

SENATE BILL 288

Q3

11r0982

(PRE-FILED)

By: **Senator Pinsky**

Requested: October 15, 2020

Introduced and read first time: January 13, 2021

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Carried Interest – Additional Tax**

3 FOR the purpose of imposing a certain State income tax on the Maryland taxable income
4 attributable to certain investment management services of an individual or a
5 corporation or the distributive share of a pass-through entity; providing for the
6 calculation of the tax; providing that the tax does not apply under certain
7 circumstances; defining certain terms; making a technical correction; requiring the
8 Comptroller to provide certain notice to the Department of Legislative Services;
9 providing for the application of this Act; providing for the termination of this Act if
10 certain federal legislation is enacted into law; and generally relating to the State
11 income tax and investment management services.

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

17 BY adding to
18 Article – Tax – General
19 Section 10–102.2
20 Annotated Code of Maryland
21 (2016 Replacement Volume and 2020 Supplement)

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

24 **Article – Tax – General**

25 10–102.1.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

7 (ii) increased by the sum of:

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

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

12 3. the decrease, if any, in the entity's liability reserve as of
13 the end of the taxable year; and

14 (iii) decreased by the sum of:

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

18 2. the increase, if any, in the entity's liability reserve as of
19 the end of the taxable year.

20 (3) **"INVESTMENT MANAGEMENT SERVICES" MEANS SERVICES**
21 **PROVIDED BY A PARTNER OR SHAREHOLDER TO A PARTNERSHIP, AN S**
22 **CORPORATION, OR ANY OTHER ENTITY IF THE SERVICES INCLUDE PROVIDING A**
23 **SUBSTANTIAL QUANTITY OF:**

24 **(I) ADVISING AS TO THE ADVISABILITY OF INVESTING IN,**
25 **PURCHASING, OR SELLING A SPECIFIED ASSET;**

26 **(II) MANAGING, ACQUIRING, OR DISPOSING OF A SPECIFIED**
27 **ASSET;**

28 **(III) ARRANGING FINANCING WITH RESPECT TO ACQUIRING A**
29 **SPECIFIED ASSET; OR**

30 **(IV) ANY ACTIVITY IN SUPPORT OF ANY OF THE SERVICES**
31 **DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.**

1 (4) “Liability reserve” means accrued unpaid liabilities that are not
2 deductible in computing taxable income.

3 [(4)] (5) “Member” means:

4 (i) a shareholder of an S corporation;

5 (ii) a general or limited partner of a partnership, limited
6 partnership, or limited liability partnership;

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

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

9 [(5)] (6) “Nonresident entity” means an entity that is not formed under
10 the laws of the State and is not qualified by or registered with the Department of
11 Assessments and Taxation to do business in the State.

12 [(6)] (7) “Nonresident taxable income” means any income described in §
13 10–210(b)(1) through (4) of this title.

14 [(7)] (8) “Pass-through entity” means:

15 (i) an S corporation;

16 (ii) a partnership;

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

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

21 [(8)] (9) “Pass-through entity’s taxable income” means the portion of a
22 pass-through entity’s income under the federal Internal Revenue Code that is derived from
23 or reasonably attributable to the trade or business of the pass-through entity in this State.

24 (10) “SPECIFIED ASSET” MEANS SECURITIES, REAL ESTATE HELD FOR
25 RENTAL OR INVESTMENT, INTERESTS IN PARTNERSHIPS, COMMODITIES, OR
26 OPTIONS OR DERIVATIVES CONTRACTS.

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

29 (2) Each pass-through entity:

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

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

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

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

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

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

23 (i) a rate equal to the sum of the rate of the tax imposed under §
24 10-106.1 of this subtitle and the top marginal State tax rate for individuals under §
25 10-105(a) of this subtitle applied to the sum of each individual member's distributive share
26 or pro rata share of the pass-through entity's taxable income; and

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

30 (3) (I) **IN ADDITION TO THE TAX IMPOSED UNDER SUBSECTION (B)**
31 **OF THIS SECTION, A STATE TAX IS IMPOSED THAT IS EQUAL TO:**

32 **1. WITH RESPECT TO A PASS-THROUGH ENTITY THAT**
33 **PAYS THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN**
34 **ACCORDANCE WITH SUBSECTION (B)(2)(I) OF THIS SECTION, 17% OF THE**
35 **DISTRIBUTIVE SHARE OR PRO RATA SHARE OF A PASS-THROUGH ENTITY'S**
36 **NONRESIDENT TAXABLE INCOME THAT IS ATTRIBUTABLE TO INVESTMENT**

1 MANAGEMENT SERVICES PROVIDED IN THE STATE; AND

2 2. WITH RESPECT TO A PASS-THROUGH ENTITY THAT
3 PAYS THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN
4 ACCORDANCE WITH SUBSECTION (B)(2)(II) OF THIS SECTION, 17% OF THE
5 DISTRIBUTIVE SHARE OR PRO RATA SHARE OF A PASS-THROUGH ENTITY'S TAXABLE
6 INCOME THAT IS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES
7 PROVIDED IN THE STATE.

8 (II) THE TAX IMPOSED UNDER THIS PARAGRAPH:

9 1. IS CALCULATED BY REFERENCE TO THE
10 PERFORMANCE OF THE INVESTMENT PORTFOLIO FUNDS AND NOT FROM THE
11 INVESTMENT ITSELF; AND

12 2. IS NOT IMPOSED ON FEES CALCULATED BY
13 REFERENCE TO THE TOTAL ASSETS UNDER MANAGEMENT OF A PASS-THROUGH
14 ENTITY ENGAGED IN INVESTMENT MANAGEMENT SERVICES.

15 (III) THE TAX IMPOSED UNDER THIS PARAGRAPH DOES NOT
16 APPLY TO THE DISTRIBUTIVE SHARE OR PRO RATA SHARE OF A PASS-THROUGH
17 ENTITY'S NONRESIDENT TAXABLE INCOME THAT IS ATTRIBUTABLE TO INVESTMENT
18 MANAGEMENT SERVICES PROVIDED IN THE STATE IF, DURING THE TAXABLE YEAR,
19 AT LEAST 80% OF THE AVERAGE FAIR MARKET VALUE OF THE SPECIFIED ASSETS OF
20 THE PASS-THROUGH ENTITY CONSISTS OF REAL ESTATE.

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

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

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

30 **10-102.2.**

31 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
32 INDICATED.

33 (2) "INVESTMENT MANAGEMENT SERVICES" MEANS SERVICES

1 PROVIDED BY A PARTNER OR SHAREHOLDER TO A PARTNERSHIP, AN S
2 CORPORATION, OR ANY OTHER ENTITY IF THE SERVICES INCLUDE PROVIDING A
3 SUBSTANTIAL QUANTITY OF THE FOLLOWING:

4 (I) ADVISING AS TO THE ADVISABILITY OF INVESTING IN,
5 PURCHASING, OR SELLING A SPECIFIED ASSET;

6 (II) MANAGING, ACQUIRING, OR DISPOSING OF A SPECIFIED
7 ASSET;

8 (III) ARRANGING FINANCING WITH RESPECT TO ACQUIRING A
9 SPECIFIED ASSET; OR

10 (IV) ANY ACTIVITY IN SUPPORT OF ANY OF THE SERVICES
11 DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

12 (3) "SPECIFIED ASSET" MEANS SECURITIES, REAL ESTATE HELD FOR
13 RENTAL OR INVESTMENT, INTERESTS IN PARTNERSHIPS, COMMODITIES, OR
14 OPTIONS OR DERIVATIVES CONTRACTS.

15 (B) (1) IN ADDITION TO ANY OTHER TAX IMPOSED UNDER THIS TITLE, A
16 STATE TAX IS IMPOSED ON THE MARYLAND TAXABLE INCOME OF A CORPORATION
17 OR AN INDIVIDUAL, INCLUDING SPOUSES FILING A JOINT RETURN OR A SURVIVING
18 SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF THE INTERNAL REVENUE
19 CODE, THAT IS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES.

20 (2) THE TAX IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION
21 FOR A CORPORATION OR AN INDIVIDUAL, INCLUDING SPOUSES FILING A JOINT
22 RETURN OR A SURVIVING SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF
23 THE INTERNAL REVENUE CODE, IS EQUAL TO 17% OF THE MARYLAND TAXABLE
24 INCOME THAT IS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES.

25 (3) THE TAX IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

26 (I) IS CALCULATED BY REFERENCE TO THE PERFORMANCE OF
27 THE INVESTMENT PORTFOLIO FUNDS AND NOT FROM THE INVESTMENT ITSELF; AND

28 (II) IS NOT IMPOSED ON FEES CALCULATED BY REFERENCE TO
29 THE TOTAL ASSETS UNDER MANAGEMENT OF A PASS-THROUGH ENTITY ENGAGED IN
30 INVESTMENT MANAGEMENT SERVICES.

31 (4) A PARTNER OR SHAREHOLDER IS NOT SUBJECT TO THE TAX
32 UNDER THIS SUBSECTION IF, DURING THE TAXABLE YEAR, AT LEAST 80% OF THE

1 AVERAGE FAIR MARKET VALUE OF THE SPECIFIED ASSETS OF THE PARTNERSHIP, S
2 CORPORATION, OR OTHER ENTITY CONSISTS OF REAL ESTATE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Comptroller shall notify
4 the Department of Legislative Services within 5 days after determining that the United
5 States Congress has passed and the President of the United States has signed legislation
6 having an identical effect to this Act applicable to income attributable to investment
7 management services earned in all of the states and territories.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
9 1, 2021, and shall be applicable to all taxable years beginning after December 31, 2020. It
10 shall remain effective until 30 days after the day on which the Department of Legislative
11 Services receives notice under Section 2 of this Act, and, at the end of the 30th day, this
12 Act, with no further action required by the General Assembly, shall be abrogated and of no
13 further force and effect.