

SENATE BILL 311

Q3

01r2024

By: **Senators Pinsky, Augustine, Benson, Elfreth, Ellis, Hayes, Kagan, Kelley, Lam, Lee, McCray, Patterson, Rosapepe, Smith, Sydnor, Washington, and Young**
Introduced and read first time: January 22, 2020
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Tax Fairness Act of 2020**

3 FOR the purpose of requiring that certain sales of tangible personal property be included
4 in the numerator of the sales factor used for apportioning a corporation's income to
5 the State under certain circumstances; requiring certain corporations to compute
6 Maryland taxable income using a certain method; authorizing certain corporations,
7 subject to regulations adopted by the Comptroller, to determine certain income using
8 a certain method; requiring, subject to regulations adopted by the Comptroller,
9 certain groups of corporations to file a combined income tax return reflecting the
10 aggregate income tax liability of all the members of the group; requiring the
11 Comptroller to adopt certain regulations; requiring certain regulations to be
12 consistent with certain regulations adopted by the Multistate Tax Commission;
13 requiring the Comptroller to report to the General Assembly on or before a certain
14 date each year; requiring the Comptroller to assess interest and penalties under
15 certain circumstances; defining certain terms; providing for the application of certain
16 provisions of this Act; and generally relating to the Maryland corporate income tax.

17 BY repealing and reenacting, without amendments,
18 Article – Tax – General
19 Section 10–402(a)
20 Annotated Code of Maryland
21 (2016 Replacement Volume and 2019 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Tax – General
24 Section 10–402(d) and 10–811
25 Annotated Code of Maryland
26 (2016 Replacement Volume and 2019 Supplement)

27 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



Article – Tax – General

Section 10–402.1 and 10–402.2

Annotated Code of Maryland

(2016 Replacement Volume and 2019 Supplement)

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

Article – Tax – General

10–402.

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

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

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

(3) 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.

(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 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.

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

(iv) If the Comptroller determines that a corporation has submitted

information that incorrectly classifies the corporation as a manufacturing corporation under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation in an appropriate manner.

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

(i) 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;

(ii) for a taxable year beginning after December 31, 2018, but before January 1, 2020, 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 4 times the sales factor; and

2. the denominator of which is 6;

(iii) for a taxable year beginning after December 31, 2019, but before January 1, 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 3-factor apportionment fraction:

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

2. the denominator of which is 7;

(iv) for a taxable year beginning after December 31, 2020, but before 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.

(5) (I) SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE INCLUDED IN THE NUMERATOR OF THE SALES FACTOR UNDER PARAGRAPH (1), (2), OR (3) OF THIS SUBSECTION IF:

1. THE PROPERTY IS DELIVERED OR SHIPPED TO A PURCHASER WITHIN THE STATE, REGARDLESS OF THE FREE ON BOARD (F.O.B.) POINT OR OTHER CONDITIONS OF THE SALE; OR

2. THE PROPERTY IS SHIPPED FROM AN OFFICE, A STORE, A WAREHOUSE, A FACTORY, OR ANY OTHER PLACE OF STORAGE IN THE STATE AND THE CORPORATION IS NOT TAXABLE IN THE STATE OF THE PURCHASER.

(II) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, A CORPORATION IS TAXABLE IN A STATE IF:

1. IN THAT STATE THE CORPORATION IS SUBJECT TO A

1 NET INCOME TAX, FRANCHISE TAX MEASURED BY NET INCOME, FRANCHISE TAX FOR
2 THE PRIVILEGE OF DOING BUSINESS, OR CORPORATE STOCK TAX; OR

3 2. THAT STATE HAS JURISDICTION TO SUBJECT THE
4 TAXPAYER TO A NET INCOME TAX, REGARDLESS OF WHETHER, IN FACT, THE STATE
5 IMPOSES A TAX.

6 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
7 as follows:

8 Article – Tax – General

9 10-402.1.

10 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (2) “COMBINED GROUP” MEANS:

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

16 (II) OTHER MEMBERS OF THE UNITARY GROUP NOT DESCRIBED
17 IN ITEM (I) OF THIS PARAGRAPH UNDER THE CIRCUMSTANCES AND TO THE EXTENT
18 PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER TO PREVENT THE
19 AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME OF ANY MEMBER OF THE
20 COMBINED GROUP FOR ANY PERIOD.

21 (3) “UNITARY GROUP” MEANS AN AFFILIATED GROUP OF
22 CORPORATIONS:

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

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

26 1. A COMMON OWNER OR COMMON OWNERS, EITHER
27 CORPORATE OR NONCORPORATE; OR

28 2. ONE OR MORE MEMBER CORPORATIONS OF THE
29 GROUP.

30 (B) WHETHER OR NOT THE COMBINED GROUP FILES A COMBINED INCOME

TAX RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A COMBINED GROUP SHALL COMPUTE ITS MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING METHOD UNDER THIS SECTION.

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

(1) BY DETERMINING THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP BY COMBINING THE CORPORATION'S INCOME WITH THE INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP, TO REFLECT CLEARLY THE INCOME OF THE COMBINED GROUP;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) THE USE OF THE WATER'S EDGE METHOD IS SUBJECT TO THE TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,

1 INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO PREVENT
2 THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY THE INCOME FOR ANY PERIOD.

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

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

9 10-402.2.

10 ON OR BEFORE MARCH 31 EACH YEAR, THE COMPTROLLER SHALL REPORT
11 TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE
12 GOVERNMENT ARTICLE, AN ESTIMATE OF THE TOTAL ADDITIONAL TAX REVENUE
13 FROM CORPORATIONS, IF ANY, THAT WILL BE COLLECTED FOR THE FISCAL YEAR
14 THAT BEGINS JULY 1 OF THAT CALENDAR YEAR AS A RESULT OF THE REQUIREMENT
15 UNDER § 10-402.1 OF THIS SUBTITLE THAT MEMBERS OF COMBINED GROUPS
16 COMPUTE MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING
17 METHOD.

18 10-811.

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

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

27 SECTION 3. AND BE IT FURTHER ENACTED, That, for a taxable year beginning
28 after December 31, 2019, but before January 1, 2021, notwithstanding §§ 13-602 and
29 13-702 of the Tax – General Article, the Comptroller shall assess interest and penalties
30 under §§ 13-602 and 13-702 of the Tax – General Article if a corporation pays estimated
31 income tax for the taxable year in an amount less than 90% of the tax required to be shown
32 on the corporation’s income tax return for the taxable year.

33 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be
34 applicable to all taxable years beginning after December 31, 2019.

35 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be

1 applicable to all taxable years beginning after December 31, 2020.

2 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect July
3 1, 2020.