
By: **Delegate Ross**
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Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax Reform**

3 FOR the purpose of requiring certain corporations to compute Maryland taxable
4 income using a certain method; providing that, except as provided by and
5 subject to regulations of the Comptroller, certain groups of corporations shall file
6 a combined income tax return reflecting the aggregate income tax liability of all
7 of the members of the group for certain taxable years; requiring the Comptroller
8 to adopt certain regulations; requiring the Comptroller to provide a certain
9 annual report; requiring certain corporations under certain circumstances to
10 include with an income tax return or otherwise file with the Comptroller a
11 certain statement; defining certain terms; providing for the application of this
12 Act; and generally relating to the income tax on corporations.

13 BY adding to
14 Article - Tax - General
15 Section 10-402.1
16 Annotated Code of Maryland
17 (1997 Replacement Volume and 2003 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Tax - General
20 Section 10-804(e)(3) and 10-811
21 Annotated Code of Maryland
22 (1997 Replacement Volume and 2003 Supplement)

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

25 **Article - Tax - General**

26 10-402.1.

27 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

1 (2) "TAX HAVEN COUNTRY" MEANS ANDORRA, ANGUILLA, ANTIGUA AND
2 BARBUDA, ARUBA, THE BAHAMAS, SAUDI ARABIA, BARBADOS, BELIZE, BERMUDA, BRITISH
3 VIRGIN ISLANDS, CAYMAN ISLANDS, COOK ISLANDS, TURKS AND CAICOS ISLANDS,
4 DOMINICA, GIBRALTAR, GRENADA, GUERNSEY-SARK-ALDERNEY, ISLE OF MAN,
5 JERSEY, LIBERIA, LIECHTENSTEIN, LUXEMBURG, MALDIVES, MARSHALL ISLANDS,
6 MONACO, MONTSERRAT, NAURU, NETHERLANDS ANTILLES, NIUE, PANAMA, SAMOA,
7 SEYCHELLES, ST. KITTS AND NEVIS, ST. LUCIA, ST. VINCENT AND THE GRENADINES,
8 TONGA, U.S. VIRGIN ISLANDS, OR VANUATU.

9 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF
10 CORPORATIONS:

11 (I) THAT ARE ENGAGED IN A UNITARY BUSINESS; AND

12 (II) MORE THAN 50% OF THE VOTING STOCK OF EACH MEMBER OF
13 WHICH IS DIRECTLY OR INDIRECTLY OWNED BY:

14 1. A COMMON OWNER OR OWNERS, EITHER CORPORATE OR
15 NONCORPORATE; OR

16 2. ONE OR MORE MEMBER CORPORATIONS OF THE GROUP.

17 (B) WHETHER OR NOT THE UNITARY GROUP FILES A COMBINED INCOME TAX
18 RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A UNITARY GROUP SHALL
19 COMPUTE ITS MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING
20 METHOD UNDER THIS SECTION.

21 (C) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS A
22 MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME TAX,
23 THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME THAT IS DERIVED
24 FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE
25 STATE SHALL BE DETERMINED AS FOLLOWS:

26 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE UNITARY
27 GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME OF OTHER
28 MEMBERS OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN
29 MEMBERS OF THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME OF THE
30 UNITARY GROUP;

31 (2) DETERMINE THE PART OF THE UNITARY GROUP'S MARYLAND
32 MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO
33 TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND
34 APPORTIONMENT FRACTION OF THE UNITARY GROUP, BASED ON NUMERATORS AND
35 DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER § 10-402
36 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS ASSOCIATED WITH
37 THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES OF OTHER MEMBERS
38 OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF
39 THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME ALLOCABLE TO
40 MARYLAND; AND

1 (3) FOR EACH MEMBER OF THE UNITARY GROUP THAT IS SUBJECT TO
2 THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE AMOUNT DETERMINED
3 UNDER ITEM (2) OF THIS SUBSECTION TO THAT CORPORATION BY MULTIPLYING THE
4 AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION BY A FRACTION:

5 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
6 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT
7 CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
8 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS
9 OF THE UNITARY GROUP IN THE DENOMINATORS OF THE APPORTIONMENT
10 FORMULA; AND

11 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE MARYLAND
12 APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE UNITARY GROUP THAT ARE
13 SUBJECT TO THE MARYLAND INCOME TAX.

14 (D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER, A
15 CORPORATION THAT IS PART OF A UNITARY GROUP SHALL DETERMINE ITS INCOME
16 DERIVED FROM OR ATTRIBUTABLE TO TRADE OR BUSINESS IN THE STATE USING A
17 MODIFIED WATER'S EDGE METHOD AS DESCRIBED IN THIS SUBSECTION.

18 (2) UNDER THE MODIFIED WATER'S EDGE METHOD, THE UNITARY
19 GROUP FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER
20 THIS SECTION SHALL INCLUDE THE FOLLOWING AFFILIATED ENTITIES ONLY:

21 (I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED
22 STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION PURSUANT TO §§ 931 TO
23 936 OF THE INTERNAL REVENUE CODE;

24 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS
25 DESCRIBED IN §§ 991 TO 994 OF THE INTERNAL REVENUE CODE AND FOREIGN SALES
26 CORPORATIONS AS DESCRIBED IN §§ 921 TO 927 OF THE INTERNAL REVENUE CODE;

27 (III) ANY CORPORATION, OTHER THAN A BANK, REGARDLESS OF
28 THE PLACE WHERE IT IS INCORPORATED IF THE AVERAGE OF ITS PROPERTY,
29 PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR MORE;

30 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970 TO 972
31 OF THE INTERNAL REVENUE CODE;

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

35 (VI) A CORPORATION THAT IS IN A UNITARY RELATIONSHIP WITH
36 THE TAXPAYER AND IS INCORPORATED IN A TAX HAVEN COUNTRY; AND

37 (VII) UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED
38 BY REGULATIONS THAT THE COMPTROLLER ADOPTS:

1 1. A CORPORATION NOT DESCRIBED IN ITEMS (I) THROUGH
2 (VII) OF THIS PARAGRAPH, TO THE EXTENT OF ITS INCOME DERIVED FROM OR
3 ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS
4 ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES, AS DETERMINED BY
5 REGULATIONS THAT THE COMPTROLLER ADOPTS; OR

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

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

12 (E) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
13 NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.

14 (2) (I) ON OR BEFORE DECEMBER 15 OF EACH YEAR, THE
15 COMPTROLLER SHALL PROVIDE TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF
16 THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY:

17 1. A REPORT UPDATING THE LIST OF COUNTRIES THAT THE
18 COMPTROLLER HAS DETERMINED SHOULD BE SHOULD BE CONSIDERED TAX HAVEN
19 COUNTRIES FOR PURPOSES OF THIS SECTION; AND

20 2. A DRAFT OF LEGISLATION TO AMEND THE DEFINITION OF
21 "TAX HAVEN COUNTRY" UNDER THIS SECTION TO REFLECT THE COMPTROLLER'S
22 DETERMINATION MADE UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH.

23 (II) FOR PURPOSES OF DETERMINING WHICH COUNTRIES SHOULD
24 BE CONSIDERED TAX HAVEN COUNTRIES FOR PURPOSES OF THIS SECTION, THE
25 COMPTROLLER SHALL CONSIDER THE EXTENT TO WHICH EACH JURISDICTION
26 PROVIDES TAX SHELTERING OPPORTUNITIES FOR CORPORATIONS INCORPORATED
27 OR EARNING INCOME IN THE UNITED STATES EITHER DIRECTLY OR THROUGH THE
28 USE OF RELATED FOREIGN CORPORATIONS.

29 10-804.

30 (e) Each person required under this subtitle to file an income tax return or
31 estimated income tax declaration or return shall:

32 (3) attach to an income tax return or otherwise file with the Comptroller
33 any records or statements that the Comptroller requires, including:

34 (i) for an individual who has income tax withheld from salary,
35 wages, or other compensation for personal services, or other payments, a copy of the
36 statement from the person who withholds the tax that states:

37 1. the amount of salary, wages, or other compensation for
38 personal services paid and the income tax withheld; or

