United States for the preparation of such  
4 statements except as modified by this chapter.

5 (C) Adjustments shall be made to the profit and loss statement to conform it to the tax  
6 accounting standards required by the state tax laws.

7 (D) Except as otherwise provided by regulation, the profit and loss statement of each  
8 member of the combined group, and the apportionment factors related thereto, whether United  
9 States or foreign, shall be translated into the currency in which the parent company maintains its  
10 books and records.

11 (E) Income apportioned to this state shall be expressed in United States dollars.

12 (2) In lieu of the procedures set forth in § 44-69-3(c)(ii)(b)(1), above, and subject to the  
13 determination of the director that reasonably approximates income as determined under the state  
14 tax laws, any member not included in § 44-69-3(C)(ii)(a) may determine its income on the basis  
15 of the consolidated profit and loss statement which includes the member and which is prepared  
16 for filing with the securities and exchange commission by related corporations. If the member is  
17 not required to file with the securities and exchange commission, the director may allow the use  
18 of the consolidated profit and loss statement prepared for reporting to shareholders and subject to  
19 review by an independent auditor. If above statements do not reasonably approximate income as  
20 determined under the state tax laws the director may accept those statements with appropriate  
21 adjustments to approximate that income.

22 (c) If a unitary business includes income from a partnership, the income to be included in  
23 the total income of the combined group shall be the member of the combined group's direct and  
24 indirect distributive share of the partnership's unitary business income.

25 (d) All dividends paid by one to another of the members of the combined group shall, to  
26 the extent those dividends are paid out of the earnings and profits of the unitary business included  
27 in the combined report, in the current or an earlier year, be eliminated from the income of the  
28 recipient. This provision shall not apply to dividends received from members of the unitary  
29 business which are not a part of the combined group.

30 (e) Except as otherwise provided by regulation, business income from an intercompany  
31 transaction between members of the same combined group shall be deferred in a manner similar  
32 to 26 CFR 1.1502-13. Upon the occurrence of any of the following events, deferred business  
33 income resulting from an intercompany transaction between members of a combined group shall  
34 be restored to the income of the seller, and shall be apportioned as business income earned

1 immediately before the event:

2 (1) The object of a deferred intercompany transaction is:

3 (A) Re-sold by the buyer to an entity that is not a member of the combined group;

4 (B) Re-sold by the buyer to an entity that is a member of the combined group for use;  
5 outside the unitary business in which the buyer and seller are engaged; or

6 (C) Converted by the buyer to a use outside the unitary business in which the buyer and  
7 seller are engaged; or

8 (2) The buyer and seller are no longer members of the same combined group, regardless  
9 of whether the members remain unitary.

10 (f) A charitable expense incurred by a member of a combined group shall, to the extent  
11 allowable as a deduction pursuant to Internal Revenue Code section 170, be subtracted first from  
12 the business income of the combined group (subject to the income limitations of that section  
13 applied to the entire business income of the group), and any remaining amount shall then be  
14 treated as a nonbusiness expense allocable to the member that incurred the expense (subject to the  
15 income limitations of that section applied to the nonbusiness income of that specific member).  
16 Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover  
17 deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by  
18 the same member, and the rules of this section shall apply in the subsequent year in determining  
19 the allowable deduction in that year.

20 (g) Gain or loss from the sale or exchange of capital assets, property described by Internal  
21 Revenue Code section 1231(a)(3), and property subject to an involuntary conversion, shall be  
22 removed from the total separate net income of each member of a combined group and shall be  
23 apportioned and allocated as follows:

24 (1) For each class of gain or loss (short term capital, long term capital, Internal Revenue  
25 Code section 1231, and involuntary conversions) all members' business gain and loss for the  
26 class shall be combined (without netting between such classes), and each class of net business  
27 gain or loss separately apportioned to each member using the member's apportionment  
28 percentage determined under § 44-69-3(B).

29 (2) Each taxpayer member shall then net its apportioned business gain or loss for all  
30 classes, including any such apportioned business gain and loss from other combined groups,  
31 against the taxpayer member's nonbusiness gain and loss for all classes allocated to this state,  
32 using the rules of Internal Revenue Code sections 1231 and 1222, without regard to any of the  
33 taxpayers member's gains or losses from the sale or exchange of capital assets, section 1231  
34 property, and involuntary conversions which are nonbusiness items allocated to another state.

1 (3) Any resulting state source income (or loss, if the loss is not subject to the limitations  
2 of Internal Revenue Code section 1211) of a taxpayer member produced by the application of the  
3 preceding subsections shall then apply to all other state source income or loss of that member.

4 (4) Any resulting state source loss of a member that is subject to the limitations of section  
5 1211 shall be carried forward by that member, and shall be treated as state source short-term  
6 capital loss incurred by that member for the year for which the carryover applies.

7 (h) Any expense of one member of the unitary group which is directly or indirectly  
8 attributable to the nonbusiness or exempt income of another member of the unitary group shall be  
9 allocated to that other member as corresponding nonbusiness or exempt expense, as appropriate.

10 **44-69-4. Designation of surety.** – As a filing convenience, and without changing the  
11 respective liability of the group members, members of a combined reporting group may annually  
12 elect to designate one taxpayer member of the combined group to file a single return in the form  
13 and manner prescribed by the department, in lieu of filing their own respective returns, provided  
14 that the taxpayer designated to file the single return consents to act as surety with respect to the  
15 tax liability of all other taxpayers properly include in the combined report, and agrees to act as  
16 agent on behalf of those taxpayers for the year of the election for tax matters relating to the  
17 combined report for that year. If for any reason the surety is unwilling or unable to perform its  
18 responsibilities, tax liability may be assessed against the taxpayer members.

19 **44-69-5. Water's-edge election; initiation and withdrawal.** – (A) Water's-edge  
20 election. Taxpayer members of a unitary group that meet the requirements of § 44-69-5(B) may  
21 elect to determine each of their apportioned shares of the net business income or loss of the  
22 combined group pursuant to a water's-edge election. Under such election, taxpayer members shall  
23 take into account all or a portion of the income and apportionment factors of only the following  
24 members otherwise included in the combined group pursuant to § 44-69-2, as described below:

25 (i) The entire income and apportionment factors of any member incorporated in the  
26 United States or formed under the laws of any state, the District of Columbia, or any territory or  
27 possession of the United States;

28 (ii) The entire income and apportionment factors of any member, regardless of the place  
29 incorporated or formed, if the average of its property, payroll, and sales factors within the United  
30 States is twenty percent (20%) or more;

31 (iii) The entire income and apportionment factors of any member which is a domestic  
32 international sales corporation as described in Internal Revenue Code sections 991 to 994,  
33 inclusive; a foreign sales corporation as described in Internal Revenue Code sections 921-927,  
34 inclusive; or any member which is an export trade corporation, as described in Internal Revenue



1 Code sections 970 to 971, inclusive;

2 (iv) Any member not described in §§ 44-69-5(A)(i) to 44-69-5(A)(iii), inclusive shall  
3 include the portion of its income derived from or attributable to sources within the United States,  
4 as determined under the Internal Revenue Code without regard to federal treaties, and its  
5 apportionment factors related thereto;

6 (v) Any member that is a “controlled foreign corporation,” as defined in Internal Revenue  
7 Code section 957, to the extent of the income of that member that is defined in section 952 of  
8 subpart F of the Internal Revenue Code (“Subpart F income”) not excluding lower-tier  
9 subsidiaries’ distributions of such income which were previously taxed, determined without  
10 regard to federal treaties, and the apportionment factors related to that income; any item of  
11 income received by a controlled foreign corporation shall be excluded if such income was subject  
12 to an effective rate of income tax imposed by a foreign country greater than ninety percent (90%)  
13 of the maximum rate of tax specified in Internal Revenue Code section 11;

14 (vi) Any member that earns more than twenty percent (20%) of its income, directly or  
15 indirectly, from intangible property or service related activities that are deductible against the  
16 business income of other members of the combined group, to the extent of that income and the  
17 apportionment factors related thereto; and

18 (vii) The entire income and apportionment factors of any member that is doing business  
19 in a tax haven, where “doing business in a tax haven” is defined as being engaged in activity  
20 sufficient for the tax haven jurisdiction to impose a tax under United States constitutional  
21 standards. If the member’s business activity within a tax haven is entirely outside the scope of the  
22 laws, provisions and practices that cause the jurisdiction to meet the criteria established in § 44-  
23 69-1(9), the activity of the member shall be treated as not having been conducted in a tax haven.

24 (B) Initiation and withdrawal of election.

25 (i) A water’s-edge election is effective only if made on a timely-filed, original return for a  
26 tax year by every member of the unitary business subject to tax under the state income tax code.  
27 The director shall develop rules and regulations governing the impact, if any, on the scope or  
28 application of a water’s-edge election, including termination or deemed election, resulting from a  
29 change in the composition of the unitary group, the combined group, the taxpayer members, and  
30 any other similar change.

31 (ii) Such election shall constitute consent to the reasonable production of documents and  
32 taking of depositions in accordance with the state statute on discovery.

33 (iii) In the discretion of the director, a water’s-edge election may be disregarded in part or  
34 in whole, and the income and apportionment factors of any member of the taxpayer’s unitary

1 group may be included in the combined report without regard to the provisions of this section, if  
2 any member of the unitary group fails to comply with any provision of this act or if a person  
3 otherwise not included in the water's-edge combined group was availed of with a substantial  
4 objective of avoiding state income tax.

5 (iv) A water's-edge election is binding for and applicable to the tax year it is made and all  
6 tax years thereafter for a period ten (10) years. It may be withdrawn or reinstated after  
7 withdrawal, prior to the expiration of the ten (10) year period, only upon written request for  
8 reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes,  
9 law, or policy, and only with the written permission of the director. If the director grants a  
10 withdrawal of election, he or she shall impose reasonable conditions as necessary to prevent the  
11 evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal.  
12 Upon the expiration of the ten (10) year period, a taxpayer may withdraw from the water's-edge  
13 election. Such withdrawal must be made in writing within one year of the expiration of the  
14 election, and is binding for a period of ten (10) years, subject to the same conditions as applied to  
15 the original election. If no withdrawal is properly made, the water's-edge election shall be in  
16 place for an additional ten (10) year period, subject to the same conditions as applied to the  
17 original election.

18 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TAXATION -- COMBINED REPORTING

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- 1           This act would address the factors required to be taken into account in determining the
- 2 taxpayers share of the net business income or loss apportionable to the state of Rhode Island.
- 3           This act would take effect upon passage.

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