

SENATE BILL 27

Q3, Q7

8lr4601

By: **Senator King**

Introduced and read first time: October 29, 2007

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Reporting and Study**

3 FOR the purpose of establishing the Maryland Business Tax Reform Commission to
4 review and evaluate the State's current business tax structure and to make
5 certain recommendations; providing for the membership and staffing of the
6 Commission; prohibiting members of the Commission from receiving certain
7 compensation but authorizing the reimbursement of certain expenses; requiring
8 an interim report by a certain date; requiring a final report by a certain date;
9 requiring certain corporations engaged in manufacturing to submit certain
10 reports as part of their income tax returns; requiring an individual to file a copy
11 of the individual's federal income tax return with the Comptroller under certain
12 circumstances; requiring certain corporations to file certain statements with the
13 Comptroller; requiring that certain statements be treated as confidential
14 taxpayer information; requiring the Comptroller to develop and implement a
15 certain enforcement system for certain filing requirements; requiring the
16 Comptroller to publish certain names and penalties imposed for certain
17 violations; requiring the Comptroller to collect, compile, and analyze certain
18 information and to use certain information to provide certain analyses to the
19 Governor and General Assembly; requiring the Comptroller to submit certain
20 reports to the Governor and General Assembly; requiring the Comptroller to
21 adopt certain regulations; defining certain terms; providing for the termination
22 of certain provisions of this Act; and generally relating to Maryland business
23 taxes.

24 BY adding to

25 Article – Tax – General

26 Section 10-110 and 10-804.1

27 Annotated Code of Maryland

28 (2004 Replacement Volume and 2007 Supplement)

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Tax – General
2 Section 10–402(c)(2)(vi) and (vii) and 10–804(e)(3)(ii) and (iii)
3 Annotated Code of Maryland
4 (2004 Replacement Volume and 2007 Supplement)

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

7 **Article – Tax – General**

8 **10–110.**

9 (A) **THERE IS A MARYLAND BUSINESS TAX REFORM COMMISSION.**

10 (B) (1) THE COMMISSION SHALL REVIEW AND EVALUATE THE
11 STATE'S CURRENT BUSINESS TAX STRUCTURE AND MAKE SPECIFIC
12 RECOMMENDATIONS FOR CHANGES TO THE STATE'S BUSINESS TAX STRUCTURE
13 TO PROVIDE FOR FAIR AND EQUITABLE TAXATION FOR ALL CORPORATIONS AND
14 OTHER BUSINESS ENTITIES DOING BUSINESS IN THE STATE.

15 (2) THE COMMISSION'S RECOMMENDATIONS MAY INCLUDE,
16 WITHOUT LIMITATION, CHANGES SUCH AS TAX RATE CHANGES, TAX BASE
17 BROADENING MEASURES, MEASURES TO ADDRESS TAX AVOIDANCE STRATEGIES,
18 AND ELIMINATION OF INEFFECTIVE OR INEFFICIENT TAX POLICIES INTENDED
19 AS ECONOMIC DEVELOPMENT INCENTIVES.

20 (3) THE COMMISSION'S STUDY SHALL INCLUDE, AT A MINIMUM, A
21 REVIEW AND EVALUATION OF THE FOLLOWING OPTIONS FOR BUSINESS TAX
22 REFORM:

23 (I) IMPOSITION OF COMBINED REPORTING UNDER THE
24 CORPORATE INCOME TAX FOR UNITARY GROUPS OF AFFILIATED
25 CORPORATIONS;

26 (II) THE ADOPTION OF A "THROWBACK RULE" FOR
27 PURPOSES OF DETERMINING THE SALES FACTOR IN THE APPORTIONMENT OF
28 INCOME OF MULTISTATE CORPORATIONS AND OTHER POTENTIAL CHANGES IN
29 THE APPORTIONMENT OF INCOME TO THE STATE BY MULTISTATE
30 CORPORATIONS;

31 (III) THE IMPOSITION OF OTHER TYPES OF BUSINESS TAXES,
32 IN LIEU OF OR IN ADDITION TO THE CURRENT TAXES IMPOSED, INCLUDING
33 GROSS RECEIPTS TAXES, VALUE ADDED TAXES, AND ALTERNATIVE MINIMUM
34 TAXES; AND

1 (IV) IMPROVED METHODS FOR EVALUATION OF THE
2 EFFECTIVENESS AND EFFICIENCY OF TAX POLICIES INTENDED AS ECONOMIC
3 DEVELOPMENT INCENTIVES, SUCH AS TAX CREDITS, TAX EXEMPTIONS, AND
4 SINGLE SALES FACTOR APPORTIONMENT FOR MANUFACTURING
5 CORPORATIONS.

6 (C) THE COMMISSION SHALL BE COMPOSED OF 17 MEMBERS, AS
7 FOLLOWS:

13 (4) THE COMPTROLLER OF THE TREASURY, OR THE
14 COMPTROLLER'S DESIGNEE;

15 (5) THE SECRETARY OF BUSINESS AND ECONOMIC
16 DEVELOPMENT, OR THE SECRETARY'S DESIGNEE;

19 (7) THE DIRECTOR OF THE STATE DEPARTMENT OF
20 ASSESSMENTS AND TAXATION, OR THE DIRECTOR'S DESIGNEE;

21 (8) A REPRESENTATIVE OF THE MARYLAND ASSOCIATION OF
22 COUNTIES:

23 (9) A REPRESENTATIVE OF THE MARYLAND MUNICIPAL LEAGUE:

24 (10) A REPRESENTATIVE OF THE MARYLAND CHAMBER OF
25 COMMERCE; AND

28 (D) THE COMPTROLLER AND THE DEPARTMENT OF BUDGET AND
29 MANAGEMENT SHALL PROVIDE STAFF SUPPORT TO THE COMMISSION.

30 (E) A MEMBER OF THE COMMISSION:

(1) MAY NOT RECEIVE COMPENSATION; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE

(F) ON OR BEFORE DECEMBER 15, 2010, THE COMMISSION SHALL SUBMIT AN INTERIM REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.

(G) ON OR BEFORE DECEMBER 15, 2011, THE COMMISSION SHALL SUBMIT A FINAL REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Tax - General

16 10-402.

17 (c) (2) (vi) As part of its tax return for a taxable year beginning after
18 December 31, [2000 but before January 1, 2003] **2006**, each manufacturing
19 corporation that has more than 25 employees and apportions its income under this
20 paragraph shall submit a report, in the form that the Comptroller requires by
21 regulation, that describes for each taxable year as of the last day of the taxable year
22 the following:

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

31 (vii) On or before October 1, [2003] **2008**, and October 1 [, 2004]
32 **OF EACH YEAR THEREAFTER**, and notwithstanding any confidentiality

1 requirements, the Comptroller shall prepare and submit to the Governor and, subject
2 to § 2-1246 of the State Government Article, to the General Assembly, a
3 comprehensive report on the use of single sales factor apportionment by
4 manufacturing corporations that provides, at a minimum:

5 1. the number of corporations filing tax returns for the
6 taxable year that ended during the preceding calendar year that use single sales factor
7 apportionment and the number of such corporations having a Maryland income tax
8 liability for that taxable year;

9 2. the number of corporations paying less in Maryland
10 income tax for that taxable year as a result of using single sales factor apportionment
11 and the aggregate amount of Maryland income tax savings for all such corporations for
12 that taxable year as a result of using single sales factor apportionment; and

13 3. the number of corporations paying more in Maryland
14 income tax for the taxable year as a result of using single sales factor apportionment
15 and the aggregate amount of additional Maryland income tax owed by those
16 corporations for the taxable year as a result of using single sales factor apportionment.

17 10-804.

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

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

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

23 1. for a corporation;

24 **2. FOR AN INDIVIDUAL WHO REPORTS INCOME OR**
25 **LOSS FROM A SOLE PROPRIETORSHIP (SCHEDULE C OF FORM 1040) OR INCOME**
26 **OR LOSS FROM RENTAL REAL ESTATE AND ROYALTIES, PARTNERSHIPS AND S**
27 **CORPORATIONS, ESTATES AND TRUSTS, OR REAL ESTATE MORTGAGE**
28 **INVESTMENT CONDUITS (SCHEDULE E OF FORM 1040); and**

29 **[2.] 3. if the Comptroller requests, for an individual OTHER**
30 **THAN ONE DESCRIBED IN ITEM 2 OF THIS ITEM; and**

31 (iii) [if the Comptroller requests,] for a corporation [that is a
32 member of an affiliated group or controlled group under § 1504 or § 1563 of the
33 Internal Revenue Code, a statement of all intermember costs or expenses and all
34 intermember sales, exchanges, or other transactions involving tangible or intangible

1 property for the taxable year], THE STATEMENTS REQUIRED UNDER § 10-804.1 OF
2 THIS SECTION.

3 **10-804.1.**

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

6 (2) “CORPORATE GROUP” MEANS:

7 (I) AN AFFILIATED GROUP OR CONTROLLED GROUP UNDER
8 § 1504 OR § 1563 OF THE INTERNAL REVENUE CODE; OR

9 (II) AN AFFILIATED GROUP OF CORPORATIONS:

10 1. THAT IS ENGAGED IN A UNITARY BUSINESS; AND

11 2. MORE THAN 50% OF THE VOTING STOCK OF EACH
12 MEMBER OF WHICH IS DIRECTLY OR INDIRECTLY OWNED BY:

13 A. A COMMON OWNER OR COMMON OWNERS, EITHER
14 CORPORATE OR NONCORPORATE; OR

15 B. ONE OR MORE MEMBERS OF THE GROUP.

16 (3) “DOING BUSINESS IN THE STATE” INCLUDES ENGAGING IN
17 ANY OF THE FOLLOWING ACTIVITIES, WHETHER OR NOT THE CORPORATION
18 ENGAGING IN THE ACTIVITY IS SUBJECT TO THE TAX IMPOSED UNDER THIS
19 TITLE:

20 (I) OWNING OR RENTING REAL OR TANGIBLE PERSONAL
21 PROPERTY PHYSICALLY LOCATED IN THE STATE;

22 (II) HAVING EMPLOYEES, AGENTS, OR REPRESENTATIVES
23 ACTING ON THE CORPORATION’S BEHALF IN THE STATE;

24 (III) MAKING SALES OF TANGIBLE PERSONAL PROPERTY TO
25 PURCHASERS THAT TAKE POSSESSION OF THE PROPERTY IN THE STATE;

26 (IV) PERFORMING SERVICES FOR CUSTOMERS LOCATED IN
27 THE STATE;

28 (V) PERFORMING SERVICES IN THE STATE;

1 (VI) EARNING INCOME FROM INTANGIBLE PROPERTY THAT
2 HAS A BUSINESS SITUS IN THE STATE:

3 (VII) ENGAGING IN REGULAR AND SYSTEMATIC SOLICITATION
4 OF SALES IN THE STATE:

5 (VIII) BEING A GENERAL OR LIMITED PARTNER IN A
6 PARTNERSHIP ENGAGED IN ANY OF THE ACTIVITIES DESCRIBED IN ITEMS (I)
7 THROUGH (VII) OF THIS PARAGRAPH; OR

8 (IX) BEING A MEMBER OF A LIMITED LIABILITY COMPANY
9 ENGAGED IN ANY OF THE ACTIVITIES DESCRIBED IN ITEMS (I) THROUGH (VII) OF
10 THIS PARAGRAPH.

11 (4) "PUBLICLY TRADED CORPORATION" MEANS:

12 (I) A CORPORATION THAT IS REGULARLY TRADED ON AN
13 ESTABLISHED SECURITIES MARKET IN THE UNITED STATES OR A FOREIGN
14 COUNTRY; OR

15 (II) A CORPORATION MORE THAN 50% OF THE VOTING
16 STOCK OF WHICH IS OWNED, DIRECTLY OR INDIRECTLY, BY A CORPORATION,
17 TRUST, ASSOCIATION, OR OTHER BUSINESS ENTITY THAT IS REGULARLY
18 TRADED ON AN ESTABLISHED SECURITIES MARKET IN THE UNITED STATES OR
19 A FOREIGN COUNTRY.

20 **(B) EACH CORPORATION THAT IS REQUIRED TO FILE AN INCOME TAX**
21 **RETURN UNDER THIS TITLE AND IS A MEMBER OF A CORPORATE GROUP SHALL**
22 **FILE WITH THE COMPTROLLER:**

23 (1) A STATEMENT IDENTIFYING EACH MEMBER OF THE
24 CORPORATE GROUP AND STATING FOR EACH MEMBER OF THE CORPORATE
25 GROUP:

26 (I) WHETHER THE MEMBER FILED AN INCOME TAX RETURN
27 UNDER THIS TITLE FOR THE TAXABLE YEAR:

28 (II) THE TOTAL VOLUME OF SALES BY THE MEMBER
29 WORLDWIDE FOR THE TAXABLE YEAR; AND

30 (III) THE VOLUME OF SALES MADE BY THE MEMBER IN THE
31 STATE FOR THE TAXABLE YEAR, IF ANY:

32 (2) A STATEMENT:

4 (II) AS TO ANY STATE THAT REQUIRES COMBINED OR
5 CONSOLIDATED REPORTING FOR CORPORATE INCOME TAXPAYERS, LISTING
6 THE MEMBERS OF THE CORPORATE GROUP THAT ARE INCLUDED IN THE
7 COMBINED OR CONSOLIDATED GROUP FOR PURPOSES OF THE INCOME TAX
8 RETURN OR RETURNS FILED IN THAT STATE; AND

13 **(C) (1) EACH PUBLICLY TRADED CORPORATION THAT IS DOING**
14 **BUSINESS IN THE STATE SHALL FILE WITH THE COMPTROLLER A STATEMENT**
15 **CONTAINING THE FOLLOWING INFORMATION:**

16 (I) THE NAME OF THE CORPORATION AND THE STREET
17 ADDRESS OF ITS PRINCIPAL EXECUTIVE OFFICE;

18 (II) THE NAME OF ANY CORPORATION THAT OWNS,
19 DIRECTLY OR INDIRECTLY, 50% OR MORE OF THE VOTING STOCK OF THE
20 CORPORATION AND THE STREET ADDRESS OF THAT CORPORATION'S PRINCIPAL
21 EXECUTIVE OFFICE:

22 (III) THE CORPORATION'S 4-DIGIT NORTH AMERICAN
23 INDUSTRY CLASSIFICATION SYSTEM CODE NUMBER; AND

24 (IV) AS SPECIFIED BY THE COMPTROLLER, INFORMATION
25 REPORTED ON OR USED IN PREPARING THE CORPORATION'S TAX RETURN FILED
26 UNDER THIS TITLE, OR, IN THE CASE OF A CORPORATION NOT REQUIRED TO
27 FILE A TAX RETURN UNDER THIS TITLE, THE INFORMATION THAT WOULD BE
28 REQUIRED TO BE REPORTED ON OR USED IN PREPARING THE TAX RETURN IF
29 THE CORPORATION WERE REQUIRED TO FILE AN INCOME TAX RETURN.

34 (I) AN EXPLANATION OF WHY THE CORPORATION IS NOT
35 REQUIRED TO FILE A CORPORATE INCOME TAX RETURN IN THIS STATE; AND

16 (I) THE INFORMATION SPECIFIED UNDER PARAGRAPH (1)
17 OR (2) OF THIS SUBSECTION FOR EACH MEMBER OF THE CORPORATE GROUP,
18 WHETHER OR NOT THE MEMBER IS DOING BUSINESS IN THE STATE OR IS
19 REQUIRED TO FILE AN INCOME TAX RETURN UNDER THIS TITLE; AND

20 (II) OTHER INFORMATION AS SPECIFIED BY THE
21 COMPTROLLER FOR THE CORPORATION AND FOR EACH MEMBER OF ANY
22 CORPORATE GROUP OF WHICH THE CORPORATION IS A MEMBER, INCLUDING:

23 **1. THE MEMBERS OF THE CORPORATE GROUP THAT**
24 **WOULD BE INCLUDED IN THE COMBINED GROUP FOR PURPOSES OF COMBINED**
25 **REPORTING AND THE DIFFERENCE IN MARYLAND INCOME TAX THAT WOULD BE**
26 **OWED IF THE CORPORATION WERE REQUIRED TO USE COMBINED REPORTING**
27 **TO DETERMINE ITS MARYLAND INCOME TAX:**

**A. SALES OF TANGIBLE PERSONAL PROPERTY TO
THE FEDERAL GOVERNMENT; AND**

**B. SALES OF TANGIBLE PERSONAL PROPERTY
SHIPPED OR DELIVERED TO A CUSTOMER IN A STATE IN WHICH THE SELLING
CORPORATION IS NOT SUBJECT TO A STATE CORPORATE INCOME TAX OR STATE
FRANCHISE TAX MEASURED BY NET INCOME AND COULD NOT BE SUBJECT TO
SUCH A TAX IF THE STATE WERE TO IMPOSE IT;**

3. FOR ANY INCOME THAT THE TAXPAYER HAS IDENTIFIED, ON THE INCOME TAX RETURN FILED UNDER THIS TITLE OR ON AN INCOME TAX RETURN FILED IN ANY STATE, AS INCOME THAT IS NOT APPORTIONABLE:

**A. THE AMOUNT AND SOURCE OF THAT
NONAPPORTIONABLE INCOME:**

B. UNLESS THE PRINCIPAL EXECUTIVE OFFICE OF THE CORPORATION IS IN THIS STATE, THE STATE TO WHICH THAT NONAPPORTIONABLE INCOME WAS ALLOCATED; AND

C. IF THE PRINCIPAL EXECUTIVE OFFICE OF THE CORPORATION IS IN THIS STATE, THE DIFFERENCE IN TAX THAT WOULD BE OWED IF THE CORPORATION WERE REQUIRED TO ALLOCATE 100% OF THE NONAPPORTIONABLE INCOME TO MARYLAND:

4. THE FULL-TIME EQUIVALENT EMPLOYMENT OF THE CORPORATION IN THE STATE ON THE LAST DAY OF THE TAXABLE YEAR AND FOR THE 3 PREVIOUS TAXABLE YEARS: AND

5. IF THE CORPORATION IS INCORPORATED IN THE UNITED STATES OR IS AN AFFILIATE OF A CORPORATION INCORPORATED IN THE UNITED STATES, PROFITS BEFORE TAX REPORTED ON THE SECURITIES AND EXCHANGE COMMISSION FORM 10-K FOR THE CORPORATION OR THE CORPORATE GROUP OF WHICH THE CORPORATION IS A MEMBER FOR THE CORPORATE FISCAL YEAR THAT CONTAINS THE LAST DAY OF THE TAXABLE YEAR.

(D) (1) THE STATEMENTS REQUIRED UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION:

(I) SHALL BE FILED ANNUALLY ON OR BEFORE DATES SPECIFIED BY THE COMPTROLLER IN AN ELECTRONIC FORMAT AS SPECIFIED BY THE COMPTROLLER;

15 (3) THE COMPTROLLER SHALL PUBLISH THE NAME OF, AND
16 PENALTY IMPOSED ON, ANY CORPORATION FAILING TO FILE A STATEMENT
17 REQUIRED UNDER THIS SECTION OR FILING AN INACCURATE STATEMENT.

18 (E) (1) A CORPORATION SUBMITTING A STATEMENT REQUIRED
19 UNDER THIS SECTION MAY SUBMIT SUPPLEMENTAL INFORMATION THAT, IN ITS
20 SOLE JUDGMENT AND DISCRETION, COULD FACILITATE PROPER
21 INTERPRETATION OF THE INFORMATION INCLUDED IN THE STATEMENT.

32 (F) (1) THE COMPTROLLER SHALL:

33 (I) COLLECT, COMPILE, AND ANALYZE THE INFORMATION
34 SUBMITTED UNDER THIS SUBSECTION:

(II) USE THE INFORMATION SUBMITTED UNDER THIS SECTION TO PROVIDE ANALYSES AS REQUESTED BY THE GOVERNOR OR THE GENERAL ASSEMBLY RELATING TO THE CORPORATE INCOME TAX OR PROPOSALS FOR CHANGES TO THE CORPORATE INCOME TAX; AND

(III) ON OR BEFORE DECEMBER 1 OF EACH YEAR, BASED ON INFORMATION PROVIDED IN INCOME TAX RETURNS AND THE DATA SUBMITTED UNDER THIS SUBSECTION, SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY, CONCERNING THE CORPORATE INCOME TAX.

(2) THE REPORT REQUIRED UNDER THIS SUBSECTION SHALL:

(I) SUMMARIZE THE INFORMATION SUBMITTED UNDER THIS SECTION; AND

(II) PROVIDE DETAILED ANALYSES OF THE CHARACTERISTICS OF CORPORATE TAXPAYERS, INCLUDING:

1. HISTORICAL SERIES OF DATA AND DETAILED REPORTS FOR THE REPORTED YEAR;

2. THE DISTRIBUTION OF MARYLAND TAXABLE INCOME, INCOME TAX LIABILITY, AND OTHER ELEMENTS OF THE CORPORATE INCOME TAX SUCH AS TAX CREDITS, MODIFICATIONS TO INCOME, AND NET OPERATING LOSS CARRYOVERS.

(3) THE INFORMATION PROVIDED IN THE REPORT SHALL BE PROVIDED BY VARIOUS CATEGORIES, INCLUDING:

(I) BUSINESS CATEGORY; AND

(II) VARIOUS MEASURES OF SIZE, SUCH AS TAXABLE INCOME, IN-STATE AND WORLDWIDE PAYROLL, AND IN-STATE AND WORLDWIDE GROSS RECEIPTS.

(G) THE COMPTROLLER SHALL ADOPT APPROPRIATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2008. Section 1 of this Act shall remain effective for a period of 3 years and 7 months and, at the end of December 31, 2011, with no further action required by the General Assembly, Section 1 of this Act shall be abrogated and of no further force and effect.