

HOUSE BILL 941

Q3
HB 731/11 – W&M

2lr1439

By: **Delegates Ross, Hucker, Arora, Barnes, Bobo, Braveboy, Carr, Cullison, Frush, Gaines, Glenn, Healey, Holmes, Hubbard, Kaiser, Luedtke, A. Miller, Murphy, Niemann, Pena–Melnyk, B. Robinson, S. Robinson, Rosenberg, Stukes, Summers, V. Turner, Walker, and Washington**

Introduced and read first time: February 10, 2012

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Business Tax Fairness Act**

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

11 BY adding to
12 Article – Tax – General
13 Section 10–402.1
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2011 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Tax – General
18 Section 10–811
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2011 Supplement)

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

23 **Article – Tax – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-402.1.**

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

4 (2) "COMBINED GROUP" MEANS:

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

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

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

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

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

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

20 2. ONE OR MORE MEMBER CORPORATIONS OF THE
21 GROUP.

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

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

31 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE
32 COMBINED GROUP BY COMBINING THE CORPORATION'S INCOME WITH THE

1 INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING
2 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT
3 CLEARLY THE INCOME OF THE COMBINED GROUP;

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

15 (3) FOR EACH MEMBER OF THE COMBINED GROUP THAT IS
16 SUBJECT TO THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE
17 AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION TO THAT
18 CORPORATION BY MULTIPLYING THE AMOUNT DETERMINED UNDER ITEM (2) OF
19 THIS SUBSECTION BY A FRACTION:

20 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
21 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING
22 THAT CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
23 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL
24 MEMBERS OF THE COMBINED GROUP IN THE DENOMINATORS OF THE
25 APPORTIONMENT FORMULA; AND

26 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE
27 MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED
28 GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.

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

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

1 **(I) CORPORATIONS THAT ARE INCORPORATED IN THE**
2 **UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§**
3 **931 THROUGH 936 OF THE INTERNAL REVENUE CODE;**

4 **(II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS**
5 **DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE, AND**
6 **FOREIGN SALES CORPORATIONS, AS DESCRIBED IN §§ 921 THROUGH 927 OF**
7 **THE INTERNAL REVENUE CODE;**

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

12 **(IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§**
13 **970 THROUGH 972 OF THE INTERNAL REVENUE CODE;**

14 **(V) A FOREIGN CORPORATION DERIVING GAIN OR LOSS**
15 **FROM DISPOSITION OF AN INTEREST IN REAL PROPERTY IN THE UNITED**
16 **STATES TO THE EXTENT RECOGNIZED UNDER § 897 OF THE INTERNAL**
17 **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 ITS INCOME DERIVED**
22 **FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS**
23 **FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR**

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

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

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

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

5 10–811.

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2012, and shall be applicable to all taxable years beginning after December 31,
16 2012.