

SENATE BILL 377

Q3

9lr0935

By: **Senators Pinsky, Elfreth, Guzzone, Kelley, Lam, Lee, Nathan-Pulliam,
Rosapepe, Smith, Washington, and Young**

Introduced and read first time: January 31, 2019

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Combined Reporting**

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

14 BY adding to

15 Article – Tax – General
16 Section 10–402.1 and 10–402.2
17 Annotated Code of Maryland
18 (2016 Replacement Volume and 2018 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Tax – General
21 Section 10–811
22 Annotated Code of Maryland
23 (2016 Replacement Volume and 2018 Supplement)

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

26 **Article – Tax – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-402.1.**

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

4 (2) "COMBINED GROUP" MEANS:

5 (I) ALL MEMBERS OF A UNITARY GROUP THAT ARE SUBJECT TO
6 THE INCOME TAX OR WOULD BE SUBJECT TO THE INCOME TAX IF DOING BUSINESS
7 IN THE STATE; AND

8 (II) OTHER MEMBERS OF THE UNITARY GROUP NOT DESCRIBED
9 IN ITEM (I) OF THIS PARAGRAPH UNDER THE CIRCUMSTANCES AND TO THE EXTENT
10 PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER TO PREVENT THE
11 AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME OF ANY MEMBER OF THE
12 COMBINED GROUP FOR ANY PERIOD.

13 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF
14 CORPORATIONS:

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

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

18 1. A COMMON OWNER OR COMMON OWNERS, EITHER
19 CORPORATE OR NONCORPORATE; OR

20 2. ONE OR MORE MEMBER CORPORATIONS OF THE
21 GROUP.

22 (B) WHETHER OR NOT THE COMBINED GROUP FILES A COMBINED INCOME
23 TAX RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A COMBINED GROUP
24 SHALL COMPUTE ITS MARYLAND TAXABLE INCOME USING THE COMBINED
25 REPORTING METHOD UNDER THIS SECTION.

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

31 (1) BY DETERMINING THE MARYLAND MODIFIED INCOME OF THE

1 COMBINED GROUP BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME
2 OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING TRANSACTIONS
3 BETWEEN MEMBERS OF THE COMBINED GROUP, TO REFLECT CLEARLY THE INCOME
4 OF THE COMBINED GROUP;

5 (2) BY DETERMINING THE PART OF THE COMBINED GROUP'S
6 MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY
7 ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A
8 MARYLAND APPORTIONMENT FRACTION OF THE COMBINED GROUP BASED ON
9 NUMERATORS AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES
10 FACTORS UNDER § 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE
11 AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH THOSE
12 AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF OTHER MEMBERS OF THE
13 COMBINED GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF THE
14 COMBINED GROUP, TO REFLECT CLEARLY THE INCOME ALLOCABLE TO MARYLAND;
15 AND

16 (3) FOR EACH MEMBER OF THE COMBINED GROUP THAT IS SUBJECT
17 TO THE MARYLAND INCOME TAX, BY ALLOCATING A PORTION OF THE AMOUNT
18 DETERMINED UNDER ITEM (2) OF THIS SUBSECTION TO THAT CORPORATION BY
19 MULTIPLYING THE AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION BY
20 A FRACTION:

21 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
22 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT
23 CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
24 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS
25 OF THE COMBINED GROUP IN THE DENOMINATORS OF THE APPORTIONMENT
26 FORMULA; AND

27 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE
28 MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED
29 GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.

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

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

37 (I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED

1 STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§ 931
2 THROUGH 936 OF THE INTERNAL REVENUE CODE;

3 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS
4 DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE;

5 (III) ANY CORPORATION OTHER THAN A BANK, REGARDLESS OF
6 THE PLACE WHERE IT IS INCORPORATED, IF THE AVERAGE OF THE CORPORATION'S
7 PROPERTY, PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR
8 MORE;

9 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970
10 AND 971 OF THE INTERNAL REVENUE CODE;

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

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

16 1. A CORPORATION NOT DESCRIBED IN ITEMS (I)
17 THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF THE CORPORATION'S INCOME
18 DERIVED FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND
19 THE CORPORATION'S FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED
20 STATES; OR

21 2. AN AFFILIATED CORPORATION THAT IS A
22 CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL
23 REVENUE CODE.

24 (3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE
25 TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,
26 INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT
27 THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME FOR ANY PERIOD.

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

30 (2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE
31 CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A
32 UNITARY BUSINESS" (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX
33 COMMISSION.

1 **10-402.2.**

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

10 **10-811.**

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

17 **(B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
18 **NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.**

19 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**
20 **1, 2019, and shall be applicable to all taxable years beginning after December 31, 2019.**