

# HOUSE BILL 887

Q3, Q2  
HB 1158/13 – W&M

4lr1648

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By: **Delegates Mizeur, Bobo, Cullison, Gutierrez, A. Kelly, Lafferty, Lee, Luedtke, Minnick, Norman, S. Robinson, and Sophocleus**

Introduced and read first time: February 5, 2014

Assigned to: Ways and Means

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## A BILL ENTITLED

AN ACT concerning

### **Corporate Income Tax – Main Street Employer Tax Rebate**

FOR the purpose of requiring certain corporations to compute Maryland taxable income using a certain method; requiring the Comptroller to make certain estimates and distribute certain income tax revenue from corporations to a certain special fund; providing that, subject to regulations of the Comptroller, certain groups of corporations shall file a combined income tax return reflecting the aggregate income tax liability of all the members of the group; requiring the Comptroller to adopt certain regulations; requiring certain regulations to be consistent with certain regulations adopted by the Multistate Tax Commission; establishing the Small Business Personal Property Tax Rebate Program; providing for the administration of the program; requiring the State Department of Assessments and Taxation to adopt certain regulations; establishing the Small Business Personal Property Tax Rebate Fund; requiring the Director of the State Department of Assessments and Taxation to administer the Fund; providing that the Fund may be used only to provide personal property tax rebates under the Small Business Personal Property Tax Rebate Program; defining certain terms; providing for the application of this Act; and generally relating to the Maryland corporate income tax and the Small Business Personal Property Tax Rebate Program.

BY adding to

Article – Tax – General  
Section 2–613.1 and 10–402.1  
Annotated Code of Maryland  
(2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – General  
Section 2–613.1, 2–614, 2–615, and 10–811

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland  
(2010 Replacement Volume and 2013 Supplement)

BY adding to

Article – Tax – Property

Section 2–301 and 2–302 to be under the new subtitle “Subtitle 3. Small Business Personal Property Tax Rebate Program”

Annotated Code of Maryland

(2012 Replacement Volume and 2013 Supplement)

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

**Article – Tax – General**

**2–613.1.**

(A) ON OR BEFORE MARCH 1 OF EACH CALENDAR YEAR, THE COMPTROLLER SHALL ESTIMATE THE TOTAL ADDITIONAL INCOME TAX REVENUE FROM CORPORATIONS, IF ANY, THAT WILL BE COLLECTED FOR THE FISCAL YEAR THAT BEGINS ON JULY 1 OF THAT CALENDAR YEAR AS A RESULT OF THE REQUIREMENT UNDER § 10–402.1 OF THIS ARTICLE THAT MEMBERS OF COMBINED GROUPS COMPUTE MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING METHOD.

(B) AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2–613 OF THIS SUBTITLE, FROM THE REMAINING INCOME TAX REVENUE FROM CORPORATIONS, THE COMPTROLLER SHALL DISTRIBUTE THE AMOUNT DETERMINED UNDER SUBSECTION (A) OF THIS SECTION TO THE SMALL BUSINESS PERSONAL PROPERTY TAX REBATE FUND ESTABLISHED UNDER § 2–302 OF THE TAX – PROPERTY ARTICLE.

**[2–613.1.] 2–613.2.**

After making the [distribution] DISTRIBUTIONS required under [§ 2–613] §§ 2–613 AND 2–613.1 of this subtitle, of the remaining income tax revenue from corporations, the Comptroller shall distribute:

(1) 6% to the Higher Education Investment Fund established under § 15–106.6 of the Education Article; and

(2) 9.15% to the General Fund.

**2–614.**

(a) (1) Except as provided in paragraph (2) of this subsection, after making the distributions required under §§ 2-613 [and 2-613.1], **2-613.1, AND 2-613.2** of this subtitle, the Comptroller shall distribute monthly 17.2% of the remaining income tax revenue from corporations to a special fund to be distributed as provided in subsection (b) of this section.

(2) The percent of the remaining income tax revenue from corporations distributed to a special fund to be distributed as provided in subsection (b) of this section shall be:

- (i) 24% for the fiscal year beginning July 1, 2011;
- (ii) 9.5% for the fiscal year beginning July 1, 2012; and
- (iii) 19.5% for each fiscal year beginning on or after July 1, 2013, but before July 1, 2016.

(b) (1) (i) Except as provided in subparagraph (ii) of this paragraph, from the special fund, the Comptroller shall distribute an amount equal to 17.2% of the cost to administer the income tax on corporations to an administrative cost account.

(ii) The percent of the cost to administer the income tax on corporations that is distributed to an administrative cost account shall be:

- 1. 24% for the fiscal year beginning July 1, 2011;
- 2. 9.5% for the fiscal year beginning July 1, 2012; and
- (iii) 19.5% for each fiscal year beginning on or after July 1, 2013, but before July 1, 2016.

(2) After making the distribution required under paragraph (1) of this subsection, the Comptroller shall distribute the balance in the special fund to the Gasoline and Motor Vehicle Revenue Account in the Transportation Trust Fund.

2-615.

After making the distributions required under §§ 2-613, [2-613.1, and] **2-613.1, 2-613.2, AND 2-614** of this subtitle, the Comptroller shall distribute the remaining income tax revenue from corporations to the General Fund of the State.

**10-402.1.**

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

**(2) “COMBINED GROUP” MEANS:**

**(I) ALL MEMBERS OF A UNITARY GROUP THAT ARE SUBJECT TO THE INCOME TAX OR WOULD BE SUBJECT TO THE INCOME TAX IF DOING BUSINESS IN THE STATE; AND**

**(II) OTHER MEMBERS OF THE UNITARY GROUP NOT DESCRIBED IN ITEM (I) OF THIS PARAGRAPH UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME OF ANY MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.**

**(3) “UNITARY GROUP” MEANS AN AFFILIATED GROUP OF CORPORATIONS:**

**(I) THAT IS ENGAGED IN A UNITARY BUSINESS; AND**

**(II) OF WHICH MORE THAN 50% OF THE VOTING STOCK OF EACH MEMBER IS DIRECTLY OR INDIRECTLY OWNED BY:**

**1. A COMMON OWNER OR COMMON OWNERS, EITHER CORPORATE OR NONCORPORATE; OR**

**2. ONE OR MORE MEMBER CORPORATIONS OF THE GROUP.**

**(B) WHETHER OR NOT THE COMBINED GROUP FILES A COMBINED INCOME TAX RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A COMBINED GROUP SHALL COMPUTE ITS MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING METHOD UNDER THIS SECTION.**

**(C) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS A MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME TAX, THE PART OF THE CORPORATION’S MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE SHALL BE DETERMINED AS FOLLOWS:**

**(1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP BY COMBINING THE CORPORATION’S INCOME WITH THE INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT CLEARLY THE INCOME OF THE COMBINED GROUP;**

(2) DETERMINE THE PART OF THE COMBINED GROUP'S MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND APPORTIONMENT FRACTION OF THE COMBINED GROUP, BASED ON NUMERATORS AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER § 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT CLEARLY THE INCOME ALLOCABLE TO MARYLAND; AND

(3) FOR EACH MEMBER OF THE COMBINED GROUP THAT IS SUBJECT TO THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION TO THAT CORPORATION BY MULTIPLYING THE AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION BY A FRACTION:

(I) THE NUMERATOR OF WHICH IS THE MARYLAND APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS OF THE COMBINED GROUP IN THE DENOMINATORS OF THE APPORTIONMENT FORMULA; AND

(II) THE DENOMINATOR OF WHICH IS THE SUM OF THE MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.

(D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, A CORPORATION THAT IS PART OF A COMBINED GROUP MAY ELECT TO DETERMINE ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO TRADE OR BUSINESS IN THE STATE USING THE WATER'S EDGE METHOD AS DESCRIBED IN THIS SUBSECTION.

(2) UNDER THE WATER'S EDGE METHOD, THE COMBINED GROUP FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS SECTION SHALL INCLUDE ONLY THE FOLLOWING AFFILIATED ENTITIES:

(I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§ 931 THROUGH 936 OF THE INTERNAL REVENUE CODE;

(II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND

FOREIGN SALES CORPORATIONS, AS DESCRIBED IN §§ 921 THROUGH 927 OF THE INTERNAL REVENUE CODE;

(III) ANY CORPORATION OTHER THAN A BANK, REGARDLESS OF THE PLACE WHERE IT IS INCORPORATED IF THE AVERAGE OF ITS PROPERTY, PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR MORE;

(IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970 THROUGH 972 OF THE INTERNAL REVENUE CODE;

(V) A FOREIGN CORPORATION DERIVING GAIN OR LOSS FROM DISPOSITION OF AN INTEREST IN REAL PROPERTY IN THE UNITED STATES TO THE EXTENT RECOGNIZED UNDER § 897 OF THE INTERNAL REVENUE CODE; AND

(VI) UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED BY REGULATIONS THAT THE COMPTROLLER ADOPTS:

1. A CORPORATION NOT DESCRIBED IN ITEMS (I) THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR

2. AN AFFILIATED CORPORATION THAT IS A CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL REVENUE CODE.

(3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION, INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME FOR ANY PERIOD.

(E) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.

(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS" (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX COMMISSION.

(A) [Each member of] **EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER**, an affiliated group of corporations [shall file a separate income tax return] **ENGAGED IN A UNITARY BUSINESS SHALL FILE A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX LIABILITY OF ALL THE MEMBERS OF THE AFFILIATED GROUP THAT ARE ENGAGED IN A UNITARY BUSINESS.**

(B) **THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.**

### **Article – Tax – Property**

#### **SUBTITLE 3. SMALL BUSINESS PERSONAL PROPERTY TAX REBATE PROGRAM.**

##### **2–301.**

(A) **IN THIS SECTION, “SMALL BUSINESS” MEANS A FOR–PROFIT ENTERPRISE WITH 25 OR FEWER EMPLOYEES.**

(B) **SUBJECT TO THE PROVISIONS OF THIS SECTION, THE DEPARTMENT MAY ISSUE PERSONAL PROPERTY TAX REBATES TO SMALL BUSINESSES THAT PAY A PERSONAL PROPERTY TAX DURING THE FISCAL YEAR.**

(C) (1) **A SMALL BUSINESS MAY SUBMIT AN APPLICATION TO THE DEPARTMENT FOR A PERSONAL PROPERTY TAX REBATE IN THE AMOUNT OF PERSONAL PROPERTY TAXES PAID DURING THE FISCAL YEAR.**

(2) **THE DEPARTMENT MAY NOT APPROVE PERSONAL PROPERTY TAX REBATE APPLICATIONS UNTIL THE END OF THE FISCAL YEAR.**

(3) (I) **THE TOTAL AMOUNT OF PERSONAL PROPERTY TAX REBATES APPROVED BY THE DEPARTMENT MAY NOT EXCEED THE AMOUNT OF REVENUE IN THE SMALL BUSINESS PERSONAL PROPERTY TAX REBATE FUND UNDER § 2–302 OF THIS SUBTITLE.**

(II) **IF THE TOTAL AMOUNT OF PERSONAL PROPERTY TAX REBATES APPLIED FOR BY ALL SMALL BUSINESSES UNDER PARAGRAPH (1) OF THIS SUBSECTION EXCEED THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A PERSONAL PROPERTY TAX REBATE UNDER THIS SUBSECTION FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OBTAINED BY MULTIPLYING THE PERSONAL PROPERTY TAX REBATE APPLIED FOR BY THE APPLICANT BY A FRACTION:**

1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND

2. THE DENOMINATOR OF WHICH IS THE TOTAL AMOUNT OF ALL PERSONAL PROPERTY TAX REBATES APPLIED FOR BY ALL APPLICANTS UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(4) THE DEPARTMENT SHALL ISSUE A PERSONAL PROPERTY TAX REBATE IN THE AMOUNT DETERMINED UNDER THIS SUBSECTION TO EACH APPLICANT THAT IS APPROVED.

(D) THE DEPARTMENT SHALL:

(1) PROVIDE FOR THE FORM OF AND INFORMATION REQUIRED BY THE PERSONAL PROPERTY TAX REBATE APPLICATION; AND

(2) ADOPT REGULATIONS TO ADMINISTER THIS SECTION.

(E) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE NUMBER OF PERSONAL PROPERTY TAX REBATES ISSUED IN THE PREVIOUS FISCAL YEAR.

2-302.

(A) IN THIS SECTION, "FUND" MEANS THE SMALL BUSINESS PERSONAL PROPERTY TAX REBATE FUND.

(B) THERE IS A SMALL BUSINESS PERSONAL PROPERTY TAX REBATE FUND.

(C) THE PURPOSE OF THE FUND IS TO USE ADDITIONAL STATE REVENUE FROM ADOPTING COMBINED REPORTING UNDER THE CORPORATE INCOME TAX TO REIMBURSE SMALL BUSINESSES FOR PERSONAL PROPERTY TAXES THAT HAVE BEEN PAID.

(D) THE DIRECTOR OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION SHALL ADMINISTER THE FUND.

(E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

**(2) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

**(F) THE FUND CONSISTS OF:**

**(1) REVENUE DISTRIBUTED TO THE FUND UNDER § 2-613.1 OF THE TAX – GENERAL ARTICLE;**

**(2) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;  
AND**

**(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.**

**(G) THE FUND MAY BE USED ONLY TO PROVIDE GRANTS TO SMALL BUSINESSES FOR THE EXPENSE OF PAYING PERSONAL PROPERTY TAXES.**

**(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

**(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID INTO THE GENERAL FUND OF THE STATE.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014, and shall be applicable to all taxable years beginning after December 31, 2013.