
By: **Delegates Cardin and Hixson**

Introduced and read first time: February 11, 2005

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2005

CHAPTER _____

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:

1 **Article - Tax - General**

2 10-402.

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

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

9 (ii) the denominator of which is 4.

10 (2) (i) In this paragraph:

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

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

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

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

27 (iv) If the Comptroller determines that a corporation has submitted
28 information that incorrectly classifies the corporation as a manufacturing corporation
29 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the
30 corporation in an appropriate manner.

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

34 (vi) As part of its tax return for ~~for~~ a taxable year beginning after
35 December 31, ~~2000~~ 2003 but before January 1, ~~2003~~ 2007 ~~EACH TAXABLE YEAR~~, each
36 manufacturing corporation that has more than 25 employees and apportions its
37 income under this paragraph shall submit a report, in the form that the Comptroller

1 requires by regulation, that describes for each taxable year as of the last day of the
2 taxable year the following:

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

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

8 3. taxable income in the State and worldwide; [and]

9 4. book value of plant, land, and equipment in the State and
10 worldwide; AND

11 5. PAYROLL IN THE STATE AND WORLDWIDE.

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

16 1. \$250; OR

17 2. 10% OF THE TAX REQUIRED TO BE SHOWN ON THE
18 RETURN FOR THE TAXABLE YEAR.

19 [(vii)] (VIII) On or before [October 1, 2003 and October 1, 2004]
20 ~~OCTOBER 1 OF EACH YEAR, 2006, OCTOBER 1, 2007, AND OCTOBER 1, 2008,~~ and
21 notwithstanding any confidentiality requirements, the Comptroller shall prepare and
22 submit to the Governor and, subject to § 2-1246 of the State Government Article, to
23 the General Assembly, a comprehensive report on the use of single sales factor
24 apportionment by manufacturing corporations that provides, at a minimum:

25 1. the number of corporations filing tax returns for the
26 taxable year that [ended] BEGAN during the SECOND preceding calendar year that
27 use single sales factor apportionment and the number of such corporations having a
28 Maryland income tax liability for that taxable year;

29 2. the number of corporations paying less in Maryland
30 income tax for that taxable year as a result of using single sales factor apportionment
31 and the aggregate amount of Maryland income tax savings for all such corporations
32 for that taxable year as a result of using single sales factor apportionment; and

33 3. the number of corporations paying more in Maryland
34 income tax for the taxable year as a result of using single sales factor apportionment
35 and the aggregate amount of additional Maryland income tax owed by those
36 corporations for the taxable year as a result of using single sales factor
37 apportionment.

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

3 (i) rented and owned real property; and

4 (ii) tangible personal property located in the State and used in the
5 trade or business.

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

8 (a) ~~In this section, "manufacturing corporation" has the meaning stated in §~~
9 ~~10-402(c)(2) of the Tax - General Article.~~

10 (b) ~~For a taxable year beginning after December 31, 2002 but before January~~
11 ~~1, 2004, a manufacturing corporation shall, on or before September 15, 2005, submit~~
12 ~~the information required under § 10-402(c)(2)(vi) of the Tax - General Article to the~~
13 ~~Comptroller as a separate report in the form that the Comptroller requires.~~

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

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

25 (d) ~~If a manufacturing corporation fails to provide the report required under~~
26 ~~subsection (b) of this section on or before September 15, 2005 or fails to provide the~~
27 ~~report required under subsection (c) of this section on or before the date 6 months~~
28 ~~after the original due date for the return, the Comptroller may assess a penalty not~~
29 ~~exceeding the greater of:~~

30 (1) ~~\$250; or~~

31 (2) ~~10% of the tax required to be shown on the return for the taxable~~
32 ~~year.~~

33 (e) ~~The report for tax year 2003 required from the Comptroller under §~~
34 ~~10-402(c)(2)(viii) of the Tax - General Article may be submitted on or before January~~
35 ~~15, 2006.~~

36 (f) (b) As soon as practicable, the Comptroller shall notify each
37 manufacturing corporation of the requirements of this section and shall provide each
38 manufacturing corporation copies of any required forms.

1 ~~SECTION 3. AND BE IT FURTHER ENACTED, That:~~

2 ~~(a) In this section, "manufacturing corporation" has the meaning stated in §~~
3 ~~10-402(c)(2) of the Tax—General Article.~~

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

9 ~~(1) the name, address, and phone number of the manufacturing~~
10 ~~corporation;~~

11 ~~(2) for each taxable year beginning after December 31, 2000, but before~~
12 ~~January 1, 2005:~~

13 ~~(i) whether the manufacturing corporation paid more, less, or the~~
14 ~~same amount in Maryland income tax for that taxable year as a result of using single~~
15 ~~sales factor apportionment instead of the 3-factor double-weighted sales factor~~
16 ~~apportionment formula required for corporations other than manufacturing~~
17 ~~corporations, and the amount of any Maryland income tax savings or additional~~
18 ~~Maryland income tax for the manufacturing corporation for each taxable year as a~~
19 ~~result of using single sales factor apportionment;~~

20 ~~(ii) the volume of sales in the State and worldwide for each taxable~~
21 ~~year;~~

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

24 ~~(iv) the total payroll in the State and worldwide for each taxable~~
25 ~~year;~~

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

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

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

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

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

4 (e) (1) On or before October 15, 2006, notwithstanding any confidentiality
5 requirements or other provisions of law, the Department of Business and Economic
6 Development shall prepare and submit to the Governor and, subject to § 2-1246 of the
7 State Government Article, to the General Assembly, a comprehensive report
8 evaluating the use of single sales factor apportionment by manufacturing
9 corporations and the effectiveness of the single sales factor apportionment method as
10 an economic development tool for the State that provides a summary of the
11 information provided in the reports required under subsection (b) of this section,
12 including separate summaries for each category of manufacturing corporations
13 specified in paragraph (3) of this subsection, stating:

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

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

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

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

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

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

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

28 1. the aggregate number of employees in Maryland and
29 worldwide as of December 31 of each calendar year for all corporations in each
30 category, broken down by full time positions, part time positions, and temporary
31 positions;

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

37 3. the aggregate average per employee cost for each
38 calendar year to all corporations in each category of health care coverage provided to
39 employees, in Maryland and worldwide.

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

7 (3) For each taxable year, the summary information required under this
8 subsection shall be provided separately for each of the following categories of
9 manufacturing corporations required to report to the Department under subsection
10 (b) of this section:

11 (i) the manufacturing corporations that paid less in Maryland
12 income tax on a cumulative basis over all taxable years beginning after December 31,
13 2000 but before January 1, 2005, as a result of using single sales factor
14 apportionment;

15 (ii) the manufacturing corporations that paid more in Maryland
16 income tax on a cumulative basis over all taxable years beginning after December 31,
17 2000 but before January 1, 2005, as a result of using single sales factor
18 apportionment; and

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

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

26 SECTION 4. 3. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect July 1, 2005, and shall be applicable to all taxable years beginning after
28 December 31, ~~2002~~ 2003.