

SENATE BILL 76

Q3
SB 227/18 – B&T

(PRE-FILED)

9lr0378

By: **Senators Young, Carter, Rosapepe, and Nathan-Pulliam**

Requested: July 13, 2018

Introduced and read first time: January 9, 2019

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Small Business Fairness Act**

3 FOR the purpose of requiring certain retail trade and food services corporations to compute
4 Maryland taxable income using a certain method; authorizing certain retail trade
5 and food services corporations, subject to regulations adopted by the Comptroller, to
6 determine certain income using a certain method; requiring, subject to regulations
7 adopted by the Comptroller, certain groups of retail trade and food services
8 corporations to file a combined income tax return reflecting the aggregate income tax
9 liability of all the members of the group; requiring the Comptroller to adopt certain
10 regulations; requiring certain regulations to be consistent with certain regulations
11 adopted by the Multistate Tax Commission; requiring the Comptroller to report to
12 the General Assembly on or before a certain date each year; defining certain terms;
13 providing for the application of this Act; and generally relating to the Maryland
14 corporate income tax.

15 BY adding to
16 Article – Tax – General
17 Section 10–402.1 and 10–402.2
18 Annotated Code of Maryland
19 (2016 Replacement Volume and 2018 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Tax – General
22 Section 10–811
23 Annotated Code of Maryland
24 (2016 Replacement Volume and 2018 Supplement)

25 Preamble

26 WHEREAS, Small businesses are the primary employers in Maryland's economy,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 accounting for 97.5% of all employers and 51.6% of the private-sector labor force, according
2 to the Office of Advocacy within the federal Small Business Administration; and

3 WHEREAS, Under current law, large multistate corporations are permitted to
4 transfer their Maryland profits back to their home state and avoid paying Maryland taxes
5 – taxes that Maryland’s small business owners are required to pay; and

6 WHEREAS, As noted by the Department of Legislative Services in a 2015
7 presentation to the Maryland Economic Development and Business Climate Commission,
8 this taxation method creates a “competitive disadvantage for local businesses, which are
9 unable to use cross-border tax planning techniques to avoid the tax”; and

10 WHEREAS, Maryland “cannot reasonably ask individual taxpayers and small
11 businesses to pay higher personal income and sales tax while allowing large corporations
12 to escape paying their fair share”, as stated by the Center for Budget and Policy Priorities;
13 and

14 WHEREAS, At least 25 states and the District of Columbia have a corporate income
15 tax method that requires the income of all members of a multistate corporation to be
16 included in the computation of the state’s income tax; and

17 WHEREAS, According to the Department of Legislative Services, if this method were
18 applied to multistate retail trade and food service corporations operating in Maryland, it
19 would generate approximately \$50 million each year in new revenue for the State; and

20 WHEREAS, Creating a fair corporate tax environment expands Maryland’s
21 economic base, raises prosperity across the State, and provides additional revenue to
22 strengthen the State’s budget solvency; now, therefore,

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

25 **Article – Tax – General**

26 **10-402.1.**

27 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

29 (2) “COMBINED GROUP” MEANS:

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

33 (II) OTHER MEMBERS OF THE UNITARY GROUP NOT DESCRIBED

1 IN ITEM (I) OF THIS PARAGRAPH UNDER THE CIRCUMSTANCES AND TO THE EXTENT
2 PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER TO PREVENT THE
3 AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME OF ANY MEMBER OF THE
4 COMBINED GROUP FOR ANY PERIOD.

5 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF
6 CORPORATIONS:

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

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

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

12 2. ONE OR MORE MEMBER CORPORATIONS OF THE
13 GROUP.

14 (B) THIS SECTION APPLIES ONLY TO A DOMESTIC OR FOREIGN
15 CORPORATION THAT:

16 (1) IS PRIMARILY ENGAGED IN ACTIVITIES THAT, IN ACCORDANCE
17 WITH THE NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS),
18 UNITED STATES MANUAL, UNITED STATES OFFICE OF MANAGEMENT AND
19 BUDGET, 2017 EDITION, WOULD BE INCLUDED IN SECTOR 44, 45, OR 722; AND

20 (2) MAINTAINS MULTIPLE LOCATIONS OF BUSINESS, WHETHER IN
21 THIS STATE OR ANOTHER STATE.

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

26 (D) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS A
27 MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME TAX,
28 THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME THAT IS DERIVED
29 FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE
30 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 INCOME
33 OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING TRANSACTIONS

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

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

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

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

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

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

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

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

1 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS
2 DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE;

3 (III) ANY CORPORATION OTHER THAN A BANK, REGARDLESS OF
4 THE PLACE WHERE IT IS INCORPORATED, IF THE AVERAGE OF THE CORPORATION'S
5 PROPERTY, PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR
6 MORE;

7 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§ 970
8 AND 971 OF THE INTERNAL REVENUE CODE;

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

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

14 1. A CORPORATION NOT DESCRIBED IN ITEMS (I)
15 THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF ITS INCOME DERIVED FROM
16 OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS FACTORS
17 ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR

18 2. AN AFFILIATED CORPORATION THAT IS A
19 CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL
20 REVENUE CODE.

21 (3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE
22 TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,
23 INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT
24 THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME FOR ANY PERIOD.

25 (F) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
26 NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

27 (2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE
28 CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A
29 UNITARY BUSINESS" (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX
30 COMMISSION.

31 10-402.2.

32 ON OR BEFORE MARCH 31 EACH CALENDAR YEAR, THE COMPTROLLER SHALL
33 REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE

1 **STATE GOVERNMENT ARTICLE, AN ESTIMATE OF THE TOTAL ADDITIONAL TAX**
2 **REVENUE, IF ANY, THAT WILL BE COLLECTED FOR THE FISCAL YEAR THAT BEGINS**
3 **JULY 1 OF THAT CALENDAR YEAR AS A RESULT OF THE REQUIREMENT UNDER**
4 **§ 10-402.1 OF THIS SUBTITLE THAT MEMBERS OF CERTAIN COMBINED GROUPS**
5 **COMPUTE MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING**
6 **METHOD.**

7 10-811.

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

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
17 1, 2019, and shall be applicable to all taxable years beginning after December 31, 2019.