

SENATE BILL 305

Q3

11r0400
CF 11r1280

By: **Senators Pinsky, Benson, Conway, Currie, Frosh, Gladden,
Jones–Rodwell, Kelley, Madaleno, Manno, Montgomery, Muse, Peters,
Ramirez, Raskin, Rosapepe, Stone, and Young**

Introduced and read first time: February 2, 2011

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Combined Reporting**

3 FOR the purpose of requiring certain corporations to compute Maryland taxable
4 income using a certain method; requiring, subject to regulations of the
5 Comptroller, certain groups of corporations to file a combined income tax return
6 reflecting the aggregate income tax liability of all the members of the group;
7 requiring the Comptroller to adopt certain regulations; requiring certain
8 regulations to be consistent with certain regulations adopted by the Multistate
9 Tax Commission; defining certain terms; providing for the application of this
10 Act; and generally relating to the Maryland corporate income tax.

11 BY adding to
12 Article – Tax – General
13 Section 10–402.1
14 Annotated Code of Maryland
15 (2010 Replacement Volume)

16 BY repealing and reenacting, with amendments,
17 Article – Tax – General
18 Section 10–811
19 Annotated Code of Maryland
20 (2010 Replacement Volume)

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

23 **Article – Tax – General**

24 **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) “COMBINED GROUP” MEANS:**

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

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

12 **(3) “UNITARY GROUP” MEANS AN AFFILIATED GROUP OF**
13 **CORPORATIONS:**

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

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

17 **1. A COMMON OWNER OR COMMON OWNERS, EITHER**
18 **CORPORATE OR NONCORPORATE; OR**

19 **2. ONE OR MORE MEMBER CORPORATIONS OF THE**
20 **GROUP.**

21 **(B) WHETHER OR NOT THE COMBINED GROUP FILES A COMBINED**
22 **INCOME TAX RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A**
23 **COMBINED GROUP SHALL COMPUTE ITS MARYLAND TAXABLE INCOME USING**
24 **THE COMBINED REPORTING METHOD UNDER THIS SECTION.**

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

30 **(1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE**
31 **COMBINED GROUP, BY COMBINING THE CORPORATION’S INCOME WITH THE**
32 **INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING**

1 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT
2 CLEARLY THE INCOME OF THE COMBINED GROUP;

3 (2) DETERMINE THE PART OF THE COMBINED GROUP'S
4 MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY
5 ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A
6 MARYLAND APPORTIONMENT FRACTION OF THE COMBINED GROUP, BASED ON
7 NUMERATORS AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES
8 FACTORS UNDER § 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE
9 AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH
10 THOSE AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF OTHER MEMBERS OF
11 THE COMBINED GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF
12 THE COMBINED GROUP TO REFLECT CLEARLY THE INCOME ALLOCABLE TO
13 MARYLAND; AND

14 (3) FOR EACH MEMBER OF THE COMBINED GROUP THAT IS
15 SUBJECT TO THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE
16 AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION TO THAT
17 CORPORATION BY MULTIPLYING THE AMOUNT DETERMINED UNDER ITEM (2) OF
18 THIS SUBSECTION BY A FRACTION:

19 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
20 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING
21 THAT CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
22 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL
23 MEMBERS OF THE COMBINED GROUP IN THE DENOMINATORS OF THE
24 APPORTIONMENT FORMULA; AND

25 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE
26 MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED
27 GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.

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

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

1 **(I) CORPORATIONS THAT ARE INCORPORATED IN THE**
2 **UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§**
3 **931 THROUGH 936 OF THE INTERNAL REVENUE CODE;**

4 **(II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS**
5 **DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND**
6 **FOREIGN SALES CORPORATIONS, AS DESCRIBED IN §§ 921 THROUGH 927 OF**
7 **THE INTERNAL REVENUE CODE;**

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

12 **(IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§**
13 **970 THROUGH 972 OF THE INTERNAL REVENUE CODE;**

14 **(V) A FOREIGN CORPORATION DERIVING GAIN OR LOSS**
15 **FROM DISPOSITION OF AN INTEREST IN REAL PROPERTY IN THE UNITED**
16 **STATES TO THE EXTENT RECOGNIZED UNDER § 897 OF THE INTERNAL**
17 **REVENUE CODE; AND**

18 **(VI) UNDER THE CIRCUMSTANCES AND TO THE EXTENT**
19 **PROVIDED BY REGULATIONS THAT THE COMPTROLLER ADOPTS:**

20 **1. A CORPORATION NOT DESCRIBED IN ITEMS (I)**
21 **THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF ITS INCOME DERIVED**
22 **FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS**
23 **FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR**

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

27 **(3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE**
28 **TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,**
29 **INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO**
30 **PREVENT THE AVOIDANCE OF TAX OR TO CLEARLY REFLECT INCOME FOR ANY**
31 **PERIOD.**

32 **(E) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
33 **NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.**

34 **(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL**
35 **BE CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF**

1 A UNITARY BUSINESS” (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX
2 COMMISSION.

3 10-811.

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

10 (B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
11 NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 July 1, 2011, and shall be applicable to all taxable years beginning after December 31,
14 2011.