

HOUSE BILL 211

C9, Q3, Q6

3lr0471

By: **Delegates Palakovich Carr, Lehman, Charkoudian, Ebersole, Fair, Feldmark, Grossman, R. Lewis, J. Long, Lopez, Moon, Ruth, Smith, Stewart, Taveras, Terrasa, Washington, Wells, and Wilkins**

Introduced and read first time: January 20, 2023

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Rental Housing Fund, Calculation of Taxable Income, and Transfer Tax –**
3 **Alterations**
4 **(Affordable Housing Investment Act)**

5 FOR the purpose of requiring the Governor to include in the annual budget bill an
6 appropriation to the Rental Housing Fund; requiring certain taxpayers to add a
7 certain deduction for capital gains excluded under the federal Qualified Opportunity
8 Zones program back to federal adjusted gross income to determine Maryland taxable
9 income; altering the rate of the transfer tax imposed on residential real property to
10 be used as a principal residence by a first-time home buyer; requiring taxpayers who
11 itemize deductions on a State income tax return to reduce the amount of the
12 deductions by the amount of certain interest paid or accrued during the taxable year;
13 and generally relating to the Rental Housing Fund, the Maryland income tax, and
14 the State transfer tax on real property.

15 BY repealing and reenacting, with amendments,
16 Article – Housing and Community Development
17 Section 4–504
18 Annotated Code of Maryland
19 (2019 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Tax – General
22 Section 10–204(a) and 10–305(a)
23 Annotated Code of Maryland
24 (2022 Replacement Volume)

25 BY adding to
26 Article – Tax – General

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 10–204(m)
2 Annotated Code of Maryland
3 (2022 Replacement Volume)

4 BY repealing and reenacting, with amendments,
5 Article – Tax – General
6 Section 10–218 and 10–305(d)
7 Annotated Code of Maryland
8 (2022 Replacement Volume)

9 BY repealing and reenacting, with amendments,
10 Article – Real Property
11 Section 14–104
12 Annotated Code of Maryland
13 (2015 Replacement Volume and 2022 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Tax – Property
16 Section 13–203
17 Annotated Code of Maryland
18 (2019 Replacement Volume and 2022 Supplement)

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

21 **Article – Housing and Community Development**

22 4–504.

23 (a) In this section, “Fund” means the Rental Housing Fund.

24 (b) There is a Rental Housing Fund.

25 (c) The Department shall use the Fund to operate, make loans, and pay expenses
26 of the Rental Housing Program, including reserves for anticipated future losses directly
27 related to the Rental Housing Program, as provided in the State budget.

28 (d) The Department shall administer the Fund either directly or through the
29 Administration.

30 (e) The Fund consists of:

31 (1) money appropriated by the State for the Rental Housing Program under
32 § 4–402 of this title;

33 (2) repayments and prepayments of loans made under the Rental Housing
34 Program and from loan programs under this title that have been repealed;

1 (3) money appropriated under § 4–501(c) of this subtitle;

2 (4) money transferred to the Fund in accordance with §§ 4–502(e),
3 4–503(d), and 4–505(h) of this subtitle and § 3–203(i) of this article;

4 (5) funds received by the Department or the Administration from the
5 federal government or other public or private sources;

6 (6) investment earnings of the Fund; [and]

7 (7) revenue distributed to the Fund under § 2–605.2 of the Tax – General
8 Article; AND

9 **(8) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND.**

10 (f) (1) When the Department issues a binding commitment to make a loan,
11 the Department shall withdraw from the Fund an amount equal to the commitment.

12 (2) Subject to § 7–209 of the State Finance and Procurement Article and
13 except as otherwise provided in the State budget, after the first 8 months of a fiscal year
14 the Department may transfer unencumbered money in the Fund to any other fund
15 established under this title.

16 **(G) (1) FOR FISCAL YEAR 2025 AND EACH FISCAL YEAR THEREAFTER,**
17 **THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION**
18 **OF \$20,000,000 TO THE FUND.**

19 **(2) FUNDS PROVIDED UNDER THIS SUBSECTION SHALL BE**
20 **SUPPLEMENTAL TO, AND MAY NOT SUPPLANT, FUNDS OTHERWISE APPROPRIATED**
21 **TO THE FUND.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
23 as follows:

24 **Article – Tax – General**

25 10–204.

26 (a) To the extent excluded from federal adjusted gross income, the amounts under
27 this section are added to the federal adjusted gross income of a resident to determine
28 Maryland adjusted gross income.

29 **(M) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES ANY**
30 **CAPITAL GAINS EXCLUDED UNDER § 1400Z–2 OF THE INTERNAL REVENUE CODE.**

1 10–305.

2 (a) To the extent excluded from federal taxable income, the amounts under this
3 section are added to the federal taxable income of a corporation to determine Maryland
4 modified income.

5 (d) The addition under subsection (a) of this section includes the additions
6 required for an individual under:

7 (1) § 10–204(b) of this title (Dividends and interest from another state or
8 local obligation);

9 (2) § 10–204(c)(2) of this title (Federal tax–exempt income);

10 (3) § 10–204(e) of this title (Oil percentage depletion allowance);

11 (4) § 10–204(i) of this title (Deduction for qualified production activities
12 income);

13 (5) § 10–204(j) of this title (Deduction for costs for security clearance
14 administrative expenses and construction and equipment costs incurred to construct or
15 renovate a sensitive compartmented information facility); [and]

16 (6) § 10–204(l) of this title (Deduction for donations to qualified permanent
17 endowment funds); AND

18 **(7) § 10–204(M) OF THIS TITLE (CAPITAL GAINS EXCLUDED FOR**
19 **INVESTMENT IN OPPORTUNITY ZONE).**

20 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
21 as follows:

22 **Article – Real Property**

23 14–104.

24 (a) In this section, “first–time Maryland home buyer” means an individual who
25 has never owned in the State residential real property that has been the individual’s
26 principal residence.

27 (b) Except as provided in subsection (c) of this section, in every written or oral
28 agreement for the sale or other disposition of property, it is presumed in the absence of a
29 contrary provision in the agreement or the law, that the parties to the agreement intended
30 that the cost of any recordation tax or any State or local transfer tax shall be shared equally
31 between the grantor and grantee. This section does not apply to mortgages or deeds of trust.

1 (c) (1) The entire amount of recordation tax and local transfer tax shall be paid
2 by the seller of improved, residential real property that is sold to a first-time Maryland
3 home buyer who will occupy the property as a principal residence, unless there is an express
4 agreement between the parties to the agreement that the recordation tax and local transfer
5 tax will not be paid entirely by the seller.

6 (2) **[The] EXCEPT AS PROVIDED IN § 13-203 OF THE TAX – PROPERTY**
7 **ARTICLE, THE** entire amount of State transfer tax shall be paid by the seller of improved,
8 residential real property that is sold to a first-time Maryland home buyer who will occupy
9 the property as a principal residence.

10 (3) This subsection does not apply to tax sales of property under Title 14,
11 Subtitle 8 of the Tax – Property Article.

12 (4) If there are two or more grantees, this subsection does not apply unless
13 each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase
14 money mortgage or purchase money deed of trust as defined in § 12-108(i) of the Tax –
15 Property Article for the property and the co-maker or guarantor will not occupy the
16 residence as the co-maker's or guarantor's principal residence.

17 (5) Paragraphs (1) and (2) of this subsection apply only if each grantee or
18 an agent of the grantee provides a statement that is signed under oath by the grantee or
19 agent of the grantee stating that:

20 (i) 1. The grantee is a first-time Maryland home buyer as
21 defined under subsection (a) of this section; and

22 2. The residence will be occupied by the grantee as the
23 grantee's principal residence; or

24 (ii) 1. The grantee is a co-maker or guarantor of a purchase
25 money mortgage or purchase money deed of trust as defined in § 12-108(i) of the Tax –
26 Property Article for the property; and

27 2. The grantee will not occupy the residence as the
28 co-maker's or guarantor's principal residence.

29 (6) A statement under paragraph (5) of this subsection by an agent of a
30 grantee shall state that the statement:

31 (i) Is based on a diligent inquiry made by the agent with respect to
32 the facts set forth in the statement; and

33 (ii) Is true to the best of the knowledge, information, and belief of the
34 agent.

1 13–203.

2 (a) (1) Except as provided in subsections (a–1) and (b) of this section, the rate
3 of the transfer tax is 0.5% of the consideration payable for the instrument of writing.

4 (2) The consideration:

5 (i) includes the amount of any mortgage or deed of trust assumed
6 by the grantee; and

7 (ii) subject to item (i) of this paragraph, includes only the amount
8 paid or delivered in return for the sale of the property and does not include the amount of
9 any debt forgiven or no longer secured by a mortgage or deed of trust on the property.

10 (a–1) (1) Except as provided in subsection (b) of this section, the rate of the
11 transfer tax is 0.5% of the consideration paid for the transfer of a controlling interest in a
12 real property entity as defined in § 13–103 of this title that has developed real property
13 under Section 42 of the Internal Revenue Code, the Low Income Housing Tax Credit
14 Program.

15 (2) The consideration under this subsection shall be the actual payment
16 made by the purchaser to the seller for the purchase of the interest.

17 (b) (1) In this subsection, “first–time Maryland home buyer” means an
18 individual who has never owned in the State residential real property that has been the
19 individual’s principal residence.

20 (2) If there are two or more grantees, this subsection does not apply unless
21 each grantee is a first–time Maryland home buyer or a co–maker or guarantor of a purchase
22 money mortgage or purchase money deed of trust as defined in § 12–108(i) of this article
23 for the property and the co–maker or guarantor will not occupy the residence as the
24 co–maker’s or guarantor’s principal residence.

25 (3) Notwithstanding any other provision of law, for a sale of improved
26 residential real property to a first–time Maryland home buyer who will occupy the property
27 as a principal residence, [the rate of the transfer tax is 0.25% of the consideration payable
28 for the instrument of writing and the transfer tax shall be paid entirely by the seller] **THE**
29 **RATE OF THE TRANSFER TAX IS ON THE CONSIDERATION PAYABLE FOR THE**
30 **INSTRUMENT OF WRITING AS FOLLOWS:**

31 **(I) 0.25% ON THE CONSIDERATION OF UP TO \$1,000,000 TO BE**
32 **PAID ENTIRELY BY THE SELLER; AND**

1 **(II) 0.5% ON THE CONSIDERATION IN EXCESS OF \$1,000,000 TO**
2 **BE PAID EQUALLY BETWEEN THE BUYER AND THE SELLER, UNLESS THERE IS AN**
3 **EXPRESS AGREEMENT BETWEEN THE BUYER AND THE SELLER TO THE CONTRARY.**

4 (4) To qualify for the exemption under paragraph (3) of this subsection,
5 each grantee or an agent of the grantee shall provide a statement that is signed under oath
6 by the grantee or agent of the grantee stating that:

7 (i) 1. the grantee is an individual who has never owned in the
8 State residential real property that has been the individual's principal residence; and

9 2. the residence will be occupied by the grantee as the
10 grantee's principal residence; or

11 (ii) 1. the grantee is a co-maker or guarantor of a purchase
12 money mortgage or purchase money deed of trust as defined in § 12-108(i) of this article
13 for the property; and

14 2. the grantee will not occupy the residence as the
15 co-maker's or guarantor's principal residence.

16 (5) A statement under paragraph (4) of this subsection by an agent of a
17 grantee shall state that the statement:

18 (i) is based on a diligent inquiry made by the agent with respect to
19 the facts set forth in the statement; and

20 (ii) is true to the best of the knowledge, information, and belief of the
21 agent.

22 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
23 as follows:

24 **Article – Tax – General**

25 10-218.

26 (a) **(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
27 **INDICATED.**

28 **(2) “QUALIFIED RESIDENCE” HAS THE MEANING STATED IN § 163 OF**
29 **THE INTERNAL REVENUE CODE.**

30 **(3) “QUALIFIED RESIDENCE INTEREST” HAS THE MEANING STATED**
31 **IN § 163 OF THE INTERNAL REVENUE CODE.**

1 **(B)** Only an individual who itemizes deductions on the individual's federal income
2 tax return may elect to itemize deductions on the individual's income tax return.

3 **[(b)] (C)** An individual who elects to itemize deductions is allowed as a deduction
4 the sum of the individual's federal itemized deductions:

5 (1) limited and reduced as required under the Internal Revenue Code;

6 (2) further reduced by any amount deducted under § 170 of the Internal
7 Revenue Code for contributions of a preservation or conservation easement for which a
8 credit is claimed under § 10-723 of this title; **[and]**

9 (3) further reduced by the amount claimed as taxes on income paid to a
10 state or political subdivision of a state, after subtracting a pro rata portion of the reduction
11 to itemized deductions required under § 68 of the Internal Revenue Code; **AND**

12 **(4) FURTHER REDUCED BY ANY AMOUNT DEDUCTED FOR QUALIFIED
13 RESIDENCE INTEREST UNDER § 163 OF THE INTERNAL REVENUE CODE FOR ANY
14 QUALIFIED RESIDENCE THAT IS:**

15 **(I) NOT A PRINCIPAL RESIDENCE; AND**

16 **(II) NOT LOCATED IN THE STATE.**

17 SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be
18 applicable to all taxable years beginning after December 31, 2022.

19 SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall be
20 applicable to all instruments of writing recorded or filed on or after July 1, 2023.

21 SECTION 7. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall be
22 construed to apply only prospectively and may not be applied or interpreted to have any
23 effect on or application to any indebtedness incurred or refinanced before January 1, 2024.

24 SECTION 8. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall take
25 effect January 1, 2024, and shall be applicable to all taxable years beginning after
26 December 31, 2023.

27 SECTION 9. AND BE IT FURTHER ENACTED, That, except as provided in Section
28 8 of this Act, this Act shall take effect July 1, 2023.