

# HOUSE BILL 507

Q3

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By: **Delegates Palakovich Carr, Acevero, Barron, Carr, Charkoudian, Ebersole, Feldmark, Ivey, R. Lewis, Lopez, Moon, Mosby, Reznik, Shetty, Smith, Stewart, and Wilkins**

Introduced and read first time: January 24, 2020

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Pass–Through Entity – Additional Tax**

3 FOR the purpose of imposing a certain income tax on income distributed to certain  
4 members of certain pass–through entities from the pass–through entity’s taxable  
5 income exceeding a certain amount; providing that the tax does not apply under  
6 certain circumstances; defining certain terms; providing for the application of this  
7 Act; and generally relating to the income tax rate that applies to certain income  
8 received from pass–through entities.

9 BY repealing and reenacting, without amendments,  
10 Article – Tax – General  
11 Section 10–102.1(a)(1), (4), (6), and (7) and (b)  
12 Annotated Code of Maryland  
13 (2016 Replacement Volume and 2019 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article – Tax – General  
16 Section 10–102.1(d)  
17 Annotated Code of Maryland  
18 (2016 Replacement Volume and 2019 Supplement)

19 BY adding to  
20 Article – Tax – General  
21 Section 10–102.2  
22 Annotated Code of Maryland  
23 (2016 Replacement Volume and 2019 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## Article – Tax – General

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2 10–102.1.

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

4 (4) “Member” means:

5 (i) a shareholder of an S corporation;

6 (ii) a general or limited partner of a partnership, limited  
7 partnership, or limited liability partnership;

8 (iii) a member of a limited liability company; or

9 (iv) a beneficiary of a business trust or statutory trust.

10 (6) “Nonresident taxable income” means any income described in §  
11 10–210(b)(1) through (4) of this title.

12 (7) “Pass-through entity” means:

13 (i) an S corporation;

14 (ii) a partnership;

15 (iii) a limited liability company that is not taxed as a corporation  
16 under this title; or17 (iv) a business trust or statutory trust that is not taxed as a  
18 corporation under this title.19 (b) In addition to any other tax imposed under this title, a tax is imposed on each  
20 pass-through entity that has:21 (1) any member who is a nonresident of the State or is a nonresident entity;  
22 and

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

24 (d) (1) Except as provided in [paragraph (2)] **PARAGRAPHS (2) AND (3)** of  
25 this subsection, the tax imposed under subsection (b) of this section is the sum of:26 (i) a rate equal to the sum of the rate of the tax imposed under §  
27 10–106.1 of this subtitle and the top marginal State tax rate for individuals under §  
28 10–105(a) of this subtitle applied to the sum of each nonresident individual member’s

1 distributive share or pro-rata share of a pass-through entity's nonresident taxable income;  
2 and

3 (ii) the rate of the tax for a corporation under § 10-105(b) of this  
4 subtitle applied to the sum of each nonresident entity member's distributive share or  
5 pro-rata share of a pass-through entity's nonresident taxable income.

6 (2) The tax required to be paid for any taxable year on behalf of nonresident  
7 or nonresident entity members by a pass-through entity may not exceed the sum of all of  
8 the nonresident and nonresident entity members' shares of the pass-through entity's  
9 distributable cash flow.

10 (3) (I) THIS SUBSECTION DOES NOT APPLY TO THE INCOME OF A  
11 PASS-THROUGH ENTITY THAT:

12 1. IS A SOLE PROPRIETORSHIP; OR

13 2. HAS IMPLEMENTED AN EMPLOYEE STOCK  
14 OWNERSHIP PLAN, AS DEFINED IN § 4975(E)(7) OF THE INTERNAL REVENUE CODE.

15 (II) 1. IN ADDITION TO THE TAX IMPOSED UNDER  
16 SUBSECTION (B) OF THIS SECTION, A TAX IS IMPOSED ON THE DISTRIBUTIVE SHARE  
17 OR PRO-RATA SHARE OF A PASS-THROUGH ENTITY'S NONRESIDENT INCOME  
18 DISTRIBUTED FROM THE PASS-THROUGH ENTITY'S TAXABLE INCOME THAT  
19 EXCEEDS \$1,000,000.

20 2. THE RATE OF THE TAX IMPOSED UNDER  
21 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH IS 4%.

22 10-102.2.

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

25 (2) "MEMBER" MEANS:

26 (I) A SHAREHOLDER OF AN S CORPORATION;

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

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

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

1 TRUST.

2 (3) "PASS-THROUGH ENTITY" MEANS:

3 (I) AN S CORPORATION;

4 (II) A PARTNERSHIP;

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

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

9 (B) THIS SECTION DOES NOT APPLY TO THE INCOME OF A PASS-THROUGH  
10 ENTITY THAT:

11 (1) IS A SOLE PROPRIETORSHIP; OR

12 (2) HAS IMPLEMENTED AN EMPLOYEE STOCK OWNERSHIP PLAN, AS  
13 DEFINED IN § 4975(E)(7) OF THE INTERNAL REVENUE CODE.

14 (C) (1) IN ADDITION TO ANY OTHER TAX IMPOSED UNDER THIS TITLE, A  
15 TAX IS IMPOSED ON THE DISTRIBUTIVE SHARE OR PRO-RATA SHARE OF INCOME  
16 DISTRIBUTED TO A MEMBER OF A PASS-THROUGH ENTITY FROM THE  
17 PASS-THROUGH ENTITY'S TAXABLE INCOME THAT EXCEEDS \$1,000,000.

18 (2) THE RATE OF THE TAX IMPOSED UNDER PARAGRAPH (1) OF THIS  
19 SUBSECTION IS 4%.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
21 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019.