

SENATE BILL 195

C1, Q3
SB 357/17 – B&T

8lr1440
CF 8lr2441

By: **Senators Pinsky, Benson, Conway, Guzzone, Kagan, Kelley, Lee, Madaleno, Manno, Muse, Nathan–Pulliam, Ramirez, Robinson, Rosapepe, Smith, Young, and Zucker**

Introduced and read first time: January 17, 2018

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Business Relief and Tax Fairness Act of 2018**

3 FOR the purpose of prohibiting the State Department of Assessments and Taxation from
4 imposing a certain fee for the filing of certain documents by certain corporations and
5 business entities; requiring certain corporations to compute Maryland taxable
6 income using a certain method; authorizing certain corporations, subject to
7 regulations adopted by the Comptroller, to determine certain income using a certain
8 method; requiring, subject to regulations adopted by the Comptroller, certain groups
9 of corporations to file a combined income tax return reflecting the aggregate income
10 tax liability of all the members of the group; requiring the Comptroller to adopt
11 certain regulations; requiring certain regulations to be consistent with certain
12 regulations adopted by the Multistate Tax Commission; requiring the Comptroller
13 to report to the General Assembly on or before a certain date each year; defining
14 certain terms; providing for the application of this Act; and generally relating to fees
15 collected by the State Department of Assessments and Taxation and the Maryland
16 corporate income tax.

17 BY repealing and reenacting, without amendments,
18 Article – Corporations and Associations
19 Section 1–203(a)
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2017 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Corporations and Associations
24 Section 1–203(b)(3)(ii)
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
 2 Article – Tax – General
 3 Section 10–402.1 and 10–402.2
 4 Annotated Code of Maryland
 5 (2016 Replacement Volume and 2017 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Tax – General
 8 Section 10–811
 9 Annotated Code of Maryland
 10 (2016 Replacement Volume and 2017 Supplement)

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

13 **Article – Corporations and Associations**

14 1–203.

15 (a) In addition to any organization and capitalization fee required under §
 16 1–204 of this subtitle, subject to subsection (c) of this section, the Department shall collect
 17 the fees specified in subsection (b) of this section.

18 (b) (3) (ii) **1.** Except as provided **UNDER SUBSUBPARAGRAPH 2 OF**
 19 **THIS SUBPARAGRAPH OR** in paragraph (14) of this subsection, for each of the following
 20 documents which are filed but not recorded, the filing fee is as indicated:

21 Annual report of a Maryland corporation, except a charitable or
 22 benevolent institution, nonstock corporation, savings and loan corporation,
 23 credit union, family farm, and banking institution..... \$300

24 Annual report of a foreign corporation subject to the jurisdiction of
 25 this State, except a national banking association, savings and loan
 26 association, credit union, nonstock corporation, and charitable and
 27 benevolent institution..... \$300

28 Annual report of a Maryland savings and loan association, banking
 29 institution, or credit union or of a foreign savings and loan association,
 30 national banking association, or credit union that is subject to the
 31 jurisdiction of this State \$300

32 Annual report of a Maryland limited liability company, limited
 33 liability partnership, limited partnership, or of a foreign limited liability
 34 company, foreign limited liability partnership, or foreign limited
 35 partnership, except a family farm..... \$300

36 Annual report of a business trust..... \$300

1 Annual report of a real estate investment trust or foreign statutory
2 trust doing business in this State \$300

3 Annual report of a family farm..... \$100

4 **2. THE DEPARTMENT MAY NOT IMPOSE A FEE UNDER**
5 **SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH ON A CORPORATION OR BUSINESS**
6 **ENTITY WITH 10 OR FEWER EMPLOYEES.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
8 as follows:

9 **Article – Tax – General**

10 **10-402.1.**

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

13 **(2) “COMBINED GROUP” MEANS:**

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

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

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

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

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

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

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

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

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

10 **(1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE**
11 **COMBINED GROUP BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME**
12 **OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING TRANSACTIONS**
13 **BETWEEN MEMBERS OF THE COMBINED GROUP, TO REFLECT CLEARLY THE INCOME**
14 **OF THE COMBINED GROUP;**

15 **(2) DETERMINE THE PART OF THE COMBINED GROUP'S MARYLAND**
16 **MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO**
17 **TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND**
18 **APPORTIONMENT FRACTION OF THE COMBINED GROUP BASED ON NUMERATORS**
19 **AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER §**
20 **10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS ASSOCIATED**
21 **WITH THE ACTIVITIES OF THE CORPORATION WITH THOSE AMOUNTS ASSOCIATED**
22 **WITH THE ACTIVITIES OF OTHER MEMBERS OF THE COMBINED GROUP,**
23 **DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP, TO**
24 **REFLECT CLEARLY THE INCOME ALLOCABLE TO MARYLAND; AND**

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

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

36 **(II) THE DENOMINATOR OF WHICH IS THE SUM OF THE**
37 **MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED**

1 GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.

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

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

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

12 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS
13 DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE, AND
14 FOREIGN SALES CORPORATIONS, AS DESCRIBED IN §§ 921 THROUGH 927 OF THE
15 INTERNAL REVENUE CODE;

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

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

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

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

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

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

33 (3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE

1 TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,
2 INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT
3 THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME FOR ANY PERIOD.

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

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

10 10-402.2.

11 ON OR BEFORE MARCH 31 EACH CALENDAR YEAR, THE COMPTROLLER SHALL
12 REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE
13 STATE GOVERNMENT ARTICLE, AN ESTIMATE OF THE TOTAL ADDITIONAL TAX
14 REVENUE FROM CORPORATIONS, IF ANY, THAT WILL BE COLLECTED FOR THE
15 FISCAL YEAR THAT BEGINS JULY 1 OF THAT CALENDAR YEAR AS A RESULT OF THE
16 REQUIREMENT UNDER § 10-402.1 OF THIS SUBTITLE THAT MEMBERS OF COMBINED
17 GROUPS COMPUTE MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING
18 METHOD.

19 10-811.

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

26 (B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
27 NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

28 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be
29 applicable to all taxable years beginning after December 31, 2018.

30 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
31 1, 2018.