

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL 523

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “King,”; in the same line, strike “and Zucker” and substitute “Zucker, Eckardt, McCray, Miller, and Salling”; in line 2, strike “– Imposition of Tax” and substitute “and Corporations”; strike beginning with “authorizing” in line 6 down through “entity;” in line 7 and substitute “authorizing a pass-through entity to elect to pay the tax imposed with respect to certain shares of all resident member of the pass-through entity;”; in line 9, after “amount;” insert “requiring each pass-through entity that elects to pay the tax imposed with respect to certain shares of resident members of the pass-through entity to report certain information to the Comptroller in a certain manner; requiring the Comptroller, subject to certain provisions of law, to distribute to each county certain income tax revenues; altering the number of employees that certain worldwide headquartered companies must employ at a certain location in the State in order to elect to use a certain formula to apportion certain income to the State; expanding a certain income tax credit to allow members of all pass-through entities, rather than only shareholders of S corporations, who are residents of the State to claim the credit under certain circumstances;”; in line 11, after “entity;” insert “providing a subtraction modification under the Maryland corporate income tax for certain changes to a certain corporation’s deferred tax assets or liabilities that are the result of certain acts of the General Assembly; providing for the calculation of the amount of the subtraction modification; providing that the subtraction modification may be claimed only for certain taxable years; prohibiting the subtraction from being reduced as a result of an event that occurs after the calculation of the subtraction; providing, under certain circumstances, for the carryforward of the subtraction; requiring a corporation that intends to claim the subtraction to file a certain statement with the Comptroller on or before a certain date; authorizing the Comptroller to review and alter the amount of the subtraction specified in the statement or claimed”

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on certain tax returns;”; in line 12, after “of” insert “certain provisions of”; in line 13, after “entities” insert “and corporations”; in line 16, after “10-102.1,” insert “10-402,”; in the same line, after “10-701.1,” insert “10-703,”; and after line 18, insert:

“BY adding to
Article - Tax - General
Section 10-311
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)”.

AMENDMENT NO. 2

On page 6, after line 16, insert:

“(K) (1) A PASS-THROUGH ENTITY THAT ELECTS, UNDER SUBSECTION (B)(2)(II) OF THIS SECTION, TO PAY THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION WITH RESPECT TO THE DISTRIBUTIVE SHARES OR PRO RATA SHARES OF RESIDENT MEMBERS OF THE PASS-THROUGH ENTITY SHALL REPORT TO THE COMPTROLLER, ON A QUARTERLY BASIS, A LIST OF THOSE RESIDENT MEMBERS AND THE COUNTIES IN WHICH THEY RESIDE.

(2) SUBJECT TO TITLE 2, SUBTITLE 6 OF THIS ARTICLE, THE COMPTROLLER SHALL DISTRIBUTE TO EACH COUNTY THE PORTION OF INCOME TAX REVENUE ATTRIBUTABLE TO THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (B)(2)(II) OF THIS SECTION BASED ON THE RATE OF TAX IMPOSED UNDER § 10-106.1 OF THIS SUBTITLE AND ATTRIBUTABLE TO EACH INDIVIDUAL MEMBER RESIDING IN THAT COUNTY.”

AMENDMENT NO. 3

On page 6, before line 17, insert:

“10-402.

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(a) In this section, “worldwide headquartered company” means a corporation included in a group of corporations including a parent corporation that:

(1) filed a Form 10-Q with the Securities and Exchange Commission for the quarterly period ending June 30, 2017;

(2) has its principal executive office in the State; and

(3) (I) employs at all times between July 1, 2017, and June 30, 2020, at least 500 full-time employees at the parent corporation’s principal executive office that is located within the State; OR

(II) IF THE PARENT CORPORATION IS A FRANCHISOR, IS PART OF A GROUP OF CORPORATIONS THAT EMPLOYS AT ALL TIMES BETWEEN JULY 1, 2017, AND JUNE 30, 2020, AT LEAST 400 FULL-TIME EMPLOYEES AT THE PARENT CORPORATION’S PRINCIPAL EXECUTIVE OFFICE THAT IS LOCATED WITHIN THE STATE.

(b) In computing Maryland taxable income, a corporation shall allocate Maryland modified income derived from or reasonably attributable to its trade or business in this State in the following manner:

(1) if a corporation carries on its trade or business wholly within the State, the corporation shall allocate to the State all of the Maryland modified income of the corporation; and

(2) if a corporation carries on its trade or business within and outside the State, the corporation shall allocate to the State the part of the corporation’s Maryland modified income that is derived from or reasonably attributable to the part of its trade or business carried on in the State, in the manner required in subsection (c), (d), or (e) of this section.

(c) (1) Except as provided in subsection (d) or (e) of this section, the part of the corporation’s Maryland modified income derived from or reasonably attributable to trade or business carried on in the State may be determined by separate accounting if practicable.

(2) If in any taxable year a corporation is permitted or required to use

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the separate accounting method in determining all or a portion of its Maryland taxable income, the portion that is separately accounted for to Maryland shall be taxable whether or not the Maryland modified income of the corporation for the taxable year is zero or less.

(d) (1) (i) In this paragraph:

1. “manufacturing corporation” means a domestic or foreign corporation which is primarily engaged in activities that, in accordance with the North American Industrial Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or 33; and

2. “manufacturing corporation” does not include a refiner, as defined in § 10–101 of the Business Regulation Article.

(ii) If a manufacturing corporation carries on its trade or business within and outside the State and the trade or business is a unitary business, the part of the corporation’s Maryland modified income derived from or reasonably attributable to trade or business carried on in the State shall be determined using a single sales factor apportionment formula, by multiplying its Maryland modified income by 100% of the sales factor.

(iii) In filing its tax return for each year, a manufacturing corporation shall certify that the NAICS Code reported on its Maryland return is consistent with that reported to other government agencies.

(iv) If the Comptroller determines that a corporation has submitted information that incorrectly classifies the corporation as a manufacturing corporation under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation in an appropriate manner.

(2) Except as provided in paragraphs (1) and (3) of this subsection:

(i) for a taxable year beginning after December 31, 2017, but before January 1, 2019, if the trade or business is a unitary business, the part of the corporation’s Maryland modified income derived from or reasonably attributable to trade or business carried on in the State shall be determined using a 3–factor

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apportionment fraction:

1. the numerator of which is the sum of the property factor, the payroll factor, and 3 times the sales factor; and

2. the denominator of which is 5;

(ii) for a taxable year beginning after December 31, 2018, but before January 1, 2020, if the trade or business is a unitary business, the part of the corporation's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State shall be determined using a 3-factor apportionment fraction:

1. the numerator of which is the sum of the property factor, the payroll factor, and 4 times the sales factor; and

2. the denominator of which is 6;

(iii) for a taxable year beginning after December 31, 2019, but before January 1, 2021, if the trade or business is a unitary business, the part of the corporation's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State shall be determined using a 3-factor apportionment fraction:

1. the numerator of which is the sum of the property factor, the payroll factor, and 5 times the sales factor; and

2. the denominator of which is 7;

(iv) for a taxable year beginning after December 31, 2020, but before January 1, 2022, if the trade or business is a unitary business, the part of the corporation's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State shall be determined using a 3-factor apportionment fraction:

1. the numerator of which is the sum of the property factor, the payroll factor, and 6 times the sales factor; and

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2. the denominator of which is 8; and

(v) for a taxable year beginning after December 31, 2021, if the trade or business is a unitary business, the part of the corporation's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State shall be determined using a single sales factor apportionment formula, by multiplying its Maryland modified income by 100% of the sales factor.

(3) (i) Each year a worldwide headquartered company that filed a federal corporate income tax return for the taxable year may elect to calculate its Maryland modified income derived from or reasonably attributable to trade or business carried on in the State using a 3-factor apportionment fraction:

1. the numerator of which is the sum of the property factor, the payroll factor, and twice the sales factor; and

2. the denominator of which is 4.

(ii) To determine under subparagraph (i) of this paragraph the Maryland modified income of a corporation or group of corporations that is a worldwide headquartered company that filed a federal corporate income tax return for the taxable year, gross income from intangible investments, including dividends, interest, royalties, and capital gains from the sale of intangible property, shall be included in the calculation of the numerator based on the average of the property and payroll factors.

(4) The property factor under paragraphs (2) and (3) of this subsection shall include:

(i) rented and owned real property; and

(ii) tangible personal property located in the State and used in the trade or business.

(e) To reflect clearly the income allocable to Maryland, the Comptroller may alter, if circumstances warrant, the methods under subsections (c) and (d) of this section, including:

(1) the use of the separate accounting method;

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(2) the use of the 3-factor double weighted sales factor formula method or the single sales factor formula method;

(3) the weight of any factor in the 3-factor formula;

(4) the valuation of rented property included in the property factor; and

(5) the determination of the extent to which tangible personal property is located in the State.”.

AMENDMENT NO. 4

On page 6, after line 22, insert:

“10-703.

(a) IN THIS SECTION, “MEMBER” AND “PASS-THROUGH ENTITY” HAVE THE MEANINGS STATED IN § 10-102.1 OF THIS TITLE.

(B) Except as provided in subsection [(b)] (C) of this section, a resident may claim a credit against the income tax for a taxable year in the amount determined under subsection [(c)] (D) of this section for State tax on income paid to another state for the year.

[(b)] (C) A credit under subsection [(a)] (B) of this section is not allowed to:

(1) a resident other than a fiduciary, if the laws of the other state allow the resident a credit for State income tax paid to this State;

(2) a resident fiduciary, if the fiduciary claims, and the other state allows, a credit for State income tax paid to this State;

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(3) a resident for less than the full taxable year for tax on income that is paid to another state during residency in that state; or

(4) a nonresident.

[(c)] (D) (1) Except as provided in paragraph (2) of this subsection and subject to subsection **[(d)] (E)** of this section, the credit allowed a resident under subsection **[(a)](B)** of this section is the lesser of:

(i) the amount of allowable tax on income that the resident paid to another state; or

(ii) an amount that does not reduce the income tax to an amount less than would be payable if the income subjected to tax in the other state were disregarded.

(2) If the credit allowed a resident under subsection **[(a)] (B)** of this section is based on tax that **[an S corporation] A PASS-THROUGH ENTITY** pays to another state, the credit allowable to a **[shareholder] MEMBER OF THE PASS-THROUGH ENTITY:**

(i) may not exceed that **[shareholder's] MEMBER'S** pro rata share of the tax; and

(ii) will be allowed for another state's income taxes or taxes based on income.

[(d)] (E) (1) The amount of the credit allowed under subsection **[(a)] (B)** of this section to be applied against the State income tax is equal to the amount that would be calculated under subsection **[(c)] (D)** of this section using the State income tax rate as the only applicable rate.

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(2) The amount of the credit allowed under subsection [(a)] (B) of this section to be applied against the county income tax is equal to the amount calculated under subsection [(c)] (D) of this section less the amount calculated under paragraph (1) of this subsection.”.

AMENDMENT NO. 5

On page 6, after line 31, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Tax – General

10-311.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “NET DEFERRED TAX ASSET” MEANS THE AMOUNT BY WHICH THE DEFERRED TAX ASSETS EXCEED THE DEFERRED TAX LIABILITIES OF A TAXPAYER, COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(3) “NET DEFERRED TAX LIABILITY” MEANS THE AMOUNT BY WHICH THE DEFERRED TAX LIABILITIES EXCEED THE DEFERRED TAX ASSETS OF A TAXPAYER, COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(B) THIS SECTION APPLIES ONLY TO A CORPORATION THAT ON OR BEFORE APRIL 24, 2018, THE DATE OF ENACTMENT OF THE PROVISIONS OF § 10-402 OF THIS TITLE BY CHAPTERS 341 AND 342 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2018, WAS:

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(1) PUBLICLY TRADED; OR

(2) AFFILIATED WITH A CORPORATION THAT WAS PUBLICLY TRADED, AND PARTICIPATED IN THE FILING OF THE PUBLICLY TRADED CORPORATION'S FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION TO THE MODIFICATIONS UNDER §§ 10-307 AND 10-308 OF THIS SUBTITLE, THE AMOUNTS DETERMINED UNDER SUBSECTION (D) OF THIS SECTION ARE SUBTRACTED FROM THE FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND MODIFIED INCOME OF THE CORPORATION IF, AS OF APRIL 24, 2018, THE DATE OF ENACTMENT OF THE PROVISIONS OF § 10-402 OF THIS TITLE BY CHAPTERS 341 AND 342 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2018, THE ENACTMENT RESULTED IN AN AGGREGATE:

(I) INCREASE TO THE CORPORATION'S NET DEFERRED TAX LIABILITY;

(II) DECREASE TO THE CORPORATION'S NET DEFERRED TAX ASSET; OR

(III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET DEFERRED TAX LIABILITY.

(2) THE AMOUNT OF ANY INCREASE, DECREASE, OR CHANGE SHALL BE DETERMINED WITHOUT REGARD TO THE SUBTRACTION AUTHORIZED UNDER THIS SECTION.

(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE

SUBTRACTION AUTHORIZED UNDER THIS SECTION IS EQUAL TO ONE-TENTH OF THE AMOUNT NECESSARY TO OFFSET THE AGGREGATE:

(I) INCREASE TO THE CORPORATION'S NET DEFERRED TAX LIABILITY;

(II) DECREASE TO THE CORPORATION'S NET DEFERRED TAX ASSET; OR

(III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET DEFERRED TAX LIABILITY.

(2) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION MAY BE USED TO REDUCE THE CORPORATION'S MARYLAND MODIFIED INCOME FOR 10 CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THAT BEGINS AFTER DECEMBER 31, 2029.

(3) THE SUBTRACTION CALCULATED UNDER THIS SECTION MAY NOT BE REDUCED AS A RESULT OF ANY EVENT THAT OCCURS AFTER THE CALCULATION, INCLUDING THE DISPOSITION OR ABANDONMENT OF ANY ASSET.

(4) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION:

(I) SHALL BE CALCULATED WITHOUT REGARD TO THE FEDERAL TAX EFFECT; AND

(II) MAY NOT ALTER THE TAX BASIS OF ANY ASSET.

(5) IF THE SUBTRACTION DETERMINED UNDER THIS SECTION RESULTS IN A SUBTRACTION THAT EXCEEDS MARYLAND MODIFIED INCOME COMPUTED WITHOUT REGARD TO THE SUBTRACTION UNDER THIS SECTION, THE AMOUNT OF THE EXCESS MAY BE CARRIED FORWARD TO SUCCEEDING TAXABLE

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YEARS AND USED TO REDUCE MARYLAND MODIFIED INCOME IN EACH SUCCEEDING TAXABLE YEAR UNTIL THE EXCESS IS FULLY USED.

(E) (1) ON OR BEFORE JULY 1, 2021, A CORPORATION THAT INTENDS TO CLAIM A SUBTRACTION UNDER THIS SECTION SHALL FILE WITH THE COMPTROLLER A STATEMENT THAT SPECIFIES THE TOTAL AMOUNT OF THE SUBTRACTION THAT THE CORPORATION INTENDS TO CLAIM.

(2) THE STATEMENT SHALL BE ON THE FORM AND CONTAIN THE INFORMATION THE COMPTROLLER REQUIRES.

(3) THE COMPTROLLER MAY REVIEW AND ALTER THE AMOUNT OF:

(I) THE SUBTRACTION SPECIFIED IN THE STATEMENT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR

(II) THE SUBTRACTION CLAIMED ON A TAX RETURN FOR ANY TAXABLE YEAR.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be applicable to all taxable years beginning after December 31, 2019.”;

in line 32, strike “2.” and substitute “4.”; and in line 33, strike “, and shall be applicable to all taxable years beginning after December 31, 2019”.