



February 12, 2020

The Honorable Anne R. Kaiser, Chair
Ways and Means Committee
House Office Building, Rm. 131
Annapolis, MD 21401

Re: HB 129 Taxes – Election for Pass-Through Entities –
Support with Amendments

Dear Chair Kaiser and Members of the Committee:

The Maryland Association of Certified Public Accountants is a professional membership association representing the CPA profession in Maryland, with more than 9,000 members and a history of serving the public interest since 1901. MACPA members represent many areas of practice, including business and industry, public practice, government, education, and consulting.

Many of our members serve clients that are, or are employed by, businesses that are among the thousands of Maryland's pass-through entities (PTEs), i.e. S-corporations, partnerships and limited liability companies. The concept behind HB129 represents a unique opportunity for the Maryland legislature to provide federal tax relief to the owners of these businesses *without any impact at all on the state's and locals' income tax revenues*.

We note that HB129 appears to be an early draft of this idea; we request that the bill be amended to conform to SB523 which contains the needed technical changes to the earlier draft.

PTEs don't pay a corporate income tax; rather, the entity's income "passes through" to its members who then report their share of the PTE's income on their personal returns. The bill's goal is to restore a federal income tax deduction to the members of these entities by confirming that the tax Maryland currently imposes on PTEs is a tax on the entity.

Maryland's current law requires the PTE tax be paid with respect to only the nonresident members; the bill would retain that requirement, and also allow PTEs to elect to pay tax with respect to all of their members, both resident and nonresident. The tax being imposed on and paid by the PTE thus allows the position that the entity tax is not subject to the new federal \$10,000 limitation on deductions for state and local taxes, newly imposed by the U.S. Congress when it enacted the 2017 federal tax law (known as the TCJA or Tax Cuts and Jobs Act). That \$10,000 limitation applies only to individuals and not to state taxes imposed on business entities. The bill therefore will also put PTE businesses on a level playing field with C-corporations, which have no limitation on their state tax deductions for federal tax purposes.

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The PTE tax rate in the bill is set at the highest “state” rate plus the lowest “local” rate for individual members, in order to avoid Constitutional issues regarding taxation of nonresidents; and the current corporate rate for members that are other entities. The PTE income will still be reported on the member’s personal tax return, and the member will reflect Maryland credits for the part of the PTE’s state plus local tax that relates to his share of the PTE’s income. For residents who live in localities with tax rates that are higher than the lowest rate, the rate that the PTE paid, the residents will be responsible for an additional amount so that their total tax is calculated at their actual rate. This approach will allow for proper reflection of the state and local tax on the individual return, resulting in the same state revenue and local revenue as prior to this change.

Several other states have implemented laws for the same treatment of PTE taxes, e.g. Connecticut’s law was enacted in 2018. We hope that Maryland will do the same.

We ask that the Committee give HB129 a favorable report after the indicated amendments.

Thank you very much for the opportunity to offer these comments for your consideration. Whenever we can be of assistance, please contact MaryBeth Halpern at the MACPA office at marybeth@macpa.org or (443) 632-2330.

Sincerely,



J. Thomas Hood, III, CPA
CEO & Executive Director

cc: Nick Manis, Manis Canning & Associates