

SENATE BILL 360

Q3
SB 511/21 – B&T

2lr1260

By: **Senators Pinsky, Young, Watson, Jackson, McCray, Lee, Augustine, Smith,
Lam, Kelley, Washington, Rosapepe, Elfreth, and Sydnor**

Introduced and read first time: January 21, 2022

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Tax Fairness Act of 2022**

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 certain corporations to compute
6 Maryland taxable income using a certain method; authorizing certain corporations,
7 subject to regulations adopted by the Comptroller, to determine certain income using
8 a certain method; requiring, subject to regulations adopted by the Comptroller,
9 certain groups of corporations to file a combined income tax return reflecting the
10 aggregate income tax liability of all the members of the group; requiring the
11 Comptroller to adopt certain regulations consistent with certain regulations adopted
12 by the Multistate Tax Commission; altering the distribution of certain income tax
13 revenue from corporations; requiring the Comptroller to assess interest and
14 penalties under certain circumstances; and generally relating to the Maryland
15 income tax on corporations.

16 BY repealing and reenacting, with amendments,
17 Article – Tax – General
18 Section 2–613.1, 2–614, 10–402(d), and 10–811
19 Annotated Code of Maryland
20 (2016 Replacement Volume and 2021 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Education
23 Section 5–206(b)
24 Annotated Code of Maryland
25 (2018 Replacement Volume and 2021 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Education

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 5–206(f)
2 Annotated Code of Maryland
3 (2018 Replacement Volume and 2021 Supplement)

4 BY adding to
5 Article – Tax – General
6 Section 10–402.1
7 Annotated Code of Maryland
8 (2016 Replacement Volume and 2021 Supplement)

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

11 **Article – Tax – General**

12 10–402.

13 (d) (1) (i) In this paragraph:

14 1. “manufacturing corporation” means a domestic or foreign
15 corporation which is primarily engaged in activities that, in accordance with the North
16 American Industrial Classification System (NAICS), United States Manual, United States
17 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or
18 33; and

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

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

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

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

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

35 (i) for a taxable year beginning after December 31, 2017, but before

1 January 1, 2019, if the trade or business is a unitary business, the part of the corporation's
2 Maryland modified income derived from or reasonably attributable to trade or business
3 carried on in the State shall be determined using a 3-factor apportionment fraction:

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

6 2. the denominator of which is 5;

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

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

13 2. the denominator of which is 6;

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

18 1. the numerator of which is the sum of the property factor,
19 the payroll factor, and 5 times the sales factor; and

20 2. the denominator of which is 7;

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

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

27 2. the denominator of which is 8; and

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

33 (3) (i) Each year a worldwide headquartered company that filed a
34 federal corporate income tax return for the taxable year may elect to calculate its Maryland

1 modified income derived from or reasonably attributable to trade or business carried on in
2 the State using a 3-factor apportionment fraction:

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

5 2. the denominator of which is 4.

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

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

14 (i) rented and owned real property; and

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

17 **(5) (I) SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE**
18 **INCLUDED IN THE NUMERATOR OF THE SALES FACTOR UNDER PARAGRAPH (1), (2),**
19 **OR (3) OF THIS SUBSECTION IF:**

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

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

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
2 as follows:

3 **Article – Education**

4 5–206.

5 (b) There is the Blueprint for Maryland’s Future Fund.

6 (f) The Fund consists of:

7 (1) Revenue distributed to the Fund under Title 9, Subtitles 1D and 1E of
8 the State Government Article and §§ 2–4A–02, 2–605.1, **2–613.1**, 2–1302.1, and
9 2–1303 of the Tax – General Article;

10 (2) Money appropriated in the State budget for the Fund; and

11 (3) Any other money from any other source accepted for the benefit of the
12 Fund.

13 **Article – Tax – General**

14 2–613.1.

15 After making the distribution required under § 2–613 of this subtitle, of the
16 remaining income tax revenue from corporations, the Comptroller shall distribute:

17 (1) **[6%] 5.5%** to the Higher Education Investment Fund established under
18 § 15–106.6 of the Education Article; and

19 (2) **[9.15% to the General Fund] 7.6% TO THE BLUEPRINT FOR**
20 **MARYLAND’S FUTURE FUND ESTABLISHED UNDER § 5–206 OF THE EDUCATION**
21 **ARTICLE.**

22 2–614.

23 (a) **[(1) Except as provided in paragraph (2) of this subsection, after] AFTER**
24 **making the distributions required under §§ 2–613 and 2–613.1 of this subtitle, the**
25 **Comptroller shall distribute monthly [17.2%] 15.5%** of the remaining income tax revenue
26 **from corporations to a special fund to be distributed as provided in subsection (b) of this**
27 **section.**

28 **[(2) The percent of the remaining income tax revenue from corporations**
29 **distributed to a special fund to be distributed as provided in subsection (b) of this section**
30 **shall be:**

- 1 (i) 24% for the fiscal year beginning July 1, 2011;
- 2 (ii) 9.5% for the fiscal year beginning July 1, 2012; and
- 3 (iii) 19.5% for each fiscal year beginning on or after July 1, 2013, but
4 before July 1, 2016.]

5 (b) (1) [(i) Except as provided in subparagraph (ii) of this paragraph, from]
6 **FROM** the special fund, the Comptroller shall distribute an amount equal to [17.2%] **15.5%**
7 of the cost to administer the income tax on corporations to an administrative cost account.

8 [(ii) The percent of the cost to administer the income tax on
9 corporations that is distributed to an administrative cost account shall be:

- 10 1. 24% for the fiscal year beginning July 1, 2011;
- 11 2. 9.5% for the fiscal year beginning July 1, 2012; and
- 12 3. 19.5% for each fiscal year beginning on or after July 1,
13 2013, but before July 1, 2016.]

14 (2) After making the distribution required under paragraph (1) of this
15 subsection, the Comptroller shall distribute the balance in the special fund to the Gasoline
16 and Motor Vehicle Revenue Account in the Transportation Trust Fund.

17 **10-402.1.**

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

20 (2) **“COMBINED GROUP” MEANS A GROUP OF CORPORATIONS:**

21 (I) **THAT IS ENGAGED IN A UNITARY BUSINESS;**

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

24 1. **A COMMON OWNER OR COMMON OWNERS, EITHER**
25 **CORPORATE OR NONCORPORATE; OR**

26 2. **ONE OR MORE MEMBER CORPORATIONS OF THE**
27 **GROUP;**

28 (III) **THE MEMBERS OF WHICH ARE SUBJECT TO THE INCOME TAX**
29 **OR WOULD BE SUBJECT TO THE INCOME TAX IF DOING BUSINESS IN THE STATE; AND**

1 (IV) CONSISTING OF ANY OTHER MEMBERS UNDER THE
2 CIRCUMSTANCES AND TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY
3 THE COMPTROLLER TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY
4 THE INCOME OF ANY MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.

5 (3) "COMBINED RETURN" MEANS A TAX RETURN FOR THE COMBINED
6 GROUP CONTAINING INFORMATION AS PROVIDED IN THIS SECTION OR OTHERWISE
7 REQUIRED BY THE COMPTROLLER.

8 (4) "UNITARY BUSINESS" MEANS A SINGLE ECONOMIC ENTERPRISE
9 THAT IS MADE EITHER OF SEPARATE PARTS OF A SINGLE BUSINESS ENTITY OR OF A
10 COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES THAT ARE SUFFICIENTLY
11 INTERDEPENDENT, INTEGRATED, AND INTERRELATED THROUGH THEIR ACTIVITIES
12 SO AS TO PROVIDE MUTUAL BENEFIT THAT PRODUCES A SHARING OR EXCHANGE OF
13 VALUE AMONG THEM AND A SIGNIFICANT FLOW OF VALUE TO THE SEPARATE PARTS.

14 (B) (1) THE TERM "UNITARY BUSINESS" SHALL BE CONSTRUED TO THE
15 BROADEST EXTENT ALLOWED UNDER THE U.S. CONSTITUTION.

16 (2) A BUSINESS CONDUCTED DIRECTLY OR INDIRECTLY BY ONE
17 CORPORATION IS A UNITARY BUSINESS WITH RESPECT TO THAT PORTION OF A
18 BUSINESS CONDUCTED BY ANOTHER CORPORATION THROUGH ITS DIRECT OR
19 INDIRECT INTEREST IN A PARTNERSHIP IF THE REQUIREMENTS OF SUBSECTION
20 (A)(4) OF THIS SECTION ARE SATISFIED, INCLUDING IF THERE IS SYNERGY AND AN
21 EXCHANGE AND FLOW OF VALUE BETWEEN THE TWO PARTS OF THE BUSINESS AND
22 THE TWO CORPORATIONS ARE MEMBERS OF THE SAME COMMONLY CONTROLLED
23 GROUP.

24 (3) A BUSINESS CONDUCTED BY A PARTNERSHIP SHALL BE TREATED
25 AS CONDUCTED BY ITS PARTNERS, WHETHER DIRECTLY HELD OR INDIRECTLY HELD
26 THROUGH A SERIES OF PARTNERSHIPS, TO THE EXTENT OF THE PARTNER'S
27 DISTRIBUTIVE SHARE OF THE PARTNERSHIP'S INCOME, REGARDLESS OF THE
28 PERCENTAGE OF THE PARTNER'S OWNERSHIP INTEREST OR ITS DISTRIBUTIVE OR
29 ANY OTHER SHARE OF PARTNERSHIP INCOME.

30 (C) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS
31 ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER
32 DECEMBER 31, 2022, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL
33 FILE A COMBINED RETURN, REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE
34 INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX
35 LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A
36 UNITARY BUSINESS.

1 **(2) THE TAXABLE INCOME OF A CORPORATION REQUIRED TO FILE**
2 **UNDER § 10-811(A)(2) OF THIS TITLE IS EQUAL TO THE COMBINED GROUP'S**
3 **MARYLAND MODIFIED INCOME AS ADJUSTED UNDER SUBSECTION (D)(3) OF THIS**
4 **SECTION.**

5 **(D) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP**
6 **EQUALS THE PRODUCT OF:**

7 **(I) THE COMBINED GROUP'S APPORTIONABLE MARYLAND**
8 **MODIFIED INCOME, AS DETERMINED UNDER PARAGRAPH (2) OF THIS SUBSECTION**
9 **AND ADJUSTED UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND**

10 **(II) THE COMBINED GROUP'S MARYLAND APPORTIONMENT**
11 **FACTOR, AS DETERMINED UNDER PARAGRAPH (4) OF THIS SUBSECTION.**

12 **(2) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS**
13 **PARAGRAPH, THE APPORTIONABLE MARYLAND MODIFIED INCOME OF THE**
14 **COMBINED GROUP EQUALS THE SUM OF THE CORPORATION AND EACH MEMBER'S**
15 **MARYLAND MODIFIED INCOME.**

16 **(II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS**
17 **SUBPARAGRAPH, FOR ANY MEMBER INCORPORATED IN THE UNITED STATES OR**
18 **INCLUDED IN A CONSOLIDATED FEDERAL CORPORATE INCOME TAX RETURN, THE**
19 **INCOME TO BE INCLUDED IN THE TOTAL APPORTIONABLE INCOME OF THE**
20 **COMBINED GROUP IS THE MARYLAND MODIFIED INCOME AS CALCULATED UNDER §**
21 **10-304 OF THIS TITLE.**

22 **2. THE INCOME OF EACH MEMBER SHALL BE**
23 **CALCULATED ON A SEPARATE RETURN BASIS AS IF THE MEMBER WERE NOT**
24 **CONSOLIDATED FOR FEDERAL INCOME TAX PURPOSES.**

25 **(III) 1. FOR ANY MEMBER NOT INCLUDED UNDER**
26 **SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE INCOME TO BE INCLUDED IN THE**
27 **TOTAL INCOME OF THE COMBINED GROUP IS DETERMINED AS PROVIDED UNDER**
28 **THIS SUBPARAGRAPH.**

29 **2. A PROFIT AND LOSS STATEMENT SHALL BE PREPARED**
30 **FOR EACH FOREIGN BRANCH OR CORPORATION IN THE CURRENCY IN WHICH THE**
31 **BOOKS OF ACCOUNT OF THE BRANCH OR CORPORATION ARE REGULARLY**
32 **MAINTAINED.**

33 **3. THE PROFIT AND LOSS STATEMENT SHALL BE**
34 **ADJUSTED TO CONFORM TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS**
35 **ADOPTED BY THE UNITED STATES FINANCIAL ACCOUNTING STANDARDS BOARD**

1 FOR THE PREPARATION OF THE PROFIT AND LOSS STATEMENTS, EXCEPT AS
2 MODIFIED BY REGULATION.

3 4. EXCEPT AS OTHERWISE PROVIDED BY REGULATION,
4 THE PROFIT AND LOSS STATEMENT OF EACH MEMBER OF THE COMBINED GROUP,
5 AND THE APPORTIONMENT FACTORS RELATED TO EACH STATEMENT, WHETHER
6 UNITED STATES OR FOREIGN, SHALL BE TRANSLATED INTO THE CURRENCY IN
7 WHICH THE PARENT COMPANY MAINTAINS ITS BOOKS AND RECORDS.

8 5. INCOME APPORTIONED TO THE STATE SHALL BE
9 EXPRESSED IN UNITED STATES DOLLARS.

10 (IV) IF A UNITARY BUSINESS INCLUDES INCOME FROM A
11 PARTNERSHIP, THE INCOME TO BE INCLUDED IN THE TOTAL INCOME OF THE
12 COMBINED GROUP EQUALS THE DIRECT AND INDIRECT DISTRIBUTIVE SHARE OF
13 THE PARTNERSHIP'S UNITARY BUSINESS INCOME ALLOCATED TO ANY MEMBER OF
14 THE COMBINED GROUP.

15 (3) THE COMBINED GROUP'S APPORTIONABLE MARYLAND MODIFIED
16 INCOME SHALL BE ADJUSTED TO ELIMINATE INTERCOMPANY TRANSACTIONS AS
17 DETERMINED UNDER THE INTERNAL REVENUE CODE.

18 (4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE
19 COMBINED GROUP'S MARYLAND APPORTIONMENT FACTOR IS A FRACTION:

20 1. THE NUMERATOR OF WHICH IS THE SUM OF THE
21 CORPORATION'S AND EACH MEMBER'S MARYLAND FACTORS UNDER § 10-402 OF
22 THIS SUBTITLE; AND

23 2. THE DENOMINATOR OF WHICH IS THE SUM OF THE
24 CORPORATION'S AND EACH MEMBER'S FACTORS UNDER § 10-402 OF THIS SUBTITLE.

25 (II) THE APPORTIONMENT FACTORS OF PASS-THROUGH
26 ENTITY MEMBERS ARE INCLUDED IN THE NUMERATOR UNDER SUBPARAGRAPH (I)1
27 OF THIS PARAGRAPH AND THE DENOMINATOR UNDER SUBPARAGRAPH (I)2 OF THIS
28 PARAGRAPH TO THE EXTENT OF THE CORPORATION'S DIRECT AND INDIRECT
29 DISTRIBUTIVE SHARE OF THAT ENTITY.

30 (E) (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

1 PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS
2 SECTION SHALL INCLUDE ONLY THE FOLLOWING AFFILIATED ENTITIES:

3 (I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED
4 STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§ 931
5 THROUGH 934 OF THE INTERNAL REVENUE CODE;

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

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

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

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

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

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

24 2. AN AFFILIATED CORPORATION THAT IS A
25 CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL
26 REVENUE CODE.

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

31 (F) (1) (I) AN ELECTION TO USE THE WATER'S EDGE METHOD IN
32 ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION IS EFFECTIVE ONLY IF MADE
33 ON A TIMELY FILED, ORIGINAL RETURN FOR A TAX YEAR BY EVERY MEMBER OF THE
34 UNITARY BUSINESS.

1 **(II) THE COMPTROLLER SHALL DEVELOP REGULATIONS**
2 **GOVERNING THE IMPACT, IF ANY, ON THE SCOPE OR APPLICATION OF AN ELECTION**
3 **TO USE THE WATER'S EDGE METHOD, INCLUDING TERMINATION OR DEEMED**
4 **ELECTION, RESULTING FROM A CHANGE IN THE COMPOSITION OF THE UNITARY**
5 **BUSINESS, THE COMBINED GROUP, THE TAXPAYER MEMBERS, OR ANY OTHER**
6 **SIMILAR CHANGE.**

7 **(2) AN ELECTION TO USE THE WATER'S EDGE METHOD SHALL**
8 **CONSTITUTE CONSENT TO THE REASONABLE PRODUCTION OF DOCUMENTS AND**
9 **TAKING OF DEPOSITIONS IN ACCORDANCE WITH THE MARYLAND RULES.**

10 **(3) AT THE DISCRETION OF THE COMPTROLLER, AN ELECTION TO**
11 **USE THE WATER'S EDGE METHOD MAY BE DISREGARDED IN PART OR IN WHOLE, AND**
12 **THE INCOME AND APPORTIONMENT FACTORS OF ANY MEMBER OF THE TAXPAYER'S**
13 **UNITARY GROUP MAY BE INCLUDED IN THE COMBINED REPORT WITHOUT REGARD**
14 **TO THE PROVISIONS OF THIS SECTION, IF ANY MEMBER OF THE UNITARY GROUP**
15 **FAILS TO COMPLY WITH ANY PROVISION OF THIS SECTION OR IF A PERSON**
16 **OTHERWISE NOT INCLUDED IN THE WATER'S EDGE COMBINED GROUP WAS AVAILED**
17 **OF A SUBSTANTIAL OBJECTIVE OF AVOIDING STATE INCOME TAX.**

18 **(4) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS**
19 **PARAGRAPH, AN ELECTION TO USE THE WATER'S EDGE METHOD IS BINDING FOR**
20 **AND APPLICABLE TO THE TAXABLE YEAR IN WHICH THE ELECTION IS MADE AND ALL**
21 **TAXABLE YEARS THEREAFTER FOR A PERIOD OF 10 YEARS.**

22 **(II) AN ELECTION TO USE THE WATER'S EDGE METHOD MAY BE**
23 **WITHDRAWN OR REINSTITUTED AFTER WITHDRAWAL, BEFORE THE EXPIRATION OF**
24 **THE 10-YEAR PERIOD, ONLY ON WRITTEN REQUEST FOR REASONABLE CAUSE AND**
25 **ONLY WITH THE WRITTEN PERMISSION OF THE COMPTROLLER.**

26 **(III) IF THE COMPTROLLER GRANTS A WITHDRAWAL OF THE**
27 **ELECTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMPTROLLER**
28 **SHALL IMPOSE REASONABLE CONDITIONS AS NECESSARY TO PREVENT THE EVASION**
29 **OF TAX OR TO CLEARLY REFLECT INCOME FOR THE ELECTION PERIOD BEFORE OR**
30 **AFTER THE WITHDRAWAL.**

31 **(IV) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS**
32 **SUBPARAGRAPH, ON THE EXPIRATION OF THE 10-YEAR PERIOD, A TAXPAYER MAY**
33 **WITHDRAW FROM THE ELECTION TO USE THE WATER'S EDGE METHOD.**

34 **2. THE WITHDRAWAL SHALL BE MADE IN WRITING**
35 **WITHIN 1 YEAR BEFORE THE EXPIRATION OF THE ELECTION AND IS BINDING FOR A**
36 **PERIOD OF 10 YEARS, SUBJECT TO THE SAME CONDITIONS AS APPLIED TO THE**

1 ORIGINAL ELECTION.

2 3. IF NO WITHDRAWAL IS PROPERLY MADE UNDER THIS
3 SUBPARAGRAPH, THE ELECTION TO USE THE WATER'S EDGE METHOD SHALL
4 REMAIN IN EFFECT FOR AN ADDITIONAL 10-YEAR PERIOD, SUBJECT TO THE SAME
5 CONDITIONS AS APPLIED TO THE ORIGINAL ELECTION.

6 (G) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
7 NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

8 (2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE
9 CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A
10 UNITARY BUSINESS" (REG. IV.1.(B)) OF THE MODEL GENERAL ALLOCATION AND
11 APPORTIONMENT REGULATIONS, AS ADOPTED BY THE MULTISTATE TAX
12 COMMISSION.

13 10-811.

14 (A) (1) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO
15 REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of corporations
16 [shall file a separate income tax return] ENGAGED IN A UNITARY BUSINESS SHALL FILE
17 A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX
18 LIABILITY OF ALL THE MEMBERS OF THE AFFILIATED GROUP THAT ARE ENGAGED IN
19 A UNITARY BUSINESS.

20 (2) THE RETURN REQUIRED UNDER PARAGRAPH (1) OF THIS
21 SUBSECTION SHALL INCLUDE THE INCOME AND APPORTIONMENT FACTORS
22 DETERMINED UNDER § 10-402.1(D) AND (E) OF THIS TITLE, AND ANY OTHER
23 INFORMATION REQUIRED BY THE COMPTROLLER, FOR ALL MEMBERS OF THE
24 COMBINED GROUP WHEREVER LOCATED OR DOING BUSINESS.

25 (3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
26 PARAGRAPH, THE COMBINED RETURN SHALL BE FILED UNDER THE NAME AND
27 FEDERAL EMPLOYER IDENTIFICATION NUMBER OF THE PARENT CORPORATION IF
28 THE PARENT IS A MEMBER OF THE COMBINED GROUP.

29 (II) IF THERE IS NO PARENT CORPORATION OR IF THE PARENT
30 IS NOT A MEMBER OF THE COMBINED GROUP, THE MEMBERS OF THE COMBINED
31 GROUP SHALL CHOOSE A MEMBER TO FILE THE RETURN.

32 (III) THE FILING MEMBER UNDER SUBPARAGRAPH (I) OR (II) OF
33 THIS PARAGRAPH SHALL CONTINUE TO FILE THE COMBINED RETURN UNLESS THE
34 FILING MEMBER IS NO LONGER THE PARENT CORPORATION OR NO LONGER A
35 MEMBER OF THE COMBINED GROUP.

1 **(4) THE RETURN SHALL BE SIGNED BY A RESPONSIBLE OFFICER OF**
2 **THE FILING MEMBER ON BEHALF OF THE COMBINED GROUP MEMBERS.**

3 **(5) MEMBERS OF THE COMBINED GROUP ARE JOINTLY AND**
4 **SEVERALLY LIABLE FOR THE TAX LIABILITY OF THE COMBINED GROUP INCLUDED**
5 **IN THE COMBINED RETURN.**

6 **(B) (1) THE COMPTROLLER MAY, BY REGULATION, REQUIRE THAT THE**
7 **COMBINED RETURN INCLUDE THE INCOME AND ASSOCIATED APPORTIONMENT**
8 **FACTORS OF ENTITIES THAT ARE NOT INCLUDED IN THE COMBINED REPORT BUT**
9 **THAT ARE MEMBERS OF A UNITARY BUSINESS IN ORDER TO REFLECT PROPER**
10 **APPORTIONMENT OF INCOME OF THE ENTIRE UNITARY BUSINESS.**

11 **(2) IF THE COMPTROLLER DETERMINES THAT THE REPORTED**
12 **INCOME OR LOSS OF A TAXPAYER ENGAGED IN A UNITARY BUSINESS WITH A MEMBER**
13 **NOT INCLUDED IN THE COMBINED GROUP REPRESENTS AN AVOIDANCE OR EVASION**
14 **OF TAX, THE COMPTROLLER MAY, ON A CASE-BY-CASE BASIS, REQUIRE THAT ALL**
15 **OR PART OF THE INCOME AND ASSOCIATED APPORTIONMENT FACTORS OF THE**
16 **MEMBER BE INCLUDED IN THE TAXPAYER'S COMBINED RETURN.**

17 **(3) THE COMPTROLLER MAY REQUIRE:**

18 **(I) THE EXCLUSION OF ONE OR MORE FACTORS, THE**
19 **INCLUSION OF ONE OR MORE ADDITIONAL FACTORS, OR THE EMPLOYMENT OF ANY**
20 **OTHER METHOD THAT WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS IN THE**
21 **STATE; OR**

22 **(II) THE EMPLOYMENT OF ANY OTHER METHOD TO EFFECTUATE**
23 **A PROPER REFLECTION OF THE TOTAL AMOUNT OF INCOME SUBJECT TO**
24 **APPORTIONMENT AND AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE**
25 **COMBINED GROUP'S OR ITS MEMBERS' INCOME.**

26 **(C) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
27 **NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.**

28 SECTION 3. AND BE IT FURTHER ENACTED, That, for a taxable year beginning
29 after December 31, 2021, but before January 1, 2023, notwithstanding §§ 13-602 and
30 13-702 of the Tax – General Article, the Comptroller shall assess interest and penalties
31 under §§ 13-602 and 13-702 of the Tax – General Article if a corporation pays estimated
32 income tax for the taxable year in an amount less than 90% of the tax required to be shown
33 on the corporation's income tax return for the taxable year.

34 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be
35 applicable to all taxable years beginning after December 31, 2021.

1 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
2 effect July 1, 2023, and shall be applicable to all taxable years beginning after December
3 31, 2022.

4 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section
5 5 of this Act, this Act shall take effect July 1, 2022.