

# SENATE BILL 511

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By: **Senators Pinsky, Kelley, Rosapepe, Augustine, Lam, Lee, Sydnor, and Washington**

Introduced and read first time: January 22, 2021

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Tax Fairness Act of 2021**

3 FOR the purpose of requiring that certain sales of tangible personal property be included  
4 in the numerator of the sales factor used for apportioning a corporation's income to  
5 the State under certain circumstances; requiring certain corporations to compute  
6 Maryland taxable income using a certain method; authorizing certain corporations,  
7 subject to regulations adopted by the Comptroller, to determine certain income using  
8 a certain method; requiring, subject to regulations adopted by the Comptroller,  
9 certain groups of corporations to file a combined income tax return reflecting the  
10 aggregate income tax liability of all the members of the group; requiring the  
11 Comptroller to adopt certain regulations; requiring certain regulations to be  
12 consistent with certain regulations adopted by the Multistate Tax Commission;  
13 altering the distribution of certain income tax revenue from corporations; requiring  
14 the Comptroller to assess interest and penalties under certain circumstances;  
15 defining certain terms; providing for the application of this Act; providing for the  
16 construction of certain provisions of this Act; providing for a delayed effective date  
17 for certain provisions of this Act; and generally relating to the Maryland income tax  
18 on corporations.

19 BY repealing and reenacting, with amendments,  
20 Article – Tax – General  
21 Section 2–613.1, 2–614, 10–402(d), and 10–811  
22 Annotated Code of Maryland  
23 (2016 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, without amendments,  
25 Article – Education  
26 Section 5–219(b)  
27 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2018 Replacement Volume and 2020 Supplement)

2 BY repealing and reenacting, with amendments,  
3 Article – Education  
4 Section 5–219(f)  
5 Annotated Code of Maryland  
6 (2018 Replacement Volume and 2020 Supplement)

7 BY adding to  
8 Article – Tax – General  
9 Section 10–402.1  
10 Annotated Code of Maryland  
11 (2016 Replacement Volume and 2020 Supplement)

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

14 **Article – Tax – General**

15 10–402.

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

17 1. “manufacturing corporation” means a domestic or foreign  
18 corporation which is primarily engaged in activities that, in accordance with the North  
19 American Industrial Classification System (NAICS), United States Manual, United States  
20 Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or  
21 33; and

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

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

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

33 (iv) If the Comptroller determines that a corporation has submitted  
34 information that incorrectly classifies the corporation as a manufacturing corporation  
35 under subparagraph (i) of this paragraph, the Comptroller shall reclassify the corporation  
36 in an appropriate manner.

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

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

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

8                           2.     the denominator of which is 5;

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

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

15                           2.     the denominator of which is 6;

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

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

22                           2.     the denominator of which is 7;

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

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

29                           2.     the denominator of which is 8; and

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

1 Maryland modified income by 100% of the sales factor.

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

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

8 2. the denominator of which is 4.

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

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

17 (i) rented and owned real property; and

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

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

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

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

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

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

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

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

6   **Article – Education**

7 5–219.

8           (b) There is The Blueprint for Maryland’s Future Fund.

9           (f) The Fund consists of:

10                   (1) Revenue distributed to the Fund under §§ 2–605.1, **2–613.1**, and  
 11 2–1303 of the Tax – General Article;

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

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

15   **Article – Tax – General**

16 2–613.1.

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

19                   (1) **[6%] 5.5%** to the Higher Education Investment Fund established under  
 20 § 15–106.6 of the Education Article; and

21                   (2) **[9.15% to the General Fund] 7.6% TO THE BLUEPRINT FOR**  
 22 **MARYLAND’S FUTURE FUND ESTABLISHED UNDER § 5–219 OF THE EDUCATION**  
 23 **ARTICLE.**

24 2–614.

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

30                   **[(2) The percent of the remaining income tax revenue from corporations**

1 distributed to a special fund to be distributed as provided in subsection (b) of this section  
2 shall be:

- 3 (i) 24% for the fiscal year beginning July 1, 2011;
- 4 (ii) 9.5% for the fiscal year beginning July 1, 2012; and
- 5 (iii) 19.5% for each fiscal year beginning on or after July 1, 2013, but  
6 before July 1, 2016.]

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

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

- 12 1. 24% for the fiscal year beginning July 1, 2011;
- 13 2. 9.5% for the fiscal year beginning July 1, 2012; and
- 14 3. 19.5% for each fiscal year beginning on or after July 1,  
15 2013, but before July 1, 2016.]

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

19 **10-402.1.**

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

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

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

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

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

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

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

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

7 (3) "COMBINED RETURN" MEANS A TAX RETURN FOR THE COMBINED  
8 GROUP CONTAINING INFORMATION AS PROVIDED IN THIS SECTION OR OTHERWISE  
9 REQUIRED BY THE COMPTROLLER.

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

16 (B) (1) THE TERM "UNITARY BUSINESS" SHALL BE CONSTRUED TO THE  
17 BROADEST EXTENT ALLOWED UNDER THE U.S. CONSTITUTION.

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

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

32 (C) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS  
33 ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER  
34 DECEMBER 31, 2021, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL  
35 FILE A COMBINED RETURN, REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE  
36 INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX  
37 LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A

1 UNITARY BUSINESS.

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

6 (D) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP  
7 EQUALS THE PRODUCT OF:

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

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

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

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

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

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

30 2. A PROFIT AND LOSS STATEMENT SHALL BE PREPARED  
31 FOR EACH FOREIGN BRANCH OR CORPORATION IN THE CURRENCY IN WHICH THE  
32 BOOKS OF ACCOUNT OF THE BRANCH OR CORPORATION ARE REGULARLY  
33 MAINTAINED.

34 3. THE PROFIT AND LOSS STATEMENT SHALL BE



1 ADJUSTED TO CONFORM TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AS  
2 ADOPTED BY THE UNITED STATES FINANCIAL ACCOUNTING STANDARDS BOARD  
3 FOR THE PREPARATION OF THE PROFIT AND LOSS STATEMENTS, EXCEPT AS  
4 MODIFIED BY REGULATION.

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

10 5. INCOME APPORTIONED TO THIS STATE SHALL BE  
11 EXPRESSED IN UNITED STATES DOLLARS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32           **(F) (1) (I) AN ELECTION TO USE THE WATER'S EDGE METHOD IN**  
33 **ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION IS EFFECTIVE ONLY IF MADE**

1 ON A TIMELY FILED, ORIGINAL RETURN FOR A TAX YEAR BY EVERY MEMBER OF THE  
2 UNITARY BUSINESS.

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

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

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

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

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

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

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

36 2. THE WITHDRAWAL SHALL BE MADE IN WRITING

1 WITHIN 1 YEAR BEFORE THE EXPIRATION OF THE ELECTION AND IS BINDING FOR A  
2 PERIOD OF 10 YEARS, SUBJECT TO THE SAME CONDITIONS AS APPLIED TO THE  
3 ORIGINAL ELECTION.

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

8 (G) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE  
9 NECESSARY AND APPROPRIATE TO CARRY OUT THIS SECTION.

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

15 10-811.

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

22 (2) THE RETURN REQUIRED UNDER PARAGRAPH (1) OF THIS  
23 SUBSECTION SHALL INCLUDE THE INCOME AND APPORTIONMENT FACTORS  
24 DETERMINED UNDER § 10-402.1(D) AND (E) OF THIS TITLE, AND ANY OTHER  
25 INFORMATION REQUIRED BY THE COMPTROLLER, FOR ALL MEMBERS OF THE  
26 COMBINED GROUP WHEREVER LOCATED OR DOING BUSINESS.

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

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

34 (III) THE FILING MEMBER UNDER SUBPARAGRAPH (I) OR (II) OF  
35 THIS PARAGRAPH SHALL CONTINUE TO FILE THE COMBINED RETURN UNLESS THE

1 FILING MEMBER IS NO LONGER THE PARENT CORPORATION OR NO LONGER A  
2 MEMBER OF THE COMBINED GROUP.

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

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

8 (B) (1) THE COMPTROLLER MAY, BY REGULATION, REQUIRE THAT THE  
9 COMBINED RETURN INCLUDE THE INCOME AND ASSOCIATED APPORTIONMENT  
10 FACTORS OF ENTITIES THAT ARE NOT INCLUDED IN THE COMBINED REPORT BUT  
11 THAT ARE MEMBERS OF A UNITARY BUSINESS IN ORDER TO REFLECT PROPER  
12 APPORTIONMENT OF INCOME OF THE ENTIRE UNITARY BUSINESS.

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

19 (3) THE COMPTROLLER MAY REQUIRE:

20 (I) THE EXCLUSION OF ONE OR MORE FACTORS, THE  
21 INCLUSION OF ONE OR MORE ADDITIONAL FACTORS, OR THE EMPLOYMENT OF ANY  
22 OTHER METHOD THAT WILL FAIRLY REPRESENT THE TAXPAYER'S BUSINESS IN THIS  
23 STATE; OR

24 (II) THE EMPLOYMENT OF ANY OTHER METHOD TO EFFECTUATE  
25 A PROPER REFLECTION OF THE TOTAL AMOUNT OF INCOME SUBJECT TO  
26 APPORTIONMENT AND AN EQUITABLE ALLOCATION AND APPORTIONMENT OF THE  
27 COMBINED GROUP'S OR ITS MEMBERS' INCOME.

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

30 SECTION 3. AND BE IT FURTHER ENACTED, That, for a taxable year beginning  
31 after December 31, 2020, but before January 1, 2022, notwithstanding §§ 13-602 and  
32 13-702 of the Tax – General Article, the Comptroller shall assess interest and penalties  
33 under §§ 13-602 and 13-702 of the Tax – General Article if a corporation pays estimated  
34 income tax for the taxable year in an amount less than 90% of the tax required to be shown  
35 on the corporation's income tax return for the taxable year.

1 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be  
2 applicable to all taxable years beginning after December 31, 2020.

3 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take  
4 effect July 1, 2022, and shall be applicable to all taxable years beginning after December  
5 31, 2021.

6 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section  
7 5 of this Act, this Act shall take effect July 1, 2021.