

(PRE-FILED)

By: **Delegates Taylor, Dewberry, Hurson, Arnick, Busch, Doory, Guns,
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Requested: November 15, 2000

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Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Single Sales Factor Apportionment for Manufacturing**
3 **Corporations**

4 FOR the purpose of altering a formula used to apportion certain income to the State
5 for certain corporations that are engaged in manufacturing and carry on a trade
6 or business in and out of the State; requiring certain corporations engaged in
7 manufacturing to submit certain reports as part of their income tax returns;
8 requiring the Comptroller to prepare and submit a certain report each year to
9 the Governor and the General Assembly; defining a certain term; providing for
10 the application of this Act; and generally relating to an apportionment formula
11 under the Maryland income tax for certain corporations engaged in
12 manufacturing.

13 BY repealing and reenacting, with amendments,
14 Article - Tax - General
15 Section 10-402
16 Annotated Code of Maryland
17 (1997 Replacement Volume and 2000 Supplement)

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

20 **Article - Tax - General**

21 10-402.

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

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

4 (2) if a corporation carries on its trade or business in and out of the
5 State, the corporation shall allocate to the State the part of the corporation's
6 Maryland modified income that is derived from or reasonably attributable to the part
7 of its trade or business carried on in the State, in the manner required in subsection
8 (b), (c), or (d) of this section.

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

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

18 (c) (1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
19 IF the trade or business is a unitary business, the part of the corporation's Maryland
20 modified income derived from or reasonably attributable to trade or business carried
21 on in the State shall be determined using a 3-factor apportionment fraction:

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

24 (ii) the denominator of which is 4.

25 (2) (I) IN THIS PARAGRAPH, "MANUFACTURING CORPORATION":

26 1. MEANS A DOMESTIC OR FOREIGN CORPORATION
27 ENGAGED, IN SUBSTANTIAL PART, IN TRANSFORMING RAW OR FINISHED PHYSICAL
28 MATERIALS BY HAND OR MACHINERY, AND THROUGH HUMAN SKILL AND
29 KNOWLEDGE, INTO A NEW PRODUCT POSSESSING A NEW NAME AND NATURE AND
30 ADAPTED TO A NEW USE; AND

31 2. DOES NOT INCLUDE:

32 A. A PUBLIC SERVICE COMPANY, AS DEFINED IN § 1-101 OF
33 THE PUBLIC UTILITY COMPANIES ARTICLE;

34 B. AN ELECTRICITY SUPPLIER, AS DEFINED IN § 1-101 OF
35 THE PUBLIC UTILITY COMPANIES ARTICLE; OR

36 C. A GAS SUPPLIER, AS DEFINED IN § 1-101 OF THE PUBLIC
37 UTILITY COMPANIES ARTICLE.

1 (II) IF A MANUFACTURING CORPORATION CARRIES ON ITS TRADE
2 OR BUSINESS IN AND OUT OF THE STATE AND THE TRADE OR BUSINESS IS A UNITARY
3 BUSINESS, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME
4 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED
5 ON IN THE STATE SHALL BE DETERMINED USING A SINGLE SALES FACTOR
6 APPORTIONMENT FORMULA, BY MULTIPLYING ITS MARYLAND MODIFIED INCOME BY
7 100% OF THE SALES FACTOR.

8 (III) FOR PURPOSES OF THIS PARAGRAPH, A CORPORATION'S
9 MANUFACTURING ACTIVITIES SHALL BE DEEMED TO BE SUBSTANTIAL IF ANY ONE
10 OF THE FOLLOWING FIVE TESTS ARE MET:

11 1. AT LEAST 25% OF ITS GROSS RECEIPTS ARE DERIVED
12 FROM THE SALE OF MANUFACTURED GOODS THAT IT MANUFACTURES;

13 2. AT LEAST 25% OF ITS PAYROLL IS PAID TO EMPLOYEES
14 WORKING IN ITS MANUFACTURING OPERATIONS AND AT LEAST 15% OF ITS GROSS
15 RECEIPTS ARE DERIVED FROM THE SALE OF MANUFACTURED GOODS THAT IT
16 MANUFACTURES;

17 3. AT LEAST 25 % OF ITS TANGIBLE PROPERTY IS USED IN ITS
18 MANUFACTURING OPERATIONS AND AT LEAST 15% OF ITS GROSS RECEIPTS ARE
19 DERIVED FROM THE SALE OF MANUFACTURED GOODS THAT IT MANUFACTURES;

20 4. AT LEAST 35% OF ITS TANGIBLE PROPERTY IS USED IN ITS
21 MANUFACTURING OPERATIONS; OR

22 5. THE CORPORATION'S MANUFACTURING ACTIVITIES ARE
23 DEEMED SUBSTANTIAL UNDER REGULATIONS ADOPTED BY THE COMPTROLLER.

24 (IV) IN DETERMINING WHETHER A PROCESS CONSTITUTES
25 MANUFACTURING, THE COMPTROLLER SHALL EXAMINE THE FACTS AND
26 CIRCUMSTANCES OF EACH CASE.

27 (V) AS PART OF ITS TAX RETURN FOR EACH YEAR, EACH
28 MANUFACTURING CORPORATION THAT HAS MORE THAN 25 EMPLOYEES AND
29 APPORTIONS ITS INCOME UNDER THIS PARAGRAPH SHALL SUBMIT A REPORT, IN THE
30 FORM THAT THE COMPTROLLER REQUIRES BY REGULATION, THAT DESCRIBES FOR
31 EACH TAXABLE YEAR AS OF THE LAST DAY OF THE TAXABLE YEAR THE FOLLOWING:

32 1. THE NUMBER, NATURE, AND WAGES OF JOBS ADDED OR
33 LOST IN THE STATE AND WORLDWIDE FROM THE PREVIOUS TAXABLE YEAR;

34 2. THE NATURE AND AMOUNT OF ANY CHANGE IN THE
35 PROPERTY FACTOR DURING THE TAXABLE YEAR;

36 3. THE NATURE AND AMOUNT OF ANY CHANGE IN THE
37 PAYROLL FACTOR IN THE TAXABLE YEAR;

- 1 4. THE DIFFERENCE IN TAX OWED AS A RESULT OF USING
 2 THE SALES FACTOR UNDER THIS PARAGRAPH AS COMPARED TO THE TAX OWED
 3 USING THE APPORTIONMENT METHOD IN EFFECT FOR THE FIRST TAXABLE YEAR
 4 BEGINNING ON OR AFTER DECEMBER 31, 2000;
- 5 5. VOLUME OF SALES IN THE STATE AND WORLDWIDE;
- 6 6. TAXABLE INCOME IN THE STATE AND WORLDWIDE;
- 7 7. BOOK VALUE OF PLANT, LAND, AND EQUIPMENT IN THE
 8 STATE AND WORLDWIDE;
- 9 8. NET CAPITAL INVESTMENTS IN THE STATE AND
 10 WORLDWIDE;
- 11 9. NET ASSETS;
- 12 10. CAPACITY UTILIZATION; AND
- 13 11. DEBTS, ITEMIZED BY THE FOLLOWING CATEGORIES:
- 14 A. LOANS; AND
- 15 B. MORTGAGES.

16 (VI) 1. ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE
 17 COMPTROLLER SHALL PREPARE AND SUBMIT TO THE GOVERNOR AND, SUBJECT TO §
 18 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY, A
 19 COMPREHENSIVE REPORT USING THE INFORMATION RECEIVED UNDER
 20 SUBPARAGRAPH (V) OF THIS PARAGRAPH AND OTHER SOURCES DESCRIBING AND
 21 EVALUATING THE IMPACT, IF ANY, ON THE MANUFACTURING INDUSTRY OF USING
 22 SINGLE SALES FACTOR APPORTIONMENT.

23 2. THE REPORT SHALL CONTAIN ONLY CUMULATIVE
 24 INFORMATION FOR ALL MANUFACTURING CORPORATIONS SUBMITTING REPORTS.

25 3. THE REPORT SHALL SET FORTH FOR ALL
 26 MANUFACTURING CORPORATIONS SUBMITTING REPORTS THE CUMULATIVE TOTALS
 27 WORLDWIDE AND, WHERE APPLICABLE, IN THE STATE OF THE ITEMS SPECIFIED IN
 28 SUBPARAGRAPH (V) 1 THROUGH 11 OF THIS PARAGRAPH AND THE CHANGES IN THE
 29 AGGREGATE TOTALS FROM THE PREVIOUS TAXABLE YEAR.

30 [(2)] (3) The property factor under paragraph (1) of this subsection shall
 31 include:

32 (i) rented and owned real property; and

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

1 (d) To reflect clearly the income allocable to Maryland, the Comptroller may
2 alter, if circumstances warrant, the methods under subsections (b) and (c) of this
3 section, including:

4 (1) the use of the separate accounting method;

5 (2) the use of the 3-factor double weighted sales factor formula method
6 OR THE SINGLE SALES FACTOR FORMULA METHOD;

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

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

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 July 1, 2001, and shall be applicable to all taxable years beginning after December 31,
13 2001.