

Chapter 445

(Senate Bill 240)

AN ACT concerning

**Income Tax – Out-of-State Taxes Paid by Pass-Through Entities – Addition
Modification**

FOR the purpose of providing an addition modification under the Maryland income tax for the amount of a certain tax credit claimed for certain taxes paid to another state by ~~a member of~~ a pass-through entity under certain circumstances; and generally relating to Maryland income tax and pass-through entities.

BY repealing and reenacting, without amendments,
 Article – Tax – General
 Section 10–102.1(a)(1), (4), and (7) and (b), 10–205(a), and 10–703
 Annotated Code of Maryland
 (2022 Replacement Volume)

BY ~~repealing and reenacting, with amendments,~~ adding to
 Article – Tax – General
 Section ~~10–205(m)~~ 10–205(d–1)
 Annotated Code of Maryland
 (2022 Replacement Volume)

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

Article – Tax – General

10–102.1.

- (a) (1) In this section the following words have the meanings indicated.
- (4) “Member” means:
- (i) a shareholder of an S corporation;
 - (ii) a general or limited partner of a partnership, limited partnership, or limited liability partnership;
 - (iii) a member of a limited liability company; or
 - (iv) a beneficiary of a business trust or statutory trust.
- (7) “Pass-through entity” means:

- (i) an S corporation;
- (ii) a partnership;
- (iii) a limited liability company that is not taxed as a corporation under this title; or
- (iv) a business trust or statutory trust that is not taxed as a corporation under this title.

(b) (1) Subject to paragraph (2) of this subsection, in addition to any other tax imposed under this title, a tax is imposed on each pass-through entity.

(2) Each pass-through entity:

(i) shall pay the tax imposed under paragraph (1) of this subsection with respect to the distributive shares or pro rata shares of the nonresident and nonresident entity members of the pass-through entity; or

(ii) may elect to pay the tax imposed under paragraph (1) of this subsection with respect to the distributive shares or pro rata shares of all members of the pass-through entity.

10-205.

(a) In addition to the modification under § 10-204 of this subtitle, the amounts under this section are added to the federal adjusted gross income of a resident to determine Maryland adjusted gross income.

(D-1) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE AMOUNT OF A CREDIT THAT IS CLAIMED UNDER § 10-703 OF THIS TITLE AND IS BASED ON A TAX IMPOSED ON ANY PASS-THROUGH ENTITY BY ANOTHER STATE THAT IS DEDUCTIBLE IN DETERMINING THE PASS-THROUGH ENTITY'S INCOME UNDER THE INTERNAL REVENUE CODE.

~~(m) The addition under subsection (a) of this section includes the amount of credit that is claimed under:~~

~~(1) § 10-701.1 of this title for the amount of tax paid by a pass-through entity under § 10-102.1 of this title and is attributable to the member's share of tax on the member's share of the pass-through entity's taxable income, as defined in § 10-102.1(a)(8) of this title; AND~~

~~(2) TO THE EXTENT NOT INCLUDED IN THE ADDITION UNDER SUBSECTION (D) OF THIS SECTION, § 10-703 OF THIS TITLE FOR THE AMOUNT OF TAX PAID BY A PASS THROUGH ENTITY TO A STATE OTHER THAN THIS STATE THAT IS:~~

~~(I) BASED ON THE PASS THROUGH ENTITY'S NET INCOME;~~

~~(II) ATTRIBUTABLE TO THE MEMBER'S SHARE OF THE TAX; AND~~

~~(III) DEDUCTED FROM THE PASS THROUGH ENTITY'S INCOME UNDER THE FEDERAL INTERNAL REVENUE CODE.~~

10-703.

(a) In this section, "member" and "pass-through entity" have the meanings stated in § 10-102.1 of this title.

(b) Except as provided in subsection (c) of this section, a resident may claim a credit against the income tax for a taxable year in the amount determined under subsection (d) of this section for State tax on income paid to another state for the year.

(c) A credit under subsection (b) of this section is not allowed to:

(1) a resident other than a fiduciary, if the laws of the other state allow the resident a credit for State income tax paid to this State;

(2) a resident fiduciary, if the fiduciary claims, and the other state allows, a credit for State income tax paid to this State;

(3) a resident for less than the full taxable year for tax on income that is paid to another state during residency in that state; or

(4) a nonresident.

(d) (1) Except as provided in paragraph (2) of this subsection and subject to subsection (e) of this section, the credit allowed a resident under subsection (b) of this section is the lesser of:

(i) the amount of allowable tax on income that the resident paid to another state; or

(ii) an amount that does not reduce the income tax to an amount less than would be payable if the income subjected to tax in the other state were disregarded.

(2) If the credit allowed a resident under subsection (b) of this section is based on tax that a pass-through entity pays to another state, the credit allowable to a member of the pass-through entity:

- (i) may not exceed that member's pro rata share of the tax; and
- (ii) will be allowed for another state's income taxes or taxes based on income.

(e) (1) The amount of the credit allowed under subsection (b) of this section to be applied against the State income tax is equal to the amount that would be calculated under subsection (d) of this section using the State income tax rate as the only applicable rate.

(2) The amount of the credit allowed under subsection (b) of this section to be applied against the county income tax is equal to the amount calculated under subsection (d) of this section less the amount calculated under paragraph (1) of this subsection.

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

Approved by the Governor, May 8, 2023.