

HOUSE BILL 16

Q3

8lr4599

By: **Delegate Ross**

Introduced and read first time: October 29, 2007

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax Reform**

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
6 file a combined income tax return reflecting the aggregate income tax liability of
7 all of the members of the group for certain taxable years; requiring the
8 Comptroller to adopt certain regulations; requiring certain corporations under
9 certain circumstances to include with an income tax return or otherwise file
10 with the Comptroller a certain statement; defining certain terms; providing for
11 the effective date and application of this Act; and generally relating to the
12 income tax on corporations.

13 BY adding to

14 Article – Tax – General

15 Section 10–402.1

16 Annotated Code of Maryland

17 (2004 Replacement Volume and 2007 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Tax – General

20 Section 10–804(e) and 10–811

21 Annotated Code of Maryland

22 (2004 Replacement Volume and 2007 Supplement)

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.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
2 MEANINGS INDICATED.

3 (2) "TAX HAVEN" MEANS A JURISDICTION THAT, DURING THE
4 TAXABLE YEAR, IS A JURISDICTION IDENTIFIED BY THE ORGANISATION FOR
5 ECONOMIC CO-OPERATION AND DEVELOPMENT AS A TAX HAVEN OR AS HAVING
6 A HARMFUL PREFERENTIAL TAX REGIME OR IS DETERMINED BY THE
7 COMPTROLLER TO EXHIBIT THE FOLLOWING CHARACTERISTICS ESTABLISHED
8 BY THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT IN
9 ITS 1998 REPORT ENTITLED "HARMFUL TAX COMPETITION: AN EMERGING
10 GLOBAL ISSUE" AS INDICATIVE OF A TAX HAVEN OR AS INDICATIVE OF A
11 JURISDICTION HAVING A HARMFUL PREFERENTIAL TAX REGIME, REGARDLESS
12 OF WHETHER IT IS LISTED BY THE ORGANISATION FOR ECONOMIC
13 CO-OPERATION AND DEVELOPMENT AS AN UNCOOPERATIVE TAX HAVEN:

14 (I) HAS NO OR NOMINAL EFFECTIVE TAX ON THE RELEVANT
15 INCOME; AND

16 (II) 1. HAS LAWS OR PRACTICES THAT PREVENT THE
17 EFFECTIVE EXCHANGE OF INFORMATION FOR TAX PURPOSES WITH OTHER
18 GOVERNMENTS REGARDING TAXPAYERS BENEFITING FROM THE TAX REGIME;

19 2. HAS A TAX REGIME THAT LACKS TRANSPARENCY
20 IN THAT:

21 A. THE DETAILS OF LEGISLATIVE, LEGAL, OR
22 ADMINISTRATIVE PROVISIONS ARE NOT OPEN AND APPARENT OR ARE NOT
23 CONSISTENTLY APPLIED AMONG SIMILARLY SITUATED TAXPAYERS; OR

24 B. THE INFORMATION NEEDED BY TAX AUTHORITIES
25 TO DETERMINE A TAXPAYER'S CORRECT TAX LIABILITY, SUCH AS ACCOUNTING
26 RECORDS AND UNDERLYING DOCUMENTATION, IS NOT ADEQUATELY
27 AVAILABLE;

28 3. FACILITATES THE ESTABLISHMENT OF
29 FOREIGN-OWNED ENTITIES WITHOUT THE NEED FOR A LOCAL SUBSTANTIVE
30 PRESENCE OR PROHIBITS THOSE ENTITIES FROM HAVING ANY COMMERCIAL
31 IMPACT ON THE LOCAL ECONOMY;

32 4. EXPLICITLY OR IMPLICITLY EXCLUDES THE
33 JURISDICTION'S RESIDENT TAXPAYERS FROM TAKING ADVANTAGE OF THE TAX
34 REGIME'S BENEFITS OR PROHIBITS ENTERPRISES THAT BENEFIT FROM THE
35 REGIME FROM OPERATING IN THE JURISDICTION'S DOMESTIC MARKET; OR

1 **5. HAS CREATED A TAX REGIME THAT IS FAVORABLE**
2 **FOR TAX AVOIDANCE, BASED ON AN OVERALL ASSESSMENT OF RELEVANT**
3 **FACTORS, INCLUDING WHETHER THE JURISDICTION HAS A SIGNIFICANT**
4 **UNTAXED OFFSHORE FINANCIAL OR OTHER SERVICES SECTOR RELATIVE TO ITS**
5 **OVERALL ECONOMY.**

6 **(3) “UNITARY GROUP” MEANS AN AFFILIATED GROUP OF**
7 **CORPORATIONS:**

8 **(I) THAT ARE ENGAGED IN A UNITARY BUSINESS; AND**

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

11 **1. A COMMON OWNER OR OWNERS, EITHER**
12 **CORPORATE OR NONCORPORATE; OR**

13 **2. ONE OR MORE MEMBER CORPORATIONS OF THE**
14 **GROUP.**

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

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

24 **(1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE**
25 **UNITARY GROUP, BY COMBINING THE CORPORATION’S INCOME WITH THE**
26 **INCOME OF OTHER MEMBERS OF THE UNITARY GROUP, DISREGARDING**
27 **TRANSACTIONS BETWEEN MEMBERS OF THE UNITARY GROUP TO ACCURATELY**
28 **REFLECT THE INCOME OF THE UNITARY GROUP;**

29 **(2) DETERMINE THE PART OF THE UNITARY GROUP’S MARYLAND**
30 **MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO**
31 **TRADE OR BUSINESS CARRIED ON IN THE STATE USING A MARYLAND**
32 **APPORTIONMENT FRACTION OF THE UNITARY GROUP, BASED ON NUMERATORS**
33 **AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES FACTORS UNDER**
34 **§ 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE AMOUNTS**
35 **ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH THE ACTIVITIES**

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

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

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

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

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

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

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

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

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

1 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§
2 970 THROUGH 972 OF THE INTERNAL REVENUE CODE;

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

7 (VI) A CORPORATION THAT IS IN A UNITARY RELATIONSHIP
8 WITH THE TAXPAYER AND IS INCORPORATED IN OR IS DOING BUSINESS IN A TAX
9 HAVEN; AND

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

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

27 10-804.

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

30 (1) comply with the regulations of the Comptroller;

31 (2) keep the records that the Comptroller requires; and

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

1 (i) for an individual who has income tax withheld from salary,
2 wages, or other compensation for personal services, or other payments, a copy of the
3 statement from the person who withholds the tax that states:

4 1. the amount of salary, wages, or other compensation
5 for personal services paid and the income tax withheld; or

6 2. the amount of payments made and the income tax
7 withheld;

8 (ii) a copy of the federal income tax return:

9 1. for a corporation; and

10 2. if the Comptroller requests, for an individual; and

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

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

17 2. **FOR EACH MEMBER OF THE AFFILIATED GROUP**
18 **OR CONTROLLED GROUP, A STATEMENT OF THE INCOME REPORTED TO EACH**
19 **STATE AND EACH TAX HAVEN JURISDICTION AS DEFINED IN § 10-402.1 OF THIS**
20 **TITLE, THE TAX LIABILITY FOR EACH STATE AND EACH TAX HAVEN COUNTRY,**
21 **AND THE METHOD USED FOR ALLOCATING OR APPORTIONING INCOME TO EACH**
22 **STATE AND EACH TAX HAVEN COUNTRY.**

23 10-811.

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

30 (B) **THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
31 **NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 January 1, 2008, and shall be applicable to all taxable years beginning after December
3 31, 2007.