

SENATE BILL 523

Q3

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CF 0lr3153

By: **Senators Guzzone, Hester, Beidle, Carozza, Edwards, Elfreth, Feldman, Griffith, Kagan, ~~King~~, Kramer, Peters, Serafini, West, ~~and Zucker~~ Zucker, Eckardt, McCray, Miller, and Salling**

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Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 11, 2020

CHAPTER _____

1 AN ACT concerning

2 **Income Tax – Pass-Through Entities – ~~Imposition of Tax~~ and Corporations**

3 FOR the purpose of altering the State income tax imposed on certain pass-through entities;
4 requiring each pass-through entity to pay the tax imposed with respect to certain
5 shares of certain nonresident and nonresident entity members of the pass-through
6 entity; ~~authorizing a pass-through entity to pay the tax imposed with respect to~~
7 ~~certain shares of all members of the pass-through entity; authorizing a~~
8 ~~pass-through entity to elect to pay the tax imposed with respect to certain shares of~~
9 ~~all resident members of the pass-through entity; providing for the calculation of the~~
10 tax; prohibiting the tax required to be paid for any taxable year from exceeding a
11 certain amount; requiring each pass-through entity that elects to pay the tax
12 imposed with respect to certain shares of resident members of the pass-through
13 entity to report certain information to the Comptroller in a certain manner; requiring
14 the Comptroller, subject to certain provisions of law, to distribute to each county
15 certain income tax revenues; altering the number of employees that certain
16 worldwide headquartered companies must employ at a certain location in the State
17 in order to elect to use a certain formula to apportion certain income to the State;
18 expanding a certain income tax credit to allow members of all pass-through entities,
19 rather than only shareholders of S corporations, who are residents of the State to
20 claim the credit under certain circumstances; allowing each member to claim a credit
21 against the State income tax and county income tax for the member's proportionate
22 share of the tax paid by the pass-through entity; providing a subtraction
23 modification under the Maryland corporate income tax for certain changes to a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 certain corporation's deferred tax assets or liabilities that are the result of certain
 2 acts of the General Assembly; providing for the calculation of the amount of the
 3 subtraction modification; providing that the subtraction modification may be claimed
 4 only for certain taxable years; prohibiting the subtraction from being reduced as a
 5 result of an event that occurs after the calculation of the subtraction; providing,
 6 under certain circumstances, for the carryforward of the subtraction; requiring a
 7 corporation that intends to claim the subtraction to file a certain statement with the
 8 Comptroller on or before a certain date; authorizing the Comptroller to review and
 9 alter the amount of the subtraction specified in the statement or claimed on certain
 10 tax returns; defining certain terms; making certain stylistic and conforming changes;
 11 providing for the application of certain provisions of this Act; and generally relating
 12 to the State income tax and pass-through entities and corporations.

13 BY repealing and reenacting, with amendments,

14 Article – Tax – General

15 Section 10–102.1, 10–402, 10–701.1, 10–703, and 10–706

16 Annotated Code of Maryland

17 (2016 Replacement Volume and 2019 Supplement)

18 BY adding to

19 Article – Tax – General

20 Section 10–311

21 Annotated Code of Maryland

22 (2016 Replacement Volume and 2019 Supplement)

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

24 That the Laws of Maryland read as follows:

25 **Article – Tax – General**

26 10–102.1.

27 (a) (1) In this section the following words have the meanings indicated.

28 (2) “Distributable cash flow” means taxable income reportable by a
 29 pass-through entity on its federal income tax return for the taxable year:

30 (i) adjusted, in the case of an entity using the accrual method of
 31 accounting to report federal taxable income, to reflect the amount of taxable income that
 32 would have been reported under the cash method of accounting;

33 (ii) increased by the sum of:

34 1. cash receipts for the taxable year that are not includable
 35 in the gross income of the entity, including capital contributions and loan proceeds;

36 2. amounts allowable to the entity for the taxable year as

1 **(8) “PASS-THROUGH ENTITY’S TAXABLE INCOME” MEANS THE**
2 **PORTION OF A PASS-THROUGH ENTITY’S INCOME UNDER THE FEDERAL INTERNAL**
3 **REVENUE CODE THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO THE**
4 **TRADE OR BUSINESS OF THE PASS-THROUGH ENTITY IN THIS STATE.**

5 **(b) (1) [In] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN** addition
6 to any other tax imposed under this title, a tax is imposed on each pass-through entity
7 [that has:

8 (1) any member who is a nonresident of the State or is a nonresident entity;
9 and

10 (2) any nonresident taxable income for the taxable year].

11 **(2) EACH PASS-THROUGH ENTITY:**

12 **(I) SHALL PAY THE TAX IMPOSED UNDER PARAGRAPH (1) OF**
13 **THIS SUBSECTION WITH RESPECT TO THE DISTRIBUTIVE SHARES OR PRO RATA**
14 **SHARES OF THE NONRESIDENT AND NONRESIDENT ENTITY MEMBERS OF THE**
15 **PASS-THROUGH ENTITY; OR**

16 **(II) MAY ELECT TO PAY THE TAX IMPOSED UNDER PARAGRAPH**
17 **(1) OF THIS SUBSECTION WITH RESPECT TO THE DISTRIBUTIVE SHARES OR PRO**
18 **RATA SHARES OF RESIDENT MEMBERS OF THE PASS-THROUGH ENTITY.**

19 **(c) (1) [The] WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS**
20 **THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE**
21 **WITH SUBSECTION (B)(2)(I) OF THIS SECTION, THE tax [imposed under subsection (b)**
22 **of this section] shall be treated as a tax imposed on the nonresident or nonresident entity**
23 **members that is paid on behalf of the nonresidents or nonresident entities by the**
24 **pass-through entity.**

25 (2) The Comptroller shall provide by regulation for the treatment of the tax
26 imposed under subsection (b) of this section that is paid on behalf of a nonresident entity
27 member that is itself a pass-through entity.

28 **(d) (1) [Except as provided in paragraph (2) of this subsection, the] WITH**
29 **RESPECT TO A PASS-THROUGH ENTITY THAT PAYS THE TAX IMPOSED UNDER**
30 **SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (B)(2)(I)**
31 **OF THIS SECTION, THE tax imposed [under subsection (b) of this section] is the sum of:**

32 (i) a rate equal to the sum of the rate of the tax imposed under §
33 10-106.1 of this subtitle and the top marginal State tax rate for individuals under §
34 10-105(a) of this subtitle applied to the sum of each nonresident individual member’s
35 distributive share or [pro-rata] **PRO RATA** share of [a] **THE** pass-through entity’s

1 nonresident taxable income; and

2 (ii) the rate of the tax for a corporation under § 10–105(b) of this
3 subtitle applied to the sum of each nonresident entity member’s distributive share or
4 [pro–rata] PRO RATA share of [a] THE pass–through entity’s nonresident taxable income.

5 **(2) WITH RESPECT TO A PASS–THROUGH ENTITY THAT PAYS THE TAX**
6 **IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH**
7 **SUBSECTION (B)(2)(II) OF THIS SECTION, THE TAX IMPOSED IS THE SUM OF:**

8 **(I) A RATE EQUAL TO THE SUM OF THE RATE OF THE TAX**
9 **IMPOSED UNDER § 10–106.1 OF THIS SUBTITLE AND THE TOP MARGINAL STATE TAX**
10 **RATE FOR INDIVIDUALS UNDER § 10–105(A) OF THIS SUBTITLE APPLIED TO THE SUM**
11 **OF EACH INDIVIDUAL MEMBER’S DISTRIBUTIVE SHARE OR PRO RATA SHARE OF THE**
12 **PASS–THROUGH ENTITY’S TAXABLE INCOME; AND**

13 **(II) THE RATE OF THE TAX FOR A CORPORATION UNDER §**
14 **10–105(B) OF THIS SUBTITLE APPLIED TO THE SUM OF EACH ENTITY MEMBER’S**
15 **DISTRIBUTIVE SHARE OR PRO RATA SHARE OF THE PASS–THROUGH ENTITY’S**
16 **TAXABLE INCOME.**

17 **[(2)] (3)** The tax required to be paid for any taxable year [on behalf of
18 nonresident or nonresident entity members] by a pass–through entity may not exceed:

19 **(I) WITH RESPECT TO A PASS–THROUGH ENTITY THAT PAYS**
20 **THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE**
21 **WITH SUBSECTION (B)(2)(I) OF THIS SECTION,** the sum of all of the nonresident and
22 nonresident entity members’ shares of the pass–through entity’s distributable cash flow;
23 **AND**

24 **(II) WITH RESPECT TO A PASS–THROUGH ENTITY THAT PAYS**
25 **THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE**
26 **WITH SUBSECTION (B)(2)(II) OF THIS SECTION, THE SUM OF ALL OF THE MEMBERS’**
27 **SHARES OF THE PASS–THROUGH ENTITY’S DISTRIBUTABLE CASH FLOW.**

28 **(E) IN ACCORDANCE WITH § 10–701.1 OF THIS TITLE, EACH MEMBER MAY**
29 **CLAIM A CREDIT AGAINST THE TAX IMPOSED ON THE MEMBER FOR THE MEMBER’S**
30 **PROPORTIONATE SHARE OF THE TAX PAID BY THE PASS–THROUGH ENTITY UNDER**
31 **SUBSECTION (B) OF THIS SECTION.**

32 **[(e)] (F)** (1) (i) The tax imposed under subsection (b) of this section does
33 not apply with respect to the distributive share or [pro–rata] PRO RATA share of a member
34 that is itself a pass–through entity formed under the laws of the State or qualified by or
35 registered with the Department of Assessments and Taxation to do business in the State.

1 (ii) A member of a pass-through entity that is itself a pass-through
2 entity as described in subparagraph (i) of this paragraph shall **ITSELF** comply with the
3 provisions of this section [with respect to any of its members that are nonresidents or
4 nonresident entities].

5 (2) The tax imposed under subsection (b) of this section does not apply with
6 respect to the direct or indirect distributive share or pro rata share of a member that is:

7 (I) a real estate investment trust as defined by § 856 of the Internal
8 Revenue Code; **OR**

9 (II) **AN ENTITY THAT IS EXEMPT FROM TAXATION UNDER § 501**
10 **OF THE INTERNAL REVENUE CODE.**

11 **[(f)] (G)** The Comptroller may provide by regulation for:

12 (1) the filing of composite returns by a pass-through entity on behalf of its
13 nonresident and nonresident entity members; and

14 (2) application of or exemption from the tax imposed under subsection (b)
15 of this section for a pass-through entity:

16 (i) that files a composite return on behalf of nonresident and
17 nonresident entity members; or

18 (ii) the **[nonresident or nonresident]** entity members of which are
19 tax exempt.

20 **[(g)] (H)** (1) Subject to paragraph (2) of this subsection, if a partnership fails
21 to pay the tax when due the tax may be collected from the partners under the law applicable
22 to debts of the partnership, with the partnership and partners having rights of contribution
23 against any **[nonresident]** partner on whose behalf the tax is paid.

24 (2) Unless it is established by the Comptroller that the partner
25 participated in a pattern of distributions to one or more partners with the intention of
26 defeating the partnership liability for the tax imposed under subsection (b) of this section,
27 any partner otherwise liable under paragraph (1) of this subsection shall be liable for the
28 tax imposed on the partnership only to the extent of distributions from the partnership to
29 that partner after the tax was due to be paid by the partnership.

30 **[(h)] (I)** Except as provided in § 10-701.1 of this title, nothing in this section
31 limits or affects in any way the liability of an individual nonresident member or a
32 nonresident entity member for the tax imposed on the individual nonresident or
33 nonresident entity under § 10-102 of this subtitle.

1 **[(i)] (J)** The tax imposed under subsection (b) of this section does not apply to a
2 publicly traded pass-through entity that has agreed to file with the Comptroller an annual
3 information return reporting the name, address, taxpayer identification number, and other
4 information requested by the Comptroller of each nonresident or nonresident entity
5 member whose distributive share or **[pro-rata] PRO RATA** share of the pass-through
6 entity's nonresident taxable income for the taxable year exceeds \$500.

7 **(K) (1) A PASS-THROUGH ENTITY THAT ELECTS, UNDER SUBSECTION**
8 **(B)(2)(II) OF THIS SECTION, TO PAY THE TAX IMPOSED UNDER SUBSECTION (B)(1)**
9 **OF THIS SECTION WITH RESPECT TO THE DISTRIBUTIVE SHARES OR PRO RATA**
10 **SHARES OF RESIDENT MEMBERS OF THE PASS-THROUGH ENTITY SHALL REPORT TO**
11 **THE COMPTROLLER, ON A QUARTERLY BASIS, A LIST OF THOSE RESIDENT MEMBERS**
12 **AND THE COUNTIES IN WHICH THEY RESIDE.**

13 **(2) SUBJECT TO TITLE 2, SUBTITLE 6 OF THIS ARTICLE, THE**
14 **COMPTROLLER SHALL DISTRIBUTE TO EACH COUNTY THE PORTION OF INCOME TAX**
15 **REVENUE ATTRIBUTABLE TO THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS**
16 **SECTION IN ACCORDANCE WITH SUBSECTION (B)(2)(II) OF THIS SECTION BASED ON**
17 **THE RATE OF TAX IMPOSED UNDER § 10-106.1 OF THIS SUBTITLE AND**
18 **ATTRIBUTABLE TO EACH INDIVIDUAL MEMBER RESIDING IN THAT COUNTY.**

19 10-402.

20 (a) In this section, "worldwide headquartered company" means a corporation
21 included in a group of corporations including a parent corporation that:

22 (1) filed a Form 10-Q with the Securities and Exchange Commission for
23 the quarterly period ending June 30, 2017;

24 (2) has its principal executive office in the State; and

25 (3) **(I) employs at all times between July 1, 2017, and June 30, 2020, at**
26 **least 500 full-time employees at the parent corporation's principal executive office that is**
27 **located within the State; OR**

28 **(II) IF THE PARENT CORPORATION IS A FRANCHISOR, IS PART**
29 **OF A GROUP OF CORPORATIONS THAT EMPLOYS AT ALL TIMES BETWEEN JULY 1,**
30 **2017, AND JUNE 30, 2020, AT LEAST 400 FULL-TIME EMPLOYEES AT THE PARENT**
31 **CORPORATION'S PRINCIPAL EXECUTIVE OFFICE THAT IS LOCATED WITHIN THE**
32 **STATE.**

33 (b) In computing Maryland taxable income, a corporation shall allocate Maryland
34 modified income derived from or reasonably attributable to its trade or business in this
35 State in the following manner:

1 (1) if a corporation carries on its trade or business wholly within the State,
2 the corporation shall allocate to the State all of the Maryland modified income of the
3 corporation; and

4 (2) if a corporation carries on its trade or business within and outside the
5 State, the corporation shall allocate to the State the part of the corporation's Maryland
6 modified income that is derived from or reasonably attributable to the part of its trade or
7 business carried on in the State, in the manner required in subsection (c), (d), or (e) of this
8 section.

9 (c) (1) Except as provided in subsection (d) or (e) of this section, the part of the
10 corporation's Maryland modified income derived from or reasonably attributable to trade
11 or business carried on in the State may be determined by separate accounting if practicable.

12 (2) If in any taxable year a corporation is permitted or required to use the
13 separate accounting method in determining all or a portion of its Maryland taxable income,
14 the portion that is separately accounted for to Maryland shall be taxable whether or not
15 the Maryland modified income of the corporation for the taxable year is zero or less.

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.

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

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

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

7 2. the denominator of which is 5;

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

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

14 2. the denominator of which is 6;

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

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

21 2. the denominator of which is 7;

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

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

28 2. the denominator of which is 8; and

29 (v) for a taxable year beginning after December 31, 2021, if the trade
30 or business is a unitary business, the part of the corporation's Maryland modified income
31 derived from or reasonably attributable to trade or business carried on in the State shall
32 be determined using a single sales factor apportionment formula, by multiplying its
33 Maryland modified income by 100% of the sales factor.

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

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

7 2. the denominator of which is 4.

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

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

16 (i) rented and owned real property; and

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

19 (e) To reflect clearly the income allocable to Maryland, the Comptroller may alter,
20 if circumstances warrant, the methods under subsections (c) and (d) of this section,
21 including:

22 (1) the use of the separate accounting method;

23 (2) the use of the 3-factor double weighted sales factor formula method or
24 the single sales factor formula method;

25 (3) the weight of any factor in the 3-factor formula;

26 (4) the valuation of rented property included in the property factor; and

27 (5) the determination of the extent to which tangible personal property is
28 located in the State.

29 10-701.1.

30 An individual or a corporation may claim a credit against the State income tax **AND**
31 **COUNTY INCOME TAX** for a taxable year in the amount of tax paid by a pass-through
32 entity under § 10-102.1 of this title that is attributable to the individual's or corporation's
33 share of the pass-through entity's [nonresident] taxable income, as defined in [§

1 10–102.1(a)(6)] **§ 10–102.1(A)(8)** of this title.

2 10–703.

3 (a) IN THIS SECTION, “MEMBER” AND “PASS–THROUGH ENTITY” HAVE THE
4 MEANINGS STATED IN § 10–102.1 OF THIS TITLE.

5 (B) Except as provided in subsection [(b)] (C) of this section, a resident may claim
6 a credit against the income tax for a taxable year in the amount determined under
7 subsection [(c)] (D) of this section for State tax on income paid to another state for the year.

8 [(b)] (C) A credit under subsection [(a)] (B) of this section is not allowed to:

9 (1) a resident other than a fiduciary, if the laws of the other state allow the
10 resident a credit for State income tax paid to this State;

11 (2) a resident fiduciary, if the fiduciary claims, and the other state allows,
12 a credit for State income tax paid to this State;

13 (3) a resident for less than the full taxable year for tax on income that is
14 paid to another state during residency in that state; or

15 (4) a nonresident.

16 [(c)] (D) (1) Except as provided in paragraph (2) of this subsection and
17 subject to subsection [(d)] (E) of this section, the credit allowed a resident under subsection
18 [(a)] (B) of this section is the lesser of:

19 (i) the amount of allowable tax on income that the resident paid to
20 another state; or

21 (ii) an amount that does not reduce the income tax to an amount less
22 than would be payable if the income subjected to tax in the other state were disregarded.

23 (2) If the credit allowed a resident under subsection [(a)] (B) of this section
24 is based on tax that [an S corporation] A PASS–THROUGH ENTITY pays to another state,
25 the credit allowable to a [shareholder] MEMBER OF THE PASS–THROUGH ENTITY:

26 (i) may not exceed that [shareholder’s] MEMBER’S pro rata share
27 of the tax; and

28 (ii) will be allowed for another state’s income taxes or taxes based on
29 income.

30 [(d)] (E) (1) The amount of the credit allowed under subsection [(a)] (B) of
31 this section to be applied against the State income tax is equal to the amount that would

1 be calculated under subsection [(c)] (D) of this section using the State income tax rate as
 2 the only applicable rate.

3 (2) The amount of the credit allowed under subsection [(a)] (B) of this
 4 section to be applied against the county income tax is equal to the amount calculated under
 5 subsection [(c)] (D) of this section less the amount calculated under paragraph (1) of this
 6 subsection.

7 10-706.

8 (a) Except as otherwise provided in this section, a credit allowed under this
 9 subtitle is allowed against the State income tax only.

10 (b) A credit under § 10-701 **OR § 10-701.1** of this subtitle is allowed against the
 11 total county and State income taxes.

12 (c) (1) A credit allowed under § 10-704(a)(1) or § 10-709(b)(1) of this subtitle
 13 is allowed against the State income tax only.

14 (2) A credit allowed under § 10-704(a)(2) or § 10-709(b)(2) of this subtitle
 15 is allowed against the county income tax only.

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

18 Article – Tax – General

19 10-311.

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

22 (2) “NET DEFERRED TAX ASSET” MEANS THE AMOUNT BY WHICH THE
 23 DEFERRED TAX ASSETS EXCEED THE DEFERRED TAX LIABILITIES OF A TAXPAYER,
 24 COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
 25 PRINCIPLES.

26 (3) “NET DEFERRED TAX LIABILITY” MEANS THE AMOUNT BY WHICH
 27 THE DEFERRED TAX LIABILITIES EXCEED THE DEFERRED TAX ASSETS OF A
 28 TAXPAYER, COMPUTED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING
 29 PRINCIPLES.

30 (B) THIS SECTION APPLIES ONLY TO A CORPORATION THAT ON OR BEFORE
 31 APRIL 24, 2018, THE DATE OF ENACTMENT OF THE PROVISIONS OF § 10-402 OF THIS

1 TITLE BY CHAPTERS 341 AND 342 OF THE ACTS OF THE GENERAL ASSEMBLY OF
2 2018, WAS:

3 (1) PUBLICLY TRADED; OR

4 (2) AFFILIATED WITH A CORPORATION THAT WAS PUBLICLY TRADED,
5 AND PARTICIPATED IN THE FILING OF THE PUBLICLY TRADED CORPORATION'S
6 FINANCIAL STATEMENTS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED
7 ACCOUNTING PRINCIPLES.

8 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN ADDITION
9 TO THE MODIFICATIONS UNDER §§ 10-307 AND 10-308 OF THIS SUBTITLE, THE
10 AMOUNTS DETERMINED UNDER SUBSECTION (D) OF THIS SECTION ARE
11 SUBTRACTED FROM THE FEDERAL TAXABLE INCOME OF A CORPORATION TO
12 DETERMINE MARYLAND MODIFIED INCOME OF THE CORPORATION IF, AS OF APRIL
13 24, 2018, THE DATE OF ENACTMENT OF THE PROVISIONS OF § 10-402 OF THIS TITLE
14 BY CHAPTERS 341 AND 342 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2018, THE
15 ENACTMENT RESULTED IN AN AGGREGATE:

16 (I) INCREASE TO THE CORPORATION'S NET DEFERRED TAX
17 LIABILITY;

18 (II) DECREASE TO THE CORPORATION'S NET DEFERRED TAX
19 ASSET; OR

20 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
21 DEFERRED TAX LIABILITY.

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

25 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE
26 SUBTRACTION AUTHORIZED UNDER THIS SECTION IS EQUAL TO ONE-TENTH OF THE
27 AMOUNT NECESSARY TO OFFSET THE AGGREGATE:

28 (I) INCREASE TO THE CORPORATION'S NET DEFERRED TAX
29 LIABILITY;

30 (II) DECREASE TO THE CORPORATION'S NET DEFERRED TAX
31 ASSET; OR

32 (III) CHANGE FROM A NET DEFERRED TAX ASSET TO A NET
33 DEFERRED TAX LIABILITY.

1 **(2) THE SUBTRACTION AUTHORIZED UNDER THIS SECTION MAY BE**
2 **USED TO REDUCE THE CORPORATION'S MARYLAND MODIFIED INCOME FOR 10**
3 **CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE FIRST TAXABLE YEAR THAT**
4 **BEGINS AFTER DECEMBER 31, 2029.**

5 **(3) 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 **(4) 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 **(5) 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, 2021, A CORPORATION THAT INTENDS TO**
19 **CLAIM A SUBTRACTION UNDER THIS SECTION SHALL FILE WITH THE COMPTROLLER**
20 **A STATEMENT THAT SPECIFIES THE TOTAL AMOUNT OF THE SUBTRACTION THAT**
21 **THE CORPORATION 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 **SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be**
30 **applicable to all taxable years beginning after December 31, 2019.**

31 **SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect**
32 **July 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019.**