

# **MANDATORY UNITARY COMBINED FILING IS BAD FOR NEW MEXICO**

## **HB 51**

- 1) It would increase taxes for many businesses operating in New Mexico and other states.
- 2) New Mexico has long offered alternative methods of corporate income tax filing as an economic development incentive to attract companies from other states with high paying jobs.
- 3) New Mexico is one of few western states with which we compete for investment to offer this significant incentive.
- 4) Mandatory unitary combined filing makes New Mexico less competitive with other states seeking to attract large national or international businesses when about only a third of the states require unitary reporting.
- 5) Mandatory unitary combined filing is not just about out-of-state businesses. It would adversely affect New Mexico based corporations that have related corporations in other states.
- 6) Many small businesses pay lower tax rates than corporations that would be affected by HB 51. Smaller businesses operated as a sole proprietorship, LLC, or S-Corporation pay income tax at a much lower personal income tax rate (4.9%) than corporations which pay at up to 7.6%.
- 7) Mandatory unitary combined filing would unfairly disrupt the economic expectations of businesses that located or expanded operations in New Mexico based upon the ability to file on a separate entity basis.
- 8) Mandatory unitary combined filing would inhibit future investment in New Mexico operations that would initially operate at a loss that would not be reflected in a combined unitary return offsetting the loss with profits from other entities.
- 9) It is likely to drive some businesses or business activities from New Mexico that are economically justifiable under either

the separate or consolidated reporting methods, but are not under combined unitary filing.

10) Businesses like certainty. Changing to mandatory unitary combined filing would enhance New Mexico's reputation amongst national and multinational companies for having an unpredictable tax system for which economic assumptions can not be considered reliable, a particular concern in the post-Enron accounting environment.

11) The Taxation and Revenue Department does not have data to provide an accurate or useful analysis of potential revenue impacts. Experiences in other states suggest that projected revenue gains from mandatory unitary filing are frequently too high.

12) Forcing combination of some businesses, suffering substantial losses in other states, could lead to less New Mexico tax revenue from those companies presently filing as a separate entity.

13) Because the concept of what corporations are "unitary" for tax purposes is a very subjective and fact based determination, it would result in considerable new litigation over whether or not businesses and their income are sufficiently "related" to be "unitary" or subject to New Mexico tax jurisdiction at all.

14) It would increase the cost of doing business in New Mexico due to the increased complexity of corporate tax compliance for those not currently reporting by the unitary method. The separate reporting and consolidated federal group methods are both considerably simpler.

15) It would seriously disrupt Taxation and Revenue Department neither trained nor staffed to administer unitary combined filing.

16) It would probably result in more litigation due to uncertainties in what constitutes a corporation in a unitary group.

17) Separate entity filing that would be barred by this bill for groups of corporations is entirely legal.

18) Tax planning is not evil. We all do it through 401(k) plans, IRAs, estate planning, choosing to file as a married couple or individually, saving for children's education in Section 529 plans, etc.