

SENATE BILL 576

Q3

3lr1400

By: **Senators Lewis Young and Rosapepe**

Introduced and read first time: February 6, 2023

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Combined Reporting**

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

18 BY adding to

19 Article – Tax – General
20 Section 10–311 and 10–402.1
21 Annotated Code of Maryland
22 (2022 Replacement Volume)

23 BY repealing and reenacting, with amendments,

24 Article – Tax – General
25 Section 10–811
26 Annotated Code of Maryland
27 (2022 Replacement Volume)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Tax – General**

3 **10–311.**

4 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

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

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

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

16 (B) THIS SECTION APPLIES ONLY TO A COMBINED GROUP OF WHICH THE
17 MEMBERS, ON OR BEFORE THE DATE OF ENACTMENT OF THE PROVISIONS OF §
18 10–402.1 OF THIS TITLE BY CHAPTER ____ (H.B. 46) OF THE ACTS OF THE
19 GENERAL ASSEMBLY OF 2023, WERE:

20 (1) PUBLICLY TRADED; OR

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

25 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION
26 TO THE MODIFICATIONS UNDER §§ 10–307 AND 10–308 OF THIS SUBTITLE, THE
27 AMOUNTS DETERMINED UNDER SUBSECTION (D) OF THIS SECTION ARE
28 SUBTRACTED FROM THE FEDERAL TAXABLE INCOME OF A COMBINED GROUP TO
29 DETERMINE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP IF, AS OF THE
30 DATE OF ENACTMENT OF § 10–402.1 OF THIS TITLE BY CHAPTER ____ (H.B. 46) OF
31 THE ACTS OF THE GENERAL ASSEMBLY OF 2023, THE ENACTMENT RESULTED IN AN
32 AGGREGATE:

33 (I) INCREASE TO THE COMBINED GROUP’S NET DEFERRED TAX

1 LIABILITY;

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

4 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
5 DEFERRED TAX LIABILITY.

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

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

12 (I) INCREASE TO THE COMBINED GROUP'S NET DEFERRED TAX
13 LIABILITY;

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

16 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
17 DEFERRED TAX LIABILITY.

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

20 (I) DIVIDED BY THE RATE DETERMINED UNDER § 10-105(B) OF
21 THIS TITLE IN EFFECT ON JANUARY 1, 2025; AND

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

26 (3) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION MAY BE
27 USED TO REDUCE THE COMBINED GROUP'S MARYLAND MODIFIED INCOME FOR 10
28 CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THAT
29 BEGINS AFTER DECEMBER 31, 2029.

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

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

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

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

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

11 **(E) (1) ON OR BEFORE JULY 1, 2026, A COMBINED GROUP THAT INTENDS**
12 **TO CLAIM A SUBTRACTION UNDER THIS SECTION SHALL FILE WITH THE**
13 **COMPTROLLER A STATEMENT THAT SPECIFIES THE TOTAL AMOUNT OF THE**
14 **SUBTRACTION THAT THE COMBINED GROUP INTENDS TO CLAIM.**

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

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

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

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

22 **10-402.1.**

23 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
24 **INDICATED.**

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

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

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

29 **1. A COMMON OWNER OR COMMON OWNERS, EITHER**

1 CORPORATE OR NONCORPORATE; OR

2 2. ONE OR MORE MEMBER CORPORATIONS OF THE
3 GROUP;

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

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

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

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

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

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

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

35 (C) (1) EXCEPT AS PROVIDED BY AND SUBJECT TO REGULATIONS

1 ADOPTED BY THE COMPTROLLER, FOR ALL TAXABLE YEARS BEGINNING AFTER
2 DECEMBER 31, 2024, A CORPORATION ENGAGED IN A UNITARY BUSINESS SHALL
3 FILE A COMBINED RETURN, REPORTING AND PAYING TAX ON WORLDWIDE TAXABLE
4 INCOME AS A COMBINED GROUP, REFLECTING THE AGGREGATE INCOME TAX
5 LIABILITY OF ALL MEMBERS OF THE COMBINED GROUP THAT ARE ENGAGED IN A
6 UNITARY BUSINESS.

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

11 (D) (1) THE MARYLAND MODIFIED INCOME OF THE COMBINED GROUP
12 EQUALS THE PRODUCT OF:

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

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

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

22 (II) 1. SUBJECT TO SUBSUBPARAGRAPH 2 OF THIS
23 SUBPARAGRAPH, FOR ANY MEMBER INCORPORATED IN THE UNITED STATES OR
24 INCLUDED IN A CONSOLIDATED FEDERAL CORPORATE INCOME TAX RETURN, THE
25 INCOME TO BE INCLUDED IN THE TOTAL APPORTIONABLE INCOME OF THE
26 COMBINED GROUP IS THE MARYLAND MODIFIED INCOME AS CALCULATED UNDER §
27 10-304 OF THIS TITLE.

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

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

35 2. A PROFIT AND LOSS STATEMENT SHALL BE PREPARED

1 FOR EACH FOREIGN BRANCH OR CORPORATION IN THE CURRENCY IN WHICH THE
2 BOOKS OF ACCOUNT OF THE BRANCH OR CORPORATION ARE REGULARLY
3 MAINTAINED.

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

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

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

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

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

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

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

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

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

1 **(E) (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 934 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 (F) (1) (I) AN ELECTION TO USE THE WATER'S EDGE METHOD IN
4 ACCORDANCE WITH SUBSECTION (E) 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 AVOIDED
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 (G) (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 § 10-402.1(D) AND (E) 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.

35 (II) IF THERE IS NO PARENT CORPORATION OR IF THE PARENT

1 IS NOT A MEMBER OF THE COMBINED GROUP, THE MEMBERS OF THE COMBINED
2 GROUP SHALL CHOOSE A MEMBER TO FILE THE RETURN.

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

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

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

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

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

23 (3) THE COMPTROLLER MAY REQUIRE:

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

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

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

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July

1 1, 2024, and shall be applicable to all taxable years beginning after December 31, 2024.