

(PRE-FILED)

By: **Delegate Ross**
Requested: September 16, 2004
Introduced and read first time: January 12, 2005
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 (2004 Replacement Volume)

18 BY repealing and reenacting, with amendments,
19 Article - Tax - General
20 Section 10-804(e) and 10-811
21 Annotated Code of Maryland
22 (2004 Replacement Volume)

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

1 **Article - Tax - General**

2 10-402.1.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
4 INDICATED.5 (2) "TAX HAVEN COUNTRY" MEANS ANDORRA, ANGUILLA, ANTIGUA AND
6 BARBUDA, ARUBA, THE BAHAMAS, BAHRAIN, BARBADOS, BELIZE, BERMUDA, BRITISH
7 VIRGIN ISLANDS, CAYMAN ISLANDS, COOK ISLANDS, TURKS AND CAICOS ISLANDS,
8 DOMINICA, GIBRALTAR, GRENADA, GUERNSEY-SARK-ALDERNEY, ISLE OF MAN,
9 JERSEY, LIBERIA, LIECHTENSTEIN, LUXEMBURG, MALDIVES, MARSHALL ISLANDS,
10 MONACO, MONTSERRAT, NAURU, NETHERLANDS ANTILLES, NIUE, PANAMA, SAMOA,
11 SEYCHELLES, ST. KITTS AND NEVIS, ST. LUCIA, ST. VINCENT AND THE GRENADINES,
12 TONGA, U.S. VIRGIN ISLANDS, OR VANUATU.13 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF
14 CORPORATIONS:

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

16 (II) MORE THAN 50% OF THE VOTING STOCK OF EACH MEMBER OF
17 WHICH IS DIRECTLY OR INDIRECTLY OWNED BY:18 1. A COMMON OWNER OR OWNERS, EITHER CORPORATE OR
19 NONCORPORATE; OR

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

21 (B) WHETHER OR NOT THE UNITARY GROUP FILES A COMBINED INCOME TAX
22 RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A UNITARY GROUP SHALL
23 COMPUTE ITS MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING
24 METHOD UNDER THIS SECTION.25 (C) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS A
26 MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME TAX,
27 THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME THAT IS DERIVED
28 FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE
29 STATE SHALL BE DETERMINED AS FOLLOWS:30 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE UNITARY
31 GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME OF OTHER
32 MEMBERS OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN
33 MEMBERS OF THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME OF THE
34 UNITARY GROUP;35 (2) DETERMINE THE PART OF THE UNITARY GROUP'S MARYLAND
36 MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO
37 TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND
38 APPORTIONMENT FRACTION OF THE UNITARY GROUP, BASED ON NUMERATORS AND

1 DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER § 10-402
2 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS ASSOCIATED WITH
3 THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES OF OTHER MEMBERS
4 OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF
5 THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME ALLOCABLE TO
6 MARYLAND; AND

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

11 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
12 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT
13 CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
14 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS
15 OF THE UNITARY GROUP IN THE DENOMINATORS OF THE APPORTIONMENT
16 FORMULA; AND

17 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE MARYLAND
18 APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE UNITARY GROUP THAT ARE
19 SUBJECT TO THE MARYLAND INCOME TAX.

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

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

27 (I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED
28 STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION PURSUANT TO §§ 931
29 THROUGH 936 OF THE INTERNAL REVENUE CODE;

30 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS
31 DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND FOREIGN
32 SALES CORPORATIONS AS DESCRIBED IN §§ 921 THROUGH 927 OF THE INTERNAL
33 REVENUE CODE;

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

37 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970
38 THROUGH 972 OF THE INTERNAL REVENUE CODE;

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

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

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

8 1. A CORPORATION NOT DESCRIBED IN ITEMS (I) THROUGH
9 (VI) OF THIS PARAGRAPH, TO THE EXTENT OF ITS INCOME DERIVED FROM OR
10 ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS
11 ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES, AS DETERMINED BY
12 REGULATIONS THAT THE COMPTROLLER ADOPTS; OR

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

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

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

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

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

27 2. A DRAFT OF LEGISLATION TO AMEND THE DEFINITION OF
28 "TAX HAVEN COUNTRY" UNDER THIS SECTION TO REFLECT THE COMPTROLLER'S
29 DETERMINATION MADE UNDER ITEM 1 OF THIS SUBPARAGRAPH.

30 (II) FOR PURPOSES OF DETERMINING WHICH COUNTRIES SHOULD
31 BE CONSIDERED TAX HAVEN COUNTRIES FOR PURPOSES OF THIS SECTION, THE
32 COMPTROLLER SHALL CONSIDER THE EXTENT TO WHICH EACH JURISDICTION
33 PROVIDES TAX SHELTERING OPPORTUNITIES FOR CORPORATIONS INCORPORATED
34 OR EARNING INCOME IN THE UNITED STATES EITHER DIRECTLY OR THROUGH THE
35 USE OF RELATED FOREIGN CORPORATIONS.

36 10-804.

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

- 1 (1) comply with the regulations of the Comptroller;
- 2 (2) keep the records that the Comptroller requires; and
- 3 (3) attach to an income tax return or otherwise file with the Comptroller
4 any records or statements that the Comptroller requires, including:
- 5 (i) for an individual who has income tax withheld from salary,
6 wages, or other compensation for personal services, or other payments, a copy of the
7 statement from the person who withholds the tax that states:
- 8 1. the amount of salary, wages, or other compensation for
9 personal services paid and the income tax withheld; or
- 10 2. the amount of payments made and the income tax
11 withheld;
- 12 (ii) a copy of the federal income tax return:
- 13 1. for a corporation; and
- 14 2. if the Comptroller requests, for an individual; and
- 15 (iii) if the Comptroller requests, for a corporation that is a member
16 of an affiliated group or controlled group under § 1504 or § 1563 of the Internal
17 Revenue Code[.];
- 18 1. a statement of all intermember costs or expenses and all
19 intermember sales, exchanges, or other transactions involving tangible or intangible
20 property for the taxable year[.]; AND
- 21 2. FOR EACH MEMBER OF THE AFFILIATED GROUP OR
22 CONTROLLED GROUP, A STATEMENT OF THE INCOME REPORTED TO EACH STATE
23 AND EACH TAX HAVEN JURISDICTION AS DEFINED IN § 10-402.1 OF THIS TITLE, THE
24 TAX LIABILITY FOR EACH STATE AND EACH TAX HAVEN COUNTRY, AND THE METHOD
25 USED FOR ALLOCATING OR APPORTIONING INCOME TO EACH STATE AND EACH TAX
26 HAVEN COUNTRY.
- 27 10-811.
- 28 (A) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO
29 REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of corporations
30 [shall file a separate income tax return] ENGAGED IN A UNITARY BUSINESS SHALL
31 FILE A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX
32 LIABILITY OF ALL OF THE MEMBERS OF THE AFFILIATED GROUP THAT ARE
33 ENGAGED IN A UNITARY BUSINESS.
- 34 (B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY
35 OR APPROPRIATE TO CARRY OUT THIS SECTION.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 June 1, 2005, and shall be applicable to all taxable years beginning after December
3 31, 2004.