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By: **Delegate Hixson**

Introduced and read first time: February 7, 2005

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax Reform - Combined Reporting**

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 certain  
8 corporations under certain circumstances to include with an income tax return  
9 or otherwise file with the Comptroller a certain statement; requiring the  
10 Comptroller to adopt certain regulations; defining certain terms; providing for  
11 the application of this Act; and generally relating to the income tax on  
12 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)(3)(iii) 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:

25 **Article - Tax - General**

26 10-402.1.

27 (A) IN THIS SECTION, "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF  
28 CORPORATIONS:

1 (1) THAT IS ENGAGED IN A UNITARY BUSINESS; AND

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

4 (I) A COMMON OWNER OR COMMON OWNERS, EITHER CORPORATE  
5 OR NONCORPORATE; OR

6 (II) ONE OR MORE MEMBER CORPORATIONS OF THE GROUP.

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

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

16 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE UNITARY  
17 GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME OF OTHER  
18 MEMBERS OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN  
19 MEMBERS OF THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME OF THE  
20 UNITARY GROUP;

21 (2) DETERMINE THE PART OF THE UNITARY GROUP'S MARYLAND  
22 MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO  
23 TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND  
24 APPORTIONMENT FRACTION OF THE UNITARY GROUP, BASED ON NUMERATORS AND  
25 DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER § 10-402  
26 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS ASSOCIATED WITH  
27 THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES OF OTHER MEMBERS  
28 OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF  
29 THE UNITARY GROUP TO ACCURATELY REFLECT THE INCOME ALLOCABLE TO  
30 MARYLAND; AND

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

35 (I) THE NUMERATOR OF WHICH IS THE MARYLAND  
36 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT  
37 CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE  
38 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS  
39 OF THE UNITARY GROUP IN THE DENOMINATORS OF THE APPORTIONMENT  
40 FORMULA; AND

1 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE MARYLAND  
2 APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE UNITARY GROUP THAT ARE  
3 SUBJECT TO THE MARYLAND INCOME TAX.

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

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

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

14 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS  
15 DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND FOREIGN  
16 SALES CORPORATIONS AS DESCRIBED IN §§ 921 THROUGH 927 OF THE INTERNAL  
17 REVENUE CODE;

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

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

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

26 (VI) UNDER THE CIRCUMSTANCES AND TO THE EXTENT PROVIDED  
27 BY REGULATIONS THAT THE COMPTROLLER ADOPTS:

28 1. A CORPORATION NOT DESCRIBED IN ITEMS (I) THROUGH  
29 (V) OF THIS PARAGRAPH, TO THE EXTENT OF ITS INCOME DERIVED FROM OR  
30 ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS  
31 ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES, AS DETERMINED BY  
32 REGULATIONS THAT THE COMPTROLLER ADOPTS; OR

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

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

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

3 10-804.

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

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

8 (iii) if the Comptroller requests, for a corporation that is a member  
9 of an affiliated group or controlled group under § 1504 or § 1563 of the Internal  
10 Revenue Code[.]:

11 1. a statement of all intermember costs or expenses and all  
12 intermember sales, exchanges, or other transactions involving tangible or intangible  
13 property for the taxable year; AND

14 2. FOR EACH MEMBER OF THE AFFILIATED GROUP OR  
15 CONTROLLED GROUP, A STATEMENT OF THE INCOME REPORTED TO EACH STATE,  
16 THE TAX LIABILITY FOR EACH STATE, AND THE METHOD USED FOR ALLOCATING OR  
17 APPORTIONING INCOME TO EACH STATE.

18 10-811.

19 (A) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO  
20 REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of corporations  
21 [shall file a separate income tax return] ENGAGED IN A UNITARY BUSINESS SHALL  
22 FILE A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX  
23 LIABILITY OF ALL OF THE MEMBERS OF THE AFFILIATED GROUP THAT ARE  
24 ENGAGED IN A UNITARY BUSINESS.

25 (B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE NECESSARY  
26 OR APPROPRIATE TO CARRY OUT THIS SECTION.

27 SECTION 2. AND BE IT FURTHER ENACTED, That, this Act shall take effect  
28 July 1, 2005, and shall be applicable to all taxable years beginning after December 31,  
29 2005.