

# SENATE BILL 858

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By: **Senator Kasemeyer**

Introduced and read first time: January 31, 2014

Assigned to: Budget and Taxation

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## A BILL ENTITLED

AN ACT concerning

### **Income Tax – Subtraction Modification – Nonpassive Income of a Pass-Through Entity**

FOR the purpose of allowing a subtraction modification under the State income tax for up to a certain amount of nonpassive income attributable to certain pass-through entities; providing that the subtraction applies only to nonpassive income of a pass-through entity if certain conditions are met; providing for the application of this Act; and generally relating to an income tax subtraction modification for certain income of certain pass-through entities.

BY adding to

Article – Tax – General

Section 10–105.1

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

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

### **Article – Tax – General**

#### **10–105.1.**

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

(2) “MEMBER” MEANS:

(I) A SHAREHOLDER OF AN S CORPORATION;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

(3) (I) “NONPASSIVE INCOME” MEANS INCOME OTHER THAN INCOME FROM PASSIVE ACTIVITY AS DETERMINED UNDER § 469 OF THE INTERNAL REVENUE CODE.

(II) “NONPASSIVE INCOME” DOES NOT INCLUDE WAGES, INTEREST, DIVIDENDS, OR CAPITAL GAINS.

(4) “PASS-THROUGH ENTITY” MEANS:

(I) AN S CORPORATION;

(II) A PARTNERSHIP;

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

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

(B) (1) AN INDIVIDUAL THAT IS A MEMBER OF A PASS-THROUGH ENTITY THAT MEETS THE REQUIREMENTS OF THIS SECTION MAY SUBTRACT FROM FEDERAL ADJUSTED GROSS INCOME TO DETERMINE MARYLAND ADJUSTED GROSS INCOME THE FIRST \$50,000 OF NONPASSIVE INCOME THAT IS ATTRIBUTABLE TO A PASS-THROUGH ENTITY.

(2) THE SUBTRACTION UNDER THIS SECTION APPLIES TO NONPASSIVE INCOME ATTRIBUTABLE TO A PASS-THROUGH ENTITY IF:

(I) THE TAXPAYER MATERIALLY PARTICIPATES IN THE DAY-TO-DAY OPERATIONS OF THE TRADE OR BUSINESS;

(II) THE PASS-THROUGH ENTITY EMPLOYS AT LEAST ONE PERSON WHO IS NOT A MEMBER OF THE PASS-THROUGH ENTITY; AND

**(III) AT LEAST 1,200 AGGREGATE HOURS OF WORK IN THE STATE ARE PERFORMED, BY THE CLOSE OF THE TAXABLE YEAR FOR WHICH THE SUBTRACTION IS TAKEN, BY EMPLOYEES WHO MEET THE REQUIREMENTS OF ITEM (II) OF THIS PARAGRAPH AND WHO ARE EMPLOYED BY THE PASS-THROUGH ENTITY.**

**(3) IN DETERMINING IF THE REQUIREMENT UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION IS MET, ONLY HOURS WORKED IN A WEEK IN WHICH THE EMPLOYEE WORKS AT LEAST 30 HOURS MAY BE CONSIDERED.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014, and shall be applicable to all taxable years beginning after December 31, 2013.