

Testimony of Justin Hayes, Director of State Affairs, Comptroller of Maryland**Senate Bill 240 – Income Tax – Out-of-State Taxes Paid by Pass-Through Entities – Addition Modification***Ways and Means Committee**April 10, 2022*

Chairman Atterbeary, Vice Chairman Wilkins and members of the Committee, it is my pleasure to provide testimony **in support** of Senate Bill 240 – Income Tax – Out-of-State Taxes Paid by Pass-Through Entities – Addition Modification as amended. I would like to thank Chairman Guzzone for sponsoring this important legislation and the Committee for providing the opportunity for my testimony to be heard.

This bill amends Tax General Article §10-205 to require resident members of pass-through entities that paid entity-level taxes to another state to ‘add back’ the amount of the credit received in that other state. This addback furthers the legislative goal of making the elective pass-through entity tax revenue-neutral by preventing Maryland resident PTE members from reducing their taxable income by the amount of the out-of-state PTE’s deduction for state and local taxes. The Comptroller’s Office worked with the Maryland Association of Certified Public Accountants (MACPA) to develop an amendment to the bill’s original text, and we agree that – as amended – Senate Bill 240 fulfills the original goal of revenue-neutrality and promotes fairness by putting Maryland-based PTEs on equal tax footing with out-of-state peers.

History: In response to the federal limit on deductions for state and local taxes (SALT cap in 2017 TCJA), Maryland (and many other states) passed legislation allowing PTEs to elect to pay taxes on income at the entity level, rather than paying on behalf of the members. A PTE SALT deduction is not capped at the federal level. Electing PTEs may take the deduction and pass the benefit on to members as reduced income.

- The PTE election is intended to provide a federal tax benefit to PTE members. It was intended to be revenue-neutral for the State of Maryland.
- For the election to be revenue-neutral, the member must ‘add back’ the amount of the credit they receive to their Maryland income. This is accomplished in the statute as currently written.
- Maryland residents are allowed a credit for taxes paid to another state. Residents are allowed to take a credit in Maryland for taxes paid at the PTE level under analogous tax regimes in other States.

Issue: The Maryland statute, as currently written, does not require an addback of the credit for PTE-level taxes paid to another state. This allows members of PTEs electing to be taxed at the entity level in other state a ‘double benefit’ of both the passed-through deduction and the credit.

Solution: Senate Bill 240 requires an addback of the credit for PTE-level taxes paid to another state, ensuring revenue neutrality in Maryland and parity among PTEs.

As always, the Comptroller’s Office is willing to answer any questions you may have at your convenience. Please contact Justin Hayes, Director of State Affairs at jhayes@marylandtaxes.gov or 410-260-7696.

