

SENATE BILL 123

Q3

11r0509

(PRE-FILED)

By: **Senator Young**

Requested: August 14, 2020

Introduced and read first time: January 13, 2021

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 corporations,
5 subject to regulations adopted by the Comptroller, to determine certain income using
6 a certain method; requiring, subject to regulations adopted by the Comptroller,
7 certain groups of corporations to file a combined income tax return reflecting the
8 aggregate income tax liability of all the members of the group; requiring the
9 Comptroller to adopt certain regulations; requiring certain regulations to be
10 consistent with certain regulations adopted by the Multistate Tax Commission;
11 defining certain terms; providing for the construction of this Act; providing for the
12 application of this Act; and generally relating to the Maryland income tax on
13 corporations.

14 BY adding to

15 Article – Tax – General

16 Section 10–402.1

17 Annotated Code of Maryland

18 (2016 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Tax – General

21 Section 10–811

22 Annotated Code of Maryland

23 (2016 Replacement Volume and 2020 Supplement)

24 Preamble

25 WHEREAS, Small businesses are the primary employers in Maryland's economy,
26 accounting for 97.5% of all employers and 51.6% of the private-sector labor force, according

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 to the Office of Advocacy within the federal Small Business Administration; and

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

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

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

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

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

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

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

24 **Article – Tax – General**

25 **10-402.1.**

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

28 **(2) “COMBINED GROUP” MEANS A GROUP OF CORPORATIONS:**

29 **(I) THAT IS ENGAGED IN A UNITARY BUSINESS;**

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

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

3 2. ONE OR MORE MEMBER CORPORATIONS OF THE
4 GROUP;

5 (III) THE MEMBERS OF WHICH ARE SUBJECT TO THE INCOME TAX
6 OR WOULD BE SUBJECT TO THE INCOME TAX IF DOING BUSINESS IN THE STATE; AND

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

11 (3) “COMBINED RETURN” MEANS A TAX RETURN FOR THE COMBINED
12 GROUP CONTAINING INFORMATION AS PROVIDED IN THIS SECTION OR OTHERWISE
13 REQUIRED BY THE COMPTROLLER.

14 (4) “UNITARY BUSINESS” MEANS A SINGLE ECONOMIC ENTERPRISE
15 THAT IS MADE OF EITHER SEPARATE PARTS OF A SINGLE BUSINESS ENTITY OR OF A
16 COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES THAT ARE SUFFICIENTLY
17 INTERDEPENDENT, INTEGRATED, AND INTERRELATED THROUGH THEIR ACTIVITIES
18 SO AS TO PROVIDE MUTUAL BENEFIT THAT PRODUCES A SHARING OR EXCHANGE OF
19 VALUE AMONG THEM AND A SIGNIFICANT FLOW OF VALUE TO THE SEPARATE PARTS.

20 (B) (1) THE TERM “UNITARY BUSINESS” SHALL BE CONSTRUED TO THE
21 BROADEST EXTENT ALLOWED UNDER THE U.S. CONSTITUTION.

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

30 (3) A BUSINESS CONDUCTED BY A PARTNERSHIP SHALL BE TREATED
31 AS CONDUCTED BY ITS PARTNERS, WHETHER DIRECTLY HELD OR INDIRECTLY HELD
32 THROUGH A SERIES OF PARTNERSHIPS, TO THE EXTENT OF THE PARTNER’S
33 DISTRIBUTIVE SHARE OF THE PARTNERSHIP’S INCOME, REGARDLESS OF THE
34 PERCENTAGE OF THE PARTNER’S OWNERSHIP INTEREST OR ITS DISTRIBUTIVE OR
35 ANY OTHER SHARE OF PARTNERSHIP INCOME.

1 (C) THIS SECTION APPLIES ONLY TO A DOMESTIC OR FOREIGN
2 CORPORATION THAT:

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

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

9 (D) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS
10 ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER
11 DECEMBER 31, 2021, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL
12 FILE A COMBINED RETURN, REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE
13 INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX
14 LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A
15 UNITARY BUSINESS.

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

20 (E) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP
21 EQUALS THE PRODUCT OF:

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

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

27 (2) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS
28 PARAGRAPH, THE APPORTIONABLE MARYLAND MODIFIED INCOME OF THE
29 COMBINED GROUP EQUALS THE SUM OF THE CORPORATION AND EACH MEMBER'S
30 MARYLAND MODIFIED INCOME.

31 (II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS
32 SUBPARAGRAPH, FOR ANY MEMBER INCORPORATED IN THE UNITED STATES OR
33 INCLUDED IN A CONSOLIDATED FEDERAL CORPORATE INCOME TAX RETURN, THE
34 INCOME TO BE INCLUDED IN THE TOTAL APPORTIONABLE INCOME OF THE

1 COMBINED GROUP IS THE MARYLAND MODIFIED INCOME AS CALCULATED UNDER §
2 10-304 OF THIS TITLE.

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

6 (III) 1. FOR ANY MEMBER NOT INCLUDED UNDER
7 SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE INCOME TO BE INCLUDED IN THE
8 TOTAL INCOME OF THE COMBINED GROUP IS DETERMINED AS PROVIDED UNDER
9 THIS SUBPARAGRAPH.

10 2. A PROFIT AND LOSS STATEMENT SHALL BE PREPARED
11 FOR EACH FOREIGN BRANCH OR CORPORATION IN THE CURRENCY IN WHICH THE
12 BOOKS OF ACCOUNT OF THE BRANCH OR CORPORATION ARE REGULARLY
13 MAINTAINED.

14 3. THE PROFIT AND LOSS STATEMENT SHALL BE
15 ADJUSTED TO CONFORM TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS
16 ADOPTED BY THE UNITED STATES FINANCIAL ACCOUNTING STANDARDS BOARD
17 FOR THE PREPARATION OF THE PROFIT AND LOSS STATEMENTS, EXCEPT AS
18 MODIFIED BY REGULATION.

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

24 5. INCOME APPORTIONED TO THIS STATE SHALL BE
25 EXPRESSED IN UNITED STATES DOLLARS.

26 (IV) IF A UNITARY BUSINESS INCLUDES INCOME FROM A
27 PARTNERSHIP, THE INCOME TO BE INCLUDED IN THE TOTAL INCOME OF THE
28 COMBINED GROUP EQUALS THE DIRECT AND INDIRECT DISTRIBUTIVE SHARE OF
29 THE PARTNERSHIP'S UNITARY BUSINESS INCOME ALLOCATED TO ANY MEMBER OF
30 THE COMBINED GROUP.

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

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

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

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

6 (II) THE APPORTIONMENT FACTORS OF PASS-THROUGH
7 ENTITY MEMBERS ARE INCLUDED IN THE NUMERATOR UNDER SUBPARAGRAPH (I)1
8 OF THIS PARAGRAPH AND THE DENOMINATOR UNDER SUBPARAGRAPH (I)2 OF THIS
9 PARAGRAPH TO THE EXTENT OF THE CORPORATION'S DIRECT AND INDIRECT
10 DISTRIBUTIVE SHARE OF THAT ENTITY.

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

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

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

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

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

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

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

32 (VI) UNDER THE CIRCUMSTANCES AND TO THE EXTENT
33 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 **(G) (1) (I) AN ELECTION TO USE THE WATER'S EDGE METHOD IN**
14 **ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION IS EFFECTIVE ONLY IF MADE**
15 **ON A TIMELY FILED, ORIGINAL RETURN FOR A TAX YEAR BY EVERY MEMBER OF THE**
16 **UNITARY BUSINESS.**

17 **(II) THE COMPTROLLER SHALL DEVELOP REGULATIONS**
18 **GOVERNING THE IMPACT, IF ANY, ON THE SCOPE OR APPLICATION OF AN ELECTION**
19 **TO USE THE WATER'S EDGE METHOD, INCLUDING TERMINATION OR DEEMED**
20 **ELECTION, RESULTING FROM A CHANGE IN THE COMPOSITION OF THE UNITARY**
21 **BUSINESS, THE COMBINED GROUP, THE TAXPAYER MEMBERS, OR ANY OTHER**
22 **SIMILAR CHANGE.**

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

26 **(3) AT THE DISCRETION OF THE COMPTROLLER, AN ELECTION TO**
27 **USE THE WATER'S EDGE METHOD MAY BE DISREGARDED IN PART OR IN WHOLE, AND**
28 **THE INCOME AND APPORTIONMENT FACTORS OF ANY MEMBER OF THE TAXPAYER'S**
29 **UNITARY GROUP MAY BE INCLUDED IN THE COMBINED REPORT WITHOUT REGARD**
30 **TO THE PROVISIONS OF THIS SECTION, IF ANY MEMBER OF THE UNITARY GROUP**
31 **FAILS TO COMPLY WITH ANY PROVISION OF THIS SECTION OR IF A PERSON**
32 **OTHERWISE NOT INCLUDED IN THE WATER'S EDGE COMBINED GROUP WAS AVAILED**
33 **OF A SUBSTANTIAL OBJECTIVE OF AVOIDING STATE INCOME TAX.**

34 **(4) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS**
35 **PARAGRAPH, AN ELECTION TO USE THE WATER'S EDGE METHOD IS BINDING FOR**

1 AND APPLICABLE TO THE TAXABLE YEAR IN WHICH THE ELECTION IS MADE AND ALL
2 TAXABLE YEARS THEREAFTER FOR A PERIOD OF 10 YEARS.

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

7 (III) IF THE COMPTROLLER GRANTS A WITHDRAWAL OF THE
8 ELECTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMPTROLLER
9 SHALL IMPOSE REASONABLE CONDITIONS AS NECESSARY TO PREVENT THE EVASION
10 OF TAX OR TO CLEARLY REFLECT INCOME FOR THE ELECTION PERIOD BEFORE OR
11 AFTER THE WITHDRAWAL.

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

15 2. THE WITHDRAWAL SHALL BE MADE IN WRITING
16 WITHIN 1 YEAR BEFORE THE EXPIRATION OF THE ELECTION AND IS BINDING FOR A
17 PERIOD OF 10 YEARS, SUBJECT TO THE SAME CONDITIONS AS APPLIED TO THE
18 ORIGINAL ELECTION.

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

23 (H) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE
24 NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

25 (2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE
26 CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A
27 UNITARY BUSINESS" (REG. IV.1.(B)) OF THE MODEL GENERAL ALLOCATION AND
28 APPORTIONMENT REGULATIONS, AS ADOPTED BY THE MULTISTATE TAX
29 COMMISSION.

30 10-811.

31 (A) [Each] EXCEPT AS PROVIDED IN THIS SECTION, EACH member of an
32 affiliated group of corporations shall file a separate income tax return.

33 (B) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS
34 ADOPTED BY THE COMPTROLLER, AN AFFILIATED GROUP OF CORPORATIONS

1 ENGAGED IN A UNITARY BUSINESS SUBJECT TO § 10-402.1 OF THIS TITLE SHALL
2 FILE A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX
3 LIABILITY OF ALL THE MEMBERS OF THE AFFILIATED GROUP THAT ARE ENGAGED IN
4 A UNITARY BUSINESS.

5 (2) THE RETURN REQUIRED UNDER PARAGRAPH (1) OF THIS
6 SUBSECTION SHALL INCLUDE THE INCOME AND APPORTIONMENT FACTORS
7 DETERMINED UNDER § 10-401.1(E) AND (F) OF THIS TITLE, AND ANY OTHER
8 INFORMATION REQUIRED BY THE COMPTROLLER, FOR ALL MEMBERS OF THE
9 COMBINED GROUP WHEREVER LOCATED OR DOING BUSINESS.

10 (3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
11 PARAGRAPH, THE COMBINED RETURN SHALL BE FILED UNDER THE NAME AND
12 FEDERAL EMPLOYER IDENTIFICATION NUMBER OF THE PARENT CORPORATION IF
13 THE PARENT IS A MEMBER OF THE COMBINED GROUP.

14 (II) IF THERE IS NO PARENT CORPORATION OR IF THE PARENT
15 IS NOT A MEMBER OF THE COMBINED GROUP, THE MEMBERS OF THE COMBINED
16 GROUP SHALL CHOOSE A MEMBER TO FILE THE RETURN.

17 (III) THE FILING MEMBER UNDER SUBPARAGRAPH (I) OR (II) OF
18 THIS PARAGRAPH SHALL CONTINUE TO FILE THE COMBINED RETURN UNLESS THE
19 FILING MEMBER IS NO LONGER THE PARENT CORPORATION OR NO LONGER A
20 MEMBER OF THE COMBINED GROUP.

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

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

26 (C) (1) THE COMPTROLLER MAY, BY REGULATION, REQUIRE THAT THE
27 COMBINED RETURN INCLUDE THE INCOME AND ASSOCIATED APPORTIONMENT
28 FACTORS OF ENTITIES THAT ARE NOT INCLUDED IN THE COMBINED REPORT BUT
29 THAT ARE MEMBERS OF A UNITARY BUSINESS IN ORDER TO REFLECT PROPER
30 APPORTIONMENT OF INCOME OF THE ENTIRE UNITARY BUSINESS.

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

1 **(3) THE COMPTROLLER MAY REQUIRE:**

2 **(I) THE EXCLUSION OF ONE OR MORE FACTORS, THE**
3 **INCLUSION OF ONE OR MORE ADDITIONAL FACTORS, OR THE EMPLOYMENT OF ANY**
4 **OTHER METHOD THAT WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS IN THIS**
5 **STATE; OR**

6 **(II) THE EMPLOYMENT OF ANY OTHER METHOD TO EFFECTUATE**
7 **A PROPER REFLECTION OF THE TOTAL AMOUNT OF INCOME SUBJECT TO**
8 **APPORTIONMENT AND AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE**
9 **COMBINED GROUP'S OR ITS MEMBERS' INCOME.**

10 **(D) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
11 **NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
13 1, 2021, and shall be applicable to all taxable years beginning after December 31, 2021.