

SENATE BILL 538

Q3
SB 833/17 – B&T

8lr2190
CF 8lr2240

By: **Senator Pinsky**

Introduced and read first time: January 31, 2018

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Throwback Rule**

3 FOR the purpose of requiring that certain sales of tangible personal property be included
4 in the numerator of the sales factor used for apportioning a corporation's income to
5 the State under certain circumstances; requiring the Comptroller to assess interest
6 and penalties under certain circumstances; providing for the application of this Act;
7 and generally relating to the income tax on corporations.

8 BY repealing and reenacting, with amendments,
9 Article – Tax – General
10 Section 10–402(c)
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 (c) (1) Except as provided in paragraph (2) of this subsection, if the trade or
18 business is a unitary business, the part of the corporation's Maryland modified income
19 derived from or reasonably attributable to trade or business carried on in the State shall
20 be determined using a 3–factor apportionment fraction:

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

23 (ii) the denominator of which is 4.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2) (i) In this paragraph:

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

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

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

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

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

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

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

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

2. volume of sales in the State and worldwide;

3. taxable income in the State and worldwide; and

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

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

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

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

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

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

(i) rented and owned real property; and

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

(4) (I) SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE INCLUDED IN THE NUMERATOR OF THE SALES FACTOR UNDER PARAGRAPH (1) OR (2) OF THIS SUBSECTION IF:

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

2. THE PROPERTY IS SHIPPED FROM AN OFFICE, A STORE, A WAREHOUSE, A FACTORY, OR ANY OTHER PLACE OF STORAGE IN THE STATE AND THE CORPORATION IS NOT TAXABLE IN THE STATE OF THE PURCHASER.

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

1. IN THAT STATE THE CORPORATION IS SUBJECT TO A NET INCOME TAX, FRANCHISE TAX MEASURED BY NET INCOME, FRANCHISE TAX FOR

1 **THE PRIVILEGE OF DOING BUSINESS, OR CORPORATE STOCK TAX; OR**

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That, for a taxable year beginning
6 after December 31, 2017, but before January 1, 2019, notwithstanding §§ 13–602 and
7 13–702 of the Tax – General Article, the Comptroller shall assess interest and penalties
8 under §§ 13–602 and 13–702 of the Tax – General Article if a corporation pays estimated
9 income tax for the taxable year in an amount less than 90% of the tax required to be shown
10 on the corporation’s income tax return for the taxable year.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
12 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.