
By: **Delegates Cardin and Hixson**

Introduced and read first time: February 11, 2005

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax - Single Sales Factor Apportionment - Reporting**

3 FOR the purpose of extending a certain requirement that certain manufacturing
4 corporations submit certain reports to the Comptroller; altering certain required
5 contents of the report; authorizing the Comptroller to impose a certain penalty if
6 a manufacturing corporation fails to file a certain report; extending a certain
7 requirement that the Comptroller submit a certain annual report to the
8 Governor and General Assembly; providing that certain reports for certain
9 taxable years be submitted in a certain manner and by a certain date; requiring
10 certain manufacturing corporations to submit a certain report to the
11 Department of Business and Economic Development; requiring the Department
12 of Business and Economic Development to submit a certain report to the
13 Governor and General Assembly; providing for the application of this Act; and
14 generally relating to certain reporting requirements relating to single sales
15 factor apportionment under the corporate income tax and economic development
16 in the State.

17 BY repealing and reenacting, with amendments,
18 Article - Tax - General
19 Section 10-402(c)
20 Annotated Code of Maryland
21 (2004 Replacement Volume)

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

24 **Article - Tax - General**

25 10-402.

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

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

3 (ii) the denominator of which is 4.

4 (2) (i) In this paragraph:

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

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

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

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

21 (iv) If the Comptroller determines that a corporation has submitted
22 information that incorrectly classifies the corporation as a manufacturing corporation
23 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the
24 corporation in an appropriate manner.

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

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

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

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

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- 1 3. taxable income in the State and worldwide; [and]
- 2 4. book value of plant, land, and equipment in the State and
- 3 worldwide; AND
- 4 5. PAYROLL IN THE STATE AND WORLDWIDE.

5 (VII) IF A MANUFACTURING CORPORATION FAILS TO PROVIDE THE
 6 REPORT REQUIRED UNDER SUBPARAGRAPH (VI) OF THIS PARAGRAPH AS PART OF ITS
 7 TAX RETURN FOR THE TAXABLE YEAR, THE COMPTROLLER MAY ASSESS A PENALTY
 8 NOT EXCEEDING THE GREATER OF:

- 9 1. \$250; OR
- 10 2. 10% OF THE TAX REQUIRED TO BE SHOWN ON THE
- 11 RETURN FOR THE TAXABLE YEAR.

12 [(vii)] (VIII) On or before [October 1, 2003 and October 1, 2004]
 13 OCTOBER 1 OF EACH YEAR, and notwithstanding any confidentiality requirements,
 14 the Comptroller shall prepare and submit to the Governor and, subject to § 2-1246 of
 15 the State Government Article, to the General Assembly, a comprehensive report on
 16 the use of single sales factor apportionment by manufacturing corporations that
 17 provides, at a minimum:

- 18 1. the number of corporations filing tax returns for the
- 19 taxable year that [ended] BEGAN during the SECOND preceding calendar year that
- 20 use single sales factor apportionment and the number of such corporations having a
- 21 Maryland income tax liability for that taxable year;
- 22 2. the number of corporations paying less in Maryland
- 23 income tax for that taxable year as a result of using single sales factor apportionment
- 24 and the aggregate amount of Maryland income tax savings for all such corporations
- 25 for that taxable year as a result of using single sales factor apportionment; and
- 26 3. the number of corporations paying more in Maryland
- 27 income tax for the taxable year as a result of using single sales factor apportionment
- 28 and the aggregate amount of additional Maryland income tax owed by those
- 29 corporations for the taxable year as a result of using single sales factor
- 30 apportionment.

31 (3) The property factor under paragraph (1) of this subsection shall
 32 include:

- 33 (i) rented and owned real property; and
- 34 (ii) tangible personal property located in the State and used in the
- 35 trade or business.

36 SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding any
 37 other provision of law:

1 (a) In this section, "manufacturing corporation" has the meaning stated in §
2 10-402(c)(2) of the Tax - General Article.

3 (b) For a taxable year beginning after December 31, 2002 but before January
4 1, 2004, a manufacturing corporation shall, on or before September 15, 2005, submit
5 the information required under § 10-402(c)(2)(vi) of the Tax - General Article to the
6 Comptroller as a separate report in the form that the Comptroller requires.

7 (c) (1) Except as provided in paragraph (2) of this subsection, for a taxable
8 year beginning after December 31, 2003 but before January 1, 2005, a manufacturing
9 corporation shall submit the report required under § 10-402(c)(2)(vi) of the Tax -
10 General Article to the Comptroller as part of its income tax return.

11 (2) If before July 1, 2005, a manufacturing corporation subject to this
12 subsection has already filed its income tax return for a taxable year beginning after
13 December 31, 2003 but before January 1, 2005, or if the manufacturing corporation
14 otherwise fails to include the report required under this subsection as part of its
15 income tax return for the taxable year, the manufacturing corporation shall submit
16 the information in a separate report to the Comptroller on or before the date 6 months
17 after the original due date for the return (not counting any extensions).

18 (d) If a manufacturing corporation fails to provide the report required under
19 subsection (b) of this section on or before September 15, 2005 or fails to provide the
20 report required under subsection (c) of this section on or before the date 6 months
21 after the original due date for the return, the Comptroller may assess a penalty not
22 exceeding the greater of:

23 (1) \$250; or

24 (2) 10% of the tax required to be shown on the return for the taxable
25 year.

26 (e) The report for tax year 2003 required from the Comptroller under §
27 10-402(c)(2)(viii) of the Tax - General Article may be submitted on or before January
28 15, 2006.

29 (f) As soon as practicable, the Comptroller shall notify each manufacturing
30 corporation of the requirements of this section and shall provide each manufacturing
31 corporation copies of any required forms.

32 SECTION 3. AND BE IT FURTHER ENACTED, That:

33 (a) In this section, "manufacturing corporation" has the meaning stated in §
34 10-402(c)(2) of the Tax - General Article.

35 (b) On or before August 15, 2006, each manufacturing corporation that in any
36 of calendar years 2000 through 2005 had more than 25 employees in the State shall
37 submit to the Department of Business and Economic Development a report in the
38 form that the Department requires that includes, for each of calendar years 2000
39 through 2005:

1 (1) the name, address, and phone number of the manufacturing
2 corporation;

3 (2) for each taxable year beginning after December 31, 2000, but before
4 January 1, 2005:

5 (i) whether the manufacturing corporation paid more, less, or the
6 same amount in Maryland income tax for that taxable year as a result of using single
7 sales factor apportionment instead of the 3-factor double-weighted sales factor
8 apportionment formula required for corporations other than manufacturing
9 corporations, and the amount of any Maryland income tax savings or additional
10 Maryland income tax for the manufacturing corporation for each taxable year as a
11 result of using single sales factor apportionment;

12 (ii) the volume of sales in the State and worldwide for each taxable
13 year;

14 (iii) the book value of plant, land, and equipment in the State and
15 worldwide for each taxable year; and

16 (iv) the total payroll in the State and worldwide for each taxable
17 year;

18 (3) for each of calendar years 2000 through 2005:

19 (i) the number of employees of the manufacturing corporation in
20 Maryland and worldwide as of December 31 of each calendar year, broken down by
21 full-time positions, part-time positions, and temporary positions;

22 (ii) the average hourly wage paid to all employees in each calendar
23 year, in Maryland and worldwide, in wage groups of \$1.00 increments beginning at
24 minimum wage through \$14.00 or more per hour, broken down by full-time positions,
25 part-time positions, and temporary positions; and

26 (iii) the average per-employee cost to the manufacturing
27 corporation of health care coverage provided to employees for each calendar year, in
28 Maryland and worldwide; and

29 (4) a certification signed by an authorized representative of the
30 manufacturing corporation that the information provided in the report is complete
31 and accurate.

32 (c) (1) On or before October 15, 2006, notwithstanding any confidentiality
33 requirements or other provisions of law, the Department of Business and Economic
34 Development shall prepare and submit to the Governor and, subject to § 2-1246 of the
35 State Government Article, to the General Assembly, a comprehensive report
36 evaluating the use of single sales factor apportionment by manufacturing
37 corporations and the effectiveness of the single sales factor apportionment method as
38 an economic development tool for the State that provides a summary of the
39 information provided in the reports required under subsection (b) of this section,

1 including separate summaries for each category of manufacturing corporations
2 specified in paragraph (3) of this subsection, stating:

3 (i) the total number of corporations in each category;

4 (ii) the aggregate amount for all corporations in each category of
5 Maryland income tax savings or additional Maryland income tax as a result of using
6 single sales factor apportionment, cumulative for all taxable years beginning after
7 December 31, 2000 but before January 1, 2005;

8 (iii) for each taxable year beginning after December 31, 2000 but
9 before January 1, 2005:

10 1. the aggregate volume of sales in the State and worldwide
11 for all corporations in each category;

12 2. the aggregate book value of plant, land, and equipment in
13 the State and worldwide for all corporations in each category; and

14 3. the aggregate total payroll in the State and worldwide for
15 all corporations in each category; and

16 (iv) for each of calendar years 2000 through 2005:

17 1. the aggregate number of employees in Maryland and
18 worldwide as of December 31 of each calendar year for all corporations in each
19 category, broken down by full-time positions, part-time positions, and temporary
20 positions;

21 2. the aggregate average hourly wage paid each calendar
22 year to all employees of all corporations in each category, in Maryland and worldwide,
23 in wage groups of \$1.00 increments beginning at minimum wage through \$14.00 or
24 more per hour, broken down by full-time positions, part-time positions, and
25 temporary positions; and

26 3. the aggregate average per-employee cost for each
27 calendar year to all corporations in each category of health care coverage provided to
28 employees, in Maryland and worldwide.

29 (2) For each manufacturing corporation that saved more than \$500,000
30 in Maryland income tax cumulatively over all taxable years beginning after
31 December 31, 2000 but before January 1, 2005 as a result of using single sales factor
32 apportionment, the Department shall include with the report required under this
33 subsection a copy of the report provided by the manufacturing corporation to the
34 Department under subsection (b) of this section.

35 (3) For each taxable year, the summary information required under this
36 subsection shall be provided separately for each of the following categories of
37 manufacturing corporations required to report to the Department under subsection
38 (b) of this section:

1 (i) the manufacturing corporations that paid less in Maryland
2 income tax on a cumulative basis over all taxable years beginning after December 31,
3 2000 but before January 1, 2005, as a result of using single sales factor
4 apportionment;

5 (ii) the manufacturing corporations that paid more in Maryland
6 income tax on a cumulative basis over all taxable years beginning after December 31,
7 2000 but before January 1, 2005, as a result of using single sales factor
8 apportionment; and

9 (iii) the manufacturing corporations with no change in their
10 Maryland income tax on a cumulative basis over all taxable years beginning after
11 December 31, 2000 but before January 1, 2005, as a result of using single sales factor
12 apportionment.

13 (d) As soon as practicable, the Department shall notify each manufacturing
14 corporation of the requirements of this section and shall provide each manufacturing
15 corporation copies of any required forms.

16 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 July 1, 2005, and shall be applicable to all taxable years beginning after December 31,
18 2002.