

SENATE BILL 841

Q3

6lr1548
CF 6lr3425

By: **The President (By Request – Maryland Economic Development and Business
Climate Commission)**

Introduced and read first time: February 5, 2016

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Pass-Through Entities – Exemption**

3 FOR the purpose of allowing a subtraction modification under the State income tax for up
4 to a certain amount of nonpassive income attributable to certain pass-through
5 entities; providing that the subtraction modification applies only to the nonpassive
6 income of a member of a pass-through entity if certain conditions are met; providing
7 that certain individuals and married couples with federal adjusted gross income in
8 excess of certain amounts are not eligible for the subtraction modification; requiring
9 the Comptroller to submit a certain report in certain years to the Governor and the
10 General Assembly; providing for the application of this Act; and generally relating
11 to an income tax subtraction modification for certain income of certain pass-through
12 entities.

13 BY adding to

14 Article – Tax – General

15 Section 10–105.1

16 Annotated Code of Maryland

17 (2010 Replacement Volume and 2015 Supplement)

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**

21 **10–105.1.**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) “MEMBER” MEANS:**

2 **(I) A SHAREHOLDER OF AN S CORPORATION;**

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

5 **(III) A MEMBER OF A LIMITED LIABILITY COMPANY;**

6 **(IV) A BENEFICIARY OF A BUSINESS TRUST OR STATUTORY**
7 **TRUST; OR**

8 **(V) A SOLE PROPRIETOR.**

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

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

14 **(4) “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**
18 **CORPORATION UNDER THIS TITLE;**

19 **(IV) A BUSINESS TRUST OR STATUTORY TRUST THAT IS NOT**
20 **TAXED AS A CORPORATION UNDER THIS TITLE; OR**

21 **(V) A SOLE PROPRIETORSHIP.**

22 **(B) (1) AN INDIVIDUAL WHO IS A MEMBER OF A PASS-THROUGH ENTITY**
23 **THAT MEETS THE REQUIREMENTS OF THIS SECTION MAY SUBTRACT FROM FEDERAL**
24 **ADJUSTED GROSS INCOME TO DETERMINE MARYLAND ADJUSTED GROSS INCOME**
25 **THE FIRST \$20,000 OF NONPASSIVE INCOME THAT IS ATTRIBUTABLE TO A**
26 **PASS-THROUGH ENTITY.**

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

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

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

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

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

13 **(C) (1) AN INDIVIDUAL IS NOT ELIGIBLE FOR THE SUBTRACTION UNDER**
14 **THIS SECTION IF THE INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME FOR THE**
15 **TAXABLE YEAR THAT EXCEEDS \$200,000.**

16 **(2) A MARRIED COUPLE FILING A JOINT RETURN IS NOT ELIGIBLE**
17 **FOR THE SUBTRACTION UNDER THIS SECTION IF THE MARRIED COUPLE HAS**
18 **FEDERAL ADJUSTED GROSS INCOME FOR THE TAXABLE YEAR THAT EXCEEDS**
19 **\$250,000.**

20 **(D) ON OR BEFORE MARCH 1, 2018, MARCH 1, 2019, AND MARCH 1, 2020,**
21 **AND NOTWITHSTANDING ANY CONFIDENTIALITY REQUIREMENTS, THE**
22 **COMPTROLLER SHALL SUBMIT TO THE GOVERNOR AND, IN ACCORDANCE WITH §**
23 **2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY A REPORT**
24 **ON THE PASS-THROUGH ENTITY EXEMPTION UNDER THIS SECTION THAT PROVIDES,**
25 **AT A MINIMUM:**

26 **(1) THE NUMBER OF RETURNS FOR THE TAXABLE YEAR THAT ENDED**
27 **DURING THE SECOND PRECEDING CALENDAR YEAR THAT REPORTED**
28 **PASS-THROUGH ENTITY INCOME;**

29 **(2) THE NUMBER OF RETURNS CLAIMING THE PASS-THROUGH**
30 **ENTITY EXEMPTION UNDER THIS SECTION FOR THAT TAXABLE YEAR; AND**

31 **(3) THE IMPACT ON STATE AND LOCAL REVENUES OF THE**
32 **PASS-THROUGH ENTITY EXEMPTION UNDER THIS SECTION FOR THAT TAXABLE**
33 **YEAR.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
2 1, 2016, and shall be applicable to all taxable years beginning after December 31, 2015.