

# SENATE BILL 393

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SB 411/06 – B&T

71r0903

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By: **Senator Pinsky**  
Introduced and read first time: February 2, 2007  
Assigned to: Budget and Taxation

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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, subject to regulations of the  
5 Comptroller, certain groups of corporations shall file a combined income tax  
6 return reflecting the aggregate income tax liability of all of the members of the  
7 group; requiring the Comptroller to adopt certain regulations; defining certain  
8 terms; providing for the application of this Act; and generally relating to the  
9 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 and 2006 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Tax – General  
17 Section 10–811  
18 Annotated Code of Maryland  
19 (2004 Replacement Volume and 2006 Supplement)

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**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**10-402.1.**

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

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

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

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

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

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

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

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

(2) DETERMINE THE PART OF THE UNITARY GROUP'S MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND APPORTIONMENT FRACTION OF THE UNITARY GROUP, BASED ON NUMERATORS AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER § 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS

1 ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES  
2 OF OTHER MEMBERS OF THE UNITARY GROUP, DISREGARDING TRANSACTIONS  
3 BETWEEN MEMBERS OF THE UNITARY GROUP TO ACCURATELY REFLECT THE  
4 INCOME ALLOCABLE TO MARYLAND; AND

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

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

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

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

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

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

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

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

4                   (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§  
5 970 THROUGH 972 OF THE INTERNAL REVENUE CODE;

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

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

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

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

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

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

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  
30 corporations [shall file a separate income tax return] ENGAGED IN A UNITARY

1 BUSINESS SHALL FILE A COMBINED INCOME TAX RETURN REFLECTING THE  
2 AGGREGATE INCOME TAX LIABILITY OF ALL OF THE MEMBERS OF THE  
3 AFFILIATED GROUP THAT ARE ENGAGED IN A UNITARY BUSINESS.

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 July 1, 2007, and shall be applicable to all taxable years beginning after December 31,  
8 2007.