
By: **Senators Pinsky, Frosh, Grosfeld, Jones, and Teitelbaum**

Introduced and read first time: February 3, 2005

Assigned to: Budget and Taxation

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 the Comptroller
8 to adopt certain regulations; defining certain terms; providing for the
9 application of this Act; and generally relating to the income tax on corporations.

10 BY adding to

11 Article - Tax - General
12 Section 10-402.1
13 Annotated Code of Maryland
14 (2004 Replacement Volume)

15 BY repealing and reenacting, with amendments,

16 Article - Tax - General
17 Section 10-811
18 Annotated Code of Maryland
19 (2004 Replacement Volume)

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

22 **Article - Tax - General**

23 10-402.1.

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

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

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

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

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

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

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

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

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

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

34 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
35 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING THAT
36 CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
37 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL MEMBERS
38 OF THE UNITARY GROUP IN THE DENOMINATORS OF THE APPORTIONMENT
39 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 10-811.

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

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That, this Act shall take effect
13 July 1, 2005, and shall be applicable to all taxable years beginning after December 31,
14 2005.