

HOUSE BILL 1794

Q3
HB 1252/16 – W&M

8lr4031

By: **Delegate Kaiser**

Introduced and read first time: March 2, 2018

Assigned to: Rules and Executive Nominations

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 within and outside the State; repealing
5 obsolete provisions; making stylistic and conforming changes; providing for the
6 application of this Act; and generally relating to the apportionment formula under
7 the Maryland income tax for corporations.

8 BY repealing and reenacting, with amendments,
9 Article – Tax – General
10 Section 10–402
11 Annotated Code of Maryland
12 (2016 Replacement Volume and 2017 Supplement)

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

15 **Article – Tax – General**

16 10–402.

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

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

23 (2) if a corporation carries on its trade or business [in and out of] **WITHIN**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **AND OUTSIDE** the State, the corporation shall allocate to the State the part of the
2 corporation's Maryland modified income that is derived from or reasonably attributable to
3 the part of its trade or business carried on in the State, in the manner required in
4 subsection (b), (c), or (d) of this section.

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

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

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

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

18 (ii) the denominator of which is 4.

19 (2) (i) In this paragraph:

20 1. "manufacturing corporation" means a domestic or foreign
21 corporation which is primarily engaged in activities that, in accordance with the North
22 American Industrial Classification System (NAICS), United States Manual, United States
23 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or
24 33; and

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

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

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

36 (iv) If the Comptroller determines that a corporation has submitted

1 information that incorrectly classifies the corporation as a manufacturing corporation
2 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation
3 in an appropriate manner.]

4 **(1) IF THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART OF**
5 **THE CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR**
6 **REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE**
7 **SHALL BE DETERMINED USING A SINGLE SALES FACTOR APPORTIONMENT FORMULA**
8 **BY MULTIPLYING ITS MARYLAND MODIFIED INCOME BY 100% OF THE SALES**
9 **FACTOR.**

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

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

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

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

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

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

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

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

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

1 taxable year as a result of using single sales factor apportionment; and

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

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

7 (i) rented and owned real property; and

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

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

13 (1)] the use of the separate accounting method[;

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

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

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
21 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2018.