

# SENATE BILL 269

Q3  
SB 305/11 – B&T

2lr1140

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

Introduced and read first time: January 25, 2012

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Business Tax Fairness Act**

3 FOR the purpose of requiring certain corporations to compute Maryland taxable  
4 income using a certain method; requiring, subject to regulations adopted by 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 and 2011 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article – Tax – General

18 Section 10–811

19 Annotated Code of Maryland

20 (2010 Replacement Volume and 2011 Supplement)

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**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-402.1.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
3 MEANINGS INDICATED.

4 (2) "COMBINED GROUP" MEANS:

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

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

13 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF  
14 CORPORATIONS:

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

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

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

20 2. ONE OR MORE MEMBER CORPORATIONS OF THE  
21 GROUP.

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

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

31 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE  
32 COMBINED GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE

1 INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING  
2 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT  
3 CLEARLY THE INCOME OF THE COMBINED GROUP;

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

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

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

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

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

34 (2) UNDER THE WATER'S EDGE METHOD, THE COMBINED GROUP  
35 FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS  
36 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 REFLECT CLEARLY THE INCOME FOR**  
31 **ANY PERIOD.**

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

1           **(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL**  
2 **BE CONSISTENT WITH THE “PRINCIPLES FOR DETERMINING THE EXISTENCE OF**  
3 **A UNITARY BUSINESS” (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX**  
4 **COMMISSION.**

5 10-811.

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

12           **(B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**  
13 **NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.**

14           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 July 1, 2012, and shall be applicable to all taxable years beginning after December 31,  
16 2012.