

HOUSE BILL 473

Q3
HB 1051/18 – W&M

0lr0786

By: **Delegates Stewart, Palakovich Carr, Boyce, Carr, Charkoudian, Ebersole, Feldmark, Lehman, R. Lewis, Moon, Mosby, Shetty, Smith, Terrasa, Wells, Wilkins, and P. Young**

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House action: Adopted
Read second time: March 7, 2020

CHAPTER _____

1 AN ACT concerning

2 ~~Corporate~~ **Income Tax – Pass-Through Entities, Throwback Rule, and**
3 **Combined Reporting**

4 FOR the purpose of altering the State income tax imposed on certain pass-through entities;
5 requiring each pass-through entity to pay the tax imposed with respect to certain
6 shares of certain nonresident and nonresident entity members of the pass-through
7 entity; authorizing a pass-through entity to elect to pay the tax imposed with respect
8 to certain shares of all resident members of the pass-through entity; providing for
9 the calculation of the tax; prohibiting the tax required to be paid for any taxable year
10 from exceeding a certain amount; requiring each pass-through entity that elects to
11 pay the tax imposed with respect to certain shares of resident members of the
12 pass-through entity to report certain information to the Comptroller in a certain
13 manner; requiring the Comptroller, subject to certain provisions of law, to distribute
14 to each county certain income tax revenues; allowing each member to claim a credit
15 against the State income tax and county income tax for the member's proportionate
16 share of the tax paid by the pass-through entity; expanding a certain income tax
17 credit to allow members of all pass-through entities, rather than only shareholders
18 of S corporations, who are residents of the State to claim the credit under certain
19 circumstances; requiring that certain sales of tangible personal property be included
20 in the numerator of the sales factor used for apportioning a corporation's income to
21 the State under certain circumstances; requiring certain corporations to compute
22 Maryland taxable income using a certain method; authorizing certain corporations,
23 subject to regulations adopted by the Comptroller, to determine certain income using

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 a certain method; requiring, subject to regulations adopted by the Comptroller,
 2 certain groups of corporations to file a combined income tax return reflecting the
 3 aggregate income tax liability of all the members of the group; requiring the
 4 Comptroller to adopt certain regulations; requiring certain regulations to be
 5 consistent with certain regulations adopted by the Multistate Tax Commission;
 6 providing a subtraction modification under the Maryland corporate income tax for
 7 certain changes to a certain combined group's deferred tax assets or liabilities that
 8 are the result of certain provisions of this Act; providing for the calculation of the
 9 amount of the subtraction modification; providing that the subtraction modification
 10 may be claimed only for certain taxable years; prohibiting the subtraction from being
 11 reduced as a result of an event that occurs after the calculation of the subtraction;
 12 providing, under certain circumstances, for the carryforward of the subtraction;
 13 requiring a combined group that intends to claim the subtraction to file a certain
 14 statement with the Comptroller on or before a certain date; authorizing the
 15 Comptroller to review and alter the amount of the subtraction specified in the
 16 statement or claimed on certain tax returns; altering the distribution of certain
 17 income tax revenue from corporations; requiring the Comptroller to assess interest
 18 and penalties under certain circumstances; declaring the intent of the General
 19 Assembly; defining certain terms; making certain stylistic and conforming changes;
 20 providing for the application of this Act; providing for a delayed effective date for
 21 certain provisions of this Act; and generally relating to the Maryland income tax on
 22 corporations.

23 BY repealing and reenacting, with amendments,

24 Article – Tax – General

25 Section ~~10-402(d)~~ 2-613.1, 2-614, 10-102.1, 10-402(d), 10-701.1, 10-703, 10-706,
 26 and 10-811

27 Annotated Code of Maryland

28 (2016 Replacement Volume and 2019 Supplement)

29 BY repealing and reenacting, without amendments,

30 Article – Education

31 Section 5-219(b)

32 Annotated Code of Maryland

33 (2018 Replacement Volume and 2019 Supplement)

34 BY repealing and reenacting, with amendments,

35 Article – Education

36 Section 5-219(f)

37 Annotated Code of Maryland

38 (2018 Replacement Volume and 2019 Supplement)

39 BY adding to

40 Article – Tax – General

41 Section 10-311 and 10-402.1

42 Annotated Code of Maryland

43 (2016 Replacement Volume and 2019 Supplement)

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

3 **Article – Tax – General**

4 10–102.1.

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

6 (2) “Distributable cash flow” means taxable income reportable by a
7 pass-through entity on its federal income tax return for the taxable year:

8 (i) adjusted, in the case of an entity using the accrual method of
9 accounting to report federal taxable income, to reflect the amount of taxable income that
10 would have been reported under the cash method of accounting;

11 (ii) increased by the sum of:

12 1. cash receipts for the taxable year that are not includable
13 in the gross income of the entity, including capital contributions and loan proceeds;

14 2. amounts allowable to the entity for the taxable year as
15 deductions for depreciation, amortization, and depletion; and

16 3. the decrease, if any, in the entity’s liability reserve as of
17 the end of the taxable year; and

18 (iii) decreased by the sum of:

19 1. cash expenditures for the taxable year that are not
20 deductible in computing the taxable income of the entity, not including distributions to
21 shareholders, partners, or members; and

22 2. the increase, if any, in the entity’s liability reserve as of
23 the end of the taxable year.

24 (3) “Liability reserve” means accrued unpaid liabilities that are not
25 deductible in computing taxable income.

26 (4) “Member” means:

27 (i) a shareholder of an S corporation;

28 (ii) a general or limited partner of a partnership, limited
29 partnership, or limited liability partnership;

1 (iii) a member of a limited liability company; or

2 (iv) a beneficiary of a business trust or statutory trust.

3 (5) “Nonresident entity” means an entity that is not formed under the laws
4 of the State and is not qualified by or registered with the Department of Assessments and
5 Taxation to do business in the State.

6 (6) “Nonresident taxable income” means any income described in §
7 10–210(b)(1) through (4) of this title.

8 (7) “Pass-through entity” means:

9 (i) an S corporation;

10 (ii) a partnership;

11 (iii) a limited liability company that is not taxed as a corporation
12 under this title; or

13 (iv) a business trust or statutory trust that is not taxed as a
14 corporation under this title.

15 (8) **“PASS-THROUGH ENTITY’S TAXABLE INCOME” MEANS THE**
16 **PORTION OF A PASS-THROUGH ENTITY’S INCOME UNDER THE FEDERAL INTERNAL**
17 **REVENUE CODE THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO THE**
18 **TRADE OR BUSINESS OF THE PASS-THROUGH ENTITY IN THIS STATE.**

19 (b) (1) [In] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN addition
20 to any other tax imposed under this title, a tax is imposed on each pass-through entity
21 [that has:

22 (1) any member who is a nonresident of the State or is a nonresident entity;
23 and

24 (2) any nonresident taxable income for the taxable year].

25 (2) **EACH PASS-THROUGH ENTITY:**

26 (1) **SHALL PAY THE TAX IMPOSED UNDER PARAGRAPH (1) OF**
27 **THIS SUBSECTION WITH RESPECT TO THE DISTRIBUTIVE SHARES OR PRO RATA**
28 **SHARES OF THE NONRESIDENT AND NONRESIDENT ENTITY MEMBERS OF THE**
29 **PASS-THROUGH ENTITY; OR**

1 (II) MAY ELECT TO PAY THE TAX IMPOSED UNDER PARAGRAPH
2 (1) OF THIS SUBSECTION WITH RESPECT TO THE DISTRIBUTIVE SHARES OR PRO
3 RATA SHARES OF RESIDENT MEMBERS OF THE PASS-THROUGH ENTITY.

4 (c) (1) [The] WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS
5 THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE
6 WITH SUBSECTION (B)(2)(I) OF THIS SECTION, THE tax [imposed under subsection (b)
7 of this section] shall be treated as a tax imposed on the nonresident or nonresident entity
8 members that is paid on behalf of the nonresidents or nonresident entities by the
9 pass-through entity.

10 (2) The Comptroller shall provide by regulation for the treatment of the tax
11 imposed under subsection (b) of this section that is paid on behalf of a nonresident entity
12 member that is itself a pass-through entity.

13 (d) (1) [Except as provided in paragraph (2) of this subsection, the] WITH
14 RESPECT TO A PASS-THROUGH ENTITY THAT PAYS THE TAX IMPOSED UNDER
15 SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (B)(2)(I)
16 OF THIS SECTION, THE tax imposed [under subsection (b) of this section] is the sum of:

17 (i) a rate equal to the sum of the rate of the tax imposed under §
18 10-106.1 of this subtitle and the top marginal State tax rate for individuals under §
19 10-105(a) of this subtitle applied to the sum of each nonresident individual member's
20 distributive share or [pro-rata] PRO RATA share of [a] THE pass-through entity's
21 nonresident taxable income; and

22 (ii) the rate of the tax for a corporation under § 10-105(b) of this
23 subtitle applied to the sum of each nonresident entity member's distributive share or
24 [pro-rata] PRO RATA share of [a] THE pass-through entity's nonresident taxable income.

25 (2) WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS THE TAX
26 IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH
27 SUBSECTION (B)(2)(II) OF THIS SECTION, THE TAX IMPOSED IS THE SUM OF:

28 (I) A RATE EQUAL TO THE SUM OF THE RATE OF THE TAX
29 IMPOSED UNDER § 10-106.1 OF THIS SUBTITLE AND THE TOP MARGINAL STATE TAX
30 RATE FOR INDIVIDUALS UNDER § 10-105(A) OF THIS SUBTITLE APPLIED TO THE SUM
31 OF EACH INDIVIDUAL MEMBER'S DISTRIBUTIVE SHARE OR PRO RATA SHARE OF THE
32 PASS-THROUGH ENTITY'S TAXABLE INCOME; AND

33 (II) THE RATE OF THE TAX FOR A CORPORATION UNDER §
34 10-105(B) OF THIS SUBTITLE APPLIED TO THE SUM OF EACH ENTITY MEMBER'S
35 DISTRIBUTIVE SHARE OR PRO RATA SHARE OF THE PASS-THROUGH ENTITY'S
36 TAXABLE INCOME.

1 ~~[(2)] (3)~~ The tax required to be paid for any taxable year [on behalf of
2 nonresident or nonresident entity members] by a pass-through entity may not exceed:

3 (I) WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS
4 THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE
5 WITH SUBSECTION (B)(2)(I) OF THIS SECTION, the sum of all of the nonresident and
6 nonresident entity members' shares of the pass-through entity's distributable cash flow;
7 AND

8 (II) WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS
9 THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE
10 WITH SUBSECTION (B)(2)(II) OF THIS SECTION, THE SUM OF ALL OF THE MEMBERS'
11 SHARES OF THE PASS-THROUGH ENTITY'S DISTRIBUTABLE CASH FLOW.

12 (E) IN ACCORDANCE WITH § 10-701.1 OF THIS TITLE, EACH MEMBER MAY
13 CLAIM A CREDIT AGAINST THE TAX IMPOSED ON THE MEMBER FOR THE MEMBER'S
14 PROPORTIONATE SHARE OF THE TAX PAID BY THE PASS-THROUGH ENTITY UNDER
15 SUBSECTION (B) OF THIS SECTION.

16 ~~[(e)] (F)~~ (1) (i) The tax imposed under subsection (b) of this section does
17 not apply with respect to the distributive share or [pro-rata] PRO RATA share of a member
18 that is itself a pass-through entity formed under the laws of the State or qualified by or
19 registered with the Department of Assessments and Taxation to do business in the State.

20 (ii) A member of a pass-through entity that is itself a pass-through
21 entity as described in subparagraph (i) of this paragraph shall ITSELF comply with the
22 provisions of this section [with respect to any of its members that are nonresidents or
23 nonresident entities].

24 (2) The tax imposed under subsection (b) of this section does not apply with
25 respect to the direct or indirect distributive share or pro rata share of a member that is:

26 (I) a real estate investment trust as defined by § 856 of the Internal
27 Revenue Code; OR

28 (II) AN ENTITY THAT IS EXEMPT FROM TAXATION UNDER § 501
29 OF THE INTERNAL REVENUE CODE.

30 ~~[(f)] (G)~~ The Comptroller may provide by regulation for:

31 (1) the filing of composite returns by a pass-through entity on behalf of its
32 nonresident and nonresident entity members; and

33 (2) application of or exemption from the tax imposed under subsection (b)
34 of this section for a pass-through entity;

1 (i) that files a composite return on behalf of nonresident and
2 nonresident entity members; or

3 (ii) the [nonresident or nonresident] entity members of which are
4 tax exempt.

5 **[(g)] (H)** (1) Subject to paragraph (2) of this subsection, if a partnership fails
6 to pay the tax when due the tax may be collected from the partners under the law applicable
7 to debts of the partnership, with the partnership and partners having rights of contribution
8 against any [nonresident] partner on whose behalf the tax is paid.

9 (2) Unless it is established by the Comptroller that the partner
10 participated in a pattern of distributions to one or more partners with the intention of
11 defeating the partnership liability for the tax imposed under subsection (b) of this section,
12 any partner otherwise liable under paragraph (1) of this subsection shall be liable for the
13 tax imposed on the partnership only to the extent of distributions from the partnership to
14 that partner after the tax was due to be paid by the partnership.

15 **[(h)] (I)** Except as provided in § 10–701.1 of this title, nothing in this section
16 limits or affects in any way the liability of an individual nonresident member or a
17 nonresident entity member for the tax imposed on the individual nonresident or
18 nonresident entity under § 10–102 of this subtitle.

19 **[(i)] (J)** The tax imposed under subsection (b) of this section does not apply to a
20 publicly traded pass-through entity that has agreed to file with the Comptroller an annual
21 information return reporting the name, address, taxpayer identification number, and other
22 information requested by the Comptroller of each nonresident or nonresident entity
23 member whose distributive share or [pro-rata] PRO RATA share of the pass-through
24 entity’s nonresident taxable income for the taxable year exceeds \$500.

25 **(K) (1) A PASS-THROUGH ENTITY THAT ELECTS, UNDER SUBSECTION**
26 **(B)(2)(II) OF THIS SECTION, TO PAY THE TAX IMPOSED UNDER SUBSECTION (B)(1)**
27 **OF THIS SECTION WITH RESPECT TO THE DISTRIBUTIVE SHARES OR PRO RATA**
28 **SHARES OF RESIDENT MEMBERS OF THE PASS-THROUGH ENTITY SHALL REPORT TO**
29 **THE COMPTROLLER, ON A QUARTERLY BASIS, A LIST OF THOSE RESIDENT MEMBERS**
30 **AND THE COUNTIES IN WHICH THEY RESIDE.**

31 **(2) SUBJECT TO TITLE 2, SUBTITLE 6 OF THIS ARTICLE, THE**
32 **COMPTROLLER SHALL DISTRIBUTE TO EACH COUNTY THE PORTION OF THE INCOME**
33 **TAX REVENUE DUE TO THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS**
34 **SECTION AND IN ACCORDANCE WITH SUBSECTION (B)(2)(II) OF THIS SECTION BASED**
35 **ON THE RATE OF TAX IMPOSED UNDER § 10–106.1 OF THIS SUBTITLE AND**
36 **ATTRIBUTABLE TO EACH INDIVIDUAL MEMBER RESIDING IN THAT COUNTY.**

1 10-701.1.

2 An individual or a corporation may claim a credit against the State income tax AND
 3 COUNTY INCOME TAX for a taxable year in the amount of tax paid by a pass-through
 4 entity under § 10-102.1 of this title that is attributable to the individual's or corporation's
 5 share of the pass-through entity's [nonresident] taxable income, as defined in [§
 6 10-102.1(a)(6)] § 10-102.1(A)(8) of this title.

7 10-703.

8 (a) IN THIS SECTION, "MEMBER" AND "PASS-THROUGH ENTITY" HAVE THE
 9 MEANINGS STATED IN § 10-102.1 OF THIS TITLE.

10 (B) Except as provided in subsection [(b)] (C) of this section, a resident may claim
 11 a credit against the income tax for a taxable year in the amount determined under
 12 subsection [(c)] (D) of this section for State tax on income paid to another state for the year.

13 [(b)] (C) A credit under subsection [(a)] (B) of this section is not allowed to:

14 (1) a resident other than a fiduciary, if the laws of the other state allow the
 15 resident a credit for State income tax paid to this State;

16 (2) a resident fiduciary, if the fiduciary claims, and the other state allows,
 17 a credit for State income tax paid to this State;

18 (3) a resident for less than the full taxable year for tax on income that is
 19 paid to another state during residency in that state; or

20 (4) a nonresident.

21 [(c)] (D) (1) Except as provided in paragraph (2) of this subsection and
 22 subject to subsection [(d)] (E) of this section, the credit allowed a resident under subsection
 23 [(a)](B) of this section is the lesser of:

24 (i) the amount of allowable tax on income that the resident paid to
 25 another state; or

26 (ii) an amount that does not reduce the income tax to an amount less
 27 than would be payable if the income subjected to tax in the other state were disregarded.

28 (2) If the credit allowed a resident under subsection [(a)] (B) of this section
 29 is based on tax that [an S corporation] A PASS-THROUGH ENTITY pays to another state,
 30 the credit allowable to a [shareholder] MEMBER OF THE PASS-THROUGH ENTITY:

31 (i) may not exceed that [shareholder's] MEMBER'S pro rata share
 32 of the tax; and

1 (ii) will be allowed for another state's income taxes or taxes based on
2 income.

3 ~~[(d)]~~ **(E)** (1) The amount of the credit allowed under subsection [(a)] (B) of
4 this section to be applied against the State income tax is equal to the amount that would
5 be calculated under subsection [(c)] (D) of this section using the State income tax rate as
6 the only applicable rate.

7 (2) The amount of the credit allowed under subsection [(a)] (B) of this
8 section to be applied against the county income tax is equal to the amount calculated under
9 subsection [(c)] (D) of this section less the amount calculated under paragraph (1) of this
10 subsection.

11 10-706.

12 (a) Except as otherwise provided in this section, a credit allowed under this
13 subtitle is allowed against the State income tax only.

14 (b) A credit under § 10-701 OR § 10-701.1 of this subtitle is allowed against the
15 total county and State income taxes.

16 (c) (1) A credit allowed under § 10-704(a)(1) or § 10-709(b)(1) of this subtitle
17 is allowed against the State income tax only.

18 (2) A credit allowed under § 10-704(a)(2) or § 10-709(b)(2) of this subtitle
19 is allowed against the county income tax only.

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

22 Article – Education

23 5-219.

24 (b) There is The Blueprint for Maryland's Future Fund.

25 (f) The Fund consists of:

26 (1) Revenue distributed to the Fund under §§ 2-605.1, 2-613.1, and
27 2-1303 of the Tax – General Article;

28 (2) Money appropriated in the State budget for the Fund; and

29 (3) Any other money from any other source accepted for the benefit of the
30 Fund.

Article – Tax – General2–613.1.

After making the distribution required under § 2–613 of this subtitle, of the remaining income tax revenue from corporations, the Comptroller shall distribute:

(1) [6%] 5.5% to the Higher Education Investment Fund established under § 15–106.6 of the Education Article; and

(2) [9.15% to the General Fund] 7.6% TO THE BLUEPRINT FOR MARYLAND’S FUTURE FUND ESTABLISHED UNDER § 5–219 OF THE EDUCATION ARTICLE.

2–614.

(a) [(1) Except as provided in paragraph (2) of this subsection, after] AFTER making the distributions required under §§ 2–613 and 2–613.1 of this subtitle, the Comptroller shall distribute monthly [17.2%] 15.5% of the remaining income tax revenue from corporations to a special fund to be distributed as provided in subsection (b) of this section.

[(2) The percent of the remaining income tax revenue from corporations distributed to a special fund to be distributed as provided in subsection (b) of this section shall be:

(i) 24% for the fiscal year beginning July 1, 2011;

(ii) 9.5% for the fiscal year beginning July 1, 2012; and

(iii) 19.5% for each fiscal year beginning on or after July 1, 2013, but before July 1, 2016.]

(b) (1) [(i) Except as provided in subparagraph (ii) of this paragraph, from] FROM the special fund, the Comptroller shall distribute an amount equal to [17.2%] 15.5% of the cost to administer the income tax on corporations to an administrative cost account.

[(ii) The percent of the cost to administer the income tax on corporations that is distributed to an administrative cost account shall be:

1. 24% for the fiscal year beginning July 1, 2011;

2. 9.5% for the fiscal year beginning July 1, 2012; and

1 3. 19.5% for each fiscal year beginning on or after July 1,
2 2013, but before July 1, 2016.]

3 (2) After making the distribution required under paragraph (1) of this
4 subsection, the Comptroller shall distribute the balance in the special fund to the Gasoline
5 and Motor Vehicle Revenue Account in the Transportation Trust Fund.

6 **10-311.**

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

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

11 (3) “NET DEFERRED TAX ASSET” MEANS THE AMOUNT BY WHICH THE
12 DEFERRED TAX ASSETS EXCEED THE DEFERRED TAX LIABILITIES OF A COMBINED
13 GROUP, COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
14 PRINCIPLES.

15 (4) “NET DEFERRED TAX LIABILITY” MEANS THE AMOUNT BY WHICH
16 THE DEFERRED TAX LIABILITIES EXCEED THE DEFERRED TAX ASSETS OF A
17 COMBINED GROUP, COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED
18 ACCOUNTING PRINCIPLES.

19 (B) THIS SECTION APPLIES ONLY TO A COMBINED GROUP THAT ON OR
20 BEFORE THE DATE OF ENACTMENT OF THE PROVISIONS OF § 10-402.1 OF THIS TITLE
21 BY CHAPTER _____ (H.B. 473) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2020,
22 THE MEMBERS OF WHICH WERE:

23 (1) PUBLICLY TRADED; OR

24 (2) AFFILIATED WITH A COMBINED GROUP THAT WAS PUBLICLY
25 TRADED, AND PARTICIPATED IN THE FILING OF THE PUBLICLY TRADED
26 CORPORATION’S FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH
27 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

28 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION
29 TO THE MODIFICATIONS UNDER §§ 10-307 AND 10-308 OF THIS SUBTITLE, THE
30 AMOUNTS DETERMINED UNDER SUBSECTION (D) OF THIS SECTION ARE
31 SUBTRACTED FROM THE FEDERAL TAXABLE INCOME OF A COMBINED GROUP TO
32 DETERMINE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP IF, AS OF THE
33 DATE OF ENACTMENT OF § 10-402.1 OF THIS TITLE BY CHAPTER _____ (H.B. 473)

1 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2020, THE ENACTMENT RESULTED IN
2 AN AGGREGATE:

3 (I) INCREASE TO THE COMBINED GROUP'S NET DEFERRED TAX
4 LIABILITY;

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

7 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
8 DEFERRED TAX LIABILITY.

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

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

15 (I) INCREASE TO THE COMBINED GROUP'S NET DEFERRED TAX
16 LIABILITY;

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

19 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
20 DEFERRED TAX LIABILITY.

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

23 (I) DIVIDED BY THE RATE DETERMINED UNDER § 10-105(B) OF
24 THIS TITLE IN EFFECT ON JANUARY 1, 2022; AND

25 (II) FURTHER DIVIDED BY THE MARYLAND APPORTIONMENT
26 FRACTION THAT WAS USED BY THE COMBINED GROUP IN THE CALCULATION OF THE
27 DEFERRED TAX ASSETS AND DEFERRED TAX LIABILITIES AS DESCRIBED IN
28 PARAGRAPH (1) OF THIS SUBSECTION.

29 (3) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION MAY BE
30 USED TO REDUCE THE COMBINED GROUP'S MARYLAND MODIFIED INCOME FOR 10
31 CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THAT
32 BEGINS AFTER DECEMBER 31, 2026.

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

4 **(5) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION:**

5 **(I) SHALL BE CALCULATED WITHOUT REGARD TO THE FEDERAL**
6 **TAX EFFECT; AND**

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

8 **(6) IF THE SUBTRACTION DETERMINED UNDER THIS SECTION**
9 **RESULTS IN A SUBTRACTION THAT EXCEEDS MARYLAND MODIFIED INCOME**
10 **COMPUTED WITHOUT REGARD TO THE SUBTRACTION UNDER THIS SECTION, THE**
11 **AMOUNT OF THE EXCESS MAY BE CARRIED FORWARD TO SUCCEEDING TAXABLE**
12 **YEARS AND USED TO REDUCE MARYLAND MODIFIED INCOME IN EACH SUCCEEDING**
13 **TAXABLE YEAR UNTIL THE EXCESS IS FULLY USED.**

14 **(E) (1) ON OR BEFORE JULY 1, 2023, A COMBINED GROUP THAT INTENDS**
15 **TO CLAIM A SUBTRACTION UNDER THIS SECTION SHALL FILE WITH THE**
16 **COMPTROLLER A STATEMENT THAT SPECIFIES THE TOTAL AMOUNT OF THE**
17 **SUBTRACTION THAT THE COMBINED GROUP INTENDS TO CLAIM.**

18 **(2) THE STATEMENT SHALL BE ON THE FORM AND CONTAIN THE**
19 **INFORMATION THE COMPTROLLER REQUIRES.**

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

21 **(I) THE SUBTRACTION SPECIFIED IN THE STATEMENT**
22 **REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR**

23 **(II) THE SUBTRACTION CLAIMED ON A TAX RETURN FOR ANY**
24 **TAXABLE YEAR.**

25 10-402.

26 (d) (1) (i) In this paragraph:

27 1. “manufacturing corporation” means a domestic or foreign
28 corporation which is primarily engaged in activities that, in accordance with the North
29 American Industrial Classification System (NAICS), United States Manual, United States
30 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or
31 33; and

1 2. “manufacturing corporation” does not include a refiner, as
2 defined in § 10–101 of the Business Regulation Article.

3 (ii) If a manufacturing corporation carries on its trade or business
4 within and outside the State and the trade or business is a unitary business, the part of the
5 corporation’s Maryland modified income derived from or reasonably attributable to trade
6 or business carried on in the State shall be determined using a single sales factor
7 apportionment formula, by multiplying its Maryland modified income by 100% of the sales
8 factor.

9 (iii) In filing its tax return for each year, a manufacturing corporation
10 shall certify that the NAICS Code reported on its Maryland return is consistent with that
11 reported to other government agencies.

12 (iv) If the Comptroller determines that a corporation has submitted
13 information that incorrectly classifies the corporation as a manufacturing corporation
14 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation
15 in an appropriate manner.

16 (2) Except as provided in paragraphs (1) and (3) of this subsection:

17 (i) for a taxable year beginning after December 31, 2017, but before
18 January 1, 2019, if the trade or business is a unitary business, the part of the corporation’s
19 Maryland modified income derived from or reasonably attributable to trade or business
20 carried on in the State shall be determined using a 3–factor apportionment fraction:

21 1. the numerator of which is the sum of the property factor,
22 the payroll factor, and 3 times the sales factor; and

23 2. the denominator of which is 5;

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

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

30 2. the denominator of which is 6;

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

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

3 2. the denominator of which is 7;

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

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

10 2. the denominator of which is 8; and

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

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

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

22 2. the denominator of which is 4.

23 (ii) To determine under subparagraph (i) of this paragraph the
24 Maryland modified income of a corporation or group of corporations that is a worldwide
25 headquartered company that filed a federal corporate income tax return for the taxable
26 year, gross income from intangible investments, including dividends, interest, royalties,
27 and capital gains from the sale of intangible property, shall be included in the calculation
28 of the numerator based on the average of the property and payroll factors.

29 (4) The property factor under paragraphs (2) and (3) of this subsection shall
30 include:

31 (i) rented and owned real property; and

32 (ii) tangible personal property located in the State and used in the
33 trade or business.

1 **(5) (I) SALES OF TANGIBLE PERSONAL PROPERTY SHALL BE**
2 **INCLUDED IN THE NUMERATOR OF THE SALES FACTOR UNDER PARAGRAPH (1), (2),**
3 **OR (3) OF THIS SUBSECTION IF:**

4 **1. THE PROPERTY IS DELIVERED OR SHIPPED TO A**
5 **PURCHASER WITHIN THE STATE, REGARDLESS OF THE FREE ON BOARD (F.O.B.)**
6 **POINT OR OTHER CONDITIONS OF THE SALE; OR**

7 **2. THE PROPERTY IS SHIPPED FROM AN OFFICE, A**
8 **STORE, A WAREHOUSE, A FACTORY, OR ANY OTHER PLACE OF STORAGE IN THE**
9 **STATE AND THE CORPORATION IS NOT TAXABLE IN THE STATE OF THE PURCHASER.**

10 **(II) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS**
11 **PARAGRAPH, A CORPORATION IS TAXABLE IN A STATE IF:**

12 **1. IN THAT STATE THE CORPORATION IS SUBJECT TO A**
13 **NET INCOME TAX, FRANCHISE TAX MEASURED BY NET INCOME, FRANCHISE TAX FOR**
14 **THE PRIVILEGE OF DOING BUSINESS, OR CORPORATE STOCK TAX; OR**

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

18 **10-402.1.**

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

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

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

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

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

27 **2. ONE OR MORE MEMBER CORPORATIONS OF THE**
28 **GROUP;**

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

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

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

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

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

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

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

30 (C) THIS SECTION DOES NOT APPLY TO A CORPORATION WHOSE BUSINESS
31 IS PREDOMINANTLY REGULATED BY THE FEDERAL ENERGY REGULATORY
32 COMMISSION, THE MARYLAND PUBLIC SERVICE COMMISSION, OR A SIMILAR BODY
33 OF ANOTHER STATE, WITH RESPECT TO RATES CHARGED TO CUSTOMERS FOR
34 ELECTRIC OR GAS SERVICES OR WATER AND WASTEWATER SERVICES.

35 (D) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS
36 ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER
37 DECEMBER 31, 2021, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL

1 FILE A COMBINED RETURN, REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE
2 INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX
3 LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A
4 UNITARY BUSINESS.

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

9 (E) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP
10 EQUALS THE PRODUCT OF:

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

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

16 (2) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS
17 PARAGRAPH, THE APPORTIONABLE MARYLAND MODIFIED INCOME OF THE
18 COMBINED GROUP EQUALS THE SUM OF THE CORPORATION AND EACH MEMBER'S
19 MARYLAND MODIFIED INCOME.

20 (II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS
21 SUBPARAGRAPH, FOR ANY MEMBER INCORPORATED IN THE UNITED STATES OR
22 INCLUDED IN A CONSOLIDATED FEDERAL CORPORATE INCOME TAX RETURN, THE
23 INCOME TO BE INCLUDED IN THE TOTAL APPORTIONABLE INCOME OF THE
24 COMBINED GROUP IS THE MARYLAND MODIFIED INCOME AS CALCULATED UNDER §
25 10-304 OF THIS TITLE.

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

29 (III) 1. FOR ANY MEMBER NOT INCLUDED UNDER
30 SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE INCOME TO BE INCLUDED IN THE
31 TOTAL INCOME OF THE COMBINED GROUP IS DETERMINED AS PROVIDED UNDER
32 THIS SUBPARAGRAPH.

33 2. A PROFIT AND LOSS STATEMENT SHALL BE PREPARED
34 FOR EACH FOREIGN BRANCH OR CORPORATION IN THE CURRENCY IN WHICH THE

1 BOOKS OF ACCOUNT OF THE BRANCH OR CORPORATION ARE REGULARLY
2 MAINTAINED.

3 3. THE PROFIT AND LOSS STATEMENT SHALL BE
4 ADJUSTED TO CONFORM TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS
5 ADOPTED BY THE UNITED STATES FINANCIAL ACCOUNTING STANDARDS BOARD
6 FOR THE PREPARATION OF THE PROFIT AND LOSS STATEMENTS, EXCEPT AS
7 MODIFIED BY REGULATION.

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

13 5. INCOME APPORTIONED TO THIS STATE SHALL BE
14 EXPRESSED IN UNITED STATES DOLLARS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (G) (1) (I) AN ELECTION TO USE THE WATER'S EDGE METHOD IN
4 ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION IS EFFECTIVE ONLY IF MADE
5 ON A TIMELY FILED, ORIGINAL RETURN FOR A TAX YEAR BY EVERY MEMBER OF THE
6 UNITARY BUSINESS.

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

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

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

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

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

32 (III) IF THE COMPTROLLER GRANTS A WITHDRAWAL OF THE
33 ELECTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMPTROLLER
34 SHALL IMPOSE REASONABLE CONDITIONS AS NECESSARY TO PREVENT THE EVASION
35 OF TAX OR TO CLEARLY REFLECT INCOME FOR THE ELECTION PERIOD BEFORE OR
36 AFTER THE WITHDRAWAL.

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

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

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

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

14 (2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL BE
15 CONSISTENT WITH THE "PRINCIPLES FOR DETERMINING THE EXISTENCE OF A
16 UNITARY BUSINESS" (REG. IV.1.(B)) OF THE MODEL GENERAL ALLOCATION AND
17 APPORTIONMENT REGULATIONS, AS ADOPTED BY THE MULTISTATE TAX
18 COMMISSION.

19 10-811.

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

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

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

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

4 (III) THE FILING MEMBER UNDER SUBPARAGRAPH (I) OR (II) OF
5 THIS PARAGRAPH SHALL CONTINUE TO FILE THE COMBINED RETURN UNLESS THE
6 FILING MEMBER IS NO LONGER THE PARENT CORPORATION OR NO LONGER A
7 MEMBER OF THE COMBINED GROUP.

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

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

13 (B) (1) THE COMPTROLLER MAY, BY REGULATION, REQUIRE THAT THE
14 COMBINED RETURN INCLUDE THE INCOME AND ASSOCIATED APPORTIONMENT
15 FACTORS OF ENTITIES THAT ARE NOT INCLUDED IN THE COMBINED REPORT BUT
16 THAT ARE MEMBERS OF A UNITARY BUSINESS IN ORDER TO REFLECT PROPER
17 APPORTIONMENT OF INCOME OF THE ENTIRE UNITARY BUSINESS.

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

24 (3) THE COMPTROLLER MAY REQUIRE:

25 (I) THE EXCLUSION OF ONE OR MORE FACTORS, THE
26 INCLUSION OF ONE OR MORE ADDITIONAL FACTORS, OR THE EMPLOYMENT OF ANY
27 OTHER METHOD THAT WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS IN THIS
28 STATE; OR

29 (II) THE EMPLOYMENT OF ANY OTHER METHOD TO EFFECTUATE
30 A PROPER REFLECTION OF THE TOTAL AMOUNT OF INCOME SUBJECT TO
31 APPORTIONMENT AND AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE
32 COMBINED GROUP'S OR ITS MEMBERS' INCOME.

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

1 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That, for a taxable year
 2 beginning after December 31, ~~2019~~ 2021, but before January 1, ~~2021~~ 2023, notwithstanding
 3 §§ 13–602 and 13–702 of the Tax – General Article, the Comptroller shall assess interest
 4 and penalties under §§ 13–602 and 13–702 of the Tax – General Article if a corporation
 5 pays estimated income tax for the taxable year in an amount less than 90% of the tax
 6 required to be shown on the corporation’s income tax return for the taxable year.

7 ~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July~~
 8 ~~1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019.~~

9 SECTION 4. AND BE IT FURTHER ENACTED, That it is the intent of the General
 10 Assembly that the additional tax revenue from corporations, if any, that will be collected
 11 as a result of the requirement under § 10–402(d)(5) of the Tax – General Article, as enacted
 12 by Section 2 of this Act, and distributed to the General Fund in accordance with § 2–615 of
 13 the Tax – General Article shall be used to provide additional support to historically black
 14 colleges and universities in accordance with Chapters _____ (S.B. 1043/H.B. 1260) of the Acts
 15 of the General Assembly of 2020.

16 SECTION 5. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be
 17 applicable to all taxable years beginning after December 31, 2019.

18 SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
 19 effect July 1, 2022, and shall be applicable to all taxable years beginning after December
 20 31, 2021.

21 SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in Section
 22 6 of this Act, this Act shall take effect July 1, 2020.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.