

HOUSE BILL 682

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Q3

1998 Regular Session
8r0550

By: **Delegate C. Davis**

Introduced and read first time: February 11, 1998

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Out-of-State Holding Companies Doing Business in Maryland**

3 FOR the purpose of clarifying that a corporation is doing business in this State if the
4 corporation is a member of an affiliated group of corporations and receives
5 certain income from an affiliated corporation that is doing business in the State;
6 requiring certain corporations to file an income tax return using an
7 apportionment factor determined in a certain manner; and generally relating to
8 the income taxation of certain corporations that receive certain income from
9 affiliated corporations that carry on business in the State.

10 BY adding to

11 Article - Tax - General

12 Section 10-810(c)

13 Annotated Code of Maryland

14 (1997 Replacement Volume)

15

Preamble

16 WHEREAS, The General Assembly is aware that certain corporations doing
17 business in Maryland have attempted to reduce their State income tax liability by the
18 use of out-of-state holding companies, sometimes referred to as passive investment
19 holding companies; and

20 WHEREAS, Operating companies doing business in Maryland have reduced
21 their Maryland taxable income by making payments of royalties, interest, and similar
22 types of payments to the passive investment holding companies; and

23 WHEREAS, The passive investment holding companies do not file Maryland
24 income tax returns thereby depriving the State of its fair share of the income that has
25 been shifted to and received by the passive investment holding companies; and

26 WHEREAS, The General Assembly believes that such passive investment
27 holding companies are in fact doing business within Maryland by virtue of the
28 activities within Maryland of their operating affiliates, and are therefore required to

1 file Maryland income tax returns and pay Maryland income taxes based on a proper
2 apportionment of their taxable income; and

3 WHEREAS, The General Assembly believes it is appropriate to formalize and
4 clarify that which it believes Maryland law presently requires; now, therefore,

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - Tax - General**

8 10-810.

9 (C) (1) IN THIS SUBSECTION, "OUT-OF-STATE HOLDING COMPANY DOING
10 BUSINESS IN THE STATE" MEANS A CORPORATION THAT:

11 (I) IS DOING BUSINESS IN THE STATE UNDER PARAGRAPH (2) OF
12 THIS SUBSECTION; AND

13 (II) BUT FOR THE RECEIPT OF INCOME FROM INTANGIBLE
14 SOURCES FROM AN AFFILIATED CORPORATION DOING BUSINESS IN THE STATE AS
15 DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION WOULD NOT BE DOING
16 BUSINESS IN THE STATE.

17 (2) A CORPORATION IS DOING BUSINESS IN THIS STATE IF THE
18 CORPORATION:

19 (I) IS A MEMBER OF AN AFFILIATED GROUP OF CORPORATIONS;
20 AND

21 (II) RECEIVES INTEREST, ROYALTIES, OR SIMILAR INCOME FROM
22 INTANGIBLE SOURCES FROM ANOTHER CORPORATION THAT:

23 1. IS A MEMBER OF THE SAME AFFILIATED GROUP OF
24 CORPORATIONS; AND

25 2. IS DOING BUSINESS IN THIS STATE.

26 (3) AN OUT-OF-STATE HOLDING COMPANY DOING BUSINESS IN THE
27 STATE SHALL FILE AN INCOME TAX RETURN.

28 (4) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
29 PARAGRAPH, AN OUT-OF-STATE HOLDING COMPANY SHALL USE THE
30 APPORTIONMENT FACTOR OF THE AFFILIATED CORPORATION THAT IS DOING
31 BUSINESS IN THE STATE AND HAS PAID INTEREST, ROYALTIES, OR SIMILAR INCOME
32 FROM INTANGIBLE SOURCES TO THE OUT-OF-STATE HOLDING COMPANY.

33 (II) IF AN OUT-OF-STATE HOLDING COMPANY RECEIVES
34 INTEREST, ROYALTIES, OR SIMILAR INCOME FROM INTANGIBLE SOURCES FROM
35 MORE THAN ONE AFFILIATED CORPORATION, THE OUT-OF-STATE HOLDING

1 COMPANY SHALL USE AN APPORTIONMENT FACTOR THAT REFLECTS, ON A PRO RATA
2 BASIS, THE AMOUNT OF INCOME RECEIVED FROM, AND APPORTIONMENT FACTOR
3 OF, EACH AFFILIATED CORPORATION THAT HAS PAID INTEREST, ROYALTIES, OR
4 SIMILAR INCOME FROM INTANGIBLE SOURCES TO THE OUT-OF-STATE HOLDING
5 COMPANY.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 July 1, 1998.