

# HOUSE BILL 1087

Q3

EMERGENCY BILL

11r2445  
CF 11r2373

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By: **Delegate Kaiser**

Introduced and read first time: February 5, 2021

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Pass-Through Entities – State and Local Taxes**

3 FOR the purpose of clarifying certain provisions of law concerning the State income tax  
4 imposed on certain pass-through entities; authorizing a pass-through entity to elect  
5 to pay that tax imposed with respect to certain shares of all members of the  
6 pass-through entity, rather than only resident members; allowing each member to  
7 claim a credit against the income tax for the member's proportionate share of the tax  
8 paid by the pass-through entity; requiring certain taxpayers to add the amount of  
9 the credit back to federal adjusted gross income to determine Maryland adjusted  
10 gross income; making conforming changes; providing for the application of this Act;  
11 making this Act an emergency measure; and generally relating to State and local  
12 income taxes and pass-through entities.

13 BY repealing and reenacting, with amendments,  
14 Article – Tax – General  
15 Section 10–102.1, 10–306(b), and 10–701.1  
16 Annotated Code of Maryland  
17 (2016 Replacement Volume and 2020 Supplement)

18 BY repealing and reenacting, without amendments,  
19 Article – Tax – General  
20 Section 10–205(a) and 10–306(a)  
21 Annotated Code of Maryland  
22 (2016 Replacement Volume and 2020 Supplement)

23 BY adding to  
24 Article – Tax – General  
25 Section 10–205(m)  
26 Annotated Code of Maryland  
27 (2016 Replacement Volume and 2020 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – Tax – General**

4 10–102.1.

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

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

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

11 (ii) increased by the sum of:

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

14 2. amounts allowable to the entity for the taxable year as  
15 deductions for depreciation, amortization, and depletion; and

16 3. the decrease, if any, in the entity’s liability reserve as of  
17 the end of the taxable year; and

18 (iii) decreased by the sum of:

19 1. cash expenditures for the taxable year that are not  
20 deductible in computing the taxable income of the entity, not including distributions to  
21 shareholders, partners, or members; and

22 2. the increase, if any, in the entity’s liability reserve as of  
23 the end of the taxable year.

24 (3) “Liability reserve” means accrued unpaid liabilities that are not  
25 deductible in computing taxable income.

26 (4) “Member” means:

27 (i) a shareholder of an S corporation;

28 (ii) a general or limited partner of a partnership, limited  
29 partnership, or limited liability partnership;

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

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

2 (5) “Nonresident entity” means an entity that is not formed under the laws  
3 of the State and is not qualified by or registered with the Department of Assessments and  
4 Taxation to do business in the State.

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

7 (7) “Pass-through entity” means:

8 (i) an S corporation;

9 (ii) a partnership;

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

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

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

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

19 (2) Each pass-through entity:

20 (i) shall pay the tax imposed under paragraph (1) of this subsection  
21 with respect to the distributive shares or pro rata shares of the nonresident and  
22 nonresident entity members of the pass-through entity; or

23 (ii) may elect to pay the tax imposed under paragraph (1) of this  
24 subsection with respect to the distributive shares or pro rata shares of [resident] ALL  
25 members of the pass-through entity.

26 (c) (1) With respect to a pass-through entity that pays the tax imposed under  
27 subsection (b)(1) of this section in accordance with subsection (b)(2)(i) of this section, the  
28 tax shall be treated as a tax imposed on the nonresident or nonresident entity members  
29 that is paid on behalf of the nonresidents or nonresident entities by the pass-through  
30 entity.

31 (2) The Comptroller shall provide by regulation for the treatment of the tax  
32 imposed under subsection (b) of this section that is paid on behalf of a nonresident entity

1 member that is itself a pass-through entity.

2 **(3) WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS THE TAX**  
3 **IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH**  
4 **SUBSECTION (B)(2)(II) OF THIS SECTION, THE TAX SHALL BE TREATED AS A TAX**  
5 **IMPOSED ON THE PASS-THROUGH ENTITY ITSELF.**

6 (d) (1) With respect to a pass-through entity that pays the tax imposed under  
7 subsection (b)(1) of this section in accordance with subsection (b)(2)(i) of this section, the  
8 tax imposed is the sum of:

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

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

17 (2) 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) The tax required to be paid for any taxable year by a pass-through  
28 entity may not exceed:

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

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

36 (e) In accordance with § 10-701.1 of this title, each member may claim a credit

1 against the tax imposed on the member for the member's proportionate share of the tax  
2 paid by the pass-through entity under subsection (b) of this section.

3 (f) (1) (i) The tax imposed under subsection [(b)] **(B)(1)** of this section  
4 **THAT IS PAID IN ACCORDANCE WITH SUBSECTION (B)(2)(I) OF THIS SECTION AND**  
5 **FOR WHICH NO ELECTION IS MADE UNDER SUBSECTION (B)(2)(II) OF THIS SECTION**  
6 does not apply with respect to the distributive share or pro rata share of a member that is  
7 itself a pass-through entity formed under the laws of the State or qualified by or registered  
8 with the Department of Assessments and Taxation to do business in the State.

9 (ii) A member of a pass-through entity that is itself a pass-through  
10 entity as described in subparagraph (i) of this paragraph shall itself comply with the  
11 provisions of this section.

12 (2) The tax imposed under subsection [(b)] **(B)(1)** of this section **THAT IS**  
13 **PAID IN ACCORDANCE WITH SUBSECTION (B)(2)(I) OF THIS SECTION AND FOR WHICH**  
14 **NO ELECTION IS MADE UNDER SUBSECTION (B)(2)(II) OF THIS SECTION** does not apply  
15 with respect to the direct or indirect distributive share or pro rata share of a member that  
16 is:

17 (i) a real estate investment trust as defined by § 856 of the Internal  
18 Revenue Code; or

19 (ii) an entity that is exempt from taxation under § 501 of the Internal  
20 Revenue Code.

21 (g) The Comptroller may provide by regulation for:

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

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

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

28 (ii) the entity members of which are tax exempt.

29 (h) (1) Subject to paragraph (2) of this subsection, if a partnership fails to pay  
30 the tax when due, the tax may be collected from the partners under the law applicable to  
31 debts of the partnership, with the partnership and partners having rights of contribution  
32 against any partner on whose behalf the tax is paid.

33 (2) Unless it is established by the Comptroller that the partner  
34 participated in a pattern of distributions to one or more partners with the intention of

1 defeating the partnership liability for the tax imposed under subsection (b) of this section,  
2 any partner otherwise liable under paragraph (1) of this subsection shall be liable for the  
3 tax imposed on the partnership only to the extent of distributions from the partnership to  
4 that partner after the tax was due to be paid by the partnership.

5 (i) Except as provided in § 10–701.1 of this title, nothing in this section limits or  
6 affects in any way the liability of an individual nonresident member or a nonresident entity  
7 member for the tax imposed on the individual nonresident or nonresident entity under §  
8 10–102 of this subtitle.

9 (j) The tax imposed under subsection [(b)] **(B)(1)** of this section **THAT IS PAID**  
10 **IN ACCORDANCE WITH SUBSECTION (B)(2)(I) OF THIS SECTION AND FOR WHICH NO**  
11 **ELECTION IS MADE UNDER SUBSECTION (B)(2)(II) OF THIS SECTION** does not apply to  
12 a publicly traded pass-through entity that has agreed to file with the Comptroller an  
13 annual information return reporting the name, address, taxpayer identification number,  
14 and other information requested by the Comptroller of each nonresident or nonresident  
15 entity member whose distributive share or pro rata share of the pass-through entity's  
16 nonresident taxable income for the taxable year exceeds \$500.

17 10–205.

18 (a) In addition to the modification under § 10–204 of this subtitle, the amounts  
19 under this section are added to the federal adjusted gross income of a resident to determine  
20 Maryland adjusted gross income.

21 **(M) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE**  
22 **AMOUNT OF CREDIT THAT IS CLAIMED UNDER § 10–701.1 OF THIS TITLE FOR THE**  
23 **AMOUNT OF TAX PAID BY A PASS-THROUGH ENTITY UNDER § 10–102.1 OF THIS TITLE**  
24 **AND IS ATTRIBUTABLE TO THE MEMBER'S SHARE OF TAX ON THE MEMBER'S SHARE**  
25 **OF THE PASS-THROUGH ENTITY'S TAXABLE INCOME, AS DEFINED IN §**  
26 **10–102.1(A)(8) OF THIS TITLE.**

27 10–306.

28 (a) In addition to the modification under § 10–305 of this subtitle, the amounts  
29 under this section are added to the federal taxable income of a corporation to determine  
30 Maryland modified income.

31 (b) The addition under subsection (a) of this section includes the additions  
32 required for an individual under:

33 (1) § 10–205(b) of this title (Enterprise zone wage credit, employment  
34 opportunity credit, disability credit, and qualified ex-felon employee credit);

35 (2) § 10–205(c) of this title (Reforestation and timber stand modification);

1 (3) § 10–205(e) of this title (Net operating loss modification);

2 (4) § 10–205(g) of this title (Unlicensed child care facility operating  
3 expenses); [and]

4 (5) § 10–205(i) of this title (Maryland research and development tax credit);

5 AND

6 (6) § 10–205(M) OF THIS TITLE (CREDIT FOR SHARE OF TAXES PAID  
7 BY PASS–THROUGH ENTITIES).

8 10–701.1.

9 [An individual or a corporation] **A MEMBER OF A PASS–THROUGH ENTITY** may  
10 claim a credit against the [State] income tax for a taxable year in the amount of tax paid  
11 by a pass–through entity under § 10–102.1 of this title that is attributable to the  
12 [individual’s or corporation’s] **MEMBER’S** share of the pass–through entity’s taxable  
13 income, as defined in § 10–102.1(a)(8) of this title.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be applicable to  
15 all taxable years beginning after December 31, 2019.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency  
17 measure, is necessary for the immediate preservation of the public health or safety, has  
18 been passed by a ye and nay vote supported by three–fifths of all the members elected to  
19 each of the two Houses of the General Assembly, and shall take effect from the date it is  
20 enacted.