

SENATE BILL 694

Q3
SB 1022/19 – B&T

0lr1669

By: **Senator Guzzone**

Introduced and read first time: February 3, 2020

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Single Sales Factor Apportionment Exemption –**
3 **Worldwide Headquartered Company Election**

4 FOR the purpose of altering the number of employees that certain worldwide
5 headquartered companies must employ at a certain location in the State in order to
6 elect to use a certain formula to apportion certain income to the State; providing for
7 the application of this Act; and generally relating to the apportionment formula
8 under the Maryland income tax for corporations.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – General
11 Section 10–402
12 Annotated Code of Maryland
13 (2016 Replacement Volume and 2019 Supplement)

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

16 **Article – Tax – General**

17 10–402.

18 (a) In this section, “worldwide headquartered company” means a corporation
19 included in a group of corporations including a parent corporation that:

20 (1) filed a Form 10–Q with the Securities and Exchange Commission for
21 the quarterly period ending June 30, 2017;

22 (2) has its principal executive office in the State; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(3) (I) employs at all times between July 1, 2017, and June 30, 2020, at least 500 full-time employees at the parent corporation's principal executive office that is located within the State; OR

(II) IF THE PARENT CORPORATION IS A FRANCHISOR, EMPLOYS AT ALL TIMES BETWEEN JULY 1, 2017, AND JUNE 30, 2020, AT LEAST 400 FULL-TIME EMPLOYEES AT THE PARENT CORPORATION'S PRINCIPAL EXECUTIVE OFFICE THAT IS LOCATED WITHIN THE STATE.

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

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

(2) if a corporation carries on its trade or business within and outside the State, the corporation shall allocate to the State the part of the corporation's Maryland modified income that is derived from or reasonably attributable to the part of its trade or business carried on in the State, in the manner required in subsection (c), (d), or (e) of this section.

(c) (1) Except as provided in subsection (d) or (e) of this section, the part of the corporation's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State may be determined by separate accounting if practicable.

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

(d) (1) (i) In this paragraph:

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

2. "manufacturing corporation" does not include a refiner, as defined in § 10-101 of the Business Regulation Article.

(ii) If a manufacturing corporation carries on its trade or business within and outside the State and the trade or business is a unitary business, the part of the corporation's Maryland modified income derived from or reasonably attributable to trade

1 or business carried on in the State shall be determined using a single sales factor
2 apportionment formula, by multiplying its Maryland modified income by 100% of the sales
3 factor.

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

7 (iv) If the Comptroller determines that a corporation has submitted
8 information that incorrectly classifies the corporation as a manufacturing corporation
9 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation
10 in an appropriate manner.

11 (2) Except as provided in paragraphs (1) and (3) of this subsection:

12 (i) for a taxable year beginning after December 31, 2017, but before
13 January 1, 2019, if the trade or business is a unitary business, the part of the corporation's
14 Maryland modified income derived from or reasonably attributable to trade or business
15 carried on in the State shall be determined using a 3-factor apportionment fraction:

16 1. the numerator of which is the sum of the property factor,
17 the payroll factor, and 3 times the sales factor; and

18 2. the denominator of which is 5;

19 (ii) for a taxable year beginning after December 31, 2018, but before
20 January 1, 2020, if the trade or business is a unitary business, the part of the corporation's
21 Maryland modified income derived from or reasonably attributable to trade or business
22 carried on in the State shall be determined using a 3-factor apportionment fraction:

23 1. the numerator of which is the sum of the property factor,
24 the payroll factor, and 4 times the sales factor; and

25 2. the denominator of which is 6;

26 (iii) for a taxable year beginning after December 31, 2019, but before
27 January 1, 2021, if the trade or business is a unitary business, the part of the corporation's
28 Maryland modified income derived from or reasonably attributable to trade or business
29 carried on in the State shall be determined using a 3-factor apportionment fraction:

30 1. the numerator of which is the sum of the property factor,
31 the payroll factor, and 5 times the sales factor; and

32 2. the denominator of which is 7;

33 (iv) for a taxable year beginning after December 31, 2020, but before
34 January 1, 2022, 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 6 times the sales factor; and

2. the denominator of which is 8; and

(v) for a taxable year beginning after December 31, 2021, 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 single sales factor apportionment formula, by multiplying its Maryland modified income by 100% of the sales factor.

(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.

(4) The property factor under paragraphs (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.

(e) To reflect clearly the income allocable to Maryland, the Comptroller may alter, if circumstances warrant, the methods under subsections (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;

- 1 (3) the weight of any factor in the 3-factor formula;
- 2 (4) the valuation of rented property included in the property factor; and
- 3 (5) the determination of the extent to which tangible personal property is
- 4 located in the State.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July

6 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019.