

SENATE BILL 1090

Q3

8lr3938

By: **Senators Peters and Guzzone**

Introduced and read first time: February 12, 2018

Assigned to: Rules

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 certain corporations that carry on a trade or business within and outside the State;
5 authorizing certain corporations to elect to use a certain formula to apportion certain
6 income; repealing obsolete provisions; making conforming changes; providing for the
7 application of this Act; and generally relating to the apportionment formula under
8 the Maryland income tax for corporations.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – General
11 Section 10–402
12 Annotated Code of Maryland
13 (2016 Replacement Volume and 2017 Supplement)

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

16 **Article – Tax – General**

17 10–402.

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

20 (2) “COMMUNICATION SERVICE” MEANS DISTRIBUTING,
21 MONITORING, PRODUCING, ROUTING, SWITCHING, OR TRANSMITTING A SERVICE
22 THAT:

23 (I) IS DESCRIBED IN § 11–101(M)(4), (5), (6), (7), (8), (9), (10),

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 OR (12) OF THE TAX – GENERAL ARTICLE;

2 (II) IS OR WOULD BE SUBJECT TO THE FEDERAL EXCISE TAX AS
3 DESCRIBED IN § 4251 OF THE INTERNAL REVENUE CODE;

4 (III) IS AN INTERNET ACCESS SERVICE, AS DEFINED IN § 1105 OF
5 THE INTERNET TAX FREEDOM ACT;

6 (IV) IS PROVIDED THROUGH A FACILITY DESCRIBED IN 47 U.S.C.
7 § 522(7);

8 (V) IS PROVIDED BY AN ENTITY DESCRIBED IN 47 U.S.C. §
9 522(13);

10 (VI) IS PROVIDED BY AN ENTITY DESCRIBED IN 47 U.S.C. §
11 153(6);

12 (VII) IS DESCRIBED IN 47 U.S.C. § 153(1) OR (7); OR

13 (VIII) IS DESCRIBED IN 47 U.S.C. § 522(20).

14 (3) “WORLDWIDE HEADQUARTERED COMPANY” MEANS A
15 CORPORATION INCLUDED IN A GROUP OF CORPORATIONS INCLUDING A PARENT
16 CORPORATION THAT:

17 (I) FILED A FORM 10-Q WITH THE SECURITIES AND EXCHANGE
18 COMMISSION FOR THE QUARTERLY PERIOD ENDING JUNE 30, 2017;

19 (II) HAS ITS PRINCIPAL EXECUTIVE OFFICE IN THE STATE; AND

20 (III) EMPLOYS AT ALL TIMES BETWEEN JULY 1, 2017, AND JUNE
21 30, 2020, AT LEAST 500 FULL-TIME EMPLOYEES AT THE PARENT CORPORATION’S
22 PRINCIPAL EXECUTIVE OFFICE THAT IS LOCATED WITHIN THE STATE.

23 [(a)] (B) In computing Maryland taxable income, a corporation shall allocate
24 Maryland modified income derived from or reasonably attributable to its trade or business
25 in this State in the following manner:

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

29 (2) if a corporation carries on its trade or business [in and out of] WITHIN
30 AND OUTSIDE the State, the corporation shall allocate to the State the part of the

1 corporation's Maryland modified income that is derived from or reasonably attributable to
2 the part of its trade or business carried on in the State, in the manner required in
3 subsection [(b), (c), or (d)] **(C), (D), OR (E)** of this section.

4 **[(b)] (C)** (1) Except as provided in subsection [(c) or] (d) **OR (E)** of this section,
5 the part of the corporation's Maryland modified income derived from or reasonably
6 attributable to trade or business carried on in the State may be determined by separate
7 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 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF**
13 **THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART OF THE**
14 **CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR REASONABLY**
15 **ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE SHALL BE**
16 **DETERMINED USING A SINGLE SALES FACTOR APPORTIONMENT FORMULA, BY**
17 **MULTIPLYING ITS MARYLAND MODIFIED INCOME BY 100% OF THE SALES FACTOR.**

18 **(2) (I) EACH YEAR A CORPORATION MAY ELECT TO CALCULATE**
19 **THE CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR**
20 **REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE**
21 **USING THE FORMULA UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH IF:**

22 **1. THE CORPORATION IS ENGAGED IN A TRADE OR**
23 **BUSINESS THAT IS SUBJECT TO REGULATORY OVERSIGHT OR LICENSURE BY THE**
24 **PUBLIC SERVICE COMMISSION OR THE FEDERAL ENERGY REGULATORY**
25 **COMMISSION;**

26 **2. THE CORPORATION IS ENGAGED IN PROVIDING**
27 **COMMUNICATION SERVICES WITHIN AND OUTSIDE THE STATE DIRECTLY OR**
28 **THROUGH THE CORPORATION'S OWNERSHIP OF AN INTEREST IN A PARTNERSHIP**
29 **THAT PROVIDES COMMUNICATION SERVICES; OR**

30 **3. THE CORPORATION OR GROUP OF CORPORATIONS IS**
31 **A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A FEDERAL CORPORATE**
32 **INCOME TAX RETURN FOR THE TAXABLE YEAR.**

33 **[(c) (1)] (II) [Except as provided in paragraph (2) of this subsection, if] IF** the
34 trade or business is a unitary business, the part of the corporation's Maryland modified
35 income derived from or reasonably attributable to trade or business carried on in the State
36 **[shall] MAY** be determined using a 3-factor apportionment fraction:

1 [(i)] 1. the numerator of which is the sum of the property factor,
2 the payroll factor, and twice the sales factor; and

3 [(ii)] 2. the denominator of which is 4.

4 [(2) (i) In this paragraph:

5 1. “manufacturing corporation” means a domestic or foreign
6 corporation which is primarily engaged in activities that, in accordance with the North
7 American Industrial Classification System (NAICS), United States Manual, United States
8 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or
9 33; and

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

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

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

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

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

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

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

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

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

2 (5) the determination of the extent to which tangible personal property is
3 located in the State.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
5 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.