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By: **Senator Pinsky**  
Introduced and read first time: February 6, 2004  
Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **Revenue Enhancement Act**

3 FOR the purpose of altering the definition of "fair market value" under the boat excise  
4 tax to provide that the tax is calculated without reduction for the value of a  
5 vessel that is traded in as part of the consideration for the sale; repealing certain  
6 tax credits allowed against certain State taxes and local property taxes for  
7 certain businesses that construct or expand certain business premises; repealing  
8 certain tax credits allowed against the public service company franchise tax and  
9 income tax for the purchase of certain Maryland-mined coal; altering a formula  
10 used to apportion certain income to the State for certain corporations that are  
11 engaged in manufacturing and carry on a trade or business in and out of the  
12 State; repealing a credit against the corporate income tax for certain wages paid  
13 by certain multijurisdictional electric companies at certain corporate or regional  
14 headquarters in the State; repealing certain credits allowed against the State  
15 income tax for certain research or development expenses incurred by an  
16 individual or corporation; repealing a property tax exemption for aircraft;  
17 repealing a property tax exemption for certain real property on which there is an  
18 airport; repealing special use assessment for property tax purposes for certain  
19 country clubs and golf courses; imposing the insurance premium tax on health  
20 maintenance organizations and managed care organizations; providing that  
21 premiums to be taxed include certain amounts paid to a health maintenance  
22 organization and a managed care organization; providing for the effective dates  
23 and application of this Act; and generally relating to State and local taxes.

24 BY repealing  
25 Article - Insurance  
26 Section 6-116  
27 Annotated Code of Maryland  
28 (2003 Replacement Volume)

29 BY repealing  
30 Article - Tax - General  
31 Section 8-217, 8-406(b), 10-205(i), 10-306, 10-704.1, 10-704.8, 10-713, and  
32 10-721

- 1 Annotated Code of Maryland
- 2 (1997 Replacement Volume and 2003 Supplement)
  
- 3 BY repealing
- 4 Article - Tax - Property
- 5 Section 7-220, 7-303, 8-212 through 8-218, and 9-230
- 6 Annotated Code of Maryland
- 7 (2001 Replacement Volume and 2003 Supplement)
  
- 8 BY repealing and reenacting, with amendments,
- 9 Article - Natural Resources
- 10 Section 8-716(a)(2)
- 11 Annotated Code of Maryland
- 12 (2000 Replacement Volume and 2003 Supplement)
  
- 13 BY adding to
- 14 Article - Tax - General
- 15 Section 10-306
- 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 10-402(c) and (d)
- 21 Annotated Code of Maryland
- 22 (1997 Replacement Volume and 2003 Supplement)
  
- 23 BY repealing and reenacting, with amendments,
- 24 Article - Tax - Property
- 25 Section 8-101(b)
- 26 Annotated Code of Maryland
- 27 (2001 Replacement Volume and 2003 Supplement)
  
- 28 BY adding to
- 29 Article - Health - General
- 30 Section 15-102.7
- 31 Annotated Code of Maryland
- 32 (2000 Replacement Volume and 2003 Supplement)
  
- 33 BY repealing and reenacting, with amendments,
- 34 Article - Health - General
- 35 Section 19-727
- 36 Annotated Code of Maryland

1 (2000 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Insurance

4 Section 6-101, 6-102(b), 6-103, 6-104(a), and 6-107(a)

5 Annotated Code of Maryland

6 (2003 Replacement Volume)

7 BY repealing and reenacting, without amendments,

8 Article - Tax - General

9 Section 10-104

10 Annotated Code of Maryland

11 (1997 Replacement Volume and 2003 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That Section(s) 6-116 of Article - Insurance of the Annotated Code of  
14 Maryland be repealed.

15 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 8-217,  
16 8-406(b), 10-205(i), 10-306, 10-704.1, 10-704.8, 10-713, and 10-721 of Article - Tax  
17 - General of the Annotated Code of Maryland be repealed.

18 SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 7-220,  
19 7-303, 8-212 through 8-218, and 9-230 of Article - Tax - Property of the Annotated  
20 Code of Maryland be repealed.

21 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
22 read as follows:

23 **Article - Natural Resources**

24 8-716.

25 (a) (2) "Fair market value" means:

26 (i) As to the sale of any vessel by a licensed dealer or a dealer  
27 licensed by another state or a foreign country, the total purchase price, as certified by  
28 the dealer on a form acceptable to the Department[, less the value of any vessel that  
29 is traded in as part of the consideration for the sale, which trade-in value may not  
30 exceed the value for the trade-in vessel as shown in a national publication of used  
31 vessel values adopted by the Department];

32 (ii) As to any other vessel that is sold by any person other than a  
33 licensed dealer, the greater of:

34 1. The total purchase price; or

35 2. \$100; or

1 (iii) As to any other vessel that is sold by any person other than a  
2 licensed dealer, either:

3 1. The total purchase price, if verified by means of a certified  
4 bill of sale approved by the Department, in which the actual price paid for the vessel  
5 is stated; or

6 2. The valuation shown in a national publication of used  
7 vessel values adopted by the Department if a certified bill of sale does not accompany  
8 the application.

9 **Article - Tax - General**

10 10-306.

11 (A) IN ADDITION TO THE MODIFICATION UNDER § 10-305 OF THIS SUBTITLE,  
12 THE AMOUNTS UNDER THIS SECTION ARE ADDED TO THE FEDERAL TAXABLE  
13 INCOME OF A CORPORATION TO DETERMINE MARYLAND MODIFIED INCOME.

14 (B) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE  
15 ADDITIONS REQUIRED FOR AN INDIVIDUAL UNDER:

16 (1) § 10-205(C) OF THIS TITLE (REFORESTATION AND TIMBER STAND  
17 MODIFICATION);

18 (2) § 10-205(E) OF THIS TITLE (NET OPERATING LOSS MODIFICATION);

19 (3) § 10-205(G) OF THIS TITLE (UNLICENSED CHILD CARE FACILITY  
20 OPERATING EXPENSES); AND

21 (4) § 10-205(I) OF THIS TITLE (MARYLAND RESEARCH AND  
22 DEVELOPMENT TAX CREDIT).

23 (C) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE  
24 ADDITIONS REQUIRED FOR AN INDIVIDUAL UNDER § 10-205(B) OF THIS TITLE.

25 10-402.

26 (c) (1) [Except as provided in paragraph (2) of this subsection, if] IF the  
27 trade or business is a unitary business, the part of the corporation's Maryland  
28 modified income derived from or reasonably attributable to trade or business carried  
29 on in the State shall be determined using a 3-factor apportionment fraction:

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

32 (ii) the denominator of which is 4.

33 [(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)]       (2)       The property factor under paragraph (1) of this subsection  
17 shall 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   **Article - Tax - Property**

32 8-101.

33       (b)       Real property is a class of property and is divided into the following  
34 subclasses:

1 (1) land that is actively devoted to farm or agricultural use, assessed  
2 under § 8-209 of this title;

3 (2) marshland, assessed under § 8-210 of this title;

4 (3) woodland, assessed under § 8-211 of this title;

5 (4) [land of a country club or golf course, assessed under §§ 8-212  
6 through 8-217 of this title;

7 (5)] land that is used for a planned development, assessed under §§ 8-220  
8 through 8-225 of this title;

9 [(6)] (5) rezoned real property that is used for residential purposes,  
10 assessed under §§ 8-226 through 8-228 of this title;

11 [(7)] (6) operating real property of a railroad;

12 [(8)] (7) operating real property of a public utility; and

13 [(9)] (8) all other real property that is directed by this article to be  
14 assessed.

15 SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
16 read as follows:

17 **Article - Health - General**

18 15-102.7.

19 THE PREMIUM TAX IMPOSED UNDER TITLE 6, SUBTITLE 1 OF THE INSURANCE  
20 ARTICLE APPLIES TO MANAGED CARE ORGANIZATIONS IN THE SAME MANNER AS IT  
21 APPLIES TO HEALTH MAINTENANCE ORGANIZATIONS.

22 19-727.

23 [(a) Except as provided in subsection (b) of this section, a] A health  
24 maintenance organization is not exempted from any State, county, or local taxes  
25 solely because of this subtitle.

26 [(b) (1) Each health maintenance organization that is authorized to operate  
27 under this subtitle is exempted from paying the premium tax imposed under Title 6,  
28 Subtitle 1 of the Insurance Article.

29 (2) Premiums received by an insurer under policies that provide health  
30 maintenance organization benefits are not subject to the premium tax imposed under  
31 Title 6, Subtitle 1 of the Insurance Article to the extent:

32 (i) Of the amounts actually paid by the insurer to a nonprofit  
33 health maintenance organization that operates only as a health maintenance  
34 organization; or

1 (ii) The premiums have been paid by that nonprofit health  
2 maintenance organization.]

3 **Article - Insurance**

4 6-101.

5 (a) The following persons are subject to taxation under this subtitle:

6 (1) a person engaged as principal in the business of writing insurance  
7 contracts, surety contracts, guaranty contracts, or annuity contracts;

8 (2) A HEALTH MAINTENANCE ORGANIZATION AUTHORIZED BY TITLE 19,  
9 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;

10 (3) A MANAGED CARE ORGANIZATION AUTHORIZED BY TITLE 15,  
11 SUBTITLE 1 OF THE HEALTH - GENERAL ARTICLE;

12 [(2)] (4) an attorney in fact for a reciprocal insurer;

13 [(3)] (5) the Maryland Automobile Insurance Fund; and

14 [(4)] (6) a credit indemnity company.

15 (b) The following persons are not subject to taxation under this subtitle:

16 (1) a nonprofit health service plan corporation that meets the  
17 requirements established under §§ 14-106 and 14-107 of this article;

18 (2) a fraternal benefit society;

19 (3) [a health maintenance organization authorized by Title 19, Subtitle  
20 7 of the Health - General Article;

21 [(4)] (4) a surplus lines broker, who is subject to taxation in accordance with  
22 Title 3, Subtitle 3 of this article;

23 [(5)] (4) an unauthorized insurer, who is subject to taxation in  
24 accordance with Title 4, Subtitle 2 of this article;

25 [(6)] (5) the Maryland Health Insurance Plan established under Title  
26 14, Subtitle 5, Part I of this article; or

27 [(7)] (6) the Senior Prescription Drug Program established under Title  
28 14, Subtitle 5, Part II of this article.

29 6-102.

30 (b) Premiums to be taxed include:



1 (1) the consideration for a surety contract, guaranty contract, or annuity  
2 contract;

3 (2) SUBSCRIPTION CHARGES OR OTHER AMOUNTS PAID TO A HEALTH  
4 MAINTENANCE ORGANIZATION ON A PREDETERMINED PERIODIC RATE BASIS BY A  
5 PERSON OTHER THAN A PERSON SUBJECT TO THE TAX UNDER THIS SUBTITLE AS  
6 COMPENSATION FOR PROVIDING HEALTH CARE SERVICES TO MEMBERS;

7 (3) GROSS RECEIPTS RECEIVED AS A RESULT OF CAPITATION  
8 PAYMENTS, INCLUDING SUPPLEMENTAL OR BONUS PAYMENTS, MADE TO A  
9 MANAGED CARE ORGANIZATION FOR PROVIDER SERVICES TO AN INDIVIDUAL WHO  
10 IS ENROLLED IN A MANAGED CARE ORGANIZATION;

11 [(2)] (4) dividends on life insurance policies that have been applied to  
12 buy additional insurance or to shorten the period during which a premium is payable;  
13 and

14 [(3)] (5) the part of the gross receipts of a title insurer that is derived  
15 from insurance business or guaranty business.

16 6-103.

17 The tax rate is:

18 (1) 0% for premiums for annuities; and

19 (2) 2% for all other premiums, INCLUDING:

20 (I) SUBSCRIPTION CHARGES OR OTHER AMOUNTS PAID TO A  
21 HEALTH MAINTENANCE ORGANIZATION; AND

22 (II) GROSS RECEIPTS RECEIVED AS A RESULT OF CAPITATION  
23 PAYMENTS, INCLUDING SUPPLEMENTAL OR BONUS PAYMENTS, MADE TO A  
24 MANAGED CARE ORGANIZATION.

25 6-104.

26 (a) Subject to subsection (b) of this section, in computing the tax under this  
27 section, the following deductions from gross direct premiums allocable to the State  
28 are allowed:

29 (1) returned premiums, not including surrender values;

30 (2) dividends that are:

31 (i) paid or credited to policyholders; or

32 (ii) applied to buy additional insurance or to shorten the period  
33 during which premiums are payable; AND

1 (3) returns or refunds made or credited to policyholders because of  
2 retrospective ratings or safe driver rewards[; and

3 (4) premiums received by a person subject to taxation under this subtitle  
4 under policies providing health maintenance organization benefits to the extent:

5 (i) of the amounts actually paid by the person to a nonprofit health  
6 maintenance organization authorized by Title 19, Subtitle 7 of the Health - General  
7 Article that operates only as a health maintenance organization that is exempt from  
8 taxes under § 19-727(b) of the Health - General Article; or

9 (ii) that the premiums have been paid by a health maintenance  
10 organization that is exempt from taxes under § 19-727(b) of the Health - General  
11 Article].

12 6-107.

13 (a) On or before March 15 of each year, each person subject to taxation under  
14 this subtitle shall:

15 (1) file with the Commissioner:

16 (i) a report of the new and renewal gross direct premiums less  
17 returned premiums written by the person during the preceding calendar year; [and]

18 (II) A REPORT OF THE GROSS RECEIPTS RECEIVED AS A RESULT OF  
19 CAPITATION PAYMENTS, INCLUDING SUPPLEMENTAL OR BONUS PAYMENTS, MADE  
20 TO A MANAGED CARE ORGANIZATION DURING THE PRECEDING CALENDAR YEAR;  
21 AND

22 [(ii)] (III) if the person issues perpetual policies of fire insurance,  
23 a report of the average amount of deposits held by the person during the preceding  
24 calendar year in connection with perpetual policies of fire insurance issued on  
25 property in the State and in force during any part of that year; and

26 (2) pay to the Commissioner the total amount of taxes imposed by this  
27 subtitle, as shown on the face of the report, after crediting the amount of taxes paid  
28 with the declaration of estimated tax and each quarterly report filed under § 6-106 of  
29 this subtitle.

30 **Article - Tax - General**

31 10-104.

32 The income tax does not apply to the income of:

33 (1) a common trust fund, as defined in § 3-501(b) of the Financial  
34 Institutions Article;

1 (2) except as provided in §§ 10-101(c-1)(3) and 10-304(2) of this title, an  
2 organization that is exempt from taxation under § 408(e)(1) or § 501 of the Internal  
3 Revenue Code;

4 (3) a financial institution that is subject to the financial institution  
5 franchise tax;

6 (4) a person subject to taxation under Title 6 of the Insurance Article;

7 (5) except as provided in § 10-102.1 of this subtitle, a partnership, as  
8 defined in § 761 of the Internal Revenue Code;

9 (6) except as provided in § 10-102.1 of this subtitle and § 10-304(3) of  
10 this title, an S corporation;

11 (7) except as provided in § 10-304(4) of this title, an investment conduit  
12 or a special exempt entity; or

13 (8) except as provided in § 10-102.1 of this subtitle, a limited liability  
14 company as defined under Title 4A of the Corporations and Associations Article to the  
15 extent that the company is taxable as a partnership, as defined in § 761 of the  
16 Internal Revenue Code.

17 SECTION 6. AND BE IT FURTHER ENACTED, That the changes to Titles 8  
18 and 10 of the Tax - General Article under Sections 2 and 4 of this Act shall be  
19 applicable to all taxable years beginning after December 31, 2003.

20 SECTION 7. AND BE IT FURTHER ENACTED, That:

21 (a) Notwithstanding any other provision of law, and except as otherwise  
22 provided in this section, the premium tax imposed under § 6-102 of the Insurance  
23 Article, as enacted by Section 5 of this Act, is applicable to:

24 (1) capitation payments, including supplemental or bonus payments,  
25 made to managed care organizations on or after July 1, 2004; and

26 (2) premiums written for all policies, contracts, and health benefit plans  
27 issued, delivered, or renewed in the State on or after July 1, 2004.

28 (b) The premium tax imposed under § 6-102 of the Insurance Article, as  
29 enacted by Section 5 of this Act, does not apply to:

30 (1) capitation payments, supplemental payments, or bonus payments,  
31 made to managed care organizations before July 1, 2004; and

32 (2) premiums written for all policies, contracts, and health benefit plans  
33 issued, delivered, or renewed in the State before July 1, 2004.

34 (c) Any health benefit plan in effect before July 1, 2004, shall comply with the  
35 provisions of Title 6 of the Insurance Article no later than July 1, 2005.

1 SECTION 8. AND BE IT FURTHER ENACTED, That, for taxable years  
2 beginning after December 31, 2004, the exemption under § 10-104 of the Tax -  
3 General Article is applicable to health maintenance organizations and managed care  
4 organizations that are subject to the insurance premium tax under Title 6 of the  
5 Insurance Article.

6 SECTION 9. AND BE IT FURTHER ENACTED, That, subject to Sections 6  
7 through 8 of this Act, this Act shall take effect July 1, 2004.