

HOUSE BILL 11

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Q3

2001 Regular Session  
11r1371

(PRE-FILED)

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By: **Delegates Taylor, Dewberry, Hurson, Arnick, Busch, Doory, Guns, Harrison, Howard, Kopp, Montague, Owings, Rawlings, Rosenberg, Vallario, and Wood Wood, Barve, Bozman, Burns, Cadden, Cane, Clagett, Cole, Conway, D'Amato, DeCarlo, Donoghue, Finifter, Giannetti, Goldwater, Hammen, Hecht, Hubers, James, Kirk, Krysiak, Love, Moe, Ports, Riley, Rosso, Rudolph, Stern, and Weir**

Requested: November 15, 2000  
Introduced and read first time: January 10, 2001  
Assigned to: Ways and Means

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 19, 2001

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CHAPTER 633

1 AN ACT concerning

2 **Income Tax - Single Sales Factor Apportionment for Manufacturing**  
3 **Corporations**

4 FOR the purpose of altering a formula used to apportion certain income to the State  
5 for certain corporations that are engaged in manufacturing and carry on a trade  
6 or business in and out of the State; requiring a manufacturing corporation to  
7 certify certain facts in filing its income tax return; requiring certain  
8 corporations engaged in manufacturing to submit certain reports as part of their  
9 income tax returns for certain taxable years; requiring the Comptroller to  
10 prepare and submit a certain report ~~each year~~ in certain years to the Governor  
11 and the General Assembly; requiring the Comptroller, in consultation with the  
12 Department of Business and Economic Development, to adopt certain  
13 regulations; defining a certain term; providing for the application of this Act;  
14 and generally relating to an apportionment formula under the Maryland income  
15 tax for certain corporations engaged in manufacturing.

16 BY repealing and reenacting, with amendments,  
17 Article - Tax - General  
18 Section 10-402  
19 Annotated Code of Maryland  
20 (1997 Replacement Volume and 2000 Supplement)

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

3 **Article - Tax - General**

4 10-402.

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

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

11 (2) if a corporation carries on its trade or business in and out of the  
12 State, the corporation shall allocate to the State the part of the corporation's  
13 Maryland modified income that is derived from or reasonably attributable to the part  
14 of its trade or business carried on in the State, in the manner required in subsection  
15 (b), (c), or (d) of this section.

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

20 (2) If in any taxable year a corporation is permitted or required to use  
21 the separate accounting method in determining all or a portion of its Maryland  
22 taxable income, the portion that is separately accounted for to Maryland shall be  
23 taxable whether or not the Maryland modified income of the corporation for the  
24 taxable year is zero or less.

25 (c) (1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
26 IF the trade or business is a unitary business, the part of the corporation's Maryland  
27 modified income derived from or reasonably attributable to trade or business carried  
28 on in the State shall be determined using a 3-factor apportionment fraction:

29 (i) the numerator of which is the sum of the property factor, the  
30 payroll factor, and twice the sales factor; and

31 (ii) the denominator of which is 4.

32 (2) (I) ~~IN THIS PARAGRAPH, "MANUFACTURING CORPORATION":~~

33 ~~1. MEANS A DOMESTIC OR FOREIGN CORPORATION~~  
34 ~~ENGAGED, IN SUBSTANTIAL PART, IN TRANSFORMING RAW OR FINISHED PHYSICAL~~  
35 ~~MATERIALS BY HAND OR MACHINERY, AND THROUGH HUMAN SKILL AND~~  
36 ~~KNOWLEDGE, INTO A NEW PRODUCT POSSESSING A NEW NAME AND NATURE AND~~  
37 ~~ADAPTED TO A NEW USE; AND~~

1                   1.       "MANUFACTURING CORPORATION" MEANS A DOMESTIC  
2 OR FOREIGN CORPORATION WHICH IS PRIMARILY ENGAGED IN ACTIVITIES THAT, IN  
3 ACCORDANCE WITH THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM  
4 (NAICS), UNITED STATES MANUAL, UNITED STATES OFFICE OF MANAGEMENT AND  
5 BUDGET, 1997 EDITION, WOULD BE INCLUDED IN SECTOR 11, 31, 32, OR 33; AND

6                   2.       "MANUFACTURING CORPORATION" DOES NOT INCLUDE A  
7 REFINER, AS DEFINED IN § 10-101 OF THE BUSINESS REGULATION ARTICLE.

8                   ~~2.       DOES NOT INCLUDE:~~

9                   A.       ~~A PUBLIC SERVICE COMPANY, AS DEFINED IN § 1-101 OF~~  
10 ~~THE PUBLIC UTILITY COMPANIES ARTICLE;~~

11                   B.       ~~AN ELECTRICITY SUPPLIER, AS DEFINED IN § 1-101 OF~~  
12 ~~THE PUBLIC UTILITY COMPANIES ARTICLE; OR~~

13                   C.       ~~A GAS SUPPLIER, AS DEFINED IN § 1-101 OF THE PUBLIC~~  
14 ~~UTILITY COMPANIES ARTICLE.~~

15                   (II)     IF A MANUFACTURING CORPORATION CARRIES ON ITS TRADE  
16 OR BUSINESS IN AND OUT OF THE STATE AND THE TRADE OR BUSINESS IS A UNITARY  
17 BUSINESS, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME  
18 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED  
19 ON IN THE STATE SHALL BE DETERMINED USING A SINGLE SALES FACTOR  
20 APPORTIONMENT FORMULA, BY MULTIPLYING ITS MARYLAND MODIFIED INCOME BY  
21 100% OF THE SALES FACTOR.

22                   (III)    FOR PURPOSES OF THIS PARAGRAPH, A CORPORATION'S  
23 ~~MANUFACTURING ACTIVITIES SHALL BE DEEMED TO BE SUBSTANTIAL IF ANY ONE~~  
24 ~~OF THE FOLLOWING FIVE TESTS ARE MET:~~

25                   1.       ~~AT LEAST 25% OF ITS GROSS RECEIPTS ARE DERIVED~~  
26 ~~FROM THE SALE OF MANUFACTURED GOODS THAT IT MANUFACTURES;~~

27                   2.       ~~AT LEAST 25% OF ITS PAYROLL IS PAID TO EMPLOYEES~~  
28 ~~WORKING IN ITS MANUFACTURING OPERATIONS AND AT LEAST 15% OF ITS GROSS~~  
29 ~~RECEIPTS ARE DERIVED FROM THE SALE OF MANUFACTURED GOODS THAT IT~~  
30 ~~MANUFACTURES;~~

31                   3.       ~~AT LEAST 25 % OF ITS TANGIBLE PROPERTY IS USED IN ITS~~  
32 ~~MANUFACTURING OPERATIONS AND AT LEAST 15% OF ITS GROSS RECEIPTS ARE~~  
33 ~~DERIVED FROM THE SALE OF MANUFACTURED GOODS THAT IT MANUFACTURES;~~

34                   4.       ~~AT LEAST 35% OF ITS TANGIBLE PROPERTY IS USED IN ITS~~  
35 ~~MANUFACTURING OPERATIONS; OR~~

36                   5.       ~~THE CORPORATION'S MANUFACTURING ACTIVITIES ARE~~  
37 ~~DEEMED SUBSTANTIAL UNDER REGULATIONS ADOPTED BY THE COMPTROLLER.~~

1 ~~(IV) IN DETERMINING WHETHER A PROCESS CONSTITUTES~~  
 2 ~~MANUFACTURING, THE COMPTROLLER SHALL EXAMINE THE FACTS AND~~  
 3 ~~CIRCUMSTANCES OF EACH CASE.~~

4 (III) IN FILING ITS TAX RETURN FOR EACH YEAR, A  
 5 MANUFACTURING CORPORATION SHALL CERTIFY THAT THE NAICS CODE REPORTED  
 6 ON ITS MARYLAND RETURN IS CONSISTENT WITH THAT REPORTED TO OTHER  
 7 GOVERNMENT AGENCIES.

8 (IV) IF THE COMPTROLLER DETERMINES THAT A CORPORATION  
 9 HAS SUBMITTED INFORMATION THAT INCORRECTLY CLASSIFIES THE CORPORATION  
 10 AS A MANUFACTURING CORPORATION UNDER SUBPARAGRAPH (I) OF THIS  
 11 PARAGRAPH, THE COMPTROLLER SHALL RECLASSIFY THE CORPORATION IN AN  
 12 APPROPRIATE MANNER.

13 (V) THE COMPTROLLER, IN CONSULTATION WITH THE  
 14 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, SHALL ADOPT  
 15 REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBSECTION.

16 ~~(V)~~ (VI) AS PART OF ITS TAX RETURN FOR EACH YEAR A TAXABLE  
 17 YEAR BEGINNING AFTER DECEMBER 31, 2000 BUT BEFORE JANUARY 1, 2003, EACH  
 18 MANUFACTURING CORPORATION THAT HAS MORE THAN 25 EMPLOYEES AND  
 19 APPORTIONS ITS INCOME UNDER THIS PARAGRAPH SHALL SUBMIT A REPORT, IN THE  
 20 FORM THAT THE COMPTROLLER REQUIRES BY REGULATION, THAT DESCRIBES FOR  
 21 EACH TAXABLE YEAR AS OF THE LAST DAY OF THE TAXABLE YEAR THE FOLLOWING:

22 ~~1. THE NUMBER, NATURE, AND WAGES OF JOBS ADDED OR~~  
 23 ~~LOST IN THE STATE AND WORLDWIDE FROM THE PREVIOUS TAXABLE YEAR;~~

24 ~~2. THE NATURE AND AMOUNT OF ANY CHANGE IN THE~~  
 25 ~~PROPERTY FACTOR DURING THE TAXABLE YEAR;~~

26 ~~3. THE NATURE AND AMOUNT OF ANY CHANGE IN THE~~  
 27 ~~PAYROLL FACTOR IN THE TAXABLE YEAR;~~

28 ~~4. 1. THE DIFFERENCE IN TAX OWED AS A RESULT OF~~  
 29 ~~USING THE SINGLE SALES FACTOR APPORTIONMENT METHOD UNDER THIS~~  
 30 ~~PARAGRAPH AS COMPARED TO THE TAX OWED USING THE 3-FACTOR DOUBLE~~  
 31 ~~WEIGHTED SALES FACTOR APPORTIONMENT METHOD IN EFFECT FOR THE FIRST~~  
 32 ~~LAST TAXABLE YEAR BEGINNING ON OR AFTER BEFORE DECEMBER 31, 2000;~~

33 ~~5. 2. VOLUME OF SALES IN THE STATE AND WORLDWIDE;~~

34 ~~6. 3. TAXABLE INCOME IN THE STATE AND WORLDWIDE;~~  
 35 AND

36 ~~7. 4. BOOK VALUE OF PLANT, LAND, AND EQUIPMENT IN~~  
 37 ~~THE STATE AND WORLDWIDE;~~



1                    [(2)]    (3)    The property factor under paragraph (1) of this subsection shall  
2 include:

3                                    (i)    rented and owned real property; and

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

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

9                    (1)    the use of the separate accounting method;

10                    (2)    the use of the 3-factor double weighted sales factor formula method  
11 OR THE SINGLE SALES FACTOR FORMULA METHOD;

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

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

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

16            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 July 1, 2001, and shall be applicable to all taxable years beginning after December 31,  
18 ~~2001~~ 2000.