

SENATE BILL 444

Q3

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CF HB 664

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

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 21, 2008

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of altering the membership of a certain business tax study
4 commission; limiting to certain taxable years a requirement for certain
5 corporations engaged in manufacturing to submit certain reports as part of
6 their income tax returns; altering the circumstances under which an individual
7 is required to attach to an income tax return or otherwise file with the
8 Comptroller a copy of the individual's federal income tax return; altering ~~certain~~
9 definitions a certain definition and repealing certain definitions for purposes of
10 certain requirements for certain corporations to submit certain reports to the
11 Comptroller; altering the reporting requirements and limiting the reporting
12 requirements to certain taxable years; ~~prohibiting the disclosure of certain~~
13 ~~information to certain governmental units or officials;~~ repealing certain penalty
14 provisions and authorizing the Comptroller to develop and implement a certain
15 penalty system relating to certain reporting requirements; altering the due date
16 for ~~a~~ certain annual ~~report~~ reports by the Comptroller; requiring a certain
17 commission in consultation with the Comptroller to review certain requirements
18 and definitions and submit certain recommendations to the Governor and
19 General Assembly by a certain date; and generally relating to certain
20 requirements for certain ~~corporations~~ persons to submit certain reports to the
21 Comptroller.

22 BY repealing and reenacting, with amendments,
23 Article – Tax – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (12) A REPRESENTATIVE OF AN ORGANIZATION THAT REPRESENTS
2 MARYLAND MANUFACTURERS, APPOINTED BY THE GOVERNOR; AND

3 [(11)] (13) three members of the public, each of whom shall be an
4 attorney at law or an accountant knowledgeable about the State's business tax
5 structure, appointed by the Governor.

6 10-402.

7 (c) (2) (vi) As part of its tax return for a taxable year beginning after
8 December 31, 2005, BUT BEFORE JANUARY 1, 2011, each manufacturing corporation
9 that has more than 25 employees and apportions its income under this paragraph
10 shall submit a report, in the form that the Comptroller requires by regulation, that
11 describes for each taxable year as of the last day of the taxable year the following:

12 1. the difference in tax owed as a result of using the
13 single sales factor apportionment method under this paragraph as compared to the tax
14 owed using the 3-factor double weighted sales factor apportionment method in effect
15 for the last taxable year beginning on or before December 31, 2000;

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

17 3. taxable income in the State and worldwide; and

18 4. book value of plant, land, and equipment in the State
19 and worldwide.

20 (vii) On or before [December 1, 2008] MARCH 1, 2009, and
21 [December] MARCH 1 of each year thereafter, and notwithstanding any
22 confidentiality requirements, the Comptroller shall prepare and submit to the
23 Governor and, subject to § 2-1246 of the State Government Article, to the General
24 Assembly, a comprehensive report on the use of single sales factor apportionment by
25 manufacturing corporations that provides, at a minimum:

26 1. the number of corporations filing tax returns for the
27 taxable year that ended during the SECOND preceding calendar year that use single
28 sales factor apportionment and the number of such corporations having a Maryland
29 income tax liability for that taxable year;

30 2. the number of corporations paying less in Maryland
31 income tax for that taxable year as a result of using single sales factor apportionment
32 and the aggregate amount of Maryland income tax savings for all such corporations for
33 that taxable year as a result of using single sales factor apportionment; and

34 3. the number of corporations paying more in Maryland
35 income tax for the taxable year as a result of using single sales factor apportionment

1 and the aggregate amount of additional Maryland income tax owed by those
 2 corporations for the taxable year as a result of using single sales factor apportionment.

3 ~~10-804.1. 10-804.~~

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

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

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

9 1. for a corporation; AND

10 2. [for an individual who reports income or loss from a
 11 sole proprietorship (Schedule C of Form 1040) or income or loss from rental real estate
 12 and royalties, partnerships and S corporations, estates and trusts, or real estate
 13 mortgage investment conduits (Schedule E of Form 1040); and

14 3.] if the Comptroller requests, for an individual [other
 15 than one described in item 2 of this item];

16 ~~10-804.1.~~

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

18 ~~(2)~~ ~~(1)~~ "Corporate:

19 (1) ~~CORPORATE~~ "CORPORATE group" means:

20 ~~{(i)}~~ ~~1.~~ an affiliated group or controlled group under § 1504 or
 21 § 1563 of the Internal Revenue Code; or

22 ~~{(ii)}~~ ~~2.~~ an affiliated group of corporations:

23 ~~{1.}~~ ~~A.~~ that is engaged in a unitary business; and

24 ~~{2.}~~ ~~B.~~ more than 50% of the voting stock of each
 25 member of which is directly or indirectly owned by[:

26 A.] a common owner or common owners, either corporate
 27 or [noncorporate;] ~~NONCORPORATE~~, or

28 [B.] ~~BY~~ one or more members of the group; AND

1 ~~(H)~~ (2) ~~“CORPORATE CORPORATE GROUP” DOES NOT~~
 2 INCLUDE:

3 ~~1.~~ (I) ANY CORPORATION THAT, FOR ANY REASON, IS
 4 NOT SUBJECT TO UNITED STATES FEDERAL INCOME TAX;

5 ~~2.~~ (II) AN INSURER AS DEFINED IN § 1-101 OF THE
 6 INSURANCE ARTICLE; OR

7 ~~3.~~ (III) A REGULATED INVESTMENT COMPANY, AS
 8 DEFINED IN § 851(A) OF THE INTERNAL REVENUE CODE.

9 ~~(3)~~ ~~“Doing business in the State” [includes] MEANS engaging in any of~~
 10 ~~the following activities, whether or not the corporation engaging in the activity is~~
 11 ~~subject to the tax imposed under this title:~~

12 ~~(i)~~ ~~owning or renting real or tangible personal property~~
 13 ~~physically located in the State;~~

14 ~~(ii)~~ ~~having employees, agents, or representatives acting on the~~
 15 ~~corporation’s behalf in the State;~~

16 ~~(iii)~~ ~~making sales of tangible personal property to purchasers~~
 17 ~~that take possession of the property in the State;~~

18 ~~[(iv) regularly and systematically performing services for~~
 19 ~~customers located in the State;]~~

20 ~~[(v)] (IV)~~ ~~regularly and systematically performing services in~~
 21 ~~the State;~~

22 ~~[(vi) earning income from intangible property that has a business~~
 23 ~~situs in the State;]~~

24 ~~[(vii)] (V)~~ ~~engaging in regular and systematic solicitation of~~
 25 ~~sales in the State;~~

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

29 ~~[(ix)] (VII)~~ ~~being a member of a limited liability company~~
 30 ~~engaged in any of the activities described in items (i) through [(vii)] (V) of this~~
 31 ~~paragraph.~~

32 ~~(4)~~ ~~“Publicly traded corporation” means:~~

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

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

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

9 ~~(1) a statement identifying each member of the corporate group and~~
10 ~~stating for each member of the corporate group:~~

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

13 ~~[(ii)] (2) the total volume of sales by the member worldwide for~~
14 ~~the taxable year; and~~

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

17 ~~(2) a statement:~~

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

20 ~~(ii) as to any state that requires combined or consolidated~~
21 ~~reporting for corporate income taxpayers, listing the members of the corporate group~~
22 ~~that are included in the combined or consolidated group for purposes of the income tax~~
23 ~~return or returns filed in that state].~~

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

27 ~~(i) the name of the corporation and the street address of its~~
28 ~~principal executive office;~~

29 ~~(ii) the name of any corporation that owns, directly or indirectly,~~
30 ~~50% or more of the voting stock of the corporation and the street address of that~~
31 ~~corporation's principal executive office;~~

32 ~~(iii) the corporation's 6-digit North American Industry~~
33 ~~Classification System code number; and~~

1 ~~(iv) as specified by the Comptroller, information reported on or~~
2 ~~used in preparing the corporation's tax return filed under this title, or, in the case of a~~
3 ~~corporation not required to file a tax return under this title, the information that~~
4 ~~would be required to be reported on or used in preparing the tax return if the~~
5 ~~corporation were required to file an income tax return.~~

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

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

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

13 ~~1. less than \$10,000,000;~~

14 ~~2. at least \$10,000,000 but less than \$50,000,000;~~

15 ~~3. at least \$50,000,000 but less than \$100,000,000;~~

16 ~~4. at least \$100,000,000 but less than \$250,000,000; or~~

17 ~~5. at least \$250,000,000.~~

18 ~~(3) If a publicly traded corporation is a member of a corporate group~~
19 ~~and the corporate group has worldwide gross receipts for the taxable year in excess of~~
20 ~~\$100,000,000, the statement required under this subsection shall include:~~

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

25 ~~(ii) other information as specified by the Comptroller for the~~
26 ~~corporation and for each member of any corporate group of which the corporation is a~~
27 ~~member, including:~~

28 ~~1. the members of the corporate group that would be~~
29 ~~included in the combined group using the "water's edge" method for purposes of~~
30 ~~combined reporting and the difference in Maryland income tax that would be owed if~~
31 ~~the corporation were required to use combined reporting using the "water's edge"~~
32 ~~method to determine its Maryland income tax;~~

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

~~A. the purchaser is the federal government; and~~

~~B. the property is 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 subjected 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 **NONOPERATIONAL AND THEREFORE** not apportionable:~~

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

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

~~[C.] **B.** if the [principal executive office] **COMMERCIAL DOMICILE** 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] **NONOPERATIONAL** income to [Maryland;] **MARYLAND TO THE FULLEST EXTENT ALLOWED UNDER THE UNITED STATES CONSTITUTION; AND**~~

~~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].~~

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

~~(i) **(1) PROVIDE A COPY OF A A PRO FORMA “WATER’S EDGE” COMBINED REPORT CALCULATION CORPORATE INCOME TAX RETURN FILED IN ACCORDANCE WITH ANOTHER STATE’S COMBINED REPORTING INCOME TAX**~~

1 ~~REQUIREMENTS, BUT REFLECTING THE MARYLAND APPORTIONMENT FACTOR~~
 2 ~~NUMERATORS; AND~~

3 ~~(H) IDENTIFY THE DIFFERENCE IN THE MARYLAND TAX~~
 4 ~~AMOUNT THAT WOULD BE OWED IF THE CORPORATION WERE REQUIRED TO USE~~
 5 ~~THE OTHER STATE'S COMBINED REPORTING REQUIREMENTS TO DETERMINE ITS~~
 6 ~~MARYLAND INCOME TAX REGULATIONS ADOPTED BY THE COMPTROLLER; AND~~

7 (2) IN A FORMAT SPECIFIED BY THE COMPTROLLER:

8 (I) THE SALES FACTOR THAT WOULD BE CALCULATED FOR
 9 THIS STATE AND THE DIFFERENCE IN MARYLAND INCOME TAX THAT WOULD BE
 10 OWED IF THE CORPORATION WERE REQUIRED TO INCLUDE IN THE NUMERATOR
 11 OF THE SALES FACTOR FOR PURPOSES OF APPORTIONING INCOME TO THE
 12 STATE ALL SALES OF PROPERTY SHIPPED FROM AN OFFICE, STORE,
 13 WAREHOUSE, FACTORY, OR OTHER PLACE OF STORAGE IN THIS STATE WHERE:

14 1. THE PURCHASER IS THE FEDERAL GOVERNMENT;
 15 OR

16 2. THE PROPERTY IS SHIPPED OR DELIVERED TO A
 17 CUSTOMER IN A STATE IN WHICH THE SELLING CORPORATION IS NOT SUBJECT
 18 TO A STATE CORPORATE INCOME TAX OR STATE FRANCHISE TAX MEASURED BY
 19 NET INCOME AND COULD NOT BE SUBJECTED TO SUCH A TAX IF THE STATE
 20 WERE TO IMPOSE IT; AND

21 (II) FOR ANY INCOME THAT THE TAXPAYER HAS IDENTIFIED,
 22 ON THE INCOME TAX RETURN FILED UNDER THIS TITLE OR ON AN INCOME TAX
 23 RETURN FILED IN ANY STATE, AS INCOME THAT IS NONOPERATIONAL AND
 24 THEREFORE NOT APPORTIONABLE:

25 1. THE AMOUNT AND SOURCE OF THAT
 26 NONOPERATIONAL INCOME; AND

27 2. IF THE COMMERCIAL DOMICILE OF THE
 28 CORPORATION IS IN THIS STATE, THE DIFFERENCE IN TAX THAT WOULD BE
 29 OWED IF THE CORPORATION WERE REQUIRED TO ALLOCATE 100% OF THE
 30 NONOPERATIONAL INCOME TO MARYLAND TO THE FULLEST EXTENT ALLOWED
 31 UNDER THE UNITED STATES CONSTITUTION.

32 ~~(d)~~ (C) (1) The statements required under ~~subsections (b) and (e)~~
 33 SUBSECTION (B) of this section:

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

4 (ii) shall be:

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

7 2. subject to audit by the Comptroller in the course of
8 and under the normal procedures applicable to corporate income tax return audits;
9 and

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

12 ~~(2) INFORMATION CONTAINED IN THE STATEMENTS SUBMITTED~~
13 ~~UNDER THIS SECTION MAY NOT BE DISCLOSED TO ANY UNIT OR OFFICIAL OF~~
14 ~~THE FEDERAL GOVERNMENT OR OF ANY OTHER STATE OR LOCAL GOVERNMENT.~~

15 ~~[(2)] (3) The statements required under this section for the members~~
16 ~~of a corporate group shall be submitted by the corporate group in one combined report~~
17 ~~that includes the information required under subsections (b) and (c) of this section for~~
18 ~~all members of the corporate group.~~

19 ~~[(3)] (4) (2)~~ The Comptroller shall develop and implement an oversight
20 **AND PENALTY** system to ensure that corporations ~~doing business in the State,~~
21 ~~including those not required to file a return under this title,~~ provide the required
22 disclosure statements in a timely and accurate manner.

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

27 ~~(5) (3)~~ The Comptroller shall publish the name of, and penalty imposed
28 on, any corporation failing to file a statement required under this section or filing an
29 inaccurate statement.

30 ~~(e) (D)~~ (1) A corporation submitting a statement required under this
31 section may submit supplemental information that, in its sole judgment and
32 discretion, could facilitate proper interpretation of the information included in the
33 statement.

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

1 (i) the corporation files an amended tax return under this title;
2 or

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

6 ~~(E)~~ (E) (1) The Comptroller shall:

7 (i) collect, compile, and analyze the information submitted
8 under this section;

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

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

16 (2) The report required under this subsection shall:

17 (i) summarize the information submitted under this section;
18 and

19 (ii) provide detailed analyses of the characteristics of corporate
20 taxpayers, including:

21 1. historical series of data and detailed reports for the
22 reported year; and

23 2. the distribution of Maryland taxable income, income
24 tax liability, and other elements of the corporate income tax such as tax credits,
25 modifications to income, and net operating loss carryovers.

26 (3) The information provided in the report shall be provided by various
27 categories, including:

28 (i) business category; and

29 (ii) various measures of size, such as taxable income, in-State
30 and worldwide payroll, and in-State and worldwide gross receipts.

31 ~~(F)~~ (F) The Comptroller shall adopt appropriate regulations to implement the
32 provisions of this section.

1 **Chapter 3 of the Acts of the 2007 Special Session**

2 SECTION 10. AND BE IT FURTHER ENACTED, That, notwithstanding any
 3 other provision of law, [except as otherwise provided in regulations that the
 4 Comptroller adopts,] the reports and statements required for a taxable year beginning
 5 before January 1, 2007, under §§ 10-402(c)(2)(vi) and 10-804.1 of the Tax – General
 6 Article as enacted by Section 6 of this Act shall be submitted as part of a corporation's
 7 tax return for the corporation's next taxable year beginning after December 31, 2006,
 8 and shall be reflected in the Comptroller's reports to be submitted in ~~DECEMBER OF~~
 9 ~~2008 AND~~ **MARCH OF 2009** to the Governor and General Assembly under §§
 10 10-402(c)(vii) and 10-804.1 of the Tax – General Article.

11 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December
 12 15, 2008, the Maryland Business Tax Reform Commission established under § 10-110
 13 of the Tax – General Article, in consultation with the Comptroller, shall review the
 14 requirements and definitions under § 10-804.1 of the Tax – General Article, as
 15 enacted by Section 1 of this Act, and submit its recommendations for any changes to
 16 that section to the Governor and, subject to § 2-1246 of the State Government Article,
 17 to the General Assembly.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.