

# SENATE BILL 800

Q3  
SB 156/04 – B&T

11r2302

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By: **Senators Benson and Montgomery**  
Introduced and read first time: February 4, 2011  
Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax Reform**

3 FOR the purpose of providing that, to the extent allowed under the United States  
4 Constitution, under certain circumstances certain income of certain  
5 corporations that is not apportionable under the United States Constitution  
6 shall be allocated to the State for income tax purposes; requiring that certain  
7 sales of tangible personal property be included in the numerator of the sales  
8 factor used for apportioning a corporation's income to the State under certain  
9 circumstances; requiring the Comptroller to assess interest and penalties under  
10 certain circumstances; defining certain terms; providing for the application of  
11 this Act; and generally relating to the income tax on corporations.

12 BY repealing and reenacting, with amendments,  
13 Article – Tax – General  
14 Section 10–402(c)  
15 Annotated Code of Maryland  
16 (2010 Replacement Volume)

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

19 **Article – Tax – General**

20 10–402.

21 (c) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE  
22 THE MEANINGS INDICATED.

23 (II) “NONOPERATIONAL INCOME” MEANS ALL INCOME  
24 OTHER THAN OPERATIONAL INCOME.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1                   **(III) “OPERATIONAL INCOME” MEANS ALL INCOME THAT IS**  
2 **APPORTIONABLE UNDER THE UNITED STATES CONSTITUTION.**

3                   **(2) (I) IF THE TRADE OR BUSINESS IS A UNITARY BUSINESS,**  
4 **THE PART OF THE CORPORATION’S MARYLAND MODIFIED INCOME DERIVED**  
5 **FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN**  
6 **THE STATE SHALL BE DETERMINED BY ADDING:**

7                               **1. THE CORPORATION’S NONOPERATIONAL INCOME**  
8 **THAT IS ALLOCATED TO THE STATE UNDER SUBPARAGRAPH (II) OF THIS**  
9 **PARAGRAPH; AND**

10                              **2. THE PART OF THE CORPORATION’S OPERATIONAL**  
11 **INCOME DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR**  
12 **BUSINESS CARRIED ON IN THE STATE AS DETERMINED UNDER PARAGRAPH (3)**  
13 **OR (4) OF THIS SUBSECTION.**

14                   **(II) TO THE EXTENT ALLOWED UNDER THE UNITED STATES**  
15 **CONSTITUTION, IF THE PRINCIPAL PLACE FROM WHICH THE TRADE OR**  
16 **BUSINESS OF A CORPORATION IS DIRECTED OR MANAGED IS IN THE STATE, ALL**  
17 **OF THE CORPORATION’S MARYLAND MODIFIED INCOME THAT IS**  
18 **NONOPERATIONAL INCOME SHALL BE ALLOCATED TO THE STATE.**

19                   **[(1)] (3)** Except as provided in paragraph **[(2)] (4)** of this subsection,  
20 if the trade or business is a unitary business, the part of the corporation’s Maryland  
21 modified income **THAT IS OPERATIONAL INCOME** derived from or reasonably  
22 attributable to trade or business carried on in the State shall be determined using a  
23 3-factor apportionment fraction:

24                               **(i)** the numerator of which is the sum of the property factor, the  
25 payroll factor, and twice the sales factor; and

26                               **(ii)** the denominator of which is 4.

27                   **[(2)] (4) (i)** In this paragraph:

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

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

1 (ii) If a manufacturing corporation carries on its trade or  
2 business in and out of the State and the trade or business is a unitary business, the  
3 part of the corporation's Maryland modified income **THAT IS OPERATIONAL INCOME**  
4 derived from or reasonably attributable to trade or business carried on in the State  
5 shall be determined using a single sales factor apportionment formula, by multiplying  
6 its Maryland modified income by 100% of the sales factor.

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

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

14 (v) The Comptroller, in consultation with the Department of  
15 Business and Economic Development, shall adopt regulations necessary to carry out  
16 the provisions of this subsection.

17 (vi) As part of its tax return for a taxable year beginning after  
18 December 31, 2005, but before January 1, 2011, each manufacturing corporation that  
19 has more than 25 employees and apportions its income under this paragraph shall  
20 submit a report, in the form that the Comptroller requires by regulation, that  
21 describes for each taxable year as of the last day of the taxable year the following:

22 1. the difference in tax owed as a result of using the  
23 single sales factor apportionment method under this paragraph as compared to the tax  
24 owed using the 3-factor double weighted sales factor apportionment method in effect  
25 for the last taxable year beginning on or before December 31, 2000;

26 2. volume of sales in the State and worldwide;

27 3. taxable income in the State and worldwide; and

28 4. book value of plant, land, and equipment in the State  
29 and worldwide.

30 (vii) On or before March 1, 2009, and March 1 of each year  
31 thereafter, and notwithstanding any confidentiality requirements, the Comptroller  
32 shall prepare and submit to the Governor and, subject to § 2-1246 of the State  
33 Government Article, to the General Assembly, a comprehensive report on the use of  
34 single sales factor apportionment by manufacturing corporations that provides, at a  
35 minimum:

36 1. the number of corporations filing tax returns for the  
37 taxable year that ended during the second preceding calendar year that use single

1 sales factor apportionment and the number of such corporations having a Maryland  
2 income tax liability for that taxable year;

3 2. the number of corporations paying less in Maryland  
4 income tax for that taxable year as a result of using single sales factor apportionment  
5 and the aggregate amount of Maryland income tax savings for all such corporations for  
6 that taxable year as a result of using single sales factor apportionment; and

7 3. the number of corporations paying more in Maryland  
8 income tax for the taxable year as a result of using single sales factor apportionment  
9 and the aggregate amount of additional Maryland income tax owed by those  
10 corporations for the taxable year as a result of using single sales factor apportionment.

11 **[(3)] (5)** The property factor under paragraph **[(1)] (3)** of this  
12 subsection shall include:

13 (i) rented and owned real property; and

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

16 **(6) (I) SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE**  
17 **INCLUDED IN THE NUMERATOR OF THE SALES FACTOR UNDER PARAGRAPH (3)**  
18 **OR (4) OF THIS SUBSECTION IF:**

19 1. **THE PROPERTY IS DELIVERED OR SHIPPED TO A**  
20 **PURCHASER WITHIN THE STATE, REGARDLESS OF THE FREE ON BOARD (F.O.B.)**  
21 **POINT OR OTHER CONDITIONS OF THE SALE; OR**

22 2. **THE PROPERTY IS SHIPPED FROM AN OFFICE,**  
23 **STORE, WAREHOUSE, FACTORY, OR OTHER PLACE OF STORAGE IN THIS STATE**  
24 **AND THE CORPORATION IS NOT TAXABLE IN THE STATE OF THE PURCHASER.**

25 **(II) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS**  
26 **PARAGRAPH, A CORPORATION IS TAXABLE IN A STATE IF:**

27 1. **IN THAT STATE THE CORPORATION IS SUBJECT TO**  
28 **A NET INCOME TAX, A FRANCHISE TAX MEASURED BY NET INCOME, A FRANCHISE**  
29 **TAX FOR THE PRIVILEGE OF DOING BUSINESS, OR A CORPORATE STOCK TAX; OR**

30 2. **THAT STATE HAS JURISDICTION TO SUBJECT THE**  
31 **TAXPAYER TO A NET INCOME TAX, REGARDLESS OF WHETHER, IN FACT, THE**  
32 **STATE IMPOSES A TAX.**

33 SECTION 2. AND BE IT FURTHER ENACTED, That, for a taxable year  
34 beginning after December 31, 2010, but before January 1, 2012, notwithstanding §§

1 13-602 and 13-702 of the Tax – General Article, the Comptroller shall assess interest  
2 and penalties under §§ 13-602 and 13-702 of the Tax – General Article if a  
3 corporation pays estimated income tax for the taxable year in an amount less than  
4 90% of the tax required to be shown on the corporation’s income tax return for the  
5 taxable year.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 July 1, 2011, and shall be applicable to all taxable years beginning after December 31,  
8 2010.