

# HOUSE BILL 1244

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CF SB 603

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By: **Delegate Ross**

Introduced and read first time: February 13, 2009

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Rate Reduction and Reform**

3 FOR the purpose of altering the State income tax rate on the Maryland taxable income  
4 of corporations for certain taxable years; requiring certain corporations to  
5 compute Maryland taxable income using a certain method; allowing certain  
6 corporations to claim a credit against the State income tax in a certain amount  
7 for certain taxable years; altering a provision limiting to certain taxable years  
8 certain requirements for certain corporations to file certain statements with the  
9 Comptroller; requiring the Comptroller to make certain estimates and include  
10 certain estimates in a certain report; providing that, subject to regulations of  
11 the Comptroller, certain groups of corporations shall file a combined income tax  
12 return reflecting the aggregate income tax liability of all of the members of the  
13 group; requiring the Comptroller to adopt certain regulations; requiring certain  
14 regulations to be consistent with certain regulations adopted by the Multistate  
15 Tax Commission; defining certain terms; stating the intent of the General  
16 Assembly that certain legislation be adopted in a certain year to permanently  
17 reduce the corporate income tax rate; providing for the application of this Act;  
18 and generally relating to the Maryland corporate income tax.

19 BY repealing and reenacting, with amendments,  
20 Article – Tax – General  
21 Section 10–105(b), 10–804.1(c)(1)(i), and 10–811  
22 Annotated Code of Maryland  
23 (2004 Replacement Volume and 2008 Supplement)

24 BY adding to  
25 Article – Tax – General  
26 Section 10–402.1, 10–728, and 10–804.1(e)(4)  
27 Annotated Code of Maryland  
28 (2004 Replacement Volume and 2008 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,  
2 Article – Tax – General  
3 Section 10–804.1(e)(1)  
4 Annotated Code of Maryland  
5 (2004 Replacement Volume and 2008 Supplement)

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

8 **Article – Tax – General**

9 10–105.

10 (b) (1) [The] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
11 **SUBSECTION, THE** State income tax rate for a corporation is 8.25% of Maryland  
12 taxable income.

13 (2) **FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31,**  
14 **2010, BUT BEFORE JANUARY 1, 2012, THE STATE INCOME TAX RATE FOR A**  
15 **CORPORATION IS THE REVISED RATE DETERMINED BY THE COMPTROLLER**  
16 **UNDER § 10–804.1(C)(4) OF THIS TITLE.**

17 **10–402.1.**

18 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
19 **MEANINGS INDICATED.**

20 (2) **“COMBINED GROUP” MEANS:**

21 (I) **ALL MEMBERS OF A UNITARY GROUP THAT ARE**  
22 **SUBJECT TO THE INCOME TAX OR WOULD BE SUBJECT TO THE INCOME TAX IF**  
23 **DOING BUSINESS IN THE STATE; AND**

24 (II) **OTHER MEMBERS OF THE UNITARY GROUP NOT**  
25 **DESCRIBED IN ITEM (I) OF THIS PARAGRAPH UNDER THE CIRCUMSTANCES AND**  
26 **TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER**  
27 **TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME OF ANY**  
28 **MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.**

29 (3) **“UNITARY GROUP” MEANS AN AFFILIATED GROUP OF**  
30 **CORPORATIONS:**

31 (I) **THAT IS ENGAGED IN A UNITARY BUSINESS; AND**

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

1                   1.     A COMMON OWNER OR COMMON OWNERS, EITHER  
2 CORPORATE OR NONCORPORATE; OR

3                   2.     ONE OR MORE MEMBER CORPORATIONS OF THE  
4 GROUP.

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

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

14                   (1)     DETERMINE THE MARYLAND MODIFIED INCOME OF THE  
15 COMBINED GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE  
16 INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING  
17 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT  
18 CLEARLY THE INCOME OF THE COMBINED GROUP;

19                   (2)     DETERMINE THE PART OF THE COMBINED GROUP'S  
20 MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY  
21 ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A  
22 MARYLAND APPORTIONMENT FRACTION OF THE COMBINED GROUP, BASED ON  
23 NUMERATORS AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES  
24 FACTORS UNDER § 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE  
25 AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH THE  
26 ACTIVITIES OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING  
27 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT  
28 CLEARLY THE INCOME ALLOCABLE TO MARYLAND; AND

29                   (3)     FOR EACH MEMBER OF THE COMBINED GROUP THAT IS  
30 SUBJECT TO THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE  
31 AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION TO THAT  
32 CORPORATION BY MULTIPLYING THE AMOUNT DETERMINED UNDER ITEM (2) OF  
33 THIS SUBSECTION BY A FRACTION:

34                           (i)     THE NUMERATOR OF WHICH IS THE MARYLAND  
35 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING  
36 THAT CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE  
37 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL

1 MEMBERS OF THE COMBINED GROUP IN THE DENOMINATORS OF THE  
2 APPORTIONMENT FORMULA; AND

3 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE  
4 MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED  
5 GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.

6 (D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER,  
7 A CORPORATION THAT IS PART OF A COMBINED GROUP MAY ELECT TO  
8 DETERMINE ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO TRADE OR  
9 BUSINESS IN THE STATE USING A WATER'S EDGE METHOD AS DESCRIBED IN  
10 THIS SUBSECTION.

11 (2) UNDER THE WATER'S EDGE METHOD, THE COMBINED GROUP  
12 FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS  
13 SECTION SHALL INCLUDE ONLY THE FOLLOWING AFFILIATED ENTITIES:

14 (I) CORPORATIONS THAT ARE INCORPORATED IN THE  
15 UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§  
16 931 THROUGH 936 OF THE INTERNAL REVENUE CODE;

17 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS  
18 DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND  
19 FOREIGN SALES CORPORATIONS AS DESCRIBED IN §§ 921 THROUGH 927 OF THE  
20 INTERNAL REVENUE CODE;

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

24 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§  
25 970 THROUGH 972 OF THE INTERNAL REVENUE CODE;

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

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

32 1. A CORPORATION NOT DESCRIBED IN ITEMS (I)  
33 THROUGH (V) OF THIS PARAGRAPH, TO THE EXTENT OF ITS INCOME DERIVED  
34 FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS  
35 FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR

1                   **2. AN AFFILIATED CORPORATION THAT IS A**  
2 **CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL**  
3 **REVENUE CODE.**

4                   **(3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE**  
5 **TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,**  
6 **INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO**  
7 **PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME FOR ANY**  
8 **PERIOD.**

9                   **(E) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**  
10 **NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.**

11                   **(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL**  
12 **BE CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF**  
13 **A UNITARY BUSINESS" (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX**  
14 **COMMISSION.**

15 **10-728.**

16                   **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, FOR A**  
17 **TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2008, BUT BEFORE**  
18 **JANUARY 1, 2011, A CORPORATION MAY CLAIM A CREDIT AGAINST THE STATE**  
19 **INCOME TAX IN AN AMOUNT EQUAL TO THE LESSER OF:**

20                   **(1) \$2,000; OR**

21                   **(2) THE STATE INCOME TAX FOR THAT TAXABLE YEAR,**  
22 **CALCULATED BEFORE APPLICATION OF THE CREDITS ALLOWED UNDER THIS**  
23 **SECTION AND §§ 10-701 AND 10-701.1 OF THIS SUBTITLE BUT AFTER**  
24 **APPLICATION OF ANY OTHER CREDITS ALLOWED UNDER THIS SUBTITLE.**

25                   **(B) FOR ANY TAXABLE YEAR, THE CREDIT UNDER THIS SECTION IS NOT**  
26 **ALLOWED TO A CORPORATION THAT IS A MEMBER OF A UNITARY GROUP, AS**  
27 **DEFINED IN § 10-402.1 OF THIS TITLE, THE MEMBERS OF WHICH, IN THE**  
28 **AGGREGATE, HAVE MORE THAN 250 EMPLOYEES IN THE STATE ON THE LAST**  
29 **DAY OF THE CORPORATION'S TAXABLE YEAR.**

30                   **(C) THE UNUSED AMOUNT OF THE CREDIT UNDER THIS SECTION FOR**  
31 **ANY TAXABLE YEAR MAY NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.**

32 **10-804.1.**

1 (c) (1) The statements required under subsection (b) of this section:

2 (i) shall be filed annually, for all taxable years beginning after  
3 December 31, 2005, but before January 1, [2011] **2009**, on or before dates specified by  
4 the Comptroller in an electronic format as specified by the Comptroller;

5 (e) (1) The Comptroller shall:

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

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

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

15 (4) (I) **ON OR BEFORE MARCH 1, 2010, BASED ON THE**  
16 **INFORMATION SUBMITTED UNDER THIS SECTION AND ANY OTHER AVAILABLE**  
17 **INFORMATION, THE COMPTROLLER SHALL ESTIMATE:**

18 **1. THE TOTAL ADDITIONAL INCOME TAX REVENUE**  
19 **FROM CORPORATIONS FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31,**  
20 **2010, BUT BEFORE JANUARY 1, 2012, THAT WOULD BE COLLECTED AS A RESULT**  
21 **OF THE REQUIREMENT UNDER § 10-402.1 OF THIS TITLE THAT MEMBERS OF**  
22 **COMBINED GROUPS COMPUTE MARYLAND TAXABLE INCOME USING THE**  
23 **COMBINED REPORTING METHOD; AND**

24 **2. A REVISED STATE INCOME TAX RATE FOR**  
25 **CORPORATIONS FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2010,**  
26 **BUT BEFORE JANUARY 1, 2012, THAT WOULD RETURN 60% OF THE AMOUNT**  
27 **ESTIMATED UNDER ITEM 1 OF THIS SUBPARAGRAPH TO CORPORATE INCOME**  
28 **TAXPAYERS.**

29 (II) **THE REVISED STATE INCOME TAX RATE FOR**  
30 **CORPORATIONS DETERMINED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH**  
31 **SHALL BE ROUNDED TO THE NEAREST TWENTIETH OF A PERCENT.**

32 (III) **THE COMPTROLLER SHALL INCLUDE THE ESTIMATES**  
33 **REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN THE REPORT**  
34 **SUBMITTED UNDER THIS SECTION IN 2010.**

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

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

9           SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the  
10 General Assembly that legislation shall be adopted by the General Assembly in 2011  
11 that will permanently reduce the State income tax rate for corporations for taxable  
12 years beginning after December 31, 2011, to the rate that the Comptroller estimates  
13 will return to corporate income taxpayers income tax 60% of the additional income tax  
14 revenue from corporations that would otherwise be collected as a result of the  
15 requirement under this Act that members of combined groups compute Maryland  
16 taxable income using the combined reporting method.

17           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 July 1, 2009, and shall be applicable to all taxable years beginning after December 31,  
19 2008.