

House Bill 1058 (AS PASSED HOUSE AND SENATE)

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

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
13 is amended in Code Section 48-7-21, relating to income taxation of corporations, by revising
14 division (7)(A)(i) of subsection (b) and by adding a new paragraph to read as follows:

15 "(A)(i) Affiliated corporations which file a consolidated federal income tax return
16 must file separate income tax returns with this state unless they ~~have prior approval~~

17 ~~or have been requested~~ elect to file a consolidated return as provided in paragraph
18 (7.1) of this subsection, by the department. The commissioner shall by regulation
19 provide the time period within which the permission must be requested. A request for
20 permission beyond such time period will not be considered and will result in the filing
21 of separate income tax returns for the applicable year."

22 "(7.1)(A) As used in this paragraph, the term:

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

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

27 (II) Is subject to taxation under this chapter;

28 (III) Is subject to taxation in Georgia, even after the application of Public Law
29 86-272 (15 U.S.C. Sections 381-384);

30 (IV) Has the same taxable year;

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

36 (VI) Apportions Georgia taxable income or loss separately for each corporation,
37 unless the member is subject to paragraph (1) of subsection (b) of Code Section
38 48-7-31;

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

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

44 (IX) Combines and reports taxable income or loss on a single return for the Georgia
45 affiliated group which includes all members of the affiliated group included on the
46 federal consolidated corporate income tax return that are eligible under this Code
47 section to be included in the Georgia affiliated group.

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

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

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

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

66 (E) Each corporation in a Georgia affiliated group that files a Georgia consolidated
67 return shall be jointly and severally liable for the group's Georgia income tax liability
68 with respect to the taxable year, except that any corporation which was not a member
69 of the Georgia affiliated group for the entire taxable year shall be jointly and severally

70 liable only for the portion of the tax liability attributable to that part of the year during
71 which the corporation was a member, prorated on a daily basis.

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

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

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

87 (I) The department shall promulgate regulations interpreting the provisions of this
88 paragraph."

89 **SECTION 2.**

90 Said title is further amended by revising Code Section 48-7-51, relating to corporation
91 returns, contents, consolidated returns of two or more corporations, returns by receivers,
92 trustees, and assignees, and collection, as follows:

93 "Every corporation subject to taxation under this chapter shall make a return stating
94 specifically the items of its gross income and the deductions and credits allowed by this
95 chapter. The income of two or more corporations shall not be included in a single return

96 except pursuant to an election made under Code Section 48-7-21 or with the express
97 consent of the commissioner. When a receiver, trustee in bankruptcy, or assignee is
98 operating the property or business of a corporation, the receiver, trustee, or assignee shall
99 make returns for the corporation in the same manner and form as the corporation is
100 required to make returns. Any tax due on the basis of returns made by a receiver, trustee,
101 or assignee shall be collected in the same manner as if collected from the corporation of
102 whose business or property he or she has custody and control."

103 **SECTION 3.**

104 This Act shall become effective upon its approval by the Governor or upon its becoming law
105 without such approval and shall be applicable to taxable years beginning on or after
106 January 1, 2023.

107 **SECTION 4.**

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