

HOUSE BILL 172

Q3

1lr0664

(PRE-FILED)

By: **Delegate Lehman**

Requested: September 17, 2020

Introduced and read first time: January 13, 2021

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Combined Reporting and Subtraction Modification for**
3 **Combined Groups of Corporations**

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

25 BY adding to
26 Article – Tax – General
27 Section 10–311 and 10–402.1
28 Annotated Code of Maryland
29 (2016 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Tax – General
3 Section 10–811
4 Annotated Code of Maryland
5 (2016 Replacement Volume and 2020 Supplement)

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

8 **Article – Tax – General**

9 **10–311.**

10 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (2) “COMBINED GROUP” HAS THE MEANING STATED IN § 10–402.1 OF
13 THIS TITLE.

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

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

22 (B) THIS SECTION APPLIES ONLY TO A COMBINED GROUP THAT ON OR
23 BEFORE THE DATE OF ENACTMENT OF THE PROVISIONS OF § 10–402.1 OF THIS TITLE
24 BY CHAPTER ____ (H.B. ____) (1LR0664) OF THE ACTS OF THE GENERAL
25 ASSEMBLY OF 2021, THE MEMBERS OF WHICH WERE:

26 (1) PUBLICLY TRADED; OR

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

31 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION
32 TO THE MODIFICATIONS UNDER §§ 10–307 AND 10–308 OF THIS SUBTITLE, THE
33 AMOUNTS DETERMINED UNDER SUBSECTION (D) OF THIS SECTION ARE

1 SUBTRACTED FROM THE FEDERAL TAXABLE INCOME OF A COMBINED GROUP TO
2 DETERMINE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP IF, AS OF THE
3 DATE OF ENACTMENT OF § 10-402.1 OF THIS TITLE BY CHAPTER ____ (H.B. ____)
4 (1LR0664) OF THE ACTS OF THE GENERAL ASSEMBLY OF 2021, THE ENACTMENT
5 RESULTED IN AN AGGREGATE:

6 (I) INCREASE TO THE COMBINED GROUP'S NET DEFERRED TAX
7 LIABILITY;

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

10 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
11 DEFERRED TAX LIABILITY.

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

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

18 (I) INCREASE TO THE COMBINED GROUP'S NET DEFERRED TAX
19 LIABILITY;

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

22 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
23 DEFERRED TAX LIABILITY.

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

26 (I) DIVIDED BY THE RATE DETERMINED UNDER § 10-105(B) OF
27 THIS TITLE IN EFFECT ON JANUARY 1, 2023; AND

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

1 **(3) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION MAY BE**
2 **USED TO REDUCE THE COMBINED GROUP'S MARYLAND MODIFIED INCOME FOR 10**
3 **CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THAT**
4 **BEGINS AFTER DECEMBER 31, 2027.**

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

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

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

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

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

18 **(E) (1) ON OR BEFORE JULY 1, 2024, A COMBINED GROUP THAT INTENDS**
19 **TO CLAIM A SUBTRACTION UNDER THIS SECTION SHALL FILE WITH THE**
20 **COMPTROLLER A STATEMENT THAT SPECIFIES THE TOTAL AMOUNT OF THE**
21 **SUBTRACTION THAT THE COMBINED GROUP INTENDS TO CLAIM.**

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

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

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

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

29 **10-402.1.**

30 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
31 **INDICATED.**

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

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

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

5 **1. A COMMON OWNER OR COMMON OWNERS, EITHER**
6 **CORPORATE OR NONCORPORATE; OR**

7 **2. ONE OR MORE MEMBER CORPORATIONS OF THE**
8 **GROUP;**

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

11 **(IV) CONSISTING OF ANY OTHER MEMBERS UNDER THE**
12 **CIRCUMSTANCES AND TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY**
13 **THE COMPTROLLER TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY**
14 **THE INCOME OF ANY MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.**

15 **(3) “COMBINED RETURN” MEANS A TAX RETURN FOR THE COMBINED**
16 **GROUP CONTAINING INFORMATION AS PROVIDED IN THIS SECTION OR OTHERWISE**
17 **REQUIRED BY THE COMPTROLLER.**

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

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

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

1 **(3) A BUSINESS CONDUCTED BY A PARTNERSHIP SHALL BE TREATED**
2 **AS CONDUCTED BY ITS PARTNERS, WHETHER DIRECTLY HELD OR INDIRECTLY HELD**
3 **THROUGH A SERIES OF PARTNERSHIPS, TO THE EXTENT OF THE PARTNER'S**
4 **DISTRIBUTIVE SHARE OF THE PARTNERSHIP'S INCOME, REGARDLESS OF THE**
5 **PERCENTAGE OF THE PARTNER'S OWNERSHIP INTEREST OR ITS DISTRIBUTIVE OR**
6 **ANY OTHER SHARE OF PARTNERSHIP INCOME.**

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

12 **(D) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS**
13 **ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER**
14 **DECEMBER 31, 2022, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL**
15 **FILE A COMBINED RETURN, REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE**
16 **INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX**
17 **LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A**
18 **UNITARY BUSINESS.**

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

23 **(E) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP**
24 **EQUALS THE PRODUCT OF:**

25 **(I) THE COMBINED GROUP'S APPORTIONABLE MARYLAND**
26 **MODIFIED INCOME, AS DETERMINED UNDER PARAGRAPH (2) OF THIS SUBSECTION**
27 **AND ADJUSTED UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND**

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

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

34 **(II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS**
35 **SUBPARAGRAPH, FOR ANY MEMBER INCORPORATED IN THE UNITED STATES OR**
36 **INCLUDED IN A CONSOLIDATED FEDERAL CORPORATE INCOME TAX RETURN, THE**

1 INCOME TO BE INCLUDED IN THE TOTAL APPORTIONABLE INCOME OF THE
2 COMBINED GROUP IS THE MARYLAND MODIFIED INCOME AS CALCULATED UNDER §
3 10-304 OF THIS TITLE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **1. A CORPORATION NOT DESCRIBED IN ITEMS (I)**
4 **THROUGH (V) OF THIS PARAGRAPH TO THE EXTENT OF THE CORPORATION'S INCOME**
5 **DERIVED FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND**
6 **THE CORPORATION'S FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED**
7 **STATES; OR**

8 **2. AN AFFILIATED CORPORATION THAT IS A**
9 **CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL**
10 **REVENUE CODE.**

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

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

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

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

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

1 **(4) (I) SUBJECT TO SUBPARAGRAPHS (II) THROUGH (IV) OF THIS**
2 **PARAGRAPH, AN ELECTION TO USE THE WATER’S EDGE METHOD IS BINDING FOR**
3 **AND APPLICABLE TO THE TAXABLE YEAR IN WHICH THE ELECTION IS MADE AND ALL**
4 **TAXABLE YEARS THEREAFTER FOR A PERIOD OF 10 YEARS.**

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

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

14 **(IV) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS**
15 **SUBPARAGRAPH, ON THE EXPIRATION OF THE 10–YEAR PERIOD, A TAXPAYER MAY**
16 **WITHDRAW FROM THE ELECTION TO USE THE WATER’S EDGE METHOD.**

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

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

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

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

32 10–811.

33 **(A) (1) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO**
34 **REGULATIONS ADOPTED BY THE COMPTROLLER, an affiliated group of corporations**
35 **[shall file a separate income tax return] ENGAGED IN A UNITARY BUSINESS SHALL FILE**

1 A COMBINED INCOME TAX RETURN REFLECTING THE AGGREGATE INCOME TAX
2 LIABILITY OF ALL THE MEMBERS OF THE AFFILIATED GROUP THAT ARE ENGAGED IN
3 A UNITARY BUSINESS.

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

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

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

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

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

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

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

30 (2) IF THE COMPTROLLER DETERMINES THAT THE REPORTED
31 INCOME OR LOSS OF A TAXPAYER ENGAGED IN A UNITARY BUSINESS WITH A MEMBER
32 NOT INCLUDED IN THE COMBINED GROUP REPRESENTS AN AVOIDANCE OR EVASION
33 OF TAX, THE COMPTROLLER MAY, ON A CASE-BY-CASE BASIS, REQUIRE THAT ALL
34 OR PART OF THE INCOME AND ASSOCIATED APPORTIONMENT FACTORS OF THE
35 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 **(C) 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, 2022, and shall be applicable to all taxable years beginning after December 31, 2022.