

SENATE BILL 842

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By: **The President (By Request – Maryland Economic Development and Business
Climate Commission)**

Introduced and read first time: February 5, 2016

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Single Sales Factor Apportionment**

3 FOR the purpose of altering the formula used to apportion certain income to the State for
4 corporations that carry on a trade or business in and out of the State; repealing
5 obsolete provisions; providing for the application of this Act; and generally relating
6 to the apportionment formula under the Maryland income tax for corporations.

7 BY repealing and reenacting, with amendments,

8 Article – Tax – General

9 Section 10–402

10 Annotated Code of Maryland

11 (2010 Replacement Volume and 2015 Supplement)

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

14 **Article – Tax – General**

15 10–402.

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

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

22 (2) if a corporation carries on its trade or business in and out of the State,
23 the corporation shall allocate to the State the part of the corporation’s Maryland modified

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 income that is derived from or reasonably attributable to the part of its trade or business
2 carried on in the State, in the manner required in subsection (b), (c), or (d) of this section.

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

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

10 (c) [(1) Except as provided in paragraph (2) of this subsection, if the trade or
11 business is a unitary business, the part of the corporation's Maryland modified income
12 derived from or reasonably attributable to trade or business carried on in the State shall
13 be determined using a 3-factor apportionment fraction:

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

16 (ii) the denominator of which is 4.

17 (2) (i) In this paragraph:

18 1. "manufacturing corporation" means a domestic or foreign
19 corporation which is primarily engaged in activities that, in accordance with the North
20 American Industrial Classification System (NAICS), United States Manual, United States
21 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or
22 33; and

23 2. "manufacturing corporation" does not include a refiner, as
24 defined in § 10-101 of the Business Regulation Article.

25 (ii) If a manufacturing corporation carries on its trade or business in
26 and out of the State and the trade or business is a unitary business, the part of the
27 corporation's Maryland modified income derived from or reasonably attributable to trade
28 or business carried on in the State shall be determined using a single sales factor
29 apportionment formula, by multiplying its Maryland modified income by 100% of the sales
30 factor.]

31 **(1) IF THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART OF**
32 **THE CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR**
33 **REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE**
34 **SHALL BE DETERMINED USING A SINGLE SALES FACTOR APPORTIONMENT**
35 **FORMULA, BY MULTIPLYING ITS MARYLAND MODIFIED INCOME BY 100% OF THE**
36 **SALES FACTOR.**

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

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

8 [(v)] (2) The Comptroller, in consultation with the Department of
9 Economic Competitiveness and Commerce, shall adopt regulations necessary to carry out
10 the provisions of this subsection.

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

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

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

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

22 4. book value of plant, land, and equipment in the State and
23 worldwide.

24 (vii) On or before March 1, 2009, and March 1 of each year thereafter
25 until March 1, 2013, and notwithstanding any confidentiality requirements, the
26 Comptroller shall prepare and submit to the Governor and, subject to § 2-1246 of the State
27 Government Article, to the General Assembly, a comprehensive report on the use of single
28 sales factor apportionment by manufacturing corporations that provides, at a minimum:

29 1. the number of corporations filing tax returns for the
30 taxable year that ended during the second preceding calendar year that use single sales
31 factor apportionment and the number of such corporations having a Maryland income tax
32 liability for that taxable year;

33 2. the number of corporations paying less in Maryland
34 income tax for that taxable year as a result of using single sales factor apportionment and
35 the aggregate amount of Maryland income tax savings for all such corporations for that
36 taxable year as a result of using single sales factor apportionment; and

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

5 (3) The property factor under paragraph (1) of this subsection shall include:

6 (i) rented and owned real property; and

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

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

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

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

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

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

17 [(5)] (3) the determination of the extent to which tangible personal
18 property is located in the State.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
20 1, 2016, and shall be applicable to all taxable years beginning after December 31, 2015.