A BILL

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IN THE COUNCIL OF DISTRICT OF COLUMBIA

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To amend Title 47, Chapter 18 of the District of Columbia Official Code by adding thereto new sections, designated §§ 47-1805.02A, 47-1810.04, 47-1810.05, 47-1810.06, 47-1810.07, and amending and reenacting, § 47-1801.04, all relating to franchise taxes; and requiring combined reporting of certain taxes upon businesses.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Combined Reporting Act of 2010."

D.C. Code § 47-1801.04. General definitions.

Sec. 1. Section 47-1801.04 of the District of Columbia Code is amended and reenacted as follows:

§ 47-1801.04. General definitions.

For the purposes of this chapter and wherever appearing herein, unless otherwise required by the context the term:

(1) "Affiliated group" means an affiliated group as defined in § 1504 of the Internal Revenue Code of 1986 [26 U.S.C.S. § 1504]; provided, that the affiliated group shall not include any corporation which does not have gross income derived from sources within the District.

(2) "Aggregated effective tax rate" means the sum of the effective rates of tax imposed by the District of Columbia, states, or possessions of the United States, and foreign nations that have entered into comprehensive tax treaties with the United States government, where a related member receiving a payment of interest expense or intangible expense is subject to tax and where the measure of the tax imposed included the payment.

(3) "Blind" means a taxpayer whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(4) “Business income” means all income which is apportionable under the Constitution of the United States.

(5)(A) "Capital asset" means property defined or treated as a capital asset under the Internal Revenue Code of 1986.

(B) For the purpose of computing for any taxable year the tax imposed under this chapter with respect to sales or other dispositions of property referred to in subparagraph (A) of this paragraph, the provisions of the Internal Revenue Code of 1986 relating to the treatment of gains and losses (other than the alternative tax imposed by § 1201 of such Code [26 U.S.C.S. § 1201]) shall apply.

(6) “Combined group” means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to § 47-1805.02A(1) and § 47-1805.02A(2) in determining the taxpayer’s share of the net business income or loss apportionable to the District.

(7) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(8) “Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(9) “Corporation” means any corporation as defined by the laws of the District or organization of any kind treated as a corporation for tax purposes under the laws of the District, wherever located, which if it were doing business in the District would be subject to the tax imposed by this chapter. The business conducted by a partnership which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation’s distributive share of the partnership income, inclusive of guaranteed payments to the extent prescribed by regulation. The term “corporation” includes a joint-stock company, trust and any association or other organization which is taxable as a corporation under federal income tax law.

(10) “Cost-of-living adjustment” for any calendar year means an amount equal to the dollar amount set forth in paragraph (49)(A) of this section (pertaining to the standard deduction), paragraph (49)(B) of this section (pertaining to the standard deduction), § 47-1806.02(f)(1)(A) (pertaining to the allowance of additional exemptions for dependents), or § 47-1806.02(i) (pertaining to the personal exemption), as the case may be, multiplied by the percentage that the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the calendar year beginning January 1, 2007. For the purposes of this paragraph, the Consumer Price Index for any calendar year is the average of the Consumer Price Index for the Washington-Baltimore Metropolitan Statistical Area for all-urban consumers published by the Department of Labor, or any successor index, as of the close of the 12-month period ending on July 31 of such calendar year.

(11) “Deficiency” as used in this chapter with respect to any tax imposed by this chapter means:

(A) The amount or amounts by which the tax imposed by this chapter as determined by the Mayor exceeds the amount shown as the tax by the taxpayer upon his return; or

(B) The amount assessed as a tax by the Mayor if no return is filed by the taxpayer.

(12) “Dependent” means a dependent as defined in § 152 of the Internal Revenue Code of 1986.

(13) “District” means the District of Columbia.

(14) “Dividend” means any distribution made by a corporation or financial institution (domestic or foreign) to its stockholders or members, out of its earnings, profits, or surplus (other than paid-in surplus), whenever earned by the corporation or financial institution and whether made in cash or any other property (other than stock of the same class in the corporation or financial institution if the recipient of such stock dividend has neither received nor exercised an option to receive such dividend in cash or in property other than stock instead of stock) and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation or financial institution, except that in the case of any such distribution any part of which for purposes of the income tax imposed under the Internal Revenue Code of 1986 is deemed to constitute a capital gain, such part shall be deemed to constitute a capital gain for purposes of the tax imposed by this chapter; provided, however, that in the case of any dividend which is distributed other than in cash or stock in the same class in the corporation or financial institution and not exempted from tax under this chapter, the basis of tax to the recipient thereof shall be the market value of such property at the time of such distribution; and provided, however, that the word "dividend" shall not include any dividend paid by a mutual life insurance company to its shareholders.

(15) “Domestic partners” means persons who have registered their relationship with the District pursuant to § 32-702.

(16) “Domestic partnership” shall have the same meaning as provided in § 32-701(4).

(17) “Engaging in business” or “doing business” means any activity of a corporation which enjoys the benefits and protection of government and laws in the District.

(18) “Employer” means employer as defined in § 3401(d) of the Internal Revenue Code of 1986.

(19) “Employee” shall apply only to an individual having a place of abode or residing or domiciled within the District at the time the tax is required to be withheld in respect to the individual's employment by another, and to every other individual who maintains a place of abode within the District for an aggregate of 183 days or more during the taxable

year, whether domiciled in the District or not. The term “employee” shall include an officer of a corporation, but shall not include any elective officer of the government of the United States or any officer or employee in the legislative branch of the Government of the United States whose compensation is paid by the Secretary of the Senate or Clerk of the House of Representatives, or any officer of the executive branch of such government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, or any Justice of the Supreme Court of the United States, unless such officers or Justices are domiciled within the District of Columbia at any time during the taxable year.

(20) “Fiduciary” means a guardian, trustee, executor, committee, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any person.

(21) “Financial institution” means any bank or trust company incorporated or required to be incorporated and doing business under the laws of the United States, the District of Columbia, or any state, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by the District or by any state, territorial, or federal authority having supervision over financial institutions. The term "financial institution" includes:

(A) Any savings and loan associations; and

(B) Any company, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, which company is organized or created under the laws of a foreign country, and which maintains an office or branch in the District.

(22) “Fiscal year” means an accounting period of 12 months ending on any day other than the last day of December and on the basis of which the taxpayer is required to report for federal income tax purposes.

(23) “Head of household” shall have the same meaning as defined in § 2(b) of the Internal Revenue Code of 1986.

(24) “Include,” “includes,” or “including,” when used in a definition contained in this section, shall not be deemed to exclude other things otherwise within the meaning of the word or words defined.

(25) “Individual” means all natural persons (other than fiduciaries), whether married, domestic partners, or unmarried.

(26) “Intangible expense” means:

(A) An expense, loss, or cost for, related to or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property, to the extent the expense, loss, or cost is allowed as a deduction or cost in determining taxable income for the taxable year under the Internal Revenue Code of 1986;

(B) A loss related to or incurred in connection directly or indirectly with factoring transactions or discounting transactions;

(C) A royalty, patent, technical, or copyright and licensing fee; or

(D) Any other similar expense or cost.

(27) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, copyrights, and similar types of intangible assets.

(28) "Interest expense" means an amount directly or indirectly allowed as a deduction under § 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code of 1986.

(29) "Internal Revenue Code of 1954" means the Internal Revenue Code of 1954, approved April 6, 1954 (68A Stat. 3; 26 U.S.C.S. § 1 et seq.), as amended through May 24, 1985.

(30) "Internal Revenue Code of 1986" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C.S. 1 et seq.), as amended from time to time. The provisions of the Internal Revenue Code of 1986 shall be effective on the same dates that they are effective for federal tax purposes.

(31) "International banking facility" or "IBF" shall have the same meaning as defined in § 204.8(a)(1) of Regulation D of the Board of Governors of the Federal Reserve System, effective December 3, 1981 (12 CFR 204.8(a)(1)).

(32) "International banking facility extension of credit" or "IBF loan" shall have the same meaning as defined in § 204.8(a)(3) of Regulation D of the Board of Governors of the Federal Reserve System, effective December 3, 1981 (12 CFR 204.8(a)(3)).

(33) "International Banking Facility time deposit" or "IBF time deposit" shall have the same meaning as defined in § 204.8(a)(2) of Regulation D of the Board of Governors of the Federal Reserve System, effective December 3, 1981 (12 CFR 204.8(a)(2)).

(34) "Mayor" means the Mayor of the District of Columbia or his duly authorized representative or representatives.

(35) “Net operating loss” shall have the same meaning as defined in § 172(c) of the Internal Revenue Code, subject to limitations and modifications provided in this section.

(36) “Net operating loss deduction” means the aggregate of the apportioned net operating loss carryovers to the taxable year.

(37) “Apportioned net operating loss" means the net operating loss generated in the year of the loss multiplied by the District of Columbia's apportionment formula for the loss year.

(38) “Nonbusiness income” means all income other than business income.

(39) “Nonresident” means every individual other than a resident.

(40) “Ownership.” In determining the ownership of stock, assets, or net profits of any person, the constructive ownership of section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by section 856(d)(5) of the Internal Revenue Code of 1986, as amended, shall apply.

(41) “Partnership” means a general or limited partnership or organization of any kind treated as a partnership for tax purposes under the laws of the District of Columbia.

(42) “Payroll period” means payroll period as defined in § 3401(b) of the Internal Revenue Code of 1986.

(43) “Person” means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited partnership, association, corporation (whether or not the corporation is, or would be if doing business in the District, subject to this chapter), company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee, fiduciary, or organization of any kind.

(44) “Related entity” means a person that, under the attribution rules of section 318 of the Internal Revenue Code of 1986, is:

(A) A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code of 1986, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;

(B) A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock; or

(C) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Internal Revenue Code of 1986, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation's outstanding stock.

(45) “Related member” means:

(A) A person that, with respect to the taxpayer any time during the year, is a related entity;

(B) A component member as defined in section 1563(b) of the Internal Revenue Code of 1986;

(C) A controlled group of which the taxpayer is also a component; or

(D) A person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code of 1986.

(46) “Resident” means every individual domiciled within the District at any time during the taxable year, and every other individual who maintains a place of abode within the District for an aggregate of 183 days or more during the taxable year, whether or not such other individual is domiciled in the District. The term "resident" shall not include any elective officer of the government of the United States or any employee on the staff of an elected official in the legislative branch of the government of the United States if such employee is a bona fide resident of the state of residence of such elected officer, or any officer of the executive branch of such government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, or any Justice of the Supreme Court of the United States, unless such officers or Justices are domiciled within the District at any time during the taxable year. In determining whether an individual is a "resident", such individual's absence from the District for temporary or transitory purposes shall not be regarded as changing his domicile or place of abode.

(47) “Sales” means all gross receipts of the taxpayer that are “business income” as defined in this section.

(48) “Shareholder” includes a member in an association, joint-stock company, or insurance company.

(49) “Standard deduction” means:

(A) $ 4,000, increased annually, beginning January 1, 2013, by the cost-of-living adjustment (if the adjustment does not result in a multiple of $ 50, rounded to the next

lowest multiple of $ 50), in the case of a return filed by a single individual, by a head of household, by a surviving spouse, or jointly by husband and wife (or domestic partner);

(B) $ 2,000, increased annually, beginning January 1, 2013, by the cost-of-living adjustment (if the adjustment does not result in a multiple of $ 50, rounded to the next lowest multiple of $ 50), in the case of a married person filing separately; or

(C) In the case of an individual who is a resident, as defined in paragraph (46) of this section, for less than a full 12-month taxable year, the amounts specified in subparagraphs (A) and (B) of this paragraph prorated by the number of months that the individual was a resident.

(50) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory, or possession of the United States and any foreign country or political subdivision thereof.

(51) “Stock” includes a share in any association, joint-stock company, or insurance company.

(52) “Subpart F income” shall have the same meaning as defined in § 952 of the Internal Revenue Code of 1986.

(53) “Surviving spouse” shall have the same meaning as defined in § 2(a) of the Internal Revenue Code of 1986; provided, that in applying § 2(a) of the Internal Revenue Code of 1986 [26 U.S.C.S. § 2(a)], the term "spouse" shall be deemed to include a domestic partner.

(54) “District taxable income” means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in this section; provided, that in the case of a corporation having income from business activity which is taxable outside the District, its "District taxable income" shall be the portion of its taxable income as allocated or apportioned to the District under the provisions of this chapter.

(55) “Tax” or “tax liability” includes the liability for all amounts owing by a taxpayer to the District under this chapter.

(56) “Taxable year” means the calendar year or the fiscal year, upon the basis of which the net income of the taxpayer is computed under this section; if no fiscal year has been established by the taxpayer, they mean the calendar year. The term "taxable year" includes, in the case of a return made for a fractional part of a calendar or fiscal year under the provisions of this section or under regulations prescribed by the Mayor, the period for which such return is made; provided, however, that no taxpayer may change from a calendar year to a fiscal year or from a fiscal year to a calendar year within any taxable year without the written permission of the Mayor.

(57) “Tax haven” means a jurisdiction that, for a particular tax year in question:

(A) Is identified by the Organization for Economic Cooperation and Development as a tax haven or as having a harmful preferential tax regime; or

(B) a jurisdiction that has no, or nominal, effective tax on the relevant income and;

(i) that has laws or practices that prevent effective exchange of information for tax purposes with other governments regarding taxpayers subject to, or benefitting from, the tax regime;

(ii) that lacks transparency. For purposes of this definition, a tax regime lacks transparency if the details of legislative, legal, or administrative provisions are not open to public scrutiny and apparent or are not consistently applied among similarly situated taxpayers;

(iii) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

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

(v) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy. For purposes of this definition, the phrase "tax regime" means a set or system of rules, laws, regulations, or practices by which taxes are imposed on any person, corporation or entity, or on any income, property, incident, indicia or activity pursuant to governmental authority.

(58) “Taxpayer” means any person required by this chapter to pay a tax, file a return, or report or apply for a license.

(59) “This code” means the District of Columbia Official Code, 2001, as amended.

(60) “Trade or business” means the engaging in or carrying on of any trade, business, profession, vocation or calling, or commercial activity in the District of Columbia, including activities in the District that benefit an affiliated entity of the taxpayer, the performance of functions of a public office and the leasing of real or personal property in the District of Columbia by any person whether or not the property is leased directly by such person or through an agent, and whether or not such person or agent performs any services in connection with the property.

(61) “United States” means the United States of America and includes all of the states of the United States, the District of Columbia and United States territories and possessions.

(62) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. For purposes of this chapter, and § 47-1810.02 of this chapter, any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or its distributive or any other share of partnership income. A business conducted directly or indirectly by one corporation through its direct or indirect interest in a partnership is unitary with that portion of a business conducted by one or more other corporations through their direct or indirect interest in a partnership if there is a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts and the corporations are members of the same commonly controlled group.

(63) "Valid business purpose" means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for a business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer or the entry by the taxpayer into new business markets.

(64) "Wages" means wages as defined in § 3401(a) of the Internal Revenue Code of 1986.

(65) "Water's-edge combined group" is comprised of all entities includible in the combined report, as determined pursuant to § 47-1810.07(A).

(66) "Worldwide combined report" means the combination of the income and activities of all members of a unitary group irrespective of the country in which the corporations are incorporated or conduct business activity.

D.C. Code § 47-1805.02A. Method of filing for franchise taxes.

Sec. 2. Section 47-1805.02A of the District of Columbia Official Code is added as follows:

§ 47-1805.02A. Method of filing for franchise taxes.

(1) Combined reporting required. -- For tax years beginning on and after December 31, 2010, any taxpayer engaged in a unitary business with one or more other corporations that are part of a water's-edge combined group under §47-1810.07(A) shall file a combined report which includes the income, determined under § 47-1810.04 and § 47-

1810.05 of this chapter, and the allocation and apportionment factors determined under § 47-1810.02 of this chapter, of all such corporations, and other information as required by the Mayor. If a worldwide combined reporting election has been made, the taxpayer shall file a combined report which includes such income and factors of all corporations that are members of the unitary business, and other information as required by the Mayor.

(2) Combined reporting at Mayor's discretion.

(A) The Mayor may by regulation require a combined report to include the income and associated apportionment factors of any persons that are not included pursuant to subsection (1) of this section, but that are members of a unitary business, in order to reflect proper apportionment of income of the entire unitary businesses.

(B) If the Mayor determines that the reported income or loss of a taxpayer engaged in a unitary business with any person not included pursuant to subsection (1) of this section represents an avoidance or evasion of tax by the taxpayer, the Mayor may, on a case-by-case basis, require all or any part of the income and associated apportionment factors be included in the taxpayer's combined report.

(C) With respect to inclusion of associated apportionment factors pursuant to this section, the Mayor may require the exclusion of any one or more of the factors, the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in the District, or the employment of any other method to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and apportionment of the taxpayer's income.

(3) The Mayor shall adopt regulations as necessary to ensure that the tax liability or net income of any taxpayer whose income derived from or attributable to sources within the District which is required to be determined by a combined report pursuant to § 47-1810.02 or § 47-1810.07 and of each entity included in the combined report, both during and after the period of inclusion in the combined report is properly reported, determined, computed, assessed, collected, or adjusted.

D.C. Code § 47-1810.04. Determination of taxable income or loss using combined report.

Sec. 3. Section 47-1810.04 of the District of Columbia Official Code is added as follows:

§ 47-1810.04. Determination of taxable income or loss using combined report.

(A) The use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to the District, which shall include, in addition to other types of income, the taxpayer member's apportioned share of business income of the combined group, where business income of the combined group is

calculated as a summation of the individual net business incomes of all members of the combined group. A member's net business income is determined by removing all but business income, expense, and loss from that member's total income, as provided in this section and § 47-1810.05 of this chapter.

(B) Components of income subject to tax in the District; application of tax credits and post-apportionment deductions.

(1) Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to the District, which shall include:

(a) Its share of any business income apportionable to the District of each of the combined groups of which it is a member, determined under subsection (c) of this section;

(b) Its share of any business income apportionable to the District of a distinct business activity conducted within and outside the District wholly by the taxpayer member, determined under the provisions for apportionment of business income set forth in this chapter;

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

(d) Its income sourced to the District from the sale or exchange of capital or assets, and from involuntary conversions, as determined under § 47-1810.05(B)(8) of this chapter;

(e) Its nonbusiness income or loss allocable to the District, determined under the provisions for allocation of nonbusiness income set forth in this chapter;

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

(g) Its net operating loss carryover. If the taxable income computed pursuant to this section and § 47-1810.05 of this chapter results in a loss for a taxpayer member of the combined group, that taxpayer member has a District net operating loss, subject to the net operating loss limitations, and carryover provisions of this chapter. This District net operating loss is applied as a deduction in a prior or subsequent year only if that taxpayer has District source positive net income, whether or not the taxpayer is or was a member of a combined reporting group in the prior or subsequent year.

(2) Except where otherwise provided, no tax credit or post-apportionment deduction earned by one member of the group, but not fully used by or allowed to that member, may be used, in whole or in part, by another member of the group or applied, in whole or in part, against the total income of the combined group; and a post-apportionment

deduction carried over into a subsequent year as to the member that incurred it, and available as a deduction to that member in a subsequent year, will be considered in the computation of the income of that member in the subsequent year regardless of the composition of that income as apportioned, allocated, or wholly within the District.

(C) Determination of taxpayer's share of the business income of a combined group apportionable to the District.

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

(1) The business income of the combined group, determined under § 47-1810.05 of this chapter; and

(2) The taxpayer member's apportionment percentage, determined in accordance with this chapter, including in the property, payroll and sales factor numerators the taxpayer's property, payroll and sales, respectively, associated with the combined group's unitary business in the District and including in the denominator the property, payroll and sales of all members of the combined group, including the taxpayer, which property, payroll, and sales are associated with the combined group's unitary business wherever located.

The property, payroll and sales of a partnership shall be included in the determination of the partner's apportionment percentage in proportion to a ratio the numerator of which is the amount of the partner's distributive share of partnership's unitary income included in the income of the combined group in accordance with § 47-1810.05 of this chapter and the denominator of which is the amount of the partnership's total unitary income.

D.C. Code § 47-1810.05. Determination of the business income of the combined group.

Sec. 4. Section 47-1810.05 of the District of Columbia Official Code is added as follows:

§ 47-1810.05. Determination of the business income of the combined group.

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

(A) From the total income of the combined group, determined under subsection (B) of this section, subtract any income and add any expense or loss, other than the business income, expense or loss of the combined group.

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

(1) For any member incorporated in the United States, or included in a consolidated federal corporate income tax return, the income to be included in the total income of the combined group shall be the taxable income for the corporation after making appropriate adjustments under this chapter.

(2) For any member not included in subdivision (1) of this subsection, the income to be included in the total income of the combined group shall be determined as follows:

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

(b) Adjustments shall be made to the profit and loss statement to conform it to the accounting principles generally accepted in the United States for the preparation of such statements except as modified by this regulation.

(c) Adjustments shall be made to the profit and loss statement to conform it to the tax accounting standards required by this chapter.

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

(e) Income apportioned to the District shall be expressed in United States dollars.

(3) In lieu of the procedures set forth in subdivision (2) of this subsection, and subject to the determination of the Mayor that it reasonably approximates income as determined under this chapter, any member not included in subdivision (1) of this subsection may determine its income on the basis of the consolidated profit and loss statement which includes the member and which is prepared for filing with the Securities and Exchange Commission by related corporations. If the member is not required to file with the Securities and Exchange Commission, the Mayor may allow the use of the consolidated profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor. If above statements do not reasonably approximate income as determined under this chapter, the Mayor may accept those statements with appropriate adjustments to approximate that income.

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

(5) All dividends paid by one to another of the members of the combined group shall, to the extent those dividends are paid out of the earnings and profits of the unitary business included in the combined report, in the current or an earlier year, be eliminated from the

income of the recipient. Except as otherwise provided, this provision shall not apply to dividends received from members of the unitary business which are not a part of the combined group. Except when specifically required by the Mayor to be included, all dividends paid by an insurance company directly or indirectly to a corporation that is part of a unitary business with the insurance company shall be deducted or eliminated from the income of the recipient of the dividend.

(6) Except as otherwise provided by regulation, business income from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to 26 C. F. R. 1.1502-13. Upon the occurrence of any of the following events, deferred business income resulting from an intercompany transaction between members of a combined group shall be restored to the income of the seller and shall be apportioned as business income earned immediately before the event:

(A) The object of a deferred intercompany transaction is:

(i) Resold by the buyer to an entity that is not a member of the combined group;

(ii) Resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged; or

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

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

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

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

(A) For each class of gain or loss (short term capital, long term capital, Internal Revenue Code § 1231 and involuntary conversions) all members' business gain and loss

for the class shall be combined without netting between classes and each class of net business gain or loss separately apportioned to each member using the member's apportionment percentage determined under § 47-1810.04 of this chapter.

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

(C) Any resulting District source income or loss, if the loss is not subject to the limitations of Internal Revenue Code § 1211 of a taxpayer member produced by the application of the preceding subsections shall then be applied to all other District source income or loss of that member.

(D) Any resulting District source loss of a member that is subject to the limitations of § 1211 shall be carried over by that member and shall be treated as District source short-term capital loss incurred by that member for the year for which the carryover applies.

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

D.C. Code § 47-1810.06. Designation of surety.

Sec. 5. Section 47-1810.06 of the District of Columbia Official Code is added as follows:

§ 47-1810.06. Designation of surety.

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

D.C. Code § 47-1810.07. Water's-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation

and withdrawal of worldwide combined reporting election.

Sec. 6. Section 47-1810.07 of the District of Columbia Official Code is added as follows:

§ 47-1810.07. Water's-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.

(A) Water's-edge reporting.

Absent an election under subsection (B) of this section to report based upon a worldwide unitary combined reporting basis, taxpayer members of a unitary group shall determine each of their apportioned shares of the net business income or loss of the combined group on a water's-edge unitary combined reporting basis. In determining tax under this chapter on a water's-edge unitary combined reporting basis, taxpayer members shall take into account all or a portion of the income and apportionment factors of only the following members otherwise included in the combined group pursuant to § 47-1805.02A of this chapter:

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

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

(3) The entire income and apportionment factors of any member which is a domestic international sales corporation as described in Internal Revenue Code §§ 991 to 994, inclusive; a foreign sales corporation as described in Internal Revenue Code §§ 921 to 927, inclusive; or any member which is an export trade corporation, as described in Internal Revenue Code §§ 970 to 971, inclusive;

(4) Any member not described in subdivision (1), (2) or (3) of this subsection shall include its business income which is effectively connected, or treated as effectively connected under the provisions of the Internal Revenue Code, with the conduct of a trade or business within the United States and, for that reason, subject to federal income tax;

(5) Any member that is a "controlled foreign corporation", as defined in Internal Revenue Code § 957, to the extent of the income of that member that is defined in § 952 of Subpart F of the Internal Revenue Code (Subpart F income) not excluding lower-tier subsidiaries' distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income; any item of income received by a controlled foreign corporation shall be excluded if such income was subject to an effective rate of income tax imposed by a foreign country

greater than 90% of the maximum rate of tax specified in Internal Revenue Code § 11;

(6) Any member that earns more than 20% of its income, directly or indirectly, from intangible property or service-related activities that are deductible against the business income of other members of the water's-edge group, to the extent of that income and the apportionment factors related thereto; and

(7) The entire income and apportionment factors of any member that is doing business in a tax haven defined as being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States constitutional standards. If the member's business activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause the jurisdiction to meet the criteria set forth in the definition of a tax haven, the activity of the member shall be treated as not having been conducted in a tax haven.

(B) Initiation and withdrawal of election to report based on worldwide unitary combined reporting.

(1) An election to report District tax based on worldwide unitary combined reporting is effective only if made on a timely filed, original return for a tax year by every member of the unitary business subject to tax under this chapter. The Mayor shall develop rules governing the impact, if any, on the scope or application of a worldwide unitary combined reporting election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members and any other similar change.

(2) The election shall constitute consent to the reasonable production of documents and taking of depositions in accordance with the provisions of this code.

(3) In the discretion of the Mayor, a worldwide unitary combined reporting election may be disregarded, in part or in whole, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in or excluded from the combined report without regard to the provisions of this section, if any member of the unitary group fails to comply with any provision of this chapter.

(4) In the discretion of the Mayor, the Mayor may mandate worldwide unitary combined reporting, in part or in whole, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in or excluded from the combined report without regard to the provisions of this section, if any member of the unitary group fails to comply with any provision of this chapter or if a person otherwise not included in the water's-edge combined group was availed of with a substantial objective of avoiding state income tax.

(5) A worldwide unitary combined reporting election is binding for and applicable to the tax year it is made and all tax years thereafter for a period of ten years. It may be withdrawn or reinstituted after withdrawal, prior to the expiration of the ten-year period,

only upon written request for reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes, law or policy and only with the written permission of the Mayor. If the Mayor grants a withdrawal of election, he or she shall impose reasonable conditions necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. Upon the expiration of the ten-year period, a taxpayer may withdraw from the worldwide unitary combined reporting election. Withdrawal must be made in writing within one year of the expiration of the election and is binding for a period of ten years, subject to the same conditions as applied to the original election. If no withdrawal is properly made, the worldwide unitary combined reporting election shall be in place for an additional ten-year period, subject to the same conditions as applied to the original election.

Sec. 7. Applicability.

This act shall apply for the taxable years beginning after December 31, 2010.

Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1 206.02(c)(1)).