

HOUSE BILL 357

Q3

1lr0731

(PRE-FILED)

By: **Delegate Palakovich Carr**

Requested: September 25, 2020

Introduced and read first time: January 13, 2021

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Pass-Through Entity – Additional Tax**

3 FOR the purpose of imposing a certain income tax on income distributed to certain
4 members of certain pass-through entities from the pass-through entity's taxable
5 income exceeding a certain amount; providing that the tax does not apply under
6 certain circumstances; altering a certain tax credit for taxes paid by a pass-through
7 entity to clarify that the credit may not be claimed for the tax imposed under this
8 Act; defining certain terms; making a technical correction; providing for the
9 application of this Act; and generally relating to the income tax rate that applies to
10 certain income received from pass-through entities.

11 BY repealing and reenacting, without amendments,
12 Article – Tax – General
13 Section 10–102.1(a)(1), (4), (6), (7), and (8)
14 Annotated Code of Maryland
15 (2016 Replacement Volume and 2020 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Tax – General
18 Section 10–102.1(b) and (d) and 10–701.1
19 Annotated Code of Maryland
20 (2016 Replacement Volume and 2020 Supplement)

21 BY adding to
22 Article – Tax – General
23 Section 10–102.2
24 Annotated Code of Maryland
25 (2016 Replacement Volume and 2020 Supplement)

26 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 10–102.1.

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

5 (4) “Member” means:

6 (i) a shareholder of an S corporation;

7 (ii) a general or limited partner of a partnership, limited
8 partnership, or limited liability partnership;

9 (iii) a member of a limited liability company; or

10 (iv) a beneficiary of a business trust or statutory trust.

11 (6) “Nonresident taxable income” means any income described in §
12 10–210(b)(1) through (4) of this title.

13 (7) “Pass-through entity” means:

14 (i) an S corporation;

15 (ii) a partnership;

16 (iii) a limited liability company that is not taxed as a corporation
17 under this title; or

18 (iv) a business trust or statutory trust that is not taxed as a
19 corporation under this title.

20 (8) “Pass-through entity’s taxable income” means the portion of a
21 pass-through entity’s income under the federal Internal Revenue Code that is derived from
22 or reasonably attributable to the trade or business of the pass-through entity in this State.

23 (b) (1) Subject to paragraph (2) of this subsection, in addition to any other tax
24 imposed under this title, a tax is imposed on each pass-through entity.

25 (2) Each pass-through entity:

26 (i) shall pay the tax imposed under paragraph (1) of this subsection
27 with respect to the distributive shares or pro rata shares of the nonresident and
28 nonresident entity members of the pass-through entity; [or] AND

1 (ii) may elect to pay the tax imposed under paragraph (1) of this
2 subsection with respect to the distributive shares or pro rata shares of resident members
3 of the pass-through entity.

4 (d) (1) **[With] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
5 **SUBSECTION, WITH** respect to a pass-through entity that pays the tax imposed under
6 subsection (b)(1) of this section in accordance with subsection (b)(2)(i) of this section, the
7 tax imposed is the sum of:

8 (i) a rate equal to the sum of the rate of the tax imposed under §
9 10-106.1 of this subtitle and the top marginal State tax rate for individuals under §
10 10-105(a) of this subtitle applied to the sum of each nonresident individual member's
11 distributive share or pro rata share of the pass-through entity's nonresident taxable
12 income; and

13 (ii) the rate of the tax for a corporation under § 10-105(b) of this
14 subtitle applied to the sum of each nonresident entity member's distributive share or pro
15 rata share of the pass-through entity's nonresident taxable income.

16 (2) **[With] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
17 **SUBSECTION, WITH** respect to a pass-through entity that pays the tax imposed under
18 subsection (b)(1) of this section in accordance with subsection (b)(2)(ii) of this section, the
19 tax imposed is the sum of:

20 (i) a rate equal to the sum of the rate of the tax imposed under §
21 10-106.1 of this subtitle and the top marginal State tax rate for individuals under §
22 10-105(a) of this subtitle applied to the sum of each individual member's distributive share
23 or pro rata share of the pass-through entity's taxable income; and

24 (ii) the rate of the tax for a corporation under § 10-105(b) of this
25 subtitle applied to the sum of each entity member's distributive share or pro rata share of
26 the pass-through entity's taxable income.

27 (3) (I) **THIS PARAGRAPH DOES NOT APPLY TO THE INCOME OF A**
28 **PASS-THROUGH ENTITY THAT:**

29 1. **IS A SOLE PROPRIETORSHIP; OR**

30 2. **HAS IMPLEMENTED AN EMPLOYEE STOCK**
31 **OWNERSHIP PLAN, AS DEFINED IN § 4975(E)(7) OF THE INTERNAL REVENUE CODE.**

32 (II) 1. **IN ADDITION TO THE TAX IMPOSED UNDER**
33 **SUBSECTION (B) OF THIS SECTION, WITH RESPECT TO A PASS-THROUGH ENTITY**
34 **THAT PAYS THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN**
35 **ACCORDANCE WITH SUBSECTION (B)(2)(I) OF THIS SECTION, A TAX IS IMPOSED ON**
36 **THE DISTRIBUTIVE SHARE OR PRO RATA SHARE OF A PASS-THROUGH ENTITY'S**

1 NONRESIDENT TAXABLE INCOME DISTRIBUTED FROM THE PASS-THROUGH ENTITY'S
2 TAXABLE INCOME THAT EXCEEDS \$1,000,000.

3 2. IN ADDITION TO THE TAX IMPOSED UNDER
4 SUBSECTION (B) OF THIS SECTION, WITH RESPECT TO A PASS-THROUGH ENTITY
5 THAT PAYS THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN
6 ACCORDANCE WITH SUBSECTION (B)(2)(II) OF THIS SECTION, A TAX IS IMPOSED ON
7 THE DISTRIBUTIVE SHARE OR PRO RATA SHARE OF A PASS-THROUGH ENTITY'S
8 TAXABLE INCOME DISTRIBUTED FROM THE PASS-THROUGH ENTITY'S TAXABLE
9 INCOME THAT EXCEEDS \$1,000,000.

10 3. THE RATE OF THE TAX IMPOSED UNDER THIS
11 SUBPARAGRAPH IS 4%.

12 (4) The tax required to be paid for any taxable year by a pass-through
13 entity may not exceed:

14 (i) with respect to a pass-through entity that pays the tax imposed
15 under subsection (b)(1) of this section in accordance with subsection (b)(2)(i) of this section,
16 the sum of all of the nonresident and nonresident entity members' shares of the
17 pass-through entity's distributable cash flow; and

18 (ii) with respect to a pass-through entity that pays the tax imposed
19 under subsection (b)(1) of this section in accordance with subsection (b)(2)(ii) of this section,
20 the sum of all of the members' shares of the pass-through entity's distributable cash flow.

21 **10-102.2.**

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

24 (2) "MEMBER" MEANS:

25 (I) A SHAREHOLDER OF AN S CORPORATION;

26 (II) A GENERAL OR LIMITED PARTNER OF A PARTNERSHIP,
27 LIMITED PARTNERSHIP, OR LIMITED LIABILITY PARTNERSHIP;

28 (III) A MEMBER OF A LIMITED LIABILITY COMPANY; OR

29 (IV) A BENEFICIARY OF A BUSINESS TRUST OR STATUTORY
30 TRUST.

31 (3) "PASS-THROUGH ENTITY" MEANS:

1 **(I) AN S CORPORATION;**

2 **(II) A PARTNERSHIP;**

3 **(III) A LIMITED LIABILITY COMPANY THAT IS NOT TAXED AS A**
4 **CORPORATION UNDER THIS TITLE; OR**

5 **(IV) A BUSINESS TRUST OR STATUTORY TRUST THAT IS NOT**
6 **TAXED AS A CORPORATION UNDER THIS TITLE.**

7 **(B) THIS SECTION DOES NOT APPLY TO THE INCOME OF A PASS-THROUGH**
8 **ENTITY THAT:**

9 **(1) IS A SOLE PROPRIETORSHIP; OR**

10 **(2) HAS IMPLEMENTED AN EMPLOYEE STOCK OWNERSHIP PLAN, AS**
11 **DEFINED IN § 4975(E)(7) OF THE INTERNAL REVENUE CODE.**

12 **(C) (1) IN ADDITION TO ANY OTHER TAX IMPOSED UNDER THIS TITLE, A**
13 **TAX IS IMPOSED ON THE DISTRIBUTIVE SHARE OR PRO RATA SHARE OF INCOME**
14 **DISTRIBUTED TO A MEMBER OF A PASS-THROUGH ENTITY FROM THE**
15 **PASS-THROUGH ENTITY'S TAXABLE INCOME THAT EXCEEDS \$1,000,000.**

16 **(2) THE RATE OF THE TAX IMPOSED UNDER PARAGRAPH (1) OF THIS**
17 **SUBSECTION IS 4%.**

18 10-701.1.

19 An individual or a corporation may claim a credit against the State income tax for a
20 taxable year in the amount of tax paid by a pass-through entity under **[§ 10-102.1] §**
21 **10-102.1(B)** of this title that is attributable to the individual's or corporation's share of
22 the pass-through entity's taxable income, as defined in § 10-102.1(a)(8) of this title.

23 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall take effect July
24 1, 2021, and shall be applicable to all taxable years beginning after December 31, 2020.