

HOUSE BILL 457

Q3

2lr0337

By: **Delegates Lehman, Palakovich Carr, R. Lewis, Moon, Ruth, and Stewart**

Introduced and read first time: January 20, 2022

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Throwback Rule and Combined Reporting**

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 consistent with certain regulations adopted
12 by the Multistate Tax Commission; providing a subtraction modification under the
13 Maryland corporate income tax for certain changes to a certain combined group's
14 deferred tax assets or liabilities that are the result of certain provisions of this Act;
15 prohibiting the subtraction from being reduced as a result of an event that occurs
16 after the calculation of the subtraction; providing, under certain circumstances, for
17 the carryforward of the subtraction; authorizing the Comptroller to review and alter
18 the amount of the subtraction specified in the statement or claimed on certain tax
19 returns; requiring the Comptroller to assess interest and penalties under certain
20 circumstances; and generally relating to the Maryland income tax on corporations.

21 BY repealing and reenacting, with amendments,
22 Article – Tax – General
23 Section 10–402(d) and 10–811
24 Annotated Code of Maryland
25 (2016 Replacement Volume and 2021 Supplement)

26 BY adding to
27 Article – Tax – General
28 Section 10–311 and 10–402.1
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2016 Replacement Volume and 2021 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.

(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;

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

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

7 2. the denominator of which is 6;

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

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

14 2. the denominator of which is 7;

15 (iv) for a taxable year beginning after December 31, 2020, but before
16 January 1, 2022, if the trade or business is a unitary business, the part of the corporation's
17 Maryland modified income derived from or reasonably attributable to trade or business
18 carried on in the State shall be determined using a 3-factor apportionment fraction:

19 1. the numerator of which is the sum of the property factor,
20 the payroll factor, and 6 times the sales factor; and

21 2. the denominator of which is 8; and

22 (v) for a taxable year beginning after December 31, 2021, if the trade
23 or business is a unitary business, the part of the corporation's Maryland modified income
24 derived from or reasonably attributable to trade or business carried on in the State shall
25 be determined using a single sales factor apportionment formula, by multiplying its
26 Maryland modified income by 100% of the sales factor.

27 (3) (i) Each year a worldwide headquartered company that filed a
28 federal corporate income tax return for the taxable year may elect to calculate its Maryland
29 modified income derived from or reasonably attributable to trade or business carried on in
30 the State using a 3-factor apportionment fraction:

31 1. the numerator of which is the sum of the property factor,
32 the payroll factor, and twice the sales factor; and

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

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

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

Article – Tax – General

10–311.

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

3 (2) “COMBINED GROUP” HAS THE MEANING STATED IN § 10-402.1 OF
4 THIS TITLE.

5 (3) “NET DEFERRED TAX ASSET” MEANS THE AMOUNT BY WHICH THE
6 DEFERRED TAX ASSETS EXCEED THE DEFERRED TAX LIABILITIES OF A COMBINED
7 GROUP, COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
8 PRINCIPLES.

9 (4) “NET DEFERRED TAX LIABILITY” MEANS THE AMOUNT BY WHICH
10 THE DEFERRED TAX LIABILITIES EXCEED THE DEFERRED TAX ASSETS OF A
11 COMBINED GROUP, COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED
12 ACCOUNTING PRINCIPLES.

13 (B) THIS SECTION APPLIES ONLY TO A COMBINED GROUP THAT ON OR
14 BEFORE THE DATE OF ENACTMENT OF THE PROVISIONS OF § 10-402.1 OF THIS TITLE
15 BY CHAPTER ____ (H.B. ____) (2LR0337) OF THE ACTS OF THE GENERAL
16 ASSEMBLY OF 2022, THE MEMBERS OF WHICH WERE:

17 (1) PUBLICLY TRADED; OR

18 (2) AFFILIATED WITH A COMBINED GROUP THAT WAS PUBLICLY
19 TRADED, AND PARTICIPATED IN THE FILING OF THE PUBLICLY TRADED
20 CORPORATION’S FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH
21 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

22 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION
23 TO THE MODIFICATIONS UNDER §§ 10-307 AND 10-308 OF THIS SUBTITLE, THE
24 AMOUNTS DETERMINED UNDER SUBSECTION (D) OF THIS SECTION ARE
25 SUBTRACTED FROM THE FEDERAL TAXABLE INCOME OF A COMBINED GROUP TO
26 DETERMINE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP IF, AS OF THE
27 DATE OF ENACTMENT OF § 10-402.1 OF THIS TITLE BY CHAPTER ____ (H.B. ____)
28 (2LR0337) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2022, THE ENACTMENT
29 RESULTED IN AN AGGREGATE:

30 (I) INCREASE TO THE COMBINED GROUP’S NET DEFERRED TAX
31 LIABILITY;

32 (II) DECREASE TO THE COMBINED GROUP’S NET DEFERRED TAX
33 ASSET; OR

34 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET

1 DEFERRED TAX LIABILITY.

2 (2) THE AMOUNT OF ANY INCREASE, DECREASE, OR CHANGE SHALL
3 BE DETERMINED WITHOUT REGARD TO THE SUBTRACTION AUTHORIZED UNDER
4 THIS SECTION.

5 (D) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, THE
6 SUBTRACTION AUTHORIZED UNDER THIS SECTION IS EQUAL TO ONE-TENTH OF THE
7 AMOUNT NECESSARY TO OFFSET THE AGGREGATE:

8 (I) INCREASE TO THE COMBINED GROUP'S NET DEFERRED TAX
9 LIABILITY;

10 (II) DECREASE TO THE COMBINED GROUP'S NET DEFERRED TAX
11 ASSET; OR

12 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
13 DEFERRED TAX LIABILITY.

14 (2) THE AMOUNT OF THE SUBTRACTION AS DETERMINED UNDER
15 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE:

16 (I) DIVIDED BY THE RATE DETERMINED UNDER § 10-105(B) OF
17 THIS TITLE IN EFFECT ON JANUARY 1, 2024; AND

18 (II) FURTHER DIVIDED BY THE MARYLAND APPORTIONMENT
19 FRACTION THAT WAS USED BY THE COMBINED GROUP IN THE CALCULATION OF THE
20 DEFERRED TAX ASSETS AND DEFERRED TAX LIABILITIES AS DESCRIBED IN
21 PARAGRAPH (1) OF THIS SUBSECTION.

22 (3) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION MAY BE
23 USED TO REDUCE THE COMBINED GROUP'S MARYLAND MODIFIED INCOME FOR 10
24 CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THAT
25 BEGINS AFTER DECEMBER 31, 2028.

26 (4) THE SUBTRACTION CALCULATED UNDER THIS SECTION MAY NOT
27 BE REDUCED AS A RESULT OF ANY EVENT THAT OCCURS AFTER THE CALCULATION,
28 INCLUDING THE DISPOSITION OR ABANDONMENT OF ANY ASSET.

29 (5) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION:

30 (I) SHALL BE CALCULATED WITHOUT REGARD TO THE FEDERAL
31 TAX EFFECT; AND

1 (II) MAY NOT ALTER THE TAX BASIS OF ANY ASSET.

2 (6) IF THE SUBTRACTION DETERMINED UNDER THIS SECTION
3 RESULTS IN A SUBTRACTION THAT EXCEEDS MARYLAND MODIFIED INCOME
4 COMPUTED WITHOUT REGARD TO THE SUBTRACTION UNDER THIS SECTION, THE
5 AMOUNT OF THE EXCESS MAY BE CARRIED FORWARD TO SUCCEEDING TAXABLE
6 YEARS AND USED TO REDUCE MARYLAND MODIFIED INCOME IN EACH SUCCEEDING
7 TAXABLE YEAR UNTIL THE EXCESS IS FULLY USED.

8 (E) (1) ON OR BEFORE JULY 1, 2025, A COMBINED GROUP THAT INTENDS
9 TO CLAIM A SUBTRACTION UNDER THIS SECTION SHALL FILE WITH THE
10 COMPTROLLER A STATEMENT THAT SPECIFIES THE TOTAL AMOUNT OF THE
11 SUBTRACTION THAT THE COMBINED GROUP INTENDS TO CLAIM.

12 (2) THE STATEMENT SHALL BE ON THE FORM AND CONTAIN THE
13 INFORMATION THE COMPTROLLER REQUIRES.

14 (3) THE COMPTROLLER MAY REVIEW AND ALTER THE AMOUNT OF:

15 (I) THE SUBTRACTION SPECIFIED IN THE STATEMENT
16 REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR

17 (II) THE SUBTRACTION CLAIMED ON A TAX RETURN FOR ANY
18 TAXABLE YEAR.

19 10-402.1.

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

22 (2) "COMBINED GROUP" MEANS A GROUP OF CORPORATIONS:

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

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 (III) THE MEMBERS OF WHICH ARE SUBJECT TO THE INCOME TAX

1 OR WOULD BE SUBJECT TO THE INCOME TAX IF DOING BUSINESS IN THE STATE; AND

2 (IV) CONSISTING OF ANY OTHER MEMBERS UNDER THE
3 CIRCUMSTANCES AND TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY
4 THE COMPTROLLER TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY
5 THE INCOME OF ANY MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.

6 (3) "COMBINED RETURN" MEANS A TAX RETURN FOR THE COMBINED
7 GROUP CONTAINING INFORMATION AS PROVIDED IN THIS SECTION OR OTHERWISE
8 REQUIRED BY THE COMPTROLLER.

9 (4) "UNITARY BUSINESS" MEANS A SINGLE ECONOMIC ENTERPRISE
10 THAT IS MADE EITHER OF SEPARATE PARTS OF A SINGLE BUSINESS ENTITY OR OF A
11 COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES THAT ARE SUFFICIENTLY
12 INTERDEPENDENT, INTEGRATED, AND INTERRELATED THROUGH THEIR ACTIVITIES
13 SO AS TO PROVIDE MUTUAL BENEFIT THAT PRODUCES A SHARING OR EXCHANGE OF
14 VALUE AMONG THEM AND A SIGNIFICANT FLOW OF VALUE TO THE SEPARATE PARTS.

15 (B) (1) THE TERM "UNITARY BUSINESS" SHALL BE CONSTRUED TO THE
16 BROADEST EXTENT ALLOWED UNDER THE U.S. CONSTITUTION.

17 (2) A BUSINESS CONDUCTED DIRECTLY OR INDIRECTLY BY ONE
18 CORPORATION IS A UNITARY BUSINESS WITH RESPECT TO THAT PORTION OF A
19 BUSINESS CONDUCTED BY ANOTHER CORPORATION THROUGH ITS DIRECT OR
20 INDIRECT INTEREST IN A PARTNERSHIP IF THE REQUIREMENTS OF SUBSECTION
21 (A)(4) OF THIS SECTION ARE SATISFIED, INCLUDING IF THERE IS SYNERGY AND AN
22 EXCHANGE AND FLOW OF VALUE BETWEEN THE TWO PARTS OF THE BUSINESS AND
23 THE TWO CORPORATIONS ARE MEMBERS OF THE SAME COMMONLY CONTROLLED
24 GROUP.

25 (3) A BUSINESS CONDUCTED BY A PARTNERSHIP SHALL BE TREATED
26 AS CONDUCTED BY ITS PARTNERS, WHETHER DIRECTLY HELD OR INDIRECTLY HELD
27 THROUGH A SERIES OF PARTNERSHIPS, TO THE EXTENT OF THE PARTNER'S
28 DISTRIBUTIVE SHARE OF THE PARTNERSHIP'S INCOME, REGARDLESS OF THE
29 PERCENTAGE OF THE PARTNER'S OWNERSHIP INTEREST OR ITS DISTRIBUTIVE OR
30 ANY OTHER SHARE OF PARTNERSHIP INCOME.

31 (C) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS
32 ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER
33 DECEMBER 31, 2023, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL
34 FILE A COMBINED RETURN, REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE
35 INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX
36 LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A
37 UNITARY BUSINESS.

1 (2) THE TAXABLE INCOME OF A CORPORATION REQUIRED TO FILE
2 UNDER § 10-811(A)(2) OF THIS TITLE IS EQUAL TO THE COMBINED GROUP'S
3 MARYLAND MODIFIED INCOME AS ADJUSTED UNDER SUBSECTION (D)(3) OF THIS
4 SECTION.

5 (D) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP
6 EQUALS THE PRODUCT OF:

7 (I) THE COMBINED GROUP'S APPORTIONABLE MARYLAND
8 MODIFIED INCOME, AS DETERMINED UNDER PARAGRAPH (2) OF THIS SUBSECTION
9 AND ADJUSTED UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND

10 (II) THE COMBINED GROUP'S MARYLAND APPORTIONMENT
11 FACTOR, AS DETERMINED UNDER PARAGRAPH (4) OF THIS SUBSECTION.

12 (2) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS
13 PARAGRAPH, THE APPORTIONABLE MARYLAND MODIFIED INCOME OF THE
14 COMBINED GROUP EQUALS THE SUM OF THE CORPORATION'S AND EACH MEMBER'S
15 MARYLAND MODIFIED INCOME.

16 (II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS
17 SUBPARAGRAPH, FOR ANY MEMBER INCORPORATED IN THE UNITED STATES OR
18 INCLUDED IN A CONSOLIDATED FEDERAL CORPORATE INCOME TAX RETURN, THE
19 INCOME TO BE INCLUDED IN THE TOTAL APPORTIONABLE INCOME OF THE
20 COMBINED GROUP IS THE MARYLAND MODIFIED INCOME AS CALCULATED UNDER §
21 10-304 OF THIS TITLE.

22 2. THE INCOME OF EACH MEMBER SHALL BE
23 CALCULATED ON A SEPARATE RETURN BASIS AS IF THE MEMBER WERE NOT
24 CONSOLIDATED FOR FEDERAL INCOME TAX PURPOSES.

25 (III) 1. FOR ANY MEMBER NOT INCLUDED UNDER
26 SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE INCOME TO BE INCLUDED IN THE
27 TOTAL INCOME OF THE COMBINED GROUP IS DETERMINED AS PROVIDED UNDER
28 THIS SUBPARAGRAPH.

29 2. A PROFIT AND LOSS STATEMENT SHALL BE PREPARED
30 FOR EACH FOREIGN BRANCH OR CORPORATION IN THE CURRENCY IN WHICH THE
31 BOOKS OF ACCOUNT OF THE BRANCH OR CORPORATION ARE REGULARLY
32 MAINTAINED.

33 3. THE PROFIT AND LOSS STATEMENT SHALL BE
34 ADJUSTED TO CONFORM TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS

1 ADOPTED BY THE UNITED STATES FINANCIAL ACCOUNTING STANDARDS BOARD
2 FOR THE PREPARATION OF THE PROFIT AND LOSS STATEMENTS, EXCEPT AS
3 MODIFIED BY REGULATION.

4 4. EXCEPT AS OTHERWISE PROVIDED BY REGULATION,
5 THE PROFIT AND LOSS STATEMENT OF EACH MEMBER OF THE COMBINED GROUP,
6 AND THE APPORTIONMENT FACTORS RELATED TO EACH STATEMENT, WHETHER
7 UNITED STATES OR FOREIGN, SHALL BE TRANSLATED INTO THE CURRENCY IN
8 WHICH THE PARENT COMPANY MAINTAINS ITS BOOKS AND RECORDS.

9 5. INCOME APPORTIONED TO THIS STATE SHALL BE
10 EXPRESSED IN UNITED STATES DOLLARS.

11 (IV) IF A UNITARY BUSINESS INCLUDES INCOME FROM A
12 PARTNERSHIP, THE INCOME TO BE INCLUDED IN THE TOTAL INCOME OF THE
13 COMBINED GROUP EQUALS THE DIRECT AND INDIRECT DISTRIBUTIVE SHARE OF
14 THE PARTNERSHIP'S UNITARY BUSINESS INCOME ALLOCATED TO ANY MEMBER OF
15 THE COMBINED GROUP.

16 (3) THE COMBINED GROUP'S APPORTIONABLE MARYLAND MODIFIED
17 INCOME SHALL BE ADJUSTED TO ELIMINATE INTERCOMPANY TRANSACTIONS AS
18 DETERMINED UNDER THE INTERNAL REVENUE CODE.

19 (4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE
20 COMBINED GROUP'S MARYLAND APPORTIONMENT FACTOR IS A FRACTION:

21 1. THE NUMERATOR OF WHICH IS THE SUM OF THE
22 CORPORATION'S AND EACH MEMBER'S MARYLAND FACTORS UNDER § 10-402 OF
23 THIS SUBTITLE; AND

24 2. THE DENOMINATOR OF WHICH IS THE SUM OF THE
25 CORPORATION'S AND EACH MEMBER'S FACTORS UNDER § 10-402 OF THIS SUBTITLE.

26 (II) THE APPORTIONMENT FACTORS OF PASS-THROUGH
27 ENTITY MEMBERS ARE INCLUDED IN THE NUMERATOR UNDER SUBPARAGRAPH (I)1
28 OF THIS PARAGRAPH AND THE DENOMINATOR UNDER SUBPARAGRAPH (I)2 OF THIS
29 PARAGRAPH TO THE EXTENT OF THE CORPORATION'S DIRECT AND INDIRECT
30 DISTRIBUTIVE SHARE OF THAT ENTITY.

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

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

4 **(I) CORPORATIONS THAT ARE INCORPORATED IN THE UNITED**
5 **STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§ 931**
6 **THROUGH 934 OF THE INTERNAL REVENUE CODE;**

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

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

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

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

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

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

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

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

32 **(F) (1) (I) AN ELECTION TO USE THE WATER'S EDGE METHOD IN**
33 **ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION IS EFFECTIVE ONLY IF MADE**
34 **ON A TIMELY FILED ORIGINAL RETURN FOR A TAX YEAR BY EVERY MEMBER OF THE**

1 UNITARY BUSINESS.

2 (II) THE COMPTROLLER SHALL DEVELOP REGULATIONS
3 GOVERNING THE IMPACT, IF ANY, ON THE SCOPE OR APPLICATION OF AN ELECTION
4 TO USE THE WATER'S EDGE METHOD, INCLUDING TERMINATION OR DEEMED
5 ELECTION, RESULTING FROM A CHANGE IN THE COMPOSITION OF THE UNITARY
6 BUSINESS, THE COMBINED GROUP, THE TAXPAYER MEMBERS, OR ANY OTHER
7 SIMILAR CHANGE.

8 (2) AN ELECTION TO USE THE WATER'S EDGE METHOD SHALL
9 CONSTITUTE CONSENT TO THE REASONABLE PRODUCTION OF DOCUMENTS AND
10 TAKING OF DEPOSITIONS IN ACCORDANCE WITH THE MARYLAND RULES.

11 (3) AT THE DISCRETION OF THE COMPTROLLER, AN ELECTION TO
12 USE THE WATER'S EDGE METHOD MAY BE DISREGARDED IN PART OR IN WHOLE, AND
13 THE INCOME AND APPORTIONMENT FACTORS OF ANY MEMBER OF THE TAXPAYER'S
14 UNITARY GROUP MAY BE INCLUDED IN THE COMBINED REPORT WITHOUT REGARD
15 TO THE PROVISIONS OF THIS SECTION, IF ANY MEMBER OF THE UNITARY GROUP
16 FAILS TO COMPLY WITH ANY PROVISION OF THIS SECTION OR IF A PERSON
17 OTHERWISE NOT INCLUDED IN THE WATER'S EDGE COMBINED GROUP WAS AVOIDED
18 OF A SUBSTANTIAL OBJECTIVE OF AVOIDING STATE INCOME TAX.

19 (4) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS
20 PARAGRAPH, AN ELECTION TO USE THE WATER'S EDGE METHOD IS BINDING FOR
21 AND APPLICABLE TO THE TAXABLE YEAR IN WHICH THE ELECTION IS MADE AND ALL
22 TAXABLE YEARS THEREAFTER FOR A PERIOD OF 10 YEARS.

23 (II) AN ELECTION TO USE THE WATER'S EDGE METHOD MAY BE
24 WITHDRAWN OR REINSTITUTED AFTER WITHDRAWAL, BEFORE THE EXPIRATION OF
25 THE 10-YEAR PERIOD, ONLY ON WRITTEN REQUEST FOR REASONABLE CAUSE AND
26 ONLY WITH THE WRITTEN PERMISSION OF THE COMPTROLLER.

27 (III) IF THE COMPTROLLER GRANTS A WITHDRAWAL OF THE
28 ELECTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMPTROLLER
29 SHALL IMPOSE REASONABLE CONDITIONS AS NECESSARY TO PREVENT THE EVASION
30 OF TAX OR TO CLEARLY REFLECT INCOME FOR THE ELECTION PERIOD BEFORE OR
31 AFTER THE WITHDRAWAL.

32 (IV) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS
33 SUBPARAGRAPH, ON THE EXPIRATION OF THE 10-YEAR PERIOD, A TAXPAYER MAY
34 WITHDRAW FROM THE ELECTION TO USE THE WATER'S EDGE METHOD.

35 2. THE WITHDRAWAL SHALL BE MADE IN WRITING
36 WITHIN 1 YEAR BEFORE THE EXPIRATION OF THE ELECTION AND IS BINDING FOR A

1 PERIOD OF 10 YEARS, SUBJECT TO THE SAME CONDITIONS AS APPLIED TO THE
2 ORIGINAL ELECTION.

3 **3. IF NO WITHDRAWAL IS PROPERLY MADE UNDER THIS**
4 **SUBPARAGRAPH, THE ELECTION TO USE THE WATER'S EDGE METHOD SHALL**
5 **REMAIN IN EFFECT FOR AN ADDITIONAL 10-YEAR PERIOD, SUBJECT TO THE SAME**
6 **CONDITIONS AS APPLIED TO THE ORIGINAL ELECTION.**

7 **(G) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
8 **NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.**

9 **(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE**
10 **CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A**
11 **UNITARY BUSINESS" (REG. IV.1.(B)) OF THE MODEL GENERAL ALLOCATION AND**
12 **APPORTIONMENT REGULATIONS, AS ADOPTED BY THE MULTISTATE TAX**
13 **COMMISSION.**

14 10-811.

15 **(A) (1) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO**
16 **REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of corporations**
17 **[shall file a separate income tax return] ENGAGED IN A UNITARY BUSINESS SHALL FILE**
18 **A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX**
19 **LIABILITY OF ALL THE MEMBERS OF THE AFFILIATED GROUP THAT ARE ENGAGED IN**
20 **A UNITARY BUSINESS.**

21 **(2) THE RETURN REQUIRED UNDER PARAGRAPH (1) OF THIS**
22 **SUBSECTION SHALL INCLUDE THE INCOME AND APPORTIONMENT FACTORS**
23 **DETERMINED UNDER § 10-402.1(D) AND (E) OF THIS TITLE, AND ANY OTHER**
24 **INFORMATION REQUIRED BY THE COMPTROLLER, FOR ALL MEMBERS OF THE**
25 **COMBINED GROUP WHEREVER LOCATED OR DOING BUSINESS.**

26 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
27 **PARAGRAPH, THE COMBINED RETURN SHALL BE FILED UNDER THE NAME AND**
28 **FEDERAL EMPLOYER IDENTIFICATION NUMBER OF THE PARENT CORPORATION IF**
29 **THE PARENT IS A MEMBER OF THE COMBINED GROUP.**

30 **(II) IF THERE IS NO PARENT CORPORATION OR IF THE PARENT**
31 **IS NOT A MEMBER OF THE COMBINED GROUP, THE MEMBERS OF THE COMBINED**
32 **GROUP SHALL CHOOSE A MEMBER TO FILE THE RETURN.**

33 **(III) THE FILING MEMBER UNDER SUBPARAGRAPH (I) OR (II) OF**
34 **THIS PARAGRAPH SHALL CONTINUE TO FILE THE COMBINED RETURN UNLESS THE**
35 **FILING MEMBER IS NO LONGER THE PARENT CORPORATION OR NO LONGER A**

1 MEMBER OF THE COMBINED GROUP.

2 (4) THE RETURN SHALL BE SIGNED BY A RESPONSIBLE OFFICER OF
3 THE FILING MEMBER ON BEHALF OF THE COMBINED GROUP MEMBERS.

4 (5) MEMBERS OF THE COMBINED GROUP ARE JOINTLY AND
5 SEVERALLY LIABLE FOR THE TAX LIABILITY OF THE COMBINED GROUP INCLUDED
6 IN THE COMBINED RETURN.

7 (B) (1) THE COMPTROLLER MAY, BY REGULATION, REQUIRE THAT THE
8 COMBINED RETURN INCLUDE THE INCOME AND ASSOCIATED APPORTIONMENT
9 FACTORS OF ENTITIES THAT ARE NOT INCLUDED IN THE COMBINED REPORT BUT
10 THAT ARE MEMBERS OF A UNITARY BUSINESS IN ORDER TO REFLECT PROPER
11 APPORTIONMENT OF INCOME OF THE ENTIRE UNITARY BUSINESS.

12 (2) IF THE COMPTROLLER DETERMINES THAT THE REPORTED
13 INCOME OR LOSS OF A TAXPAYER ENGAGED IN A UNITARY BUSINESS WITH A MEMBER
14 NOT INCLUDED IN THE COMBINED GROUP REPRESENTS AN AVOIDANCE OR EVASION
15 OF TAX, THE COMPTROLLER MAY, ON A CASE-BY-CASE BASIS, REQUIRE THAT ALL
16 OR PART OF THE INCOME AND ASSOCIATED APPORTIONMENT FACTORS OF THE
17 MEMBER BE INCLUDED IN THE TAXPAYER'S COMBINED RETURN.

18 (3) THE COMPTROLLER MAY REQUIRE:

19 (I) THE EXCLUSION OF ONE OR MORE FACTORS, THE
20 INCLUSION OF ONE OR MORE ADDITIONAL FACTORS, OR THE EMPLOYMENT OF ANY
21 OTHER METHOD THAT WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS IN THIS
22 STATE; OR

23 (II) THE EMPLOYMENT OF ANY OTHER METHOD TO EFFECTUATE
24 A PROPER REFLECTION OF THE TOTAL AMOUNT OF INCOME SUBJECT TO
25 APPORTIONMENT AND AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE
26 COMBINED GROUP'S OR ITS MEMBERS' INCOME.

27 (C) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
28 NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

29 SECTION 3. AND BE IT FURTHER ENACTED, That, for a taxable year beginning
30 after December 31, 2021, but before January 1, 2023, notwithstanding §§ 13-602 and
31 13-702 of the Tax – General Article, the Comptroller shall assess interest and penalties
32 under §§ 13-602 and 13-702 of the Tax – General Article if a corporation pays estimated
33 income tax for the taxable year in an amount less than 90% of the tax required to be shown
34 on the corporation's income tax return for the taxable year.

35 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be

1 applicable to all taxable years beginning after December 31, 2021.

2 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
3 effect July 1, 2023, and shall be applicable to all taxable years beginning after December
4 31, 2023.

5 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section
6 5 of this Act, this Act shall take effect July 1, 2022.