

# HOUSE BILL 1794

Q3  
HB 1252/16 – W&M

8lr4031

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By: **Delegate Kaiser**

Introduced and read first time: March 2, 2018

Assigned to: Rules and Executive Nominations

Re-referred to: Ways and Means, March 5, 2018

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 27, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Corporate Income Tax – Single Sales Factor Apportionment**

3 FOR the purpose of altering the formula used to apportion certain income to the State for  
4 certain corporations that carry on a trade or business within and outside the State;  
5 authorizing certain corporations to elect to use a certain formula to apportion certain  
6 income; requiring certain corporations to apportion certain income from certain  
7 intangible investments in a certain manner; repealing obsolete provisions; making  
8 stylistic and conforming changes; providing for the application of this Act; and  
9 generally relating to the apportionment formula under the Maryland income tax for  
10 corporations.

11 BY repealing and reenacting, with amendments,  
12 Article – Tax – General  
13 Section 10–402  
14 Annotated Code of Maryland  
15 (2016 Replacement Volume and 2017 Supplement)

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

### 18 **Article – Tax – General**

19 10–402.

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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 (a) IN THIS SECTION, “WORLDWIDE HEADQUARTERED COMPANY” MEANS A  
 2 CORPORATION INCLUDED IN A GROUP OF CORPORATIONS INCLUDING A PARENT  
 3 CORPORATION THAT:

4 (1) FILED A FORM 10-Q WITH THE SECURITIES AND EXCHANGE  
 5 COMMISSION FOR THE QUARTERLY PERIOD ENDING JUNE 30, 2017;

6 (2) HAS ITS PRINCIPAL EXECUTIVE OFFICE IN THE STATE; AND

7 (3) EMPLOYS AT ALL TIMES BETWEEN JULY 1, 2017, AND JUNE 30,  
 8 2020, AT LEAST 500 FULL-TIME EMPLOYEES AT THE PARENT CORPORATION’S  
 9 PRINCIPAL EXECUTIVE OFFICE THAT IS LOCATED WITHIN THE STATE.

10 (B) In computing Maryland taxable income, a corporation shall allocate Maryland  
 11 modified income derived from or reasonably attributable to its trade or business in this  
 12 State in the following manner:

13 (1) if a corporation carries on its trade or business wholly within the State,  
 14 the corporation shall allocate to the State all of the Maryland modified income of the  
 15 corporation; and

16 (2) if a corporation carries on its trade or business [in and out of] **WITHIN**  
 17 **AND OUTSIDE** the State, the corporation shall allocate to the State the part of the  
 18 corporation’s Maryland modified income that is derived from or reasonably attributable to  
 19 the part of its trade or business carried on in the State, in the manner required in  
 20 subsection ~~(b), (c), or (d)~~ **(C), (D), OR (E)** of this section.

21 ~~(b)~~ **(C)** (1) Except as provided in subsection ~~(c) or (d)~~ **(D) OR (E)** of this  
 22 section, the part of the corporation’s Maryland modified income derived from or reasonably  
 23 attributable to trade or business carried on in the State may be determined by separate  
 24 accounting if practicable.

25 (2) If in any taxable year a corporation is permitted or required to use the  
 26 separate accounting method in determining all or a portion of its Maryland taxable income,  
 27 the portion that is separately accounted for to Maryland shall be taxable whether or not  
 28 the Maryland modified income of the corporation for the taxable year is zero or less.

29 ~~(c)~~ **(D)** ~~¶~~(1) [Except as provided in paragraph (2) of this subsection, if the trade or  
 30 business is a unitary business, the part of the corporation’s Maryland modified income  
 31 derived from or reasonably attributable to trade or business carried on in the State shall  
 32 be determined using a 3-factor apportionment fraction:

33 (i) the numerator of which is the sum of the property factor, the  
 34 payroll factor, and twice the sales factor; and

35 (ii) the denominator of which is 4.

1           (2) (i) In this paragraph:

2                           1. “manufacturing corporation” means a domestic or foreign  
3 corporation which is primarily engaged in activities that, in accordance with the North  
4 American Industrial Classification System (NAICS), United States Manual, United States  
5 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or  
6 33; and

7                           2. “manufacturing corporation” does not include a refiner, as  
8 defined in § 10–101 of the Business Regulation Article.

9                           (ii) If a manufacturing corporation carries on its trade or business ~~in~~  
10 ~~and out of~~ **WITHIN AND OUTSIDE** the State and the trade or business is a unitary business,  
11 the part of the corporation’s Maryland modified income derived from or reasonably  
12 attributable to trade or business carried on in the State shall be determined using a single  
13 sales factor apportionment formula, by multiplying its Maryland modified income by 100%  
14 of the sales factor.

15                           (iii) In filing its tax return for each year, a manufacturing corporation  
16 shall certify that the NAICS Code reported on its Maryland return is consistent with that  
17 reported to other government agencies.

18                           (iv) If the Comptroller determines that a corporation has submitted  
19 information that incorrectly classifies the corporation as a manufacturing corporation  
20 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation  
21 in an appropriate manner.†

22                           ~~(1) IF THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART OF~~  
23 ~~THE CORPORATION’S MARYLAND MODIFIED INCOME DERIVED FROM OR~~  
24 ~~REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE~~  
25 ~~SHALL BE DETERMINED USING A SINGLE SALES FACTOR APPORTIONMENT FORMULA~~  
26 ~~BY MULTIPLYING ITS MARYLAND MODIFIED INCOME BY 100% OF THE SALES~~  
27 ~~FACTOR.~~

28                           ~~[(v)] (2) The Comptroller, in consultation with the Department of~~  
29 ~~Commerce, shall adopt regulations necessary to carry out the provisions of this subsection.~~

30                           ~~[(vi) As part of its tax return for a taxable year beginning after~~  
31 ~~December 31, 2005, but before January 1, 2011, each manufacturing corporation that has~~  
32 ~~more than 25 employees and apportions its income under this paragraph shall submit a~~  
33 ~~report, in the form that the Comptroller requires by regulation, that describes for each~~  
34 ~~taxable year as of the last day of the taxable year the following:~~

35                           ~~1. the difference in tax owed as a result of using the single~~  
36 ~~sales factor apportionment method under this paragraph as compared to the tax owed using~~

~~the 3 factor double weighted sales factor apportionment method in effect for the last taxable year beginning on or before December 31, 2000;~~

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

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

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

~~(vii) On or before March 1, 2009, and March 1 of each year thereafter until March 1, 2013, and notwithstanding any confidentiality requirements, the Comptroller shall prepare and submit to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly, a comprehensive report on the use of single sales factor apportionment by manufacturing corporations that provides, at a minimum:~~

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

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

~~3. the number of corporations paying more in Maryland income tax for the taxable year as a result of using single sales factor apportionment and the aggregate amount of additional Maryland income tax owed by those corporations for the taxable year as a result of using single sales factor apportionment.~~

~~(1) (2) EXCEPT AS PROVIDED IN PARAGRAPH (2) PARAGRAPHS (1) AND (3) OF THIS SUBSECTION:~~

(1) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2017, BUT BEFORE JANUARY 1, 2019, IF THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE SHALL BE DETERMINED USING A 3-FACTOR APPORTIONMENT FRACTION:

1. THE NUMERATOR OF WHICH IS THE SUM OF THE PROPERTY FACTOR, THE PAYROLL FACTOR, AND 3 TIMES THE SALES FACTOR; AND

2. THE DENOMINATOR OF WHICH IS 5;

1                   (II) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31,  
2 2018, BUT BEFORE JANUARY 1, 2020, IF THE TRADE OR BUSINESS IS A UNITARY  
3 BUSINESS, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME  
4 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED  
5 ON IN THE STATE SHALL BE DETERMINED USING A 3-FACTOR APPORTIONMENT  
6 FRACTION:

7                   1. THE NUMERATOR OF WHICH IS THE SUM OF THE  
8 PROPERTY FACTOR, THE PAYROLL FACTOR, AND 4 TIMES THE SALES FACTOR; AND

9                   2. THE DENOMINATOR OF WHICH IS 6;

10                   (III) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31,  
11 2019, BUT BEFORE JANUARY 1, 2021, IF THE TRADE OR BUSINESS IS A UNITARY  
12 BUSINESS, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME  
13 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED  
14 ON IN THE STATE SHALL BE DETERMINED USING A 3-FACTOR APPORTIONMENT  
15 FRACTION:

16                   1. THE NUMERATOR OF WHICH IS THE SUM OF THE  
17 PROPERTY FACTOR, THE PAYROLL FACTOR, AND 5 TIMES THE SALES FACTOR; AND

18                   2. THE DENOMINATOR OF WHICH IS 7;

19                   (IV) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31,  
20 2020, BUT BEFORE JANUARY 1, 2022, IF THE TRADE OR BUSINESS IS A UNITARY  
21 BUSINESS, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME  
22 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED  
23 ON IN THE STATE SHALL BE DETERMINED USING A 3-FACTOR APPORTIONMENT  
24 FRACTION:

25                   1. THE NUMERATOR OF WHICH IS THE SUM OF THE  
26 PROPERTY FACTOR, THE PAYROLL FACTOR, AND 6 TIMES THE SALES FACTOR; AND

27                   2. THE DENOMINATOR OF WHICH IS 8; AND

28                   (V) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31,  
29 2021, IF THE TRADE OR BUSINESS IS A UNITARY BUSINESS, THE PART OF THE  
30 CORPORATION'S MARYLAND MODIFIED INCOME DERIVED FROM OR REASONABLY  
31 ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE SHALL BE  
32 DETERMINED USING A SINGLE SALES FACTOR APPORTIONMENT FORMULA, BY  
33 MULTIPLYING ITS MARYLAND MODIFIED INCOME BY 100% OF THE SALES FACTOR.

~~(2)~~ **(3)** **(I)** EACH YEAR A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A FEDERAL CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR MAY ELECT TO CALCULATE ITS MARYLAND MODIFIED INCOME DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A 3-FACTOR APPORTIONMENT FRACTION:

**1.** THE NUMERATOR OF WHICH IS THE SUM OF THE PROPERTY FACTOR, THE PAYROLL FACTOR, AND TWICE THE SALES FACTOR; AND

**2.** THE DENOMINATOR OF WHICH IS 4.

**(II)** TO DETERMINE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH THE MARYLAND MODIFIED INCOME OF A CORPORATION OR GROUP OF CORPORATIONS THAT IS A WORLDWIDE HEADQUARTERED COMPANY THAT FILED A FEDERAL CORPORATE INCOME TAX RETURN FOR THE TAXABLE YEAR, GROSS INCOME FROM INTANGIBLE INVESTMENTS, INCLUDING DIVIDENDS, INTEREST, ROYALTIES, AND CAPITAL GAINS FROM THE SALE OF INTANGIBLE PROPERTY, SHALL BE INCLUDED IN THE CALCULATION OF THE NUMERATOR BASED ON THE AVERAGE OF THE PROPERTY AND PAYROLL FACTORS.

~~(3)~~ **(4)** The property factor under ~~paragraph (1)~~ PARAGRAPHS (1) AND (2) AND (3) of this subsection shall include:

(i) rented and owned real property; and

(ii) tangible personal property located in the State and used in the trade or business.†

~~(d)~~ **(E)** To reflect clearly the income allocable to Maryland, the Comptroller may alter, if circumstances warrant, the methods under subsections ~~(b) and (c)~~ (C) AND (D) of this section, including†:

(1)† the use of the separate accounting method†;

(2) the use of the 3-factor double weighted sales factor formula method or the single sales factor formula method;

(3) the weight of any factor in the 3-factor formula;

(4) the valuation of rented property included in the property factor; and

(5) the determination of the extent to which tangible personal property is located in the State.†

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
2 1, 2018, and shall be applicable to all taxable years beginning after December 31, ~~2018~~  
3 2017.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.