

# SENATE BILL 240

Q3

3lr0584

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By: **Senator Guzzone (By Request – Office of the Comptroller)**

Introduced and read first time: January 24, 2023

Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2023

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Income Tax – Out-of-State Taxes Paid by Pass-Through Entities – Addition**  
3 **Modification**

4 FOR the purpose of providing an addition modification under the Maryland income tax for  
5 the amount of a certain tax credit claimed for certain taxes paid to another state by  
6 ~~a member of~~ a pass-through entity under certain circumstances; and generally  
7 relating to Maryland income tax and pass-through entities.

8 BY repealing and reenacting, without amendments,

9 Article – Tax – General

10 Section 10–102.1(a)(1), (4), and (7) and (b), 10–205(a), and 10–703

11 Annotated Code of Maryland

12 (2022 Replacement Volume)

13 BY ~~repealing and reenacting, with amendments,~~ adding to

14 Article – Tax – General

15 Section ~~10–205(m)~~ 10–205(d–1)

16 Annotated Code of Maryland

17 (2022 Replacement Volume)

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

20 **Article – Tax – General**

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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 10-102.1.

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

3 (4) "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 (7) "Pass-through entity" means:

10 (i) an S corporation;

11 (ii) a partnership;

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

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

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

18 (2) Each pass-through entity:

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

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

25 10-205.

26 (a) In addition to the modification under § 10-204 of this subtitle, the amounts  
27 under this section are added to the federal adjusted gross income of a resident to determine  
28 Maryland adjusted gross income.

1 **(D-1) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE**  
 2 **AMOUNT OF A CREDIT THAT IS CLAIMED UNDER § 10-703 OF THIS TITLE AND IS**  
 3 **BASED ON A TAX IMPOSED ON ANY PASS-THROUGH ENTITY BY ANOTHER STATE THAT**  
 4 **IS DEDUCTIBLE IN DETERMINING THE PASS-THROUGH ENTITY'S INCOME UNDER**  
 5 **THE INTERNAL REVENUE CODE.**

6 ~~(m) The addition under subsection (a) of this section includes the amount of credit~~  
 7 ~~that is claimed under:~~

8 ~~(1) § 10-701.1 of this title for the amount of tax paid by a pass-through~~  
 9 ~~entity under § 10-102.1 of this title and is attributable to the member's share of tax on the~~  
 10 ~~member's share of the pass-through entity's taxable income, as defined in § 10-102.1(a)(8)~~  
 11 ~~of this title; AND~~

12 ~~(2) TO THE EXTENT NOT INCLUDED IN THE ADDITION UNDER~~  
 13 ~~SUBSECTION (D) OF THIS SECTION, § 10-703 OF THIS TITLE FOR THE AMOUNT OF~~  
 14 ~~TAX PAID BY A PASS-THROUGH ENTITY TO A STATE OTHER THAN THIS STATE THAT~~  
 15 ~~IS:~~

16 ~~(I) BASED ON THE PASS-THROUGH ENTITY'S NET INCOME;~~

17 ~~(II) ATTRIBUTABLE TO THE MEMBER'S SHARE OF THE TAX; AND~~

18 ~~(III) DEDUCTED FROM THE PASS-THROUGH ENTITY'S INCOME~~  
 19 ~~UNDER THE FEDERAL INTERNAL REVENUE CODE.~~

20 10-703.

21 (a) In this section, "member" and "pass-through entity" have the meanings stated  
 22 in § 10-102.1 of this title.

23 (b) Except as provided in subsection (c) of this section, a resident may claim a  
 24 credit against the income tax for a taxable year in the amount determined under subsection  
 25 (d) of this section for State tax on income paid to another state for the year.

26 (c) A credit under subsection (b) of this section is not allowed to:

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

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

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

1 (4) a nonresident.

2 (d) (1) Except as provided in paragraph (2) of this subsection and subject to  
3 subsection (e) of this section, the credit allowed a resident under subsection (b) of this  
4 section is the lesser of:

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

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

9 (2) If the credit allowed a resident under subsection (b) of this section is  
10 based on tax that a pass-through entity pays to another state, the credit allowable to a  
11 member of the pass-through entity:

12 (i) may not exceed that member's pro rata share of the tax; and

13 (ii) will be allowed for another state's income taxes or taxes based on  
14 income.

15 (e) (1) The amount of the credit allowed under subsection (b) of this section to  
16 be applied against the State income tax is equal to the amount that would be calculated  
17 under subsection (d) of this section using the State income tax rate as the only applicable  
18 rate.

19 (2) The amount of the credit allowed under subsection (b) of this section to  
20 be applied against the county income tax is equal to the amount calculated under subsection  
21 (d) of this section less the amount calculated under paragraph (1) of this subsection.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
23 1, 2023, and shall be applicable to all taxable years beginning after December 31, 2022.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.