Maryland Income Tax
ADMINISTRATIVE RELEASE

Administrative Release No. 43

Subject: Corporate Apportionment of Income

October 27, 2022 - This Administrative Release has been updated to expand the section on regulatory special apportionment formulas. No substantive changes have been made.

I. Apportionment and 2018 House Bill 1794/Senate Bill 1090

A corporation carrying on business within and outside of Maryland must allocate to Maryland the part of corporation's Maryland modified income reasonably attributable to the State by multiplying its Maryland modified income by an apportionment formula. The formula is prescribed by Tax General Article § 10-402, Annotated Code of Maryland. A corporation operating within and outside Maryland may also determine the portion of Maryland modified income reasonably attributable to Maryland by separate accounting, if practicable.[1]

On April 24, 2018, Governor Lawrence J. Hogan, Jr. signed into law House Bill 1794/Senate Bill 1090, Single Sales Factor Apportionment. This legislation altered Tax-General Article § 10-402 to require corporations carrying on business within and outside the State to transition to single sales factor apportionment. The statute phases in single sales factor apportionment over tax years 2018 to 2021 by increasing the weight of the sales factor each year.[2] For tax years beginning after December 31, 2021, corporations carrying on a business within and outside Maryland determine income derived from Maryland using a single sales factor apportionment formula, by multiplying its Maryland modified income by 100% of the sales factor.

Prior to the 2018 Single Sales Factor legislation, the default corporate apportionment formula included the property, payroll and twice the sales factor in the numerator, and had a denominator of 4. The 2018 Single Sales Factor legislation altered the corporate apportionment fraction by phasing in single sales factor apportionment over five years. It also added provisions for optional three-factor apportionment for worldwide headquartered corporations.[3] Multistate manufacturing corporations had already been required to use single sales factor apportionment prior to the 2018 Single Sales Factor legislation.[4]

The Comptroller maintains regulations relating to the apportionment of income of multi-state corporations and the calculation

[1] Tax General Article § 10-402(c)(1), Annotated Code of Maryland
[2] TG § 10-402(d)(2)
[3] "'Worldwide headquartered company' means a corporation included in a group of corporations including a parent corporation that:
(1) filed a Form 10-Q with the Securities and Exchange Commission for the quarterly period ending June 30, 2017; (2) has its principal executive office in the State; and (3)(i) employs at all times between July 1, 2017, and June 30, 2020, at least 500 full-time employees at the parent corporation's principal executive office that is located within the State; or (ii) if the parent corporation is a franchisor, is part of a group of corporations that employs at all times between July 1, 2017, and June 30, 2020, at least 400 full-time employees at the parent corporation's principal executive office that is located within the State." TG § 10-402(a).
[4] TG § 10-402(d)(1)(i)

of each factor. Effective May 2, 2022, the Comptroller alters the regulations related to apportionment of income for members of the banking industry; members of the banking industry must use single factor apportionment, with the regulatorily defined "receipts" substituting for "sales." This publication discusses the phase-in of single sales factor apportionment, as well as how regulations continue to apply to specific industries.

II. Single Sales Factor Phase-In

TG § 10-402(d)(2) phases in single sales factor apportionment over five years. Each year increases the weight given to the sales factor:

Code Section	Tax Year	Apportionment Formula
TG § 10-402(d)(2)(i)	2018 (beginning after December 31, 2017, but before January 1, 2019)	$\frac{\text{property factor + payroll factor + (3 x sales factor)}}{5}$
TG § 10-402(d)(2)(ii)	2019 (beginning after December 31, 2018, but before January 1, 2020)	$\frac{\text{property factor + payroll factor + (4 x sales factor)}}{6}$
TG § 10-402(d)(2)(iii)	2020 (beginning after December 31, 2019, but before January 1, 2021)	$\frac{\text{property factor + payroll factor + (5 x sales factor)}}{7}$
TG § 10-402(d)(2)(iv)	2021 (beginning after December 31, 2020, but before January 1, 2022)	$\frac{\text{property factor + payroll factor + (6 x sales factor)}}{8}$
TG § 10-402(d)(2)(v)	2022 and after (beginning after December 31, 2021)	sales factor

III. Worldwide Headquartered Companies

The 2018 Single Sales Factor legislation defined "worldwide headquartered company" as a corporation included in a group of corporations that is publicly traded; has a principal executive office in Maryland; and that, at all times between July 1, 2017 and June 30, 2020, had at least 500 full-time employees at the principal executive office in Maryland.[5] 2020 Senate Bill 523,[6] Pass-Through Entities and Corporations, expanded this definition to include franchisors that are part of a group of corporations that employs, at all times between July 1, 2017, and June 30, 2020, at least 400 full-time employees at the parent corporation's principal executive office in Maryland.[7]

Worldwide headquartered companies may elect to continue to use the three-factor formula with double-weighted sales. The formula is as follows:

$$\frac{\text{property factor + payroll factor +(2 x sales factor)}}{4}$$

IV. Manufacturing Corporations

Multistate manufacturing corporations must use a single sales factor apportionment formula. Manufacturing corporations' Maryland taxable income derived from the state is determined by multiplying its

[5] TG § 10-402(a)(1)-(3)

[6] SB523 also allowed pass-through entities to elect to pay tax on the pro rata distributive shares of resident members. For more on the taxation of pass-through entities, see Administrative Release 6.

[7] TG § 10-402(a)(iii)

Maryland modified income by 100% of the sales factor.[8]

V. Regulatory Special Apportionment Formulas

Code of Maryland Regulations (COMAR) 03.04.03.08 through 03.04.03.10 provide additional detail on how each factor is calculated. The regulations also require special apportionment formulas for specific industries. Neither the 2018 Single Sales Factor legislation nor the 2020 Pass-Through Entities and Corporations legislation changed the types of businesses to which the apportionment formula applies. The Comptroller adopted the regulatory framework for these industries under the same statutory language that appears in the amendments. The Comptroller continues to find that special apportionment is appropriate. Therefore, the regulatory exceptions to the default apportionment formula survive the statutory amendment changing the apportionment formula for industries not covered by the regulations.

A. Leasing Companies

The apportionment formula found in TG § 10-402(d)(2) that applies to other trades or businesses carrying on business within and outside the State does not apply to leasing or transportation companies.

Leasing companies must apply an equally weighted two-factor formula of receipts and property with the exclusion of receipts from intangible items.[9]

B. Transportation Companies

The apportionment formula found in TG § 10-402(d)(2) that applies to other trades or businesses carrying on business within and outside the State does not apply to companies primarily engaged in trucking, rail, and shipping.[10] A company engaged in transportation using trucks, railroads, and ships applies a separate apportionment method, based on miles traveled in state (trucks, railroads), or days spent in port or on waterways in-State (ships).[11]

A trucking company's (motorfreight carrier) apportionment formula is the number of miles traveled on roads in-State over number of miles traveled on roads everywhere.[12]

A railroad company's apportionment formula is the number of miles traveled on tracks in-State over the number of miles traveled on tracks everywhere.[13]

A shipping company's apportionment formula is the number of days spent in ports and on waterways in-State over the number of days spent in ports and on waterways everywhere.[14]

C. Airline Industry

The apportionment formula found in TG § 10-402(d)(2) that applies to other trades or businesses carrying on business within and outside the State does not apply to airlines. Airlines must apply a three-factor formula of property, payroll, and sales.[15] The regulations also prescribe how each factor is calculated. More information on airlines' apportionment of income can be found in Administrative Release No. 22.

D. Banks and Financial Institutions

[8] TG § 10-402(d)(1)(ii)
[9] COMAR 03.04.03.08E.(1)
[10] COMAR 03.04.03.08E.(2)
[11] COMAR 03.04.03.08E.(2)
[12] COMAR 03.04.03.08E.(2)(a)
[13] COMAR 03.04.03.08E.(2)(b)
[14] COMAR 03.04.03.08E.(2)(c)
[15] COMAR 03.04.03.08G.(3)-(6)

a. Regulations Amended. The regulatory carveout for banks and similar institutions (hereinafter, "banks") is found in COMAR 03.04.08.03. This regulation is amended effective May 2, 2022. Prior to May 2, 2022, the regulation stated that the apportionment fraction for banks is determined by adding the property factor, payroll factor, and twice the receipts factor and dividing the sum by four.[16] The banking regulation also prescribes how the receipts factor is calculated. Banks were provided this special consideration for apportionment and allocation of income under the Comptroller's regulatory power prior to the passage of the 2018 Single Sales Factor legislation to address transactions unique to the banking industry.

Unlike the carveouts for leasing companies (two-factor: receipts and property), and airlines (three-factor: payroll, property, single weighted sales), the apportionment fraction for banks is the same as the statutory corporate apportionment formula prior to the 2018 Single Sales Factor legislation, except receipts are substituted for sales.[17] Prior to the 2018 Single Sales Factor legislation, banks' special consideration was, in effect, limited to the rules for calculating the receipts factor. Banks' regulatory special apportionment is similar to the apportionment of income for film producers and television networks,[18] though the former reiterates that a three-factor, double weighted receipts formula was required, whereas the latter incorporates the default apportionment formula by reference.

The regulations are not superseded by the amendments to TG § 10-402. However, for treatment to be consistent with the pre-amendment regulation, banks must use the statutory apportionment formula found in TG § 10-402 and transition to single factor apportionment. Banks' single factor is receipts, as defined in COMAR 03.04.08.03. The amended regulation makes explicit that banks are required to use single receipts factor apportionment. Banks must continue to compute their property, payroll and receipts factors as required by COMAR 03.04.08.04.-06.

b. Amended Returns Not Required. As specifically stated in the amended regulation, the use of a single receipts factor is required only on original returns filed after the amendment's effective date, May 2, 2022. A bank that filed returns using the regulatory 3-factor formula that was in effect at the time of filing is not required to amend the return. A bank that transitioned to single-receipts factor based on the statutory change, in spite of the regulations in effect prior to May 2, 2022, is likewise not required to amend the returns. A bank that used the 3-factor apportionment formula for a return filed prior to May 2, 2022, who amends that return based on, for example, a federal adjustment is not required to change the apportionment fraction on the amended return. A bank may amend a return filed prior to May 2, 2022, that used the 3-factor apportionment formula to use the single receipts factor if the amendment falls within the statute of limitations found in TG §13-1104.

E. Alternative Apportionment

The Comptroller is tasked with administering the law as passed by the legislature.[19] TG § 10-402(e) authorizes the Comptroller to alter the methods of determining income attributable to Maryland, including the use of the three-factor formula and the weight of any factor, if circumstances warrant. Alternative apportionment

[16] COMAR 03.04.08.03A. – B.
[17] COMAR 03.04.08.03.B,.C.
[18] COMAR 03.04.03.09.
[19] TG § 2-102

COMPTROLLER of MARYLAND
Serving the People

Revenue Administration Division Revenue Administration Center
Annapolis, Maryland 21411-0001

Telephone: **410-260-7980** or **1-800-MD TAXES**

taxhelp@marylandtaxes.gov

www.marylandtaxes.gov

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determinations are fact-specific and available on a case-by-case basis. If a taxpayer asserts the apportionment formula does not fairly reflect the income attributable to Maryland, it may request an alternative apportionment method. Individual companies may propose their own alternative apportionment formulas. Alternative apportionment is not granted on an industry wide basis.

Revised: October 2022