

# SENATE BILL 444

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CF 8lr2454

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By: **Senators King, Currie, DeGrange, Edwards, Forehand, Garagiola, Jones, Kasemeyer, Kramer, Madaleno, Munson, Peters, Raskin, Robey, and Stoltzfus**

Introduced and read first time: January 31, 2008

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Reporting**

3 FOR the purpose of altering certain definitions for purposes of certain requirements  
4 for certain corporations to submit certain reports to the Comptroller; altering  
5 the reporting requirements and limiting the reporting requirements to certain  
6 taxable years; prohibiting the disclosure of certain information to certain  
7 governmental units or officials; repealing certain penalty provisions and  
8 authorizing the Comptroller to develop and implement a certain penalty system  
9 relating to certain reporting requirements; altering the due date for a certain  
10 annual report by the Comptroller; requiring a certain commission in  
11 consultation with the Comptroller to review certain requirements and  
12 definitions and submit certain recommendations to the Governor and General  
13 Assembly by a certain date; and generally relating to certain requirements for  
14 certain corporations to submit certain reports to the Comptroller.

15 BY repealing and reenacting, with amendments,  
16 Article – Tax – General  
17 Section 10–804.1  
18 Annotated Code of Maryland  
19 (2004 Replacement Volume and 2007 Supplement)  
20 (As enacted by Chapter 3 of the Acts of the General Assembly of the 2007  
21 Special Session)

22 BY repealing and reenacting, with amendments,  
23 Chapter 3 of the Acts of the General Assembly of the 2007 Special Session  
24 Section 10

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Tax – General**

2 10–804.1.

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) (I) “Corporate group” means:

5 [(i)] 1. an affiliated group or controlled group under § 1504 or  
6 § 1563 of the Internal Revenue Code; or

7 [(ii)] 2. an affiliated group of corporations:

8 [1.] A. that is engaged in a unitary business; and

9 [2.] B. more than 50% of the voting stock of each  
10 member of which is directly or indirectly owned by [:11 A.] a common owner or common owners, either corporate  
12 or [noncorporate;] **NONCORPORATE**, or13 [B.] **BY** one or more members of the group.14 (II) **“CORPORATE GROUP” DOES NOT INCLUDE ANY**  
15 **CORPORATION THAT, FOR ANY REASON, IS NOT SUBJECT TO UNITED STATES**  
16 **FEDERAL INCOME TAX.**17 (3) “Doing business in the State” [includes] **MEANS** engaging in any of  
18 the following activities, whether or not the corporation engaging in the activity is  
19 subject to the tax imposed under this title:20 (i) owning or renting real or tangible personal property  
21 physically located in the State;22 (ii) having employees, agents, or representatives acting on the  
23 corporation’s behalf in the State;24 (iii) making sales of tangible personal property to purchasers  
25 that take possession of the property in the State;26 [(iv)] regularly and systematically performing services for  
27 customers located in the State;]28 [(v)] (IV) regularly and systematically performing services in  
29 the State;

1 [(vi) earning income from intangible property that has a business  
2 situs in the State;]

3 [(vii)] (V) engaging in regular and systematic solicitation of  
4 sales in the State;

5 [(viii)] (VI) being a general or limited partner in a partnership  
6 engaged in any of the activities described in items (i) through [(vii)] (V) of this  
7 paragraph; or

8 [(ix)] (VII) being a member of a limited liability company  
9 engaged in any of the activities described in items (i) through [(vii)] (V) of this  
10 paragraph.

11 (4) "Publicly traded corporation" means:

12 (i) a corporation that is regularly traded on an established  
13 securities market in the United States or a foreign country; or

14 (ii) a corporation more than 50% of the voting stock of which is  
15 owned, directly or indirectly, by a corporation, trust, association, or other business  
16 entity that is regularly traded on an established securities market in the United  
17 States or a foreign country.

18 (b) Each corporation that is required to file an income tax return under this  
19 title and is a member of a corporate group shall file with the Comptroller[:

20 (1)] a statement identifying each member of the corporate group and  
21 stating for each member of the corporate group:

22 [(i)] (1) whether the member filed an income tax return under  
23 this title for the taxable year;

24 [(ii)] (2) the total volume of sales by the member worldwide for  
25 the taxable year; and

26 [(iii)] (3) the volume of sales made by the member in the State  
27 for the taxable year, if any[; and

28 (2) a statement:

29 (i) identifying each state other than Maryland in which any  
30 member of the corporate group filed an income tax return for the taxable year; and

31 (ii) as to any state that requires combined or consolidated  
32 reporting for corporate income taxpayers, listing the members of the corporate group

1 that are included in the combined or consolidated group for purposes of the income tax  
2 return or returns filed in that state].

3 (c) (1) Each publicly traded corporation that **IS SUBJECT TO UNITED**  
4 **STATES FEDERAL INCOME TAX AND** is doing business in the State shall file with the  
5 Comptroller a statement containing the following information:

6 (i) the name of the corporation and the street address of its  
7 principal executive office;

8 (ii) the name of any corporation that owns, directly or indirectly,  
9 50% or more of the voting stock of the corporation and the street address of that  
10 corporation's principal executive office;

11 (iii) the corporation's 6-digit North American Industry  
12 Classification System code number; and

13 (iv) as specified by the Comptroller, information reported on or  
14 used in preparing the corporation's tax return filed under this title, or, in the case of a  
15 corporation not required to file a tax return under this title, the information that  
16 would be required to be reported on or used in preparing the tax return if the  
17 corporation were required to file an income tax return.

18 (2) In lieu of the information described in paragraph (1)(iv) of this  
19 subsection, a publicly traded corporation doing business in the State but not required  
20 to file a tax return under this title may elect to provide the following information:

21 (i) an explanation of why the corporation is not required to file  
22 a corporate income tax return in this State; and

23 (ii) a statement as to whether the corporation's total gross  
24 receipts from sales to purchasers in this State for the taxable year were:

- 25 1. less than \$10,000,000;
- 26 2. at least \$10,000,000 but less than \$50,000,000;
- 27 3. at least \$50,000,000 but less than \$100,000,000;
- 28 4. at least \$100,000,000 but less than \$250,000,000; or
- 29 5. at least \$250,000,000.

30 (3) If a publicly traded corporation is a member of a corporate group  
31 and the corporate group has worldwide gross receipts for the taxable year in excess of  
32 \$100,000,000, the statement required under this subsection shall include:

1 (i) the information specified under paragraph (1) or (2) of this  
2 subsection for each member of the corporate group[, whether or not the member is  
3 doing business in the State or] **THAT** is required to file an income tax return under  
4 this title; and

5 (ii) other information as specified by the Comptroller for the  
6 corporation and for each member of any corporate group of which the corporation is a  
7 member, including:

8 1. the members of the corporate group that would be  
9 included in the combined group using the “water’s edge” method for purposes of  
10 combined reporting and the difference in Maryland income tax that would be owed if  
11 the corporation were required to use combined reporting using the “water’s edge”  
12 method to determine its Maryland income tax;

13 2. the sales factor that would be calculated for this State  
14 and the difference in Maryland income tax that would be owed if the corporation were  
15 required to include in the numerator of the sales factor for purposes of apportioning  
16 income to the State all sales of property shipped from an office, store, warehouse,  
17 factory, or other place of storage in this State where:

18 A. the purchaser is the federal government; and

19 B. the property is shipped or delivered to a customer in a  
20 state in which the selling corporation is not subject to a state corporate income tax or  
21 state franchise tax measured by net income and could not be subjected to such a tax if  
22 the state were to impose it;

23 3. for any income that the taxpayer has identified[, on  
24 the income tax return filed under this title or on an income tax return filed in any  
25 state,] as income that is **NONOPERATIONAL AND THEREFORE** not apportionable:

26 A. the amount and source of that [nonapportionable]  
27 **NONOPERATIONAL** income; **AND**

28 [B. unless the principal executive office of the corporation  
29 is in this State, the state to which that nonapportionable income was allocated; and]

30 [C.] **B.** if the [principal executive office] **COMMERCIAL**  
31 **DOMICILE** of the corporation is in this State, the difference in tax that would be owed  
32 if the corporation were required to allocate 100% of the [nonapportionable]  
33 **NONOPERATIONAL** income to [Maryland;] **MARYLAND TO THE FULLEST EXTENT**  
34 **ALLOWED UNDER THE UNITED STATES CONSTITUTION; AND**

1                   4.     the full-time equivalent employment of the  
2 corporation in the State on the last day of the taxable year and for the 3 previous  
3 taxable years[; and

4                   5.     if the corporation is incorporated in the United States  
5 or is an affiliate of a corporation incorporated in the United States, profits before tax  
6 reported on the Securities and Exchange Commission Form 10-K for the corporation  
7 or the corporate group of which the corporation is a member for the corporate fiscal  
8 year that contains the last day of the taxable year].

9                   **(4) IN LIEU OF THE INFORMATION REQUIRED UNDER**  
10 **PARAGRAPHS (1) THROUGH (3) OF THIS SUBSECTION, A CORPORATION MAY:**

11                   **(I) PROVIDE A COPY OF A “WATER’S EDGE” COMBINED**  
12 **REPORT CALCULATION FILED IN ACCORDANCE WITH ANOTHER STATE’S**  
13 **COMBINED REPORTING INCOME TAX REQUIREMENTS, BUT REFLECTING THE**  
14 **MARYLAND APPORTIONMENT FACTOR NUMERATORS; AND**

15                   **(II) IDENTIFY THE DIFFERENCE IN THE MARYLAND TAX**  
16 **AMOUNT THAT WOULD BE OWED IF THE CORPORATION WERE REQUIRED TO USE**  
17 **THE OTHER STATE’S COMBINED REPORTING REQUIREMENTS TO DETERMINE ITS**  
18 **MARYLAND INCOME TAX.**

19                   (d)   (1)   The statements required under subsections (b) and (c) of this  
20 section:

21                   (i)   shall be filed annually, for all taxable years beginning after  
22 December 31, 2005, **BUT BEFORE JANUARY 1, 2011**, on or before dates specified by  
23 the Comptroller in an electronic format as specified by the Comptroller;

24                   (ii) shall be:

25                   1.   made under oath and signed in the same manner as  
26 required for income tax returns under § 10-804 of this subtitle; and

27                   2.   subject to audit by the Comptroller in the course of  
28 and under the normal procedures applicable to corporate income tax return audits;  
29 and

30                   (iii) notwithstanding any other provision of law, shall be treated  
31 as confidential taxpayer information subject to Title 13, Subtitle 2 of this article.

32                   **(2) INFORMATION CONTAINED IN THE STATEMENTS SUBMITTED**  
33 **UNDER THIS SECTION MAY NOT BE DISCLOSED TO ANY UNIT OR OFFICIAL OF**  
34 **THE FEDERAL GOVERNMENT OR OF ANY OTHER STATE OR LOCAL GOVERNMENT.**

1            [(2)] (3)        The statements required under this section for the members  
2 of a corporate group shall be submitted by the corporate group in one combined report  
3 that includes the information required under subsections (b) and (c) of this section for  
4 all members of the corporate group.

5            [(3)] (4)        The Comptroller shall develop and implement an oversight  
6 **AND PENALTY** system to ensure that corporations doing business in the State,  
7 including those not required to file a return under this title, provide the required  
8 disclosure statements in a timely and accurate manner.

9            [(4)    A person who is required to file a statement under this section who  
10 willfully fails to file the statement or who files a false statement is guilty of a  
11 misdemeanor and, on conviction, is subject to a fine not exceeding \$10,000 or  
12 imprisonment not exceeding 5 years or both.]

13            (5)        The Comptroller shall publish the name of, and penalty imposed  
14 on, any corporation failing to file a statement required under this section or filing an  
15 inaccurate statement.

16            (e)    (1)    A corporation submitting a statement required under this section  
17 may submit supplemental information that, in its sole judgment and discretion, could  
18 facilitate proper interpretation of the information included in the statement.

19            (2)    A corporation shall file a supplemental statement under this  
20 section within 60 days after:

21                    (i)    the corporation files an amended tax return under this title;  
22 or

23                    (ii)   the corporation's tax liability for a tax year is changed as the  
24 result of an audit adjustment or final determination of liability by the Comptroller or  
25 by a court of law.

26            (f)    (1)    The Comptroller shall:

27                    (i)    collect, compile, and analyze the information submitted  
28 under this section;

29                    (ii)   use the information submitted under this section to provide  
30 analyses as requested by the Governor or the General Assembly relating to the  
31 corporate income tax or proposals for changes to the corporate income tax; and

32                    (iii) on or before [December] **MARCH** 1 of each year, based on  
33 information provided in income tax returns and the data submitted under this  
34 subsection, submit a report to the Governor and, subject to § 2-1246 of the State  
35 Government Article, to the General Assembly, concerning the corporate income tax.

- 1           (2)    The report required under this subsection shall:
- 2                           (i)    summarize the information submitted under this section;
- 3 and
- 4                           (ii)   provide detailed analyses of the characteristics of corporate
- 5 taxpayers, including:
- 6                               1.    historical series of data and detailed reports for the
- 7 reported year; and
- 8                               2.    the distribution of Maryland taxable income, income
- 9 tax liability, and other elements of the corporate income tax such as tax credits,
- 10 modifications to income, and net operating loss carryovers.
- 11           (3)    The information provided in the report shall be provided by various
- 12 categories, including:
- 13                           (i)    business category; and
- 14                           (ii)   various measures of size, such as taxable income, in-State
- 15 and worldwide payroll, and in-State and worldwide gross receipts.
- 16           (g)    The Comptroller shall adopt appropriate regulations to implement the
- 17 provisions of this section.

### 18                           **Chapter 3 of the Acts of the 2007 Special Session**

19           SECTION 10. AND BE IT FURTHER ENACTED, That, notwithstanding any

20 other provision of law, [except as otherwise provided in regulations that the

21 Comptroller adopts,] the reports and statements required for a taxable year beginning

22 before January 1, 2007, under §§ 10-402(c)(2)(vi) and 10-804.1 of the Tax – General

23 Article as enacted by Section 6 of this Act shall be submitted as part of a corporation's

24 tax return for the corporation's next taxable year beginning after December 31, 2006,

25 and shall be reflected in the Comptroller's reports to be submitted in **DECEMBER OF**

26 **2008 AND MARCH OF 2009** to the Governor and General Assembly under §§

27 10-402(c)(vii) and 10-804.1 of the Tax – General Article.

28           SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December

29 15, 2008, the Maryland Business Tax Reform Commission established under § 10-110

30 of the Tax – General Article, in consultation with the Comptroller, shall review the

31 requirements and definitions under § 10-804.1 of the Tax – General Article, as

32 enacted by Section 1 of this Act, and submit its recommendations for any changes to

33 that section to the Governor and, subject to § 2-1246 of the State Government Article,

34 to the General Assembly.



1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2    July 1, 2008.