

HOUSE BILL 295

Q3

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By: **Delegates Lehman, Acevero, B. Barnes, Boyce, Carr, Charkoudian, Ebersole, Feldmark, Healey, Ivey, Kerr, Korman, R. Lewis, Moon, Mosby, Palakovich Carr, Pena–Melnik, Pendergrass, Shetty, Smith, Solomon, Stewart, Terrasa, Valderrama, and K. Young**

Introduced and read first time: January 20, 2020

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Combined Reporting**

3 FOR the purpose of requiring certain corporations to compute Maryland taxable income
4 using a certain method; authorizing certain corporations, subject to regulations
5 adopted by the Comptroller, to determine certain income using a certain method;
6 requiring, subject to regulations adopted by the Comptroller, certain groups of
7 corporations to file a combined income tax return reflecting the aggregate income tax
8 liability of all the members of the group; requiring the Comptroller to adopt certain
9 regulations; requiring certain regulations to be consistent with certain regulations
10 adopted by the Multistate Tax Commission; requiring the Comptroller to make
11 certain estimates and distribute certain income tax revenue from corporations to a
12 certain fund; defining certain terms; providing for the application of this Act; and
13 generally relating to the Maryland corporate income tax.

14 BY adding to
15 Article – Tax – General
16 Section 2–613.1 and 10–402.1
17 Annotated Code of Maryland
18 (2016 Replacement Volume and 2019 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Tax – General
21 Section 2–613.1, 2–614, 2–615, and 10–811
22 Annotated Code of Maryland
23 (2016 Replacement Volume and 2019 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Tax – General

2–613.1.

(A) ON OR BEFORE MARCH 1 EACH CALENDAR YEAR, THE COMPTROLLER SHALL ESTIMATE THE TOTAL ADDITIONAL INCOME TAX REVENUE FROM CORPORATIONS, IF ANY, THAT WILL BE COLLECTED FOR THE FISCAL YEAR THAT BEGINS JULY 1 OF THAT CALENDAR YEAR AS A RESULT OF THE REQUIREMENT UNDER § 10–402.1 OF THIS ARTICLE THAT MEMBERS OF COMBINED GROUPS COMPUTE MARYLAND TAXABLE INCOME USING THE COMBINED REPORTING METHOD.

(B) AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2–613 OF THIS SUBTITLE, FROM THE REMAINING INCOME TAX REVENUE FROM CORPORATIONS, THE COMPTROLLER SHALL DISTRIBUTE THE AMOUNT DETERMINED UNDER SUBSECTION (A) OF THIS SECTION TO THE BLUEPRINT FOR MARYLAND’S FUTURE FUND ESTABLISHED UNDER § 5–219 OF THE EDUCATION ARTICLE.

[2–613.1.] 2–613.2.

After making the [distribution] DISTRIBUTIONS required under [§ 2–613] §§ 2–613 AND 2–613.1 of this subtitle, of the remaining income tax revenue from corporations, the Comptroller shall distribute:

(1) 6% to the Higher Education Investment Fund established under § 15–106.6 of the Education Article; and

(2) 9.15% to the General Fund.

2–614.

(a) (1) Except as provided in paragraph (2) of this subsection, after making the distributions required under §§ 2–613 [and], 2–613.1, AND 2–613.2 of this subtitle, the Comptroller shall distribute monthly 17.2% of the remaining income tax revenue from corporations to a special fund to be distributed as provided in subsection (b) of this section.

(2) The percent of the remaining income tax revenue from corporations distributed to a special fund to be distributed as provided in subsection (b) of this section shall be:

(i) 24% for the fiscal year beginning July 1, 2011;

(ii) 9.5% for the fiscal year beginning July 1, 2012; and

(iii) 19.5% for each fiscal year beginning on or after July 1, 2013, but before July 1, 2016.

(b) (1) (i) Except as provided in subparagraph (ii) of this paragraph, from the special fund, the Comptroller shall distribute an amount equal to 17.2% of the cost to administer the income tax on corporations to an administrative cost account.

(ii) The percent of the cost to administer the income tax on corporations that is distributed to an administrative cost account shall be:

1. 24% for the fiscal year beginning July 1, 2011;

2. 9.5% for the fiscal year beginning July 1, 2012; and

3. 19.5% for each fiscal year beginning on or after July 1, 2013, but before July 1, 2016.

(2) After making the distribution required under paragraph (1) of this subsection, the Comptroller shall distribute the balance in the special fund to the Gasoline and Motor Vehicle Revenue Account in the Transportation Trust Fund.

2-615.

After making the distributions required under §§ 2-613, 2-613.1, **2-613.2**, AND 2-614 of this subtitle, the Comptroller shall distribute the remaining income tax revenue from corporations to the General Fund of the State.

10-402.1.

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

(2) "COMBINED GROUP" MEANS:

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

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

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

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

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

4 1. A COMMON OWNER OR COMMON OWNERS, EITHER
5 CORPORATE OR NONCORPORATE; OR

6 2. ONE OR MORE MEMBER CORPORATIONS OF THE
7 GROUP.

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

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

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

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

33 (3) FOR EACH MEMBER OF THE COMBINED GROUP THAT IS SUBJECT
34 TO THE MARYLAND INCOME TAX, BY ALLOCATING A PORTION OF THE AMOUNT
35 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 **1. A CORPORATION NOT DESCRIBED IN ITEMS (I)**
2 **THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF THE CORPORATION'S INCOME**
3 **DERIVED FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND**
4 **THE CORPORATION'S FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED**
5 **STATES; OR**

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

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

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

15 **(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE**
16 **CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A**
17 **UNITARY BUSINESS" (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX**
18 **COMMISSION.**

19 10-811.

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

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

28 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**
29 **1, 2020, and shall be applicable to all taxable years beginning after December 31, 2020.**