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External Multistate Tax Alert
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Enacted Maryland law phases in single sales factor apportionment formula

Overview

On April 24, 2018, Governor Hogan signed Senate Bill 1090 (S.B. 1090),[1] which includes the following modifications to Maryland law applicable to all taxable years beginning after December 31, 2017:

- A five-year phase-in of a single sales factor apportionment formula.
- A three-factor apportionment election for a worldwide headquartered company.

This tax alert summarizes the changes provided by S.B. 1090 and provides some taxpayer considerations.

Five-year phase-in of a single sales factor apportionment formula starting in TY 2018

Prior to S.B. 1090, Maryland corporate taxpayers were required to use a three-factor double weighted sales formula to apportion income, with eligible "manufacturing corporations" permitted to elect a single sales factor formula.

Effective for taxable years beginning after December 31, 2017, S.B. 1090 phases in a single sales factor formula over five years, as follows:

- For taxable year 2018, application of a three-factor apportionment fraction where the numerator consists of the property, payroll, and 3 times the sales factor; and the denominator is 5;
- For taxable year 2019, application of a three-factor apportionment fraction where the numerator consists of the property, payroll, and 4 times the sales factor; and the denominator is 6;
- For taxable year 2020, application of a three-factor apportionment fraction where the numerator consists of the property, payroll, and 5 times the sales factor; and the denominator is 7;
- For taxable year 2021, application of a three-factor apportionment fraction where the numerator consists of the property, payroll, and 6 times the sales factor; and the denominator is 8; and
- For taxable years beginning after December 31, 2021, application of a 100% single sales factor apportionment formula.[2]

Three-factor formula election for a Worldwide Headquarted Company

Under S.B. 1090, all corporations will be subject to the phased-in single sales factor formula. However, a "worldwide headquartered company" that filed a federal corporate income tax return for the taxable year may elect to calculate its Maryland state taxable income using a three-factor apportionment fraction, where the numerator consists of the property, payroll, and 2 times the sales factor; and the denominator is 4.[3]

The new law defines a "worldwide headquartered company" as 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 Maryland; and (3) 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 located within Maryland.[4]

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[1] S.B. 1090, 2018 Legislative Session (2018). A copy of the adopted law is accessible here.
[2] S.B. 1090, 2018 Legislative Session, amending Md. Tax-General Code Ann. §10-402(c).
[3] S.B. 1090, 2018 Legislative Session, amending Md. Tax-General Code Ann. §10-402(c).
[4] S.B. 1090, 2018 Legislative Session, amending Md. Tax-General Code Ann. §10-402(a).

Considerations

Taxpayers, including corporations, eligible worldwide headquartered companies and pass-through entities should consult with their tax advisers regarding the impact of S.B. 1090 on their Maryland state taxable income. Potential implications may include:

- Changes to quarterly estimated payments for taxable year 2018 due to the change in the apportionment formula effective for taxable year 2018.
- ASC 740 analysis of the effect of the apportionment formula change beginning in taxable year 2018.
- Eligibility for worldwide headquartered company characterization, as well as the impact of electing to use the three-factor apportionment formula instead of the phased-in single sales factor formula.
- Impact on pass-through entities subject to mandatory non-resident withholding or otherwise electing to file Maryland composite returns. (Currently, the rules governing nonresident withholding and composite returns for pass through entities require pass-through entities to use an apportionment formula identical to the apportionment formula used by corporations.)[5]

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[5] *See* Code of Maryland Regulations 03.04.07.02 (2018).