
By: **Senators Pinsky, Britt, Frosh, Green, Grosfeld, Hollinger, Kelley, and
Middleton**

Introduced and read first time: January 31, 2003

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax - Apportionment of Income of Multistate**
3 **Corporations - Throwback Rule**

4 FOR the purpose of requiring that certain sales of tangible personal property be
5 attributed to the State under certain circumstances for purposes of the sales
6 factor used for apportioning a corporation's income to the State; providing for
7 the application of this Act; and generally relating to the apportionment of
8 income of multistate corporations for income tax purposes.

9 BY repealing and reenacting, with amendments,
10 Article - Tax - General
11 Section 10-402(c)
12 Annotated Code of Maryland
13 (1997 Replacement Volume and 2002 Supplement)

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

16 **Article - Tax - General**

17 10-402.

18 (c) (1) Except as provided in paragraph (2) of this subsection, if the trade or
19 business is a unitary business, the part of the corporation's Maryland modified
20 income derived from or reasonably attributable to trade or business carried on in the
21 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:

1 1. "manufacturing corporation" means a domestic or foreign
2 corporation which is primarily engaged in activities that, in accordance with the
3 North American Industrial Classification System (NAICS), United States Manual,
4 United States Office of Management and Budget, 1997 Edition, would be included in
5 Sector 11, 31, 32, or 33; and

6 2. "manufacturing corporation" does not include a refiner, as
7 defined in § 10-101 of the Business Regulation Article.

8 (ii) If a manufacturing corporation carries on its trade or business
9 in and out of the State and the trade or business is a unitary business, the part of the
10 corporation's Maryland modified income derived from or reasonably attributable to
11 trade or business carried on in the State shall be determined using a single sales
12 factor apportionment formula, by multiplying its Maryland modified income by 100%
13 of the sales factor.

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

17 (iv) If the Comptroller determines that a corporation has submitted
18 information that incorrectly classifies the corporation as a manufacturing corporation
19 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the
20 corporation in an appropriate manner.

21 (v) The Comptroller, in consultation with the Department of
22 Business and Economic Development, shall adopt regulations necessary to carry out
23 the provisions of this subsection.

24 (vi) As part of its tax return for a taxable year beginning after
25 December 31, 2000 but before January 1, 2003, each manufacturing corporation that
26 has more than 25 employees and apportions its income under this paragraph shall
27 submit a report, in the form that the Comptroller requires by regulation, that
28 describes for each taxable year as of the last day of the taxable year the following:

29 1. the difference in tax owed as a result of using single sales
30 factor apportionment method under this paragraph as compared to the tax owed
31 using the 3-factor double weighted sales factor apportionment method in effect for
32 the last taxable year beginning on or before December 31, 2000;

33 2. volume of sales in the State and worldwide;

34 3. taxable income in the State and worldwide; and

35 4. book value of plant, land, and equipment in the State and
36 worldwide.

37 (vii) On or before October 1, 2003 and October 1, 2004, and
38 notwithstanding any confidentiality requirements, the Comptroller shall prepare and
39 submit to the Governor and, subject to § 2-1246 of the State Government Article, to

1 the General Assembly, a comprehensive report on the use of single sales factor
2 apportionment by manufacturing corporations that provides, at a minimum:

3 1. the number of corporations filing tax returns for the
4 taxable year that ended during the preceding calendar year that use single sales
5 factor apportionment and the number of such corporations having a Maryland income
6 tax liability for that taxable year;

7 2. the number of corporations paying less in Maryland
8 income tax for that taxable year as a result of using single sales factor apportionment
9 and the aggregate amount of Maryland income tax savings for all such corporations
10 for that taxable year as a result of using single sales factor apportionment; and

11 3. the number of corporations paying more in Maryland
12 income tax for the taxable year as a result of using single sales factor apportionment
13 and the aggregate amount of additional Maryland income tax owed by those
14 corporations for the taxable year as a result of using single sales factor
15 apportionment.

16 (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 (4) (I) SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE
22 INCLUDED IN THE NUMERATOR OF THE SALES FACTOR UNDER PARAGRAPH (1) OR
23 PARAGRAPH (2) OF THIS SUBSECTION IF:

24 1. THE PROPERTY IS DELIVERED OR SHIPPED TO A
25 PURCHASER, OTHER THAN THE UNITED STATES GOVERNMENT, WITHIN THE STATE,
26 REGARDLESS OF THE F.O.B. POINT OR OTHER CONDITIONS OF THE SALE; OR

27 2. THE PROPERTY IS SHIPPED FROM AN OFFICE, STORE,
28 WAREHOUSE, FACTORY, OR OTHER PLACE OF STORAGE IN THIS STATE AND:

29 A. THE PURCHASER IS THE UNITED STATES GOVERNMENT;
30 OR

31 B. THE CORPORATION IS NOT TAXABLE IN THE STATE OF
32 THE PURCHASER.

33 (II) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, A
34 CORPORATION IS TAXABLE IN A STATE IF:

35 1. IN THAT STATE THE CORPORATION IS SUBJECT TO A NET
36 INCOME TAX, A FRANCHISE TAX MEASURED BY NET INCOME, A FRANCHISE TAX FOR
37 THE PRIVILEGE OF DOING BUSINESS, OR A CORPORATE STOCK TAX; OR

1 2. THAT STATE HAS JURISDICTION TO SUBJECT THE
2 TAXPAYER TO A NET INCOME TAX, REGARDLESS OF WHETHER, IN FACT, THE STATE
3 IMPOSES A TAX.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 July 1, 2003, and shall be applicable to all taxable years beginning after December 31,
6 2002.