

SENATE BILL 469

Q3, C1
SB 269/12 – B&T

3lr1600
CF 3lr2794

By: **Senators Pinsky, Benson, Conway, Ferguson, Forehand, Frosh, Gladden,
Jones–Rodwell, Kelley, Madaleno, Manno, Montgomery, Muse, Ramirez,
Raskin, Rosapepe, and Stone**

Introduced and read first time: January 30, 2013
Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Business Relief and Tax Fairness Act of 2013**

3 FOR the purpose of altering a certain fee collected by the State Department of
4 Assessments and Taxation for the filing of certain documents by certain
5 corporations and business entities; requiring certain corporations to compute
6 Maryland taxable income using a certain method; requiring, subject to
7 regulations adopted by the Comptroller, certain groups of corporations to file a
8 combined income tax return reflecting the aggregate income tax liability of all
9 the members of the group; requiring the Comptroller to adopt certain
10 regulations; requiring certain regulations to be consistent with certain
11 regulations adopted by the Multistate Tax Commission; defining certain terms;
12 providing for the application of this Act; and generally relating to fees collected
13 by the State Department of Assessments and Taxation and the Maryland
14 corporate income tax.

15 BY repealing and reenacting, without amendments,
16 Article – Corporations and Associations
17 Section 1–203(a)
18 Annotated Code of Maryland
19 (2007 Replacement Volume and 2012 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Corporations and Associations
22 Section 1–203(b)(3)(ii)
23 Annotated Code of Maryland
24 (2007 Replacement Volume and 2012 Supplement)

25 BY adding to
26 Article – Tax – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 10-402.1
2 Annotated Code of Maryland
3 (2010 Replacement Volume and 2012 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Tax – General
6 Section 10-811
7 Annotated Code of Maryland
8 (2010 Replacement Volume and 2012 Supplement)

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

11 **Article – Corporations and Associations**

12 1-203.

13 (a) In addition to any organization and capitalization fee required under §
14 1-204 of this subtitle, subject to subsection (c) of this section, the Department shall
15 collect the fees specified in subsection (b) of this section.

16 (b) (3) (ii) For each of the following documents which are filed but not
17 recorded, the filing fee is as indicated:

18 Annual report of a Maryland corporation, except a charitable or benevolent institution,
19 nonstock corporation, savings and loan corporation, credit union, family farm,
20 and banking institution **[\$300] \$150**

21 Annual report of a foreign corporation subject to the jurisdiction of this State, except a
22 national banking association, savings and loan association, credit union,
23 nonstock corporation, and charitable and benevolent
24 institution..... **[\$300] \$150**

25 Annual report of a Maryland savings and loan association, banking institution, or
26 credit union or of a foreign savings and loan association, national banking
27 association, or credit union that is subject to the jurisdiction of this
28 State..... **[\$300] \$150**

29 Annual report of a Maryland limited liability company, limited liability partnership,
30 limited partnership, or of a foreign limited liability company, foreign limited
31 liability partnership, or foreign limited partnership, except a family
32 farm **[\$300] \$150**

33 Annual report of a business trust **[\$300] \$150**

1 Annual report of a real estate investment trust or foreign statutory trust doing
2 business in this State..... [~~300~~] **\$150**

3 Annual report of a family farm \$100

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

6 **Article – Tax – General**

7 **10-402.1.**

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

10 (2) “COMBINED GROUP” MEANS:

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

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

19 (3) “UNITARY GROUP” MEANS AN AFFILIATED GROUP OF
20 CORPORATIONS:

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

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

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

26 2. ONE OR MORE MEMBER CORPORATIONS OF THE
27 GROUP.

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

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

6 **(1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE**
7 **COMBINED GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE**
8 **INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING**
9 **TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT**
10 **CLEARLY THE INCOME OF THE COMBINED GROUP;**

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

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

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

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

36 **(D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER,**
37 **A CORPORATION THAT IS PART OF A COMBINED GROUP MAY ELECT TO**

1 DETERMINE ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO TRADE OR
2 BUSINESS IN THE STATE USING THE WATER'S EDGE METHOD AS DESCRIBED IN
3 THIS SUBSECTION.

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

7 (I) CORPORATIONS THAT ARE INCORPORATED IN THE
8 UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§
9 931 THROUGH 936 OF THE INTERNAL REVENUE CODE;

10 (II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS
11 DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND
12 FOREIGN SALES CORPORATIONS, AS DESCRIBED IN §§ 921 THROUGH 927 OF
13 THE INTERNAL REVENUE CODE;

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

18 (IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§
19 970 THROUGH 972 OF THE INTERNAL REVENUE CODE;

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

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

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

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

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

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

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

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

10 10–811.

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

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

19 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
20 be applicable to all taxable years beginning after December 31, 2013.

21 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to Section 3 of
22 this Act, this Act shall take effect July 1, 2013.