

CHAPTER 178

(House Bill 664)

AN ACT concerning

Corporate Income Tax - Reporting and Study

FOR the purpose of altering the membership of a certain business tax study commission; limiting to certain taxable years a requirement for certain corporations engaged in manufacturing to submit certain reports as part of their income tax returns; altering the circumstances under which an individual is required to attach to an income tax return or otherwise file with the Comptroller a copy of the individual's federal income tax return; altering ~~certain definitions~~ a certain definition and repealing certain definitions for purposes of certain requirements for certain corporations to submit certain reports to the Comptroller; altering the reporting requirements and limiting the reporting requirements to certain taxable years; ~~prohibiting the disclosure of certain information to certain governmental units or officials;~~ repealing certain penalty provisions and authorizing the Comptroller to develop and implement a certain penalty system relating to certain reporting requirements; altering the due date for ~~a~~ certain annual ~~report~~ reports by the Comptroller; requiring a certain commission in consultation with the Comptroller to review certain requirements and definitions and submit certain recommendations to the Governor and General Assembly by a certain date; and generally relating to certain requirements for certain ~~corporations~~ persons to submit certain reports to the Comptroller.

BY repealing and reenacting, with amendments,

Article - Tax - General

Section 10-110(c), 10-402(c)(2)(vi) and (vii), 10-804(e)(3)(ii), and 10-804.1

Annotated Code of Maryland

(2004 Replacement Volume and 2007 Supplement)

(As enacted by Chapter 3 of the Acts of the General Assembly of the 2007 Special Session)

BY repealing and reenacting, with amendments,

Chapter 3 of the Acts of the General Assembly of the 2007 Special Session

Section 10

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

Article - Tax - General

10-110.

(c) The Commission shall be composed of [17] **19** members, as follows:

- (1) a chair, appointed by the Governor;
- (2) three members of the Senate Budget and Taxation Committee, appointed by the President of the Senate;
- (3) three members of the House Committee on Ways and Means, appointed by the Speaker of the House;
- (4) the Comptroller of the Treasury, or the Comptroller's designee;
- (5) the Secretary of Business and Economic Development, or the Secretary's designee;
- (6) the Secretary of Budget and Management, or the Secretary's designee;
- (7) the Director of the State Department of Assessments and Taxation, or the Director's designee;
- (8) a representative of the Maryland Association of Counties;
- (9) a representative of the Maryland Municipal League;
- (10) a representative of the Maryland Chamber of Commerce; [and]
- (11) **A REPRESENTATIVE OF THE GREATER BALTIMORE COMMITTEE;**
- (12) **A REPRESENTATIVE OF AN ORGANIZATION THAT REPRESENTS MARYLAND MANUFACTURERS, APPOINTED BY THE GOVERNOR; AND**
- ~~[(11)]~~ (13) three members of the public, each of whom shall be an attorney at law or an accountant knowledgeable about the State's business tax structure, appointed by the Governor.

10-402.

(c) (2) (vi) As part of its tax return for a taxable year beginning after December 31, 2005, **BUT BEFORE JANUARY 1, 2011**, each manufacturing corporation that has more than 25 employees and apportions its income under this paragraph

shall submit a report, in the form that the Comptroller requires by regulation, that describes for each taxable year as of the last day of the taxable year the following:

1. the difference in tax owed as a result of using the single sales factor apportionment method under this paragraph as compared to the tax owed using the 3-factor double weighted sales factor apportionment method in effect for the last taxable year beginning on or before December 31, 2000;

2. volume of sales in the State and worldwide;

3. taxable income in the State and worldwide; and

4. book value of plant, land, and equipment in the State and worldwide.

(vii) On or before [December 1, 2008] **MARCH 1, 2009**, and [December] **MARCH 1** of each year thereafter, and notwithstanding any confidentiality requirements, the Comptroller shall prepare and submit to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly, a comprehensive report on the use of single sales factor apportionment by manufacturing corporations that provides, at a minimum:

1. the number of corporations filing tax returns for the taxable year that ended during the **SECOND** preceding calendar year that use single sales factor apportionment and the number of such corporations having a Maryland income tax liability for that taxable year;

2. the number of corporations paying less in Maryland income tax for that taxable year as a result of using single sales factor apportionment and the aggregate amount of Maryland income tax savings for all such corporations for that taxable year as a result of using single sales factor apportionment; and

3. the number of corporations paying more in Maryland income tax for the taxable year as a result of using single sales factor apportionment and the aggregate amount of additional Maryland income tax owed by those corporations for the taxable year as a result of using single sales factor apportionment.

~~10-804.1.~~ 10-804.

(e) Each person required under this subtitle to file an income tax return or estimated income tax declaration or return shall:

(3) attach to an income tax return or otherwise file with the Comptroller any records or statements that the Comptroller requires, including:

(ii) a copy of the federal income tax return:

1. for a corporation; AND

2. [for an individual who reports income or loss from a sole proprietorship (Schedule C of Form 1040) or income or loss from rental real estate and royalties, partnerships and S corporations, estates and trusts, or real estate mortgage investment conduits (Schedule E of Form 1040); and

3.] if the Comptroller requests, for an individual [other than one described in item 2 of this item];

10-804.1.

(a) ~~(1)~~ In this section ~~the following words have the meanings indicated.~~

~~(2)~~ ~~(1)~~ ~~“Corporate:~~

(1) “CORPORATE group” means:

~~{(i)}~~ ~~1~~ an affiliated group or controlled group under § 1504 or § 1563 of the Internal Revenue Code; or

~~{(ii)}~~ ~~2~~ an affiliated group of corporations:

~~{1.}~~ ~~A~~ that is engaged in a unitary business; and

~~{2.}~~ ~~B~~ more than 50% of the voting stock of each member of which is directly or indirectly owned by [:

A.] a common owner or common owners, either corporate or [noncorporate;] **NONCORPORATE**, or

[B.] **BY** one or more members of the group=

~~(H)~~ ; AND

(2) “CORPORATE CORPORATE GROUP” DOES NOT INCLUDE:

(I) ANY CORPORATION THAT, FOR ANY REASON, IS NOT SUBJECT TO UNITED STATES FEDERAL INCOME TAX;

(II) AN INSURER AS DEFINED IN § 1-101 OF THE INSURANCE ARTICLE; OR

(III) A REGULATED INVESTMENT COMPANY, AS DEFINED IN § 851(A) OF THE INTERNAL REVENUE CODE.

~~(3) “Doing business in the State” [includes] MEANS engaging in any of the following activities, whether or not the corporation engaging in the activity is subject to the tax imposed under this title:~~

~~(i) owning or renting real or tangible personal property physically located in the State;~~

~~(ii) having employees, agents, or representatives acting on the corporation’s behalf in the State;~~

~~(iii) making sales of tangible personal property to purchasers that take possession of the property in the State;~~

~~[(iv) regularly and systematically performing services for customers located in the State;]~~

~~[(v)] (IV) regularly and systematically performing services in the State;~~

~~[(vi) earning income from intangible property that has a business situs in the State;]~~

~~[(vii)] (V) engaging in regular and systematic solicitation of sales in the State;~~

~~[(viii)] (VI) being a general or limited partner in a partnership engaged in any of the activities described in items (i) through [(vii)] (V) of this paragraph; or~~

~~[(ix)] (VII) being a member of a limited liability company engaged in any of the activities described in items (i) through [(vii)] (V) of this paragraph.~~

~~(4) “Publicly traded corporation” means:~~

~~(i) a corporation that is regularly traded on an established securities market in the United States or a foreign country; or~~

~~(ii) a corporation more than 50% of the voting stock of which is owned, directly or indirectly, by a corporation, trust, association, or other business entity that is regularly traded on an established securities market in the United States or a foreign country.~~

(b) Each corporation that is required to file an income tax return under this title and is a member of a corporate group shall file with the Comptroller~~[-~~:

~~(1) a statement identifying each member of the corporate group and stating for each member of the corporate group:~~

~~[(i)] (1) whether the member filed an income tax return under this title for the taxable year;~~

~~[(ii)] (2) the total volume of sales by the member worldwide for the taxable year; and~~

~~[(iii)] (3) the volume of sales made by the member in the State for the taxable year, if any[; and~~

~~(2) a statement:~~

~~(i) identifying each state other than Maryland in which any member of the corporate group filed an income tax return for the taxable year; and~~

~~(ii) as to any state that requires combined or consolidated reporting for corporate income taxpayers, listing the members of the corporate group that are included in the combined or consolidated group for purposes of the income tax return or returns filed in that state[.~~

~~(c) (1) Each publicly traded corporation that IS SUBJECT TO UNITED STATES FEDERAL INCOME TAX AND is doing business in the State shall file with the Comptroller a statement containing the following information:~~

~~(i) the name of the corporation and the street address of its principal executive office;~~

~~(ii) the name of any corporation that owns, directly or indirectly, 50% or more of the voting stock of the corporation and the street address of that corporation's principal executive office;~~

~~(iii) the corporation's 6 digit North American Industry Classification System code number; and~~

~~(iv) as specified by the Comptroller, information reported on or used in preparing the corporation's tax return filed under this title, or, in the case of a corporation not required to file a tax return under this title, the information that would be required to be reported on or used in preparing the tax return if the corporation were required to file an income tax return.~~

~~(2) In lieu of the information described in paragraph (1)(iv) of this subsection, a publicly traded corporation doing business in the State but not required to file a tax return under this title may elect to provide the following information:~~

~~(i) an explanation of why the corporation is not required to file a corporate income tax return in this State; and~~

~~(ii) a statement as to whether the corporation's total gross receipts from sales to purchasers in this State for the taxable year were:~~

- ~~1. less than \$10,000,000;~~
- ~~2. at least \$10,000,000 but less than \$50,000,000;~~
- ~~3. at least \$50,000,000 but less than \$100,000,000;~~
- ~~4. at least \$100,000,000 but less than \$250,000,000; or~~
- ~~5. at least \$250,000,000.~~

~~(3) If a publicly traded corporation is a member of a corporate group and the corporate group has worldwide gross receipts for the taxable year in excess of \$100,000,000, the statement required under this subsection shall include:~~

~~(i) the information specified under paragraph (1) or (2) of this subsection for each member of the corporate group[, whether or not the member is doing business in the State or] THAT is required to file an income tax return under this title; and~~

~~(ii) other information as specified by the Comptroller for the corporation and for each member of any corporate group of which the corporation is a member, including:~~

~~1. the members of the corporate group that would be included in the combined group using the "water's edge" method for purposes of combined reporting and the difference in Maryland income tax that would be owed if the corporation were required to use combined reporting using the "water's edge" method to determine its Maryland income tax;~~

~~2. the sales factor that would be calculated for this State and the difference in Maryland income tax that would be owed if the corporation were required to include in the numerator of the sales factor for purposes of apportioning income to the State all sales of property shipped from an office, store, warehouse, factory, or other place of storage in this State where:~~

~~A. the purchaser is the federal government; and~~

~~B. the property is shipped or delivered to a customer in a state in which the selling corporation is not subject to a state corporate income tax or state franchise tax measured by net income and could not be subjected to such a tax if the state were to impose it;~~

~~3. for any income that the taxpayer has identified[, on the income tax return filed under this title or on an income tax return filed in any state,] as income that is **NONOPERATIONAL AND THEREFORE** not apportionable;~~

~~A. the amount and source of that [nonapportionable] **NONOPERATIONAL** income; **AND**~~

~~[B. unless the principal executive office of the corporation is in this State, the state to which that nonapportionable income was allocated; and]~~

~~[C.] **B.** if the [principal executive office] **COMMERCIAL DOMICILE** of the corporation is in this State, the difference in tax that would be owed if the corporation were required to allocate 100% of the [nonapportionable] **NONOPERATIONAL** income to [Maryland;] **MARYLAND TO THE FULLEST EXTENT ALLOWED UNDER THE UNITED STATES CONSTITUTION; AND**~~

~~4. the full-time equivalent employment of the corporation in the State on the last day of the taxable year and for the 3 previous taxable years[; and~~

~~5. if the corporation is incorporated in the United States or is an affiliate of a corporation incorporated in the United States, profits before tax reported on the Securities and Exchange Commission Form 10-K for the corporation or the corporate group of which the corporation is a member for the corporate fiscal year that contains the last day of the taxable year].~~

~~(4) **IN LIEU OF THE INFORMATION REQUIRED UNDER PARAGRAPHS (1) THROUGH (3) OF THIS SUBSECTION, A CORPORATION MAY:**~~

~~(i) (1) **PROVIDE A COPY OF A A PRO FORMA "WATER'S EDGE" COMBINED REPORT CALCULATION CORPORATE INCOME TAX RETURN FILED IN ACCORDANCE WITH ANOTHER STATE'S COMBINED REPORTING INCOME TAX REQUIREMENTS, BUT REFLECTING THE MARYLAND APPORTIONMENT FACTOR NUMERATORS; AND**~~

~~(ii) **IDENTIFY THE DIFFERENCE IN THE MARYLAND TAX AMOUNT THAT WOULD BE OWED IF THE CORPORATION WERE REQUIRED TO USE**~~

~~THE OTHER STATE'S COMBINED REPORTING REQUIREMENTS TO DETERMINE ITS~~
~~MARYLAND INCOME TAX REGULATIONS ADOPTED BY THE COMPTROLLER; AND~~

(2) IN A FORMAT SPECIFIED BY THE COMPTROLLER:

(I) THE SALES FACTOR THAT WOULD BE CALCULATED FOR THIS STATE AND THE DIFFERENCE IN MARYLAND INCOME TAX THAT WOULD BE OWED IF THE CORPORATION WERE REQUIRED TO INCLUDE IN THE NUMERATOR OF THE SALES FACTOR FOR PURPOSES OF APPORTIONING INCOME TO THE STATE ALL SALES OF PROPERTY SHIPPED FROM AN OFFICE, STORE, WAREHOUSE, FACTORY, OR OTHER PLACE OF STORAGE IN THIS STATE WHERE:

1. THE PURCHASER IS THE FEDERAL GOVERNMENT;
OR

2. THE PROPERTY IS SHIPPED OR DELIVERED TO A CUSTOMER IN A STATE IN WHICH THE SELLING CORPORATION IS NOT SUBJECT TO A STATE CORPORATE INCOME TAX OR STATE FRANCHISE TAX MEASURED BY NET INCOME AND COULD NOT BE SUBJECTED TO SUCH A TAX IF THE STATE WERE TO IMPOSE IT; AND

(II) FOR ANY INCOME THAT THE TAXPAYER HAS IDENTIFIED, ON THE INCOME TAX RETURN FILED UNDER THIS TITLE OR ON AN INCOME TAX RETURN FILED IN ANY STATE, AS INCOME THAT IS NONOPERATIONAL AND THEREFORE NOT APPORTIONABLE:

1. THE AMOUNT AND SOURCE OF THAT NONOPERATIONAL INCOME; AND

2. IF THE COMMERCIAL DOMICILE OF THE CORPORATION IS IN THIS STATE, THE DIFFERENCE IN TAX THAT WOULD BE OWED IF THE CORPORATION WERE REQUIRED TO ALLOCATE 100% OF THE NONOPERATIONAL INCOME TO MARYLAND TO THE FULLEST EXTENT ALLOWED UNDER THE UNITED STATES CONSTITUTION.

~~(d)~~ **(C)** (1) The statements required under ~~subsections (b) and (e)~~
SUBSECTION (B) of this section:

(i) shall be filed annually, for all taxable years beginning after December 31, 2005, **BUT BEFORE JANUARY 1, 2011**, on or before dates specified by the Comptroller in an electronic format as specified by the Comptroller;

(ii) shall be:

1. made under oath and signed in the same manner as required for income tax returns under § 10-804 of this subtitle; and
 2. subject to audit by the Comptroller in the course of and under the normal procedures applicable to corporate income tax return audits; and
- (iii) notwithstanding any other provision of law, shall be treated as confidential taxpayer information subject to Title 13, Subtitle 2 of this article.

~~(2) INFORMATION CONTAINED IN THE STATEMENTS SUBMITTED UNDER THIS SECTION MAY NOT BE DISCLOSED TO ANY UNIT OR OFFICIAL OF THE FEDERAL GOVERNMENT OR OF ANY OTHER STATE OR LOCAL GOVERNMENT.~~

~~[(2)] (3) The statements required under this section for the members of a corporate group shall be submitted by the corporate group in one combined report that includes the information required under subsections (b) and (c) of this section for all members of the corporate group.~~

[(3)] ~~(4)~~ (2) The Comptroller shall develop and implement an oversight AND PENALTY system to ensure that corporations ~~doing business in the State, including those not required to file a return under this title,~~ provide the required disclosure statements in a timely and accurate manner.

[(4)] A person who is required to file a statement under this section who willfully fails to file the statement or who files a false statement is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$10,000 or imprisonment not exceeding 5 years or both.]

~~(5)~~ (3) The Comptroller shall publish the name of, and penalty imposed on, any corporation failing to file a statement required under this section or filing an inaccurate statement.

~~(e)~~ (D) (1) A corporation submitting a statement required under this section may submit supplemental information that, in its sole judgment and discretion, could facilitate proper interpretation of the information included in the statement.

(2) A corporation shall file a supplemental statement under this section within 60 days after:

- (i) the corporation files an amended tax return under this title;
- or

(ii) the corporation's tax liability for a tax year is changed as the result of an audit adjustment or final determination of liability by the Comptroller or by a court of law.

~~(E)~~ **(E)** (1) The Comptroller shall:

(i) collect, compile, and analyze the information submitted under this section;

(ii) use the information submitted under this section to provide analyses as requested by the Governor or the General Assembly relating to the corporate income tax or proposals for changes to the corporate income tax; and

(iii) on or before [~~December~~] **MARCH** 1 of each year, based on information provided in income tax returns and the data submitted under this subsection, submit a report to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly, concerning the corporate income tax.

(2) The report required under this subsection shall:

(i) summarize the information submitted under this section;
and

(ii) provide detailed analyses of the characteristics of corporate taxpayers, including:

1. historical series of data and detailed reports for the reported year; and

2. the distribution of Maryland taxable income, income tax liability, and other elements of the corporate income tax such as tax credits, modifications to income, and net operating loss carryovers.

(3) The information provided in the report shall be provided by various categories, including:

(i) business category; and

(ii) various measures of size, such as taxable income, in-State and worldwide payroll, and in-State and worldwide gross receipts.

~~(F)~~ **(F)** The Comptroller shall adopt appropriate regulations to implement the provisions of this section.

Chapter 3 of the Acts of the 2007 Special Session

SECTION 10. AND BE IT FURTHER ENACTED, That, notwithstanding any other provision of law, [except as otherwise provided in regulations that the Comptroller adopts,] the reports and statements required for a taxable year beginning before January 1, 2007, under §§ 10-402(c)(2)(vi) and 10-804.1 of the Tax – General Article as enacted by Section 6 of this Act shall be submitted as part of a corporation's tax return for the corporation's next taxable year beginning after December 31, 2006, and shall be reflected in the Comptroller's reports to be submitted in ~~DECEMBER OF 2008 AND~~ **MARCH OF 2009** to the Governor and General Assembly under §§ 10-402(c)(vii) and 10-804.1 of the Tax – General Article.

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 15, 2008, the Maryland Business Tax Reform Commission established under § 10-110 of the Tax – General Article, in consultation with the Comptroller, shall review the requirements and definitions under § 10-804.1 of the Tax – General Article, as enacted by Section 1 of this Act, and submit its recommendations for any changes to that section to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2008.

Approved by the Governor, April 24, 2008.