

Chapter 341

(Senate Bill 1090)

AN ACT concerning

Corporate Income Tax – Single Sales Factor Apportionment

FOR the purpose of altering the formula used to apportion certain income to the State for certain corporations that carry on a trade or business within and outside the State; authorizing certain corporations to elect to use a certain formula to apportion certain income; ~~requiring certain corporations to apportion certain income from certain intangible investments in a certain manner; requiring the Public Service Commission to report to certain committees of the General Assembly on or before a certain date;~~ repealing obsolete provisions; making *stylistic and* conforming changes; providing for the application of this Act; and generally relating to the apportionment formula under the Maryland income tax for corporations.

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

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

Article – Tax – General

10–402.

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

~~(2) “BANKING ENTITY” MEANS:~~

~~(I) A BANK, TRUST COMPANY, SAVINGS BANK, OR SAVINGS AND LOAN ASSOCIATION INCORPORATED OR CHARTERED UNDER THE LAWS OF A STATE OR THE UNITED STATES; OR~~

~~(II) A COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH AN INSTITUTION DESCRIBED UNDER ITEM (I) OF THIS PARAGRAPH.~~

~~(3) “COMMUNICATION SERVICE” MEANS DISTRIBUTING, MONITORING, PRODUCING, ROUTING, SWITCHING, OR TRANSMITTING A SERVICE THAT:~~

~~(I) IS DESCRIBED IN § 11-101(M)(4), (5), (6), (7), (8), (9), (10), OR (12) OF THE TAX GENERAL ARTICLE;~~

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

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

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

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

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

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

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

~~(3) (4) (A) IN THIS SECTION, “WORLDWIDE WORLDWIDE HEADQUARTERED COMPANY” MEANS A CORPORATION INCLUDED IN A GROUP OF CORPORATIONS INCLUDING A PARENT CORPORATION THAT:~~

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

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

~~(III) (3) EMPLOYS AT ALL TIMES BETWEEN JULY 1, 2017, AND JUNE 30, 2020, AT LEAST 500 FULL-TIME EMPLOYEES AT THE PARENT CORPORATION’S PRINCIPAL EXECUTIVE OFFICE THAT IS LOCATED WITHIN THE STATE.~~

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

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

(2) if a corporation carries on its trade or business [in and out of] **WITHIN AND OUTSIDE** the State, the corporation shall allocate to the State the part of the corporation's Maryland modified income that is derived from or reasonably attributable to the part of its trade or business carried on in the State, in the manner required in subsection [(b), (c), or (d)] **(C), (D), OR (E)** of this section.

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

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

~~**(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF 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.**~~

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

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

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

~~3. THE CORPORATION OR GROUP OF CORPORATIONS IS A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A FEDERAL CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR; OR~~

~~4. THE CORPORATION IS A BANKING ENTITY.~~

~~(D)~~ ~~(1)~~ ~~[(c)]~~ **(D)** (1) [Except as provided in paragraph (2) of this subsection, if 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 3-factor apportionment fraction:

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

(ii) the denominator of which is 4.

~~(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] WITHIN AND OUTSIDE 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.]

(2) EXCEPT AS PROVIDED IN ~~PARAGRAPH (2)~~ PARAGRAPHS (1) AND (3) OF THIS SUBSECTION:

(1) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2017, BUT BEFORE JANUARY 1, 2019, IF 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 3-FACTOR APPORTIONMENT FRACTION:

1. THE NUMERATOR OF WHICH IS THE SUM OF THE PROPERTY FACTOR, THE PAYROLL FACTOR, AND 3 TIMES THE SALES FACTOR; AND

2. THE DENOMINATOR OF WHICH IS 5;

(II) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2018, BUT BEFORE JANUARY 1, 2020, IF 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 3-FACTOR APPORTIONMENT FRACTION:

1. THE NUMERATOR OF WHICH IS THE SUM OF THE PROPERTY FACTOR, THE PAYROLL FACTOR, AND 4 TIMES THE SALES FACTOR; AND

2. THE DENOMINATOR OF WHICH IS 6;

(III) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2019, BUT BEFORE JANUARY 1, 2021, IF 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 3-FACTOR APPORTIONMENT FRACTION:

1. THE NUMERATOR OF WHICH IS THE SUM OF THE PROPERTY FACTOR, THE PAYROLL FACTOR, AND 5 TIMES THE SALES FACTOR; AND

2. THE DENOMINATOR OF WHICH IS 7;

(IV) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2020, BUT BEFORE JANUARY 1, 2022, IF 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 3-FACTOR APPORTIONMENT FRACTION:

1. THE NUMERATOR OF WHICH IS THE SUM OF THE PROPERTY FACTOR, THE PAYROLL FACTOR, AND 6 TIMES THE SALES FACTOR; AND

2. THE DENOMINATOR OF WHICH IS 8; AND

(V) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2021, IF 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.

~~[(e) (1)] (H) [Except as provided in paragraph (2) of this subsection, if] IF SUBJECT TO SUBPARAGRAPH (H) OF THIS PARAGRAPH, IF 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] MAY be determined using a 3-factor apportionment fraction:~~

(2) (3) (I) EACH YEAR A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A FEDERAL CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR MAY ELECT TO CALCULATE ITS MARYLAND MODIFIED INCOME DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A 3-FACTOR APPORTIONMENT FRACTION:

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

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

1. THE NUMERATOR OF WHICH IS THE SUM OF THE PROPERTY FACTOR, THE PAYROLL FACTOR, AND TWICE THE SALES FACTOR; AND

2. THE DENOMINATOR OF WHICH IS 4.

(H) (II) TO DETERMINE UNDER SUBPARAGRAPH (H) (I) OF THIS PARAGRAPH THE MARYLAND MODIFIED INCOME OF A CORPORATION OR GROUP OF CORPORATIONS THAT IS A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A FEDERAL CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR, GROSS INCOME FROM INTANGIBLE INVESTMENTS, INCLUDING DIVIDENDS, INTEREST, ROYALTIES, AND CAPITAL GAINS FROM THE SALE OF INTANGIBLE PROPERTY, SHALL BE INCLUDED IN THE CALCULATION OF THE NUMERATOR BASED ON THE AVERAGE OF THE PROPERTY AND PAYROLL FACTORS.

~~[(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] WITHIN AND OUTSIDE 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 apports 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)] ~~(III)~~ ~~(IV)~~ (4)~~ The property factor under [paragraph (1)] ~~PARAGRAPHS (1) AND (2) (2) AND (3)~~ of this subsection] ~~SUBPARAGRAPH (II) OF THIS PARAGRAPH~~ shall include:

~~[(i)]~~ ~~1.~~ rented and owned real property; and

~~[(ii)]~~ ~~2.~~ tangible personal property located in the State and used in the trade or business.

~~[(d)]~~ (E) To reflect clearly the income allocable to Maryland, the Comptroller may alter, if circumstances warrant, the methods under subsections ~~[(b) and] (c) AND (D)~~ of this section, including:

(1) the use of the separate accounting method;

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

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

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

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

~~SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 31, 2018, the Public Service Commission shall report to the Senate Budget and Taxation~~

~~Committee and the House Ways and Means Committee, in accordance with § 2-1246 of the State Government Article, on:~~

~~(1) the anticipated reduction in the corporate income tax liability of a corporation described under § 10-402(d)(2)(i)1 of the Tax — General Article making the election authorized under § 10-402(d)(2) of the Tax — General Article; and~~

~~(2) when and how Maryland public utility companies expect to pass the tax savings on to their customers.~~

SECTION ~~2~~ ~~3~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.

Approved by the Governor, April 24, 2018.