
By: **Delegate Hixson**

Introduced and read first time: March 7, 2005

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Tax Compliance - Pass-Through Entities - Real Estate Investment Trusts**

3 FOR the purpose of making certain real estate investment trusts subject to certain
4 provisions requiring certain pass-through entities to pay a tax based on certain
5 income of nonresident shareholders, partners, or members under certain
6 circumstances; requiring certain pass-through entities to pay a tax based on
7 certain income of nonresident entity shareholders, partners, or members under
8 certain circumstances; altering the rate of a certain tax imposed on certain
9 pass-through entities on behalf of shareholders, partners, or members that are
10 nonresidents or nonresident entities; altering a certain income tax subtraction
11 modification to include dividends received from a real estate investment trust in
12 the Maryland taxable income of a nonresident to a certain extent; altering a
13 certain credit allowed for certain tax paid by certain pass-through entities;
14 providing for the application of this Act; and generally relating to the taxation of
15 certain pass-through entities and nonresident income.

16 BY repealing and reenacting, without amendments,
17 Article - Tax - General
18 Section 10-101(b), (h), (i), (j), and (l) and 10-210(a)
19 Annotated Code of Maryland
20 (2004 Replacement Volume)

21 BY repealing and reenacting, with amendments,
22 Article - Tax - General
23 Section 10-102.1, 10-104, 10-210(b), and 10-701.1
24 Annotated Code of Maryland
25 (2004 Replacement Volume)

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

1 **Article - Tax - General**

2 10-101.

3 (b) "Applicable tax base" means the portion of the income of an investment
4 conduit or a special exempt entity on which a tax is imposed under:5 (1) § 11, § 527(b), § 528(b), § 852(b)(1), § 857(b)(1) or (4)(a), or §
6 860G(c)(1) of the Internal Revenue Code; or7 (2) any other section of the Internal Revenue Code that the Comptroller
8 determines by regulation to impose an entity level income tax on an entity that the
9 Comptroller determines to be:

10 (i) an investment conduit under subsection (h)(2) of this section; or

11 (ii) a special exempt entity under subsection (m)(2) of this section.

12 (h) "Investment conduit" means:

13 (1) any of the following entities described in the Internal Revenue Code:

14 (i) a regulated investment company;

15 (ii) a real estate investment trust; or

16 (iii) a real estate mortgage investment conduit; or

17 (2) any other entity that the Comptroller determines by regulation to
18 enjoy a status under the Internal Revenue Code pursuant to which the entity is not
19 generally subject to income tax at the entity level so long as substantially all of its
20 profits are distributed to the holders of equity interests in the entity.

21 (i) "Maryland taxable income" means:

22 (1) for an individual, Maryland adjusted gross income, less the
23 exemptions and deductions allowed under this title; and24 (2) for a corporation, Maryland modified income as allocated under this
25 title.

26 (j) "Nonresident" means an individual who is not a resident.

27 (l) "S corporation" means a corporation that elects to be taxed as a small
28 business corporation under Subchapter S of the Internal Revenue Code.

29 10-102.1.

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

1 (2) "Distributable cash flow" means taxable income reportable by [an
2 entity] A PASS-THROUGH ENTITY on its federal income tax return for the taxable
3 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
6 that 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;

14 (III) INCREASED, IN THE CASE OF A REAL ESTATE INVESTMENT
15 TRUST, BY THE AMOUNT OF DIVIDENDS DISTRIBUTED TO ITS MEMBERS; and

16 [(iii)] (IV) decreased by the sum of:

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

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

22 (3) "Liability reserve" means accrued unpaid liabilities that are not
23 deductible in computing taxable income.

24 (4) "MEMBER" MEANS:

25 (I) A SHAREHOLDER OF AN S CORPORATION;

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

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

29 (IV) A SHAREHOLDER OR HOLDER OF A BENEFICIAL INTEREST OF A
30 REAL ESTATE INVESTMENT TRUST.

31 (5) "NONRESIDENT ENTITY" MEANS AN ENTITY THAT IS NOT FORMED
32 UNDER THE LAWS OF THE STATE AND IS NOT QUALIFIED BY OR REGISTERED WITH
33 THE DEPARTMENT OF ASSESSMENTS AND TAXATION TO DO BUSINESS IN THE STATE.

1 [(4)] (6) (I) "Nonresident taxable income" means any income
2 described in § 10-210(b)(1) through (4) of this title.

3 (II) FOR A REAL ESTATE INVESTMENT TRUST, "NONRESIDENT
4 TAXABLE INCOME":

5 1. INCLUDES THE AMOUNT OF DIVIDENDS DISTRIBUTED TO
6 THE MEMBERS OF THE REAL ESTATE INVESTMENT TRUST; AND

7 2. DOES NOT INCLUDE THE APPLICABLE TAX BASE OF THE
8 REAL ESTATE INVESTMENT TRUST THAT IS INCLUDED IN MARYLAND MODIFIED
9 INCOME UNDER SUBTITLE 3 OF THIS TITLE.

10 (7) "PASS-THROUGH ENTITY" MEANS:

11 (I) AN S CORPORATION;

12 (II) A PARTNERSHIP;

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

15 (IV) A REAL ESTATE INVESTMENT TRUST.

16 (8) "REAL ESTATE INVESTMENT TRUST" MEANS A CORPORATION, TRUST,
17 OR ASSOCIATION THAT IS CONSIDERED A REAL ESTATE INVESTMENT TRUST FOR
18 THE TAXABLE YEAR UNDER § 856 OF THE INTERNAL REVENUE CODE.

19 (b) In addition to any other tax imposed under this title, a tax is imposed on
20 each [S corporation, partnership, and limited liability company,] PASS-THROUGH
21 ENTITY that has:

22 (1) any [shareholder, partner, or] member who is a nonresident of the
23 State OR IS A NONRESIDENT ENTITY; and

24 (2) any nonresident taxable income for the taxable year.

25 (c) (1) The tax imposed under subsection (b) of this section shall be treated
26 as a tax imposed on the [individual] nonresident [shareholders, partners,] or
27 NONRESIDENT ENTITY members that is paid on behalf of the [individuals]
28 NONRESIDENTS OR NONRESIDENT ENTITIES by the [S corporation, partnership, or
29 limited liability company] PASS-THROUGH ENTITY.

30 (2) THE COMPTROLLER SHALL PROVIDE BY REGULATION FOR THE
31 TREATMENT OF THE TAX IMPOSED UNDER SUBSECTION (B) OF THIS SECTION THAT IS
32 PAID ON BEHALF OF A NONRESIDENT ENTITY MEMBER THAT IS ITSELF A
33 PASS-THROUGH ENTITY.

34 (d) (1) Except as provided in paragraph (2) of this subsection, the tax
35 imposed under subsection (b) of this section is THE SUM OF:

1 (I) the SUM OF THE RATE OF THE TAX IMPOSED UNDER § 10-106.1
2 OF THIS TITLE AND THE top marginal State tax rate for individuals under §
3 10-105(a)(4) of this subtitle, applied to[:

4 (i) the sum of each nonresident [partner's] INDIVIDUAL MEMBER'S
5 distributive share OR PRO-RATA SHARE of a [partnership's] PASS-THROUGH
6 ENTITY'S nonresident taxable income; AND

7 [(ii) the sum of each nonresident shareholder's pro rata share of an
8 S corporation's nonresident taxable income; or

9 (iii) the sum of each nonresident member's distributive share of a
10 limited liability company's nonresident taxable income.]

11 (II) THE RATE OF THE TAX FOR A CORPORATION UNDER § 10-105(B)
12 OF THIS SUBTITLE APPLIED TO THE SUM OF EACH NONRESIDENT ENTITY MEMBER'S
13 DISTRIBUTIVE SHARE OR PRO-RATA SHARE OF A PASS-THROUGH ENTITY'S
14 NONRESIDENT TAXABLE INCOME.

15 (2) The tax required to be paid for any taxable year on behalf of
16 [nonresident shareholders, nonresident partners, or] nonresident OR NONRESIDENT
17 ENTITY members by [an S corporation, a partnership, or a limited liability company]
18 A PASS-THROUGH ENTITY may not exceed the sum of all of the nonresident
19 [shareholders', partners', or] AND NONRESIDENT ENTITY members' shares of the
20 PASS-THROUGH entity's distributable cash flow.

21 (E) (1) THE TAX IMPOSED UNDER SUBSECTION (B) OF THIS SECTION DOES
22 NOT APPLY WITH RESPECT TO THE DISTRIBUTIVE SHARE OR PRO-RATA SHARE OF A
23 MEMBER THAT IS ITSELF A PASS-THROUGH ENTITY FORMED UNDER THE LAWS OF
24 THE STATE OR QUALIFIED BY OR REGISTERED WITH THE DEPARTMENT OF
25 ASSESSMENTS AND TAXATION TO DO BUSINESS IN THE STATE.

26 (2) A MEMBER OF A PASS-THROUGH ENTITY THAT IS ITSELF A
27 PASS-THROUGH ENTITY AS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION
28 SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION WITH RESPECT TO ANY OF
29 ITS MEMBERS THAT ARE NONRESIDENTS OR NONRESIDENT ENTITIES.

30 [(e)] (F) The Comptroller may provide by regulation for:

31 (1) the filing of composite returns by [an S corporation, partnership, or
32 limited liability company] A PASS-THROUGH ENTITY on behalf of its nonresident
33 [shareholders, partners, and] AND NONRESIDENT ENTITY members; and

34 (2) application of or exemption from the tax imposed under subsection
35 (b) of this section for [an S corporation, partnership, or limited liability company] A
36 PASS-THROUGH ENTITY:

37 (i) that files a composite return on behalf of nonresident
38 [shareholders, partners, or] AND NONRESIDENT ENTITY members; or

1 (ii) the nonresident [shareholders, partners,] or NONRESIDENT
2 ENTITY members of which are tax exempt [or pass-through entities].

3 [(f)] (G) (1) Subject to paragraph (2) of this subsection, if a partnership fails
4 to pay the tax when due the tax may be collected from the partners under the law
5 applicable to debts of the partnership, with the partnership and partners having
6 rights of contribution against any nonresident partner on whose behalf the tax is
7 paid.

8 (2) Unless it is established by the Comptroller that the partner
9 participated in a pattern of distributions to one or more partners with the intention of
10 defeating the partnership liability for the tax imposed under subsection (b) of this
11 section, any partner otherwise liable under paragraph (1) of this subsection shall be
12 liable for the tax imposed on the partnership only to the extent of distributions from
13 the partnership to that partner after the tax was due to be paid by the partnership.

14 [(g)] (H) Except as provided in § 10-701.1 of this title, nothing in this section
15 limits or affects in any way the liability of an individual nonresident [shareholder,
16 partner, or] member OR A NONRESIDENT ENTITY MEMBER for the tax imposed on the
17 individual NONRESIDENT OR NONRESIDENT ENTITY under § 10-102 of this subtitle.

18 (I) THE TAX IMPOSED UNDER SUBSECTION (B) OF THIS SECTION DOES NOT
19 APPLY TO A PUBLICLY TRADED PASS-THROUGH ENTITY THAT HAS AGREED TO FILE
20 WITH THE COMPTROLLER AN ANNUAL INFORMATION RETURN REPORTING THE
21 NAME, ADDRESS, TAXPAYER IDENTIFICATION NUMBER, AND OTHER INFORMATION
22 REQUESTED BY THE COMPTROLLER OF EACH NONRESIDENT OR NONRESIDENT
23 ENTITY MEMBER WHOSE DISTRIBUTIVE SHARE OR PRO-RATA SHARE OF THE
24 PASS-THROUGH ENTITY'S NONRESIDENT TAXABLE INCOME FOR THE TAXABLE YEAR
25 EXCEEDS \$500.

26 10-104.

27 The income tax does not apply to the income of:

28 (1) a common trust fund, as defined in § 3-501(b) of the Financial
29 Institutions Article;

30 (2) except as provided in §§ 10-101(e)(3) and 10-304(2) of this title, an
31 organization that is exempt from taxation under § 408(e)(1) or § 501 of the Internal
32 Revenue Code;

33 (3) a financial institution that is subject to the financial institution
34 franchise tax;

35 (4) a person subject to taxation under Title 6 of the Insurance Article;

36 (5) except as provided in § 10-102.1 of this subtitle, a partnership, as
37 defined in § 761 of the Internal Revenue Code;

1 (6) except as provided in § 10-102.1 of this subtitle and § 10-304(3) of
2 this title, an S corporation;

3 (7) except as provided in § 10-102.1 OF THIS SUBTITLE AND § 10-304(4) of
4 this title, an investment conduit or a special exempt entity; or

5 (8) except as provided in § 10-102.1 of this subtitle, a limited liability
6 company as defined under Title 4A of the Corporations and Associations Article to the
7 extent that the company is taxable as a partnership, as defined in § 761 of the
8 Internal Revenue Code.

9 10-210.

10 (a) The amounts under this section are subtracted from the federal adjusted
11 gross income of a nonresident to determine Maryland adjusted gross income.

12 (b) To the extent included in federal adjusted gross income, the subtraction
13 under subsection (a) of this section includes all income other than:

14 (1) income derived from real or tangible personal property located in the
15 State[,];

16 (I) whether the income is derived directly or from a fiduciary; AND

17 (II) INCLUDING DIVIDENDS RECEIVED FROM A REAL ESTATE
18 INVESTMENT TRUST, AS DEFINED IN § 856 OF THE INTERNAL REVENUE CODE, TO
19 THE EXTENT THE INCOME OF THE REAL ESTATE INVESTMENT TRUST IS DERIVED
20 FROM REAL PROPERTY LOCATED IN THE STATE;

21 (2) income derived from:

22 (i) a business that is wholly carried on in the State and in which
23 the individual is a partner, shareholder of an S corporation, member of a limited
24 liability company as defined under Title 4A of the Corporations and Associations
25 Article, but only to the extent the company is taxable as a partnership under § 761 of
26 the Internal Revenue Code, or proprietor; or

27 (ii) an occupation, profession, or trade that is wholly carried on in
28 the State;

29 (3) the part, allocable to the State under § 10-401 of this title, of income
30 derived from:

31 (i) a business that is carried on both in and out of the State and of
32 which the individual is a partner, shareholder of an S corporation, member of a
33 limited liability company as defined under Title 4A of the Corporations and
34 Associations Article, but only to the extent the company is taxable as a partnership
35 under § 761 of the Internal Revenue Code, or proprietor; or

1 (ii) an occupation, profession, or trade that is carried on both in and
2 out of the State; and

3 (4) income from Maryland State Lottery prizes or winnings from any
4 other wagering, as defined in § 10-905(e) of this title, in the State.

5 10-701.1.

6 An individual OR A CORPORATION may claim a credit against the State income
7 tax for a taxable year in the amount of tax paid by a [partnership, S corporation, or
8 limited liability company] PASS-THROUGH ENTITY under § 10-102.1 of this title that
9 is attributable to the individual's OR CORPORATION'S share of the [partnership's, S
10 corporation's, or limited liability company's] PASS-THROUGH ENTITY'S nonresident
11 taxable income, as defined in § 10-102.1(a)(4) of this title.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 July 1, 2005, and shall be applicable to all taxable years beginning after December 31,
14 2004.