

HOUSE BILL 337

Q3

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By: **Delegates Palakovich Carr, Charkoudian, Cullison, Ebersole, Grossman, Hill, Ivey, Lehman, R. Lewis, McCaskill, Moon, Ruth, Stewart, Terrasa, Washington, Wells, and Wilkins**

Introduced and read first time: January 25, 2023

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Capital Gains, Dividends, and Foreign–Derived Intangible Income**
3 **– Alterations**
4 **(Investing in Marylanders Act of 2023)**

5 FOR the purpose of providing for an additional State individual income tax rate on the net
6 capital gains of individuals, subject to certain exceptions; providing addition
7 modifications under the Maryland income tax for the amount of certain deductions
8 under the Internal Revenue Code for dividends paid for real estate investment
9 trusts, foreign–derived intangible income, and certain dividends received from a
10 foreign corporation; altering a certain addition modification under the Maryland
11 income tax for certain corporate interest expenses and intangible expenses; altering
12 a certain subtraction modification under the Maryland income tax for certain
13 dividends received from a foreign corporation to preclude inclusion of certain income
14 treated as dividends under the Internal Revenue Code; and generally relating to the
15 Maryland income tax.

16 BY repealing and reenacting, with amendments,
17 Article – Tax – General
18 Section 10–105(a), 10–305, 10–306.1, and 10–307(d)
19 Annotated Code of Maryland
20 (2022 Replacement Volume)

21 BY repealing and reenacting, without amendments,
22 Article – Tax – General
23 Section 10–204(a) and 10–307(a)
24 Annotated Code of Maryland
25 (2022 Replacement Volume)

26 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Tax – General
2 Section 10–204(m)
3 Annotated Code of Maryland
4 (2022 Replacement Volume)

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

7 **Article – Tax – General**

8 10–105.

9 (a) (1) For an individual other than an individual described in paragraph (2)
10 of this subsection, the State income tax rate is:

- 11 (i) 2% of Maryland taxable income of \$1 through \$1,000;
12 (ii) 3% of Maryland taxable income of \$1,001 through \$2,000;
13 (iii) 4% of Maryland taxable income of \$2,001 through \$3,000;
14 (iv) 4.75% of Maryland taxable income of \$3,001 through \$100,000;
15 (v) 5% of Maryland taxable income of \$100,001 through \$125,000;
16 (vi) 5.25% of Maryland taxable income of \$125,001 through \$150,000;
17 (vii) 5.5% of Maryland taxable income of \$150,001 through \$250,000;
18 and
19 (viii) 5.75% of Maryland taxable income in excess of \$250,000.

20 (2) For spouses filing a joint return or for a surviving spouse or head of
21 household as defined in § 2 of the Internal Revenue Code, the State income tax rate is:

- 22 (i) 2% of Maryland taxable income of \$1 through \$1,000;
23 (ii) 3% of Maryland taxable income of \$1,001 through \$2,000;
24 (iii) 4% of Maryland taxable income of \$2,001 through \$3,000;
25 (iv) 4.75% of Maryland taxable income of \$3,001 through \$150,000;
26 (v) 5% of Maryland taxable income of \$150,001 through \$175,000;
27 (vi) 5.25% of Maryland taxable income of \$175,001 through \$225,000;

1 (vii) 5.5% of Maryland taxable income of \$225,001 through \$300,000;
2 and

3 (viii) 5.75% of Maryland taxable income in excess of \$300,000.

4 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
5 **PARAGRAPH, IF THE MARYLAND TAXABLE INCOME OF AN INDIVIDUAL DESCRIBED**
6 **IN PARAGRAPH (1) OR (2) OF THIS SUBSECTION INCLUDES ANY AMOUNT OF NET**
7 **CAPITAL GAIN, AS DEFINED AND DETERMINED UNDER THE INTERNAL REVENUE**
8 **CODE, THE STATE INCOME TAX FOR THE INDIVIDUAL IS THE SUM OF:**

9 **1. THE RATES SPECIFIED IN PARAGRAPH (1) OR (2) OF**
10 **THIS SUBSECTION APPLIED TO MARYLAND TAXABLE INCOME; AND**

11 **2. AN ADDITIONAL 1% OF THE AMOUNT OF NET CAPITAL**
12 **GAIN INCLUDED IN THE INDIVIDUAL'S MARYLAND TAXABLE INCOME.**

13 **(II) TO THE EXTENT INCLUDED IN CALCULATING NET CAPITAL**
14 **GAIN FOR FEDERAL INCOME TAX PURPOSES, ANY AMOUNT OF CAPITAL GAIN FROM**
15 **THE SALE OR EXCHANGE OF THE FOLLOWING ASSETS IS NOT SUBJECT TO THE**
16 **ADDITIONAL 1% TAX RATE SPECIFIED IN SUBPARAGRAPH (I)2 OF THIS PARAGRAPH:**

17 **1. ANY RESIDENTIAL DWELLING SOLD FOR LESS THAN**
18 **\$1,000,000 THAT IS THE INDIVIDUAL'S PRIMARY RESIDENCE, INCLUDING THE LAND**
19 **ON WHICH THE DWELLING IS LOCATED AND ANY ACCESSORY DWELLING UNIT**
20 **ASSOCIATED WITH THE RESIDENCE, IF THE DWELLING IS A SINGLE-FAMILY HOME, A**
21 **TOWN HOUSE, A ROW HOME, A RESIDENTIAL CONDOMINIUM UNIT, OR A**
22 **RESIDENTIAL COOPERATIVE UNIT;**

23 **2. ASSETS HELD IN:**

24 **A. A CASH OR DEFERRED ARRANGEMENT PLAN UNDER §**
25 **401(K) OF THE INTERNAL REVENUE CODE;**

26 **B. A TAX-SHELTERED ANNUITY OR CUSTODIAL ACCOUNT**
27 **UNDER § 403(B) OF THE INTERNAL REVENUE CODE;**

28 **C. A DEFERRED COMPENSATION PLAN UNDER § 457(B)**
29 **OF THE INTERNAL REVENUE CODE;**

30 **D. AN INDIVIDUAL RETIREMENT ACCOUNT OR**
31 **INDIVIDUAL RETIREMENT ANNUITY UNDER § 408 OF THE INTERNAL REVENUE**
32 **CODE;**

1 **E. A ROTH INDIVIDUAL RETIREMENT ACCOUNT UNDER §**
2 **408A OF THE INTERNAL REVENUE CODE; OR**

3 **F. A DEFINED CONTRIBUTION PLAN, A DEFINED BENEFIT**
4 **PLAN, OR A SIMILAR RETIREMENT SAVINGS PLAN;**

5 **3. CATTLE, HORSES, OR BREEDING LIVESTOCK HELD**
6 **FOR MORE THAN 12 MONTHS IF, FOR THE TAXABLE YEAR OF THE SALE OR**
7 **EXCHANGE, MORE THAN 50% OF THE INDIVIDUAL'S GROSS INCOME FOR THE**
8 **TAXABLE YEAR, INCLUDING INCOME FROM THE SALE OR EXCHANGE OF CAPITAL**
9 **ASSETS, IS FROM FARMING OR RANCHING;**

10 **4. LAND THAT IS SUBJECT TO A CONSERVATION,**
11 **AGRICULTURAL, OR FOREST PRESERVATION EASEMENT OR THAT WILL BE SUBJECT**
12 **TO A CONSERVATION, AGRICULTURAL, OR FOREST PRESERVATION EASEMENT ON**
13 **THE SALE OR EXCHANGE OF THE LAND;**

14 **5. PROPERTY USED IN A TRADE OR BUSINESS, THE COST**
15 **OF WHICH IS DEDUCTIBLE UNDER § 179 OF THE INTERNAL REVENUE CODE; OR**

16 **6. AFFORDABLE HOUSING OWNED BY A NONPROFIT**
17 **ORGANIZATION.**

18 10-204.

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

22 **(M) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES ANY**
23 **AMOUNT DEDUCTED UNDER § 857 OF THE INTERNAL REVENUE CODE FOR**
24 **DIVIDENDS PAID FOR REAL ESTATE INVESTMENT TRUSTS.**

25 10-305.

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

29 (b) The addition under subsection (a) of this section includes the net capital loss
30 carryback, as defined in § 1212 of the Internal Revenue Code.

31 (c) The addition under subsection (a) of this section includes any taxes based on
32 net income that are imposed by any state or by a political subdivision of any state.

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

3 (1) § 10–204(b) of this title (Dividends and interest from another state or
4 local obligation);

5 (2) § 10–204(c)(2) of this title (Federal tax–exempt income);

6 (3) § 10–204(e) of this title (Oil percentage depletion allowance);

7 (4) § 10–204(i) of this title (Deduction for qualified production activities
8 income);

9 (5) § 10–204(j) of this title (Deduction for costs for security clearance
10 administrative expenses and construction and equipment costs incurred to construct or
11 renovate a sensitive compartmented information facility); [and]

12 (6) § 10–204(l) of this title (Deduction for donations to qualified permanent
13 endowment funds); AND

14 **(7) § 10–204(M) OF THIS TITLE (DEDUCTION FOR DIVIDENDS PAID**
15 **FOR REAL ESTATE INVESTMENT TRUSTS).**

16 **(E) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES ANY**
17 **AMOUNT DEDUCTED UNDER:**

18 **(1) § 250 OF THE INTERNAL REVENUE CODE FOR FOREIGN–DERIVED**
19 **INTANGIBLE INCOME; AND**

20 **(2) §§ 243 AND 245A OF THE INTERNAL REVENUE CODE FOR**
21 **DIVIDENDS RECEIVED FROM A FOREIGN CORPORATION.**

22 10–306.1.

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

24 (2) “Aggregate effective tax rate” means the sum of the effective rates of
25 tax imposed by this State, other states or possessions of the United States, and foreign
26 nations that have entered into comprehensive tax treaties with the United States
27 government, where a related member receiving a payment of interest expense or intangible
28 expense is subject to tax and where the measure of the tax imposed included the payment.

29 (3) [“Bank” means:

30 (i) a bank holding company as defined in the federal Bank Holding
31 Company Act of 1956, as amended, or a bank, trust company, savings bank, or savings and

1 loan association incorporated or chartered under the laws of this State, another state, or
2 the United States; or

3 (ii) a subsidiary or affiliate of an entity described in item (i) of this
4 paragraph.

5 (4) “Effective rate of tax imposed” means, as to any state, possession of the
6 United States, or foreign nation, the maximum statutory tax rate imposed by the state,
7 possession, or foreign nation multiplied by the applicable apportionment rate.

8 [(5)] (4) “Intangible expense” means:

9 (i) an expense, loss, or cost for, related to, or in connection directly
10 or indirectly with the direct or indirect acquisition, use, maintenance, management,
11 ownership, sale, exchange, or any other disposition of intangible property, to the extent the
12 expense, loss, or cost is allowed as a deduction or cost in determining taxable income for
13 the taxable year under the Internal Revenue Code;

14 (ii) a loss related to or incurred in connection directly or indirectly
15 with factoring transactions or discounting transactions;

16 (iii) a royalty, patent, technical, or copyright fee;

17 (iv) a licensing fee; or

18 (v) any other similar expense or cost.

19 [(6)] (5) “Intangible property” means patents, patent applications, trade
20 names, trademarks, service marks, copyrights, and similar types of intangible assets.

21 [(7)] (6) “Interest expense” means an amount directly or indirectly
22 allowed as a deduction under § 163 of the Internal Revenue Code for purposes of
23 determining taxable income under the Internal Revenue Code.

24 [(8)] (7) “Related entity” means a person that, under the attribution rules
25 of § 318 of the Internal Revenue Code, is:

26 (i) a stockholder who is an individual or a member of the
27 stockholder’s family enumerated in § 318 of the Internal Revenue Code, if the stockholder
28 and the members of the stockholder’s family own directly, indirectly, beneficially, or
29 constructively, in the aggregate, at least 50% of the value of the taxpayer’s outstanding
30 stock;

31 (ii) a stockholder or a stockholder’s partnership, limited liability
32 company, estate, trust, or corporation, if the stockholder and the stockholder’s partnership,
33 limited liability company, estate, trust, or corporation own directly, indirectly, beneficially,

1 or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding
2 stock; or

3 (iii) a corporation or a party related to the corporation in a manner
4 that would require an attribution of stock from the corporation to the party or from the
5 party to the corporation under the attribution rules of § 318 of the Internal Revenue Code,
6 if the taxpayer owns directly, indirectly, beneficially, or constructively, at least 50% of the
7 value of the corporation's outstanding stock.

8 [(9)] (8) "Related member" means a person that, with respect to the
9 taxpayer during all or any portion of the taxable year, is:

10 (i) a related entity;

11 (ii) a component member, as defined in § 1563(b) of the Internal
12 Revenue Code; or

13 (iii) a person to or from whom there is attribution of stock ownership
14 in accordance with § 1563(e) of the Internal Revenue Code.

15 (b) (1) Except as otherwise provided in this section, in addition to the
16 modifications under §§ 10-305 and 10-306 of this subtitle, the amounts under paragraph
17 (2) of this subsection are added to the federal taxable income of a corporation to determine
18 Maryland modified income.

19 (2) The addition under this subsection includes any otherwise deductible
20 interest expense or intangible expense if the interest expense or intangible expense is
21 directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly
22 with one or more direct or indirect transactions with, one or more related members.

23 (c) The addition required under subsection (b) of this section does not apply to
24 any portion of the interest expense or intangible expense to the extent that the corporation
25 establishes **BY CLEAR AND CONVINCING EVIDENCE**, as determined by the Comptroller,
26 that:

27 (1) the transaction giving rise to the payment of the interest expense or
28 intangible expense between the corporation and the related member did not have as a
29 principal purpose the avoidance of any portion of the tax due under this title;

30 (2) the interest expense or intangible expense was paid pursuant to
31 arm's-length contracts at an arm's-length rate of interest or price; and

32 (3) (i) during the same taxable year, the related member directly or
33 indirectly paid, accrued, or incurred the interest expense or intangible expense to a person
34 who is not a related member; **OR**

(ii) 1. the related member was subject to a tax measured by its net income or receipts in this State, another state or possession of the United States, or a foreign nation that has entered into a comprehensive tax treaty with the United States government;

2. a measure of the tax imposed by this State, another state or possession of the United States, or a foreign nation that has entered into a comprehensive tax treaty with the United States government included the interest expense or intangible expense received by the related member from the corporation;

3. IF APPLICABLE, THE MEASURE OF ANY TAX IMPOSED BY A FOREIGN NATION THAT HAS ENTERED INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT WAS EQUAL TO OR GREATER THAN THE TAX IMPOSED BY THIS STATE; and

[3.] 4. the aggregate effective tax rate imposed on the amounts received by the related member is equal to or greater than **[4%]**; or

(iii) in the case of an interest expense, the corporation and the related member are banks] **THE TAX RATE SPECIFIED UNDER § 10-105(B) OF THIS TITLE MINUS 3%, PROVIDED THAT A RELATED MEMBER RECEIVING THE INTEREST EXPENSE OR INTANGIBLE EXPENSE IS NOT CONSIDERED TO BE SUBJECT TO A TAX MERELY BY VIRTUE OF THE RELATED MEMBER'S INCLUSION IN A COMBINED OR CONSOLIDATED REPORT IN ONE OR MORE STATES.**

(d) (1) Subject to regulations adopted by the Comptroller, the addition required under subsection (b) of this section does not apply if, in lieu of the **[4%]** effective tax rate requirement under subsection **[(c)(3)(ii)3] (C)(3)(II)4** of this section, the aggregate effective tax rate imposed on the amounts received by the recipient is greater than or equal to the aggregate effective tax rate that would have been imposed on the additional income of the payor corporation if the interest expense or intangible expense had not been deducted.

(2) For purposes of subsection (c)(3)(ii) of this section, the Comptroller may provide by regulation for an alternative to the effective tax rate requirement of subsection **[(c)(3)(ii)3] (C)(3)(II)4** of this section if:

(i) the related member:

1. is subject in another state or in a foreign nation that has entered into a comprehensive tax treaty with the United States government to a tax that is measured by gross receipts or is measured by net capital or net worth; and

2. is not subject in that state or in that foreign nation to a tax measured by net income or receipts; or

1 (ii) under other circumstances demonstrating to the satisfaction of
2 the Comptroller that avoidance of any portion of the tax due under this title is not a
3 principal purpose of the transaction giving rise to the payment of the interest expense or
4 intangible expense between the corporation and the related member, the Comptroller
5 determines that it is impractical for a related member that is subject to tax in this State,
6 another state, or a foreign nation that has entered into a comprehensive tax treaty with the
7 United States government, where the measure of the tax includes the payment to satisfy
8 the requirements of subsection (c)(3)(ii) of this section.

9 (e) **(1) (I)** If the payor and the recipient are both included in a combined or
10 consolidated report filed in a jurisdiction:

11 **[(1)] 1.** for purposes of subsection (c)(3)(ii)2 of this section, the
12 measure of the tax imposed by that jurisdiction shall be deemed to include the interest
13 expense or intangible expense; and

14 **[(2)] 2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
15 **PARAGRAPH,** for purposes of determining the effective rate of tax imposed by the
16 jurisdiction, the applicable apportionment rate is the lesser of:

17 **[(i)] A.** the apportionment rate of the recipient corporation,
18 determined by using only that corporation's factors in the numerators and denominators of
19 the apportionment formula; or

20 **[(ii)] B.** the apportionment rate of the combined or consolidated
21 group, determined by combining the recipient corporation's factors with the factors of other
22 members of the group included in the combined or consolidated report.

23 **(II) THE EFFECTIVE RATE OF TAX IMPOSED AS TO ANY STATE,**
24 **POSSESSION OF THE UNITED STATES, OR FOREIGN NATION SHALL BE ZERO IF:**

25 **1. THE RELATED MEMBER'S NET INCOME TAX LIABILITY**
26 **IN THE JURISDICTION IS REPORTED ON A COMBINED OR CONSOLIDATED RETURN**
27 **THAT INCLUDES THE PAYOR AND THE RECIPIENT; AND**

28 **2. THE REPORTED TRANSACTIONS BETWEEN THE PAYOR**
29 **AND THE RECIPIENT ARE ELIMINATED OR OFFSET.**

30 **(2) FOR PURPOSES OF DETERMINING THE EFFECTIVE RATE OF TAX**
31 **IMPOSED BY A JURISDICTION, IF A RELATED MEMBER'S NET INCOME IS ELIMINATED**
32 **OR OFFSET BY A CREDIT OR SIMILAR ADJUSTMENT THAT IS DEPENDENT ON THE**
33 **RELATED MEMBER EITHER MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR**
34 **COLLECTING INTEREST INCOME IN THE JURISDICTION, THE MAXIMUM STATUTORY**
35 **RATE OF TAX IMPOSED BY THE JURISDICTION SHALL BE DECREASED TO REFLECT**

1 **THE STATUTORY RATE OF TAX THAT APPLIES TO THE RELATED MEMBER AS**
2 **EFFECTIVELY REDUCED BY THE CREDIT OR SIMILAR ADJUSTMENT.**

3 (f) (1) In addition to the modifications under §§ 10–305 and 10–306 of this
4 subtitle, subject to paragraph (2) of this subsection, to determine Maryland taxable income,
5 an amount is subtracted from the federal taxable income of a corporation equal to the
6 amount received as royalties, interest, or similar income from intangibles from a related
7 member to the extent the related member, with respect to the payment, is subject to the
8 addition modification under subsection (b) of this section or a similar addition modification
9 of another state or of a foreign nation that has entered into a comprehensive tax treaty with
10 the United States government for intangible expenses or interest expenses paid to related
11 members.

12 (2) The subtraction modification under this subsection is not allowed to the
13 extent that:

14 (i) the transaction giving rise to the payment of the interest expense
15 or intangible expense had as a principal purpose the avoidance of State income taxes;

16 (ii) the interest expense or intangible expense was not paid pursuant
17 to arm’s-length contracts at an arm’s-length rate of interest or price; or

18 (iii) the aggregate effective tax rate imposed on the amounts received
19 by the recipient exceeds the aggregate effective tax rate imposed on the income of the payor
20 corporation.

21 (g) This section may not be construed:

22 (1) to require a corporation to include in or add to its net income more than
23 once any amount of interest expense or intangible expense that the corporation pays,
24 accrues, or incurs to a related member; or

25 (2) to limit or negate any other authority provided to the Comptroller under
26 this article, including:

27 (i) the authority to make adjustments under § 10–109 or § 10–402(e)
28 of this title; or

29 (ii) the authority to enter into agreements and compromises
30 otherwise allowed by law.

31 (h) The Comptroller shall adopt any regulations that are necessary or appropriate
32 to implement this section.

33 10–307.

1 (a) To the extent included in federal taxable income, the amounts under this
2 section are subtracted from the federal taxable income of a corporation to determine
3 Maryland modified income.

4 (d) **(1) IN THIS SUBSECTION, “DIVIDEND” DOES NOT INCLUDE ANY**
5 **AMOUNT TREATED AS A DIVIDEND UNDER § 245 OR § 1248 OF THE INTERNAL**
6 **REVENUE CODE.**

7 **(2)** The subtraction under subsection (a) of this section includes dividends
8 received from a corporation if:

9 **[(1)] (I)** the receiving corporation owns, directly or indirectly, 50% or
10 more of the paying corporation’s outstanding shares of capital stock; and

11 **[(2)] (II)** the paying corporation is organized under the laws of a foreign
12 government.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
14 1, 2023, and shall be applicable to all taxable years beginning after December 31, 2022.