

# HOUSE BILL 129

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By: **Delegates Krimm and Cox**

Introduced and read first time: January 15, 2020

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Taxes – Election for Pass-Through Entities**

3 FOR the purpose of altering the State income tax imposed on certain pass-through entities;  
4 requiring each pass-through entity to pay the tax imposed with respect to certain  
5 shares of certain nonresident and nonresident entity members of the pass-through  
6 entity; authorizing a pass-through entity to pay the tax imposed with respect to  
7 certain shares of all members of the pass-through entity; providing for the  
8 calculation of the tax; prohibiting the tax required to be paid for any taxable year  
9 from exceeding a certain amount; allowing each member to claim a credit against the  
10 State income tax for the member's proportionate share of the tax paid by the  
11 pass-through entity; providing for the calculation of the credit; defining certain  
12 terms; making certain conforming changes; providing for the application of this Act;  
13 and generally relating to the State income tax and pass-through entities.

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

19 BY adding to  
20 Article – Tax – General  
21 Section 10–751  
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:

26 **Article – Tax – General**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 10–102.1.

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

3 (2) “Distributable cash flow” means taxable income reportable by a  
4 pass-through entity on its federal income tax return for the taxable year:

5 (i) adjusted, in the case of an entity using the accrual method of  
6 accounting to report federal taxable income, to reflect the amount of taxable income that  
7 would have been reported under the cash method of accounting;

8 (ii) increased by the sum of:

9 1. cash receipts for the taxable year that are not includable  
10 in the gross income of the entity, including capital contributions and loan proceeds;

11 2. amounts allowable to the entity for the taxable year as  
12 deductions for depreciation, amortization, and depletion; and

13 3. the decrease, if any, in the entity’s liability reserve as of  
14 the end of the taxable year; and

15 (iii) decreased by the sum of:

16 1. cash expenditures for the taxable year that are not  
17 deductible in computing the taxable income of the entity, not including distributions to  
18 shareholders, partners, or members; and

19 2. the increase, if any, in the entity’s liability reserve as of  
20 the end of the taxable year.

21 (3) “Liability reserve” means accrued unpaid liabilities that are not  
22 deductible in computing taxable income.

23 (4) “Member” means:

24 (i) a shareholder of an S corporation;

25 (ii) a general or limited partner of a partnership, limited  
26 partnership, or limited liability partnership;

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

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

29 (5) “Nonresident entity” means an entity that is not formed under the laws  
30 of the State and is not qualified by or registered with the Department of Assessments and

1 Taxation to do business in the State.

2 (6) “Nonresident taxable income” means any income described in §  
3 10–210(b)(1) through (4) of this title.

4 (7) “Pass-through entity” means:

5 (i) an S corporation;

6 (ii) a partnership;

7 (iii) a limited liability company that is not taxed as a corporation  
8 under this title; or

9 (iv) a business trust or statutory trust that is not taxed as a  
10 corporation under this title.

11 **(8) “PASS-THROUGH ENTITY’S TAXABLE INCOME” MEANS THE**  
12 **PORTION OF A PASS-THROUGH ENTITY’S INCOME UNDER THE FEDERAL INTERNAL**  
13 **REVENUE CODE THAT IS DERIVED FROM OR REASONABLY ATTRIBUTABLE TO THE**  
14 **TRADE OR BUSINESS OF THE PASS-THROUGH ENTITY IN THIS STATE.**

15 (b) **(1) [In] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN** addition  
16 to any other tax imposed under this title, a tax is imposed on each pass-through entity  
17 [that has:

18 (1) any member who is a nonresident of the State or is a nonresident entity;  
19 and

20 (2) any nonresident taxable income for the taxable year].

21 **(2) EACH PASS-THROUGH ENTITY:**

22 **(I) SHALL PAY THE TAX IMPOSED UNDER PARAGRAPH (1) OF**  
23 **THIS SUBSECTION WITH RESPECT TO THE PRO RATA OWNERSHIP SHARES OF THE**  
24 **NONRESIDENT AND NONRESIDENT ENTITY MEMBERS OF THE PASS-THROUGH**  
25 **ENTITY; OR**

26 **(II) MAY ELECT TO PAY THE TAX IMPOSED UNDER PARAGRAPH**  
27 **(1) OF THIS SUBSECTION WITH RESPECT TO THE PRO RATA OWNERSHIP SHARES OF**  
28 **ALL MEMBERS OF THE PASS-THROUGH ENTITY.**

29 [(c) (1) The tax imposed under subsection (b) of this section shall be treated as  
30 a tax imposed on the nonresident or nonresident entity members that is paid on behalf of  
31 the nonresidents or nonresident entities by the pass-through entity.

(2) The Comptroller shall provide by regulation for the treatment of the tax imposed under subsection (b) of this section that is paid on behalf of a nonresident entity member that is itself a pass-through entity.]

~~[(d)]~~ (C) (1) [Except as provided in paragraph (2) of this subsection, the] **WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (B)(2)(I) OF THIS SECTION, THE** tax imposed [under subsection (b) of this section] is the sum of:

(i) a rate equal to the sum of the rate of the tax imposed under § 10-106.1 of this subtitle and the top marginal State tax rate for individuals under § 10-105(a) of this subtitle applied to the sum of each nonresident individual member's [distributive share or] pro-rata share of [a] **THE** pass-through entity's nonresident taxable income; and

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

**(2) WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (B)(2)(II) OF THIS SECTION, THE TAX IMPOSED IS THE SUM OF:**

**(I) A RATE EQUAL TO THE SUM OF THE RATE OF THE TAX IMPOSED UNDER § 10-106.1 OF THIS SUBTITLE AND THE TOP MARGINAL STATE TAX RATE FOR INDIVIDUALS UNDER § 10-105(A) OF THIS SUBTITLE APPLIED TO THE SUM OF EACH INDIVIDUAL MEMBER'S PRO RATA SHARE OF THE PASS-THROUGH ENTITY'S TAXABLE INCOME; AND**

**(II) THE RATE OF THE TAX FOR A CORPORATION UNDER § 10-105(B) OF THIS SUBTITLE APPLIED TO THE SUM OF EACH ENTITY MEMBER'S PRO RATA SHARE OF THE PASS-THROUGH ENTITY'S TAXABLE INCOME.**

~~[(2)]~~ (3) The tax required to be paid for any taxable year [on behalf of nonresident or nonresident entity members] by a pass-through entity may not exceed:

**(I) WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE WITH SUBSECTION (B)(2)(I) OF THIS SECTION, the sum of all of the nonresident and nonresident entity members' shares of the pass-through entity's distributable cash flow; AND**

**(II) WITH RESPECT TO A PASS-THROUGH ENTITY THAT PAYS**

1 THE TAX IMPOSED UNDER SUBSECTION (B)(1) OF THIS SECTION IN ACCORDANCE  
2 WITH SUBSECTION (B)(2)(II) OF THIS SECTION, THE SUM OF ALL OF THE MEMBERS'  
3 AND ENTITY MEMBERS' SHARES OF THE PASS-THROUGH ENTITY'S DISTRIBUTABLE  
4 CASH FLOW.

5 (D) IN ACCORDANCE WITH § 10-751 OF THIS TITLE, EACH MEMBER MAY  
6 CLAIM A CREDIT AGAINST THE TAX IMPOSED ON THE MEMBER FOR THE MEMBER'S  
7 PROPORTIONATE SHARE OF THE TAX PAID BY THE PASS-THROUGH ENTITY UNDER  
8 SUBSECTION (B) OF THIS SECTION.

9 (e) (1) (i) The tax imposed under subsection (b) of this section does not  
10 apply with respect to the [distributive share or] pro-rata share of a member that is itself a  
11 pass-through entity formed under the laws of the State or qualified by or registered with  
12 the Department of Assessments and Taxation to do business in the State.

13 (ii) A member of a pass-through entity that is itself a pass-through  
14 entity as described in subparagraph (i) of this paragraph shall **ITSELF** comply with the  
15 provisions of this section [with respect to any of its members that are nonresidents or  
16 nonresident entities].

17 (2) The tax imposed under subsection (b) of this section does not apply with  
18 respect to the [direct or indirect distributive share or] pro rata share of a member that is:

19 (I) a real estate investment trust as defined by § 856 of the Internal  
20 Revenue Code; OR

21 (II) AN ENTITY THAT IS EXEMPT FROM TAXATION UNDER § 501  
22 OF THE INTERNAL REVENUE CODE.

23 (f) The Comptroller may provide by regulation for:

24 (1) the filing of composite returns by a pass-through entity on behalf of its  
25 nonresident and nonresident entity members; and

26 (2) application of or exemption from the tax imposed under subsection (b)  
27 of this section for a pass-through entity:

28 (i) that files a composite return on behalf of nonresident and  
29 nonresident entity members; or

30 (ii) the nonresident or nonresident entity members of which are tax  
31 exempt.

32 (g) (1) Subject to paragraph (2) of this subsection, if a partnership fails to pay  
33 the tax when due the tax may be collected from the partners under the law applicable to

debts of the partnership, with the partnership and partners having rights of contribution against any [nonresident] partner on whose behalf the tax is paid.

(2) Unless it is established by the Comptroller that the partner participated in a pattern of distributions to one or more partners with the intention of defeating the partnership liability for the tax imposed under subsection (b) of this section, any partner otherwise liable under paragraph (1) of this subsection shall be liable for the tax imposed on the partnership only to the extent of distributions from the partnership to that partner after the tax was due to be paid by the partnership.

(h) Except as provided in § 10–701.1 of this title, nothing in this section limits or affects in any way the liability of an individual nonresident member or a nonresident entity member for the tax imposed on the individual nonresident or nonresident entity under § 10–102 of this subtitle.

(i) The tax imposed under subsection (b) of this section does not apply to a publicly traded pass-through entity that has agreed to file with the Comptroller an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Comptroller of each nonresident or nonresident entity member whose distributive share or pro-rata share of the pass-through entity's nonresident taxable income for the taxable year exceeds \$500.

**10–751.**

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

(2) “MEMBER” HAS THE MEANING STATED IN § 10–102.1 OF THIS TITLE.

(3) “PASS-THROUGH ENTITY” HAS THE MEANING STATED IN § 10–102.1 OF THIS TITLE.

(B) SUBJECT TO THE LIMITATIONS OF THIS SECTION, AN INDIVIDUAL WHO IS A MEMBER OF A PASS-THROUGH ENTITY MAY CLAIM A CREDIT AGAINST THE INCOME TAX EQUAL TO THE MEMBER'S PROPORTIONAL SHARE OF THE AMOUNT ELECTED TO BE PAID BY THAT PASS-THROUGH ENTITY FOR THE TAX IMPOSED UNDER § 10–102.1 OF THIS TITLE.

(C) THE TOTAL AMOUNT OF THE CREDIT ALLOWED UNDER THIS SECTION FOR ANY TAXABLE YEAR MAY NOT EXCEED THE STATE INCOME TAX FOR THAT TAXABLE YEAR, CALCULATED BEFORE APPLICATION OF THE CREDITS UNDER THIS SECTION AND §§ 10–701 AND 10–701.1 OF THIS SUBTITLE, BUT AFTER APPLICATION OF THE OTHER CREDITS ALLOWABLE UNDER THIS SUBTITLE.

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