
By: **Senators Neall, Currie, Hogan, Kasemeyer, Middleton, Stoltzfus, and
Van Hollen**

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Assigned to: Budget and Taxation

Committee Report: Favorable with amendments
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CHAPTER _____

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 a~~
7 manufacturing corporation to certify certain facts ~~as part of their income tax~~
8 returns in filing its income tax return; requiring certain corporations engaged in
9 manufacturing to submit certain reports as a part of their income tax returns for
10 certain taxable years; requiring the Comptroller to prepare and submit a certain
11 report in certain years to the Governor and the General Assembly; requiring the
12 Comptroller, in consultation with the Department of Business and Economic
13 Development, to adopt certain regulations; defining a certain term; providing for
14 the application of this Act; and generally relating to an apportionment formula
15 under the Maryland income tax for certain corporations engaged in
16 manufacturing.

17 BY repealing and reenacting, with amendments,
18 Article - Tax - General
19 Section 10-402
20 Annotated Code of Maryland
21 (1997 Replacement Volume and 2000 Supplement)

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

1

Article - Tax - General

2 10-402.

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

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

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

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

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

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

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

29 (ii) the denominator of which is 4.

30 (2) (I) IN THIS PARAGRAPH:

31 1. "MANUFACTURING CORPORATION" MEANS A DOMESTIC
32 OR FOREIGN CORPORATION WHICH IS PRIMARILY ENGAGED IN ACTIVITIES THAT, IN
33 ACCORDANCE WITH THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM
34 (NAICS), UNITED STATES MANUAL, UNITED STATES OFFICE OF MANAGEMENT AND
35 BUDGET, 1997 EDITION, WOULD BE INCLUDED IN SECTOR 11, 31, 32, OR 33; AND

36 2. "MANUFACTURING CORPORATION" DOES NOT INCLUDE A
37 REFINER, AS DEFINED IN § 10-101 OF THE BUSINESS REGULATION 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) IN FILING ITS TAX RETURN FOR EACH YEAR, A
9 MANUFACTURING CORPORATION SHALL CERTIFY THAT THE NAICS CODE REPORTED
10 ON ITS MARYLAND RETURN IS CONSISTENT WITH THAT REPORTED TO OTHER
11 GOVERNMENT AGENCIES.

12 (IV) IF THE COMPTROLLER DETERMINES THAT A CORPORATION
13 HAS SUBMITTED INFORMATION THAT INCORRECTLY CLASSIFIES THE CORPORATION
14 AS A MANUFACTURING CORPORATION UNDER SUBPARAGRAPH (I) OF THIS
15 PARAGRAPH, THE COMPTROLLER SHALL RECLASSIFY THE CORPORATION IN AN
16 APPROPRIATE MANNER.

17 (V) THE COMPTROLLER, IN CONSULTATION WITH THE
18 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, SHALL ADOPT
19 REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SUBSECTION.

20 (VI) AS PART OF ITS TAX RETURN FOR A TAXABLE YEAR BEGINNING
21 AFTER DECEMBER 31, 2000 BUT BEFORE JANUARY 1, 2003, EACH MANUFACTURING
22 CORPORATION THAT HAS MORE THAN 25 EMPLOYEES AND APPORTIONS ITS INCOME
23 UNDER THIS PARAGRAPH SHALL SUBMIT A REPORT, IN THE FORM THAT THE
24 COMPTROLLER REQUIRES BY REGULATION, THAT DESCRIBES FOR EACH TAXABLE
25 YEAR AS OF THE LAST DAY OF THE TAXABLE YEAR THE FOLLOWING:

26 1. THE DIFFERENCE IN TAX OWED AS A RESULT OF USING
27 SINGLE SALES FACTOR APPORTIONMENT METHOD UNDER THIS PARAGRAPH AS
28 COMPARED TO THE TAX OWED USING THE 3-FACTOR DOUBLE WEIGHTED SALES
29 FACTOR APPORTIONMENT METHOD IN EFFECT FOR THE LAST TAXABLE YEAR
30 BEGINNING ON OR BEFORE DECEMBER 31, 2000;

31 2. VOLUME OF SALES IN THE STATE AND WORLDWIDE;

32 3. TAXABLE INCOME IN THE STATE AND WORLDWIDE; AND

33 4. BOOK VALUE OF PLANT, LAND, AND EQUIPMENT IN THE
34 STATE AND WORLDWIDE.

35 (VII) ON OR BEFORE OCTOBER 1, 2003 AND OCTOBER 1, 2004, AND
36 NOTWITHSTANDING ANY CONFIDENTIALITY REQUIREMENTS, THE COMPTROLLER
37 SHALL PREPARE AND SUBMIT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE
38 STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY, A COMPREHENSIVE
39 REPORT ON THE USE OF SINGLE SALES FACTOR APPORTIONMENT BY
40 MANUFACTURING CORPORATIONS THAT PROVIDES, AT A MINIMUM:

1 1. THE NUMBER OF CORPORATIONS FILING TAX RETURNS
2 FOR THE TAXABLE YEAR THAT ENDED DURING THE PRECEDING CALENDAR YEAR
3 THAT USE SINGLE SALES FACTOR APPORTIONMENT AND THE NUMBER OF SUCH
4 CORPORATIONS HAVING A MARYLAND INCOME TAX LIABILITY FOR THAT TAXABLE
5 YEAR;

6 2. THE NUMBER OF CORPORATIONS PAYING LESS IN
7 MARYLAND INCOME TAX FOR THAT TAXABLE YEAR AS A RESULT OF USING SINGLE
8 SALES FACTOR APPORTIONMENT AND THE AGGREGATE AMOUNT OF MARYLAND
9 INCOME TAX SAVINGS FOR ALL SUCH CORPORATIONS FOR THAT TAXABLE YEAR AS A
10 RESULT OF USING SINGLE SALES FACTOR APPORTIONMENT; AND

11 3. THE NUMBER OF CORPORATIONS PAYING MORE IN
12 MARYLAND INCOME TAX FOR THE TAXABLE YEAR AS A RESULT OF USING SINGLE
13 SALES FACTOR APPORTIONMENT AND THE AGGREGATE AMOUNT OF ADDITIONAL
14 MARYLAND INCOME TAX OWED BY THOSE CORPORATIONS FOR THE TAXABLE YEAR
15 AS A RESULT OF USING SINGLE SALES FACTOR APPORTIONMENT.

16 [(2)] (3) The property factor under paragraph (1) of this subsection shall
17 include:

18 (i) rented and owned real property; and

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

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

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

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

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

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

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

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 July 1, 2001, and shall be applicable to all taxable years beginning after December 31,
33 2000.

