

HOUSE BILL 229

Q3

1lr0354

(PRE-FILED)

By: **Delegate Stewart**

Requested: September 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Ways and Means

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 providing for a delayed effective date; and generally relating to the income tax on
8 corporations.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – General
11 Section 10–402(d)
12 Annotated Code of Maryland
13 (2016 Replacement Volume and 2020 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 (d) (1) (i) In this paragraph:

19 1. “manufacturing corporation” means a domestic or foreign
20 corporation which is primarily engaged in activities that, in accordance with the North
21 American Industrial Classification System (NAICS), United States Manual, United States
22 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or
23 33; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

16 (2) Except as provided in paragraphs (1) and (3) of this subsection:

17 (i) for a taxable year beginning after December 31, 2017, but before
18 January 1, 2019, if the trade or business is a unitary business, the part of the corporation’s
19 Maryland modified income derived from or reasonably attributable to trade or business
20 carried on in the State shall be determined using a 3–factor apportionment fraction:

21 1. the numerator of which is the sum of the property factor,
22 the payroll factor, and 3 times the sales factor; and

23 2. the denominator of which is 5;

24 (ii) for a taxable year beginning after December 31, 2018, but before
25 January 1, 2020, if the trade or business is a unitary business, the part of the corporation’s
26 Maryland modified income derived from or reasonably attributable to trade or business
27 carried on in the State shall be determined using a 3–factor apportionment fraction:

28 1. the numerator of which is the sum of the property factor,
29 the payroll factor, and 4 times the sales factor; and

30 2. the denominator of which is 6;

31 (iii) for a taxable year beginning after December 31, 2019, but before
32 January 1, 2021, if the trade or business is a unitary business, the part of the corporation’s
33 Maryland modified income derived from or reasonably attributable to trade or business
34 carried on in the State shall be determined using a 3–factor apportionment fraction:

35 1. the numerator of which is the sum of the property factor,

1 the payroll factor, and 5 times the sales factor; and

2 2. the denominator of which is 7;

3 (iv) for a taxable year beginning after December 31, 2020, but before
4 January 1, 2022, if the trade or business is a unitary business, the part of the corporation's
5 Maryland modified income derived from or reasonably attributable to trade or business
6 carried on in the State shall be determined using a 3-factor apportionment fraction:

7 1. the numerator of which is the sum of the property factor,
8 the payroll factor, and 6 times the sales factor; and

9 2. the denominator of which is 8; and

10 (v) for a taxable year beginning after December 31, 2021, if the trade
11 or business is a unitary business, the part of the corporation's Maryland modified income
12 derived from or reasonably attributable to trade or business carried on in the State shall
13 be determined using a single sales factor apportionment formula, by multiplying its
14 Maryland modified income by 100% of the sales factor.

15 (3) (i) Each year a worldwide headquartered company that filed a
16 federal corporate income tax return for the taxable year may elect to calculate its Maryland
17 modified income derived from or reasonably attributable to trade or business carried on in
18 the State using a 3-factor apportionment fraction:

19 1. the numerator of which is the sum of the property factor,
20 the payroll factor, and twice the sales factor; and

21 2. the denominator of which is 4.

22 (ii) To determine under subparagraph (i) of this paragraph the
23 Maryland modified income of a corporation or group of corporations that is a worldwide
24 headquartered company that filed a federal corporate income tax return for the taxable
25 year, gross income from intangible investments, including dividends, interest, royalties,
26 and capital gains from the sale of intangible property, shall be included in the calculation
27 of the numerator based on the average of the property and payroll factors.

28 (4) The property factor under paragraphs (2) and (3) of this subsection shall
29 include:

30 (i) rented and owned real property; and

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

33 **(5) (I) SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE**
34 **INCLUDED IN THE NUMERATOR OF THE SALES FACTOR UNDER PARAGRAPH (1), (2),**

1 **OR (3) OF THIS SUBSECTION IF:**

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

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

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

10 **1. IN THAT STATE THE CORPORATION IS SUBJECT TO A**
11 **NET INCOME TAX, FRANCHISE TAX MEASURED BY NET INCOME, FRANCHISE TAX FOR**
12 **THE PRIVILEGE OF DOING BUSINESS, OR CORPORATE STOCK TAX; OR**

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That, for a taxable year beginning
17 after December 31, 2021, but before January 1, 2023, notwithstanding §§ 13-602 and
18 13-702 of the Tax – General Article, the Comptroller shall assess interest and penalties
19 under §§ 13-602 and 13-702 of the Tax – General Article if a corporation pays estimated
20 income tax for the taxable year in an amount less than 90% of the tax required to be shown
21 on the corporation's income tax return for the taxable year.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
23 1, 2022, and shall be applicable to all taxable years beginning after December 31, 2021.