

HOUSE BILL 439

Q3
HB 926/19 – W&M

0lr1076
CF SB 216

By: **Delegates Mosby, Acevero, Barron, Bridges, Charkoudian, Ebersole, Ivey, Korman, Lehman, Moon, Palakovich Carr, Pena–Melnik, Shetty, Stewart, Turner, Wells, Wilkins, K. Young, and P. Young**

Introduced and read first time: January 23, 2020

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Carried Interest – Additional Tax**

3 FOR the purpose of imposing a certain State income tax on the Maryland taxable income
4 attributable to certain investment management services of an individual or a
5 corporation or the distributive share of a pass-through entity; providing that the tax
6 does not apply under certain circumstances; defining certain terms; requiring the
7 Comptroller to provide certain notice to the Department of Legislative Services;
8 providing for the application of this Act; providing for the termination of this Act if
9 certain federal legislation is enacted into law; and generally relating to the State
10 income tax and investment management services.

11 BY repealing and reenacting, with amendments,
12 Article – Tax – General
13 Section 10–102.1(a) and (d)
14 Annotated Code of Maryland
15 (2016 Replacement Volume and 2019 Supplement)

16 BY adding to
17 Article – Tax – General
18 Section 10–102.2
19 Annotated Code of Maryland
20 (2016 Replacement Volume and 2019 Supplement)

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

23 **Article – Tax – General**

24 10–102.1.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

(ii) increased by the sum of:

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

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

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

(iii) decreased by the sum of:

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

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

(3) **“INVESTMENT MANAGEMENT SERVICES” MEANS SERVICES PROVIDED BY A PARTNER OR SHAREHOLDER TO A PARTNERSHIP, AN S CORPORATION, OR ANY OTHER ENTITY IF THE SERVICES INCLUDE PROVIDING A SUBSTANTIAL QUANTITY OF:**

(I) ADVISING AS TO THE ADVISABILITY OF INVESTING IN, PURCHASING, OR SELLING A SPECIFIED ASSET;

(II) MANAGING, ACQUIRING, OR DISPOSING OF A SPECIFIED ASSET;

(III) ARRANGING FINANCING WITH RESPECT TO ACQUIRING A SPECIFIED ASSET; OR

(IV) ANY ACTIVITY IN SUPPORT OF ANY OF THE SERVICES DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

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

[(4)] (5) “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.

[(5)] (6) “Nonresident entity” means an entity that is not formed under the laws of the State and is not qualified by or registered with the Department of Assessments and Taxation to do business in the State.

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

[(7)] (8) “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.

(9) “SPECIFIED ASSET” MEANS SECURITIES, REAL ESTATE HELD FOR RENTAL OR INVESTMENT, INTERESTS IN PARTNERSHIPS, COMMODITIES, OR OPTIONS OR DERIVATIVES CONTRACTS.

(d) (1) Except as provided in [paragraph (2)] **PARAGRAPHS (2) AND (3)** of this subsection, 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 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 pass–through entity’s nonresident taxable income.

(2) 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 the sum of all of the nonresident and nonresident entity members’ shares of the pass–through entity’s distributable cash flow.

(3) (I) IN ADDITION TO THE TAX IMPOSED UNDER SUBSECTION (B) OF THIS SECTION, A STATE TAX IS IMPOSED THAT IS EQUAL TO 17% OF THE DISTRIBUTIVE SHARE OR PRO–RATA SHARE OF A PASS–THROUGH ENTITY’S NONRESIDENT TAXABLE INCOME THAT IS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES PROVIDED IN THE STATE.

(II) THE TAX IMPOSED UNDER THIS PARAGRAPH DOES NOT APPLY TO THE DISTRIBUTIVE SHARE OR PRO–RATA SHARE OF A PASS–THROUGH ENTITY’S NONRESIDENT TAXABLE INCOME THAT IS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES PROVIDED IN THE STATE IF, DURING THE TAXABLE YEAR, AT LEAST 80% OF THE AVERAGE FAIR MARKET VALUE OF THE SPECIFIED ASSETS OF THE PASS–THROUGH ENTITY CONSISTS OF REAL ESTATE.

10–102.2.

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

(2) “INVESTMENT MANAGEMENT SERVICES” MEANS SERVICES PROVIDED BY A PARTNER OR SHAREHOLDER TO A PARTNERSHIP, AN S CORPORATION, OR ANY OTHER ENTITY IF THE SERVICES INCLUDE PROVIDING A SUBSTANTIAL QUANTITY OF THE FOLLOWING:

(I) ADVISING AS TO THE ADVISABILITY OF INVESTING IN, PURCHASING, OR SELLING A SPECIFIED ASSET;

(II) MANAGING, ACQUIRING, OR DISPOSING OF A SPECIFIED ASSET;

(III) ARRANGING FINANCING WITH RESPECT TO ACQUIRING A SPECIFIED ASSET; OR

(IV) ANY ACTIVITY IN SUPPORT OF ANY OF THE SERVICES DESCRIBED IN ITEMS (I) THROUGH (III) OF THIS PARAGRAPH.

1 **(3) “SPECIFIED ASSET” MEANS SECURITIES, REAL ESTATE HELD FOR**
2 **RENTAL OR INVESTMENT, INTERESTS IN PARTNERSHIPS, COMMODITIES, OR**
3 **OPTIONS OR DERIVATIVES CONTRACTS.**

4 **(B) (1) IN ADDITION TO ANY OTHER TAX IMPOSED UNDER THIS TITLE, A**
5 **STATE TAX IS IMPOSED ON THE MARYLAND TAXABLE INCOME OF A CORPORATION**
6 **OR AN INDIVIDUAL, INCLUDING SPOUSES FILING A JOINT RETURN OR A SURVIVING**
7 **SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF THE INTERNAL REVENUE**
8 **CODE, THAT IS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES.**

9 **(2) THE TAX IMPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION**
10 **FOR A CORPORATION OR AN INDIVIDUAL, INCLUDING SPOUSES FILING A JOINT**
11 **RETURN OR A SURVIVING SPOUSE OR HEAD OF HOUSEHOLD AS DEFINED IN § 2 OF**
12 **THE INTERNAL REVENUE CODE, IS EQUAL TO 17% OF THE MARYLAND TAXABLE**
13 **INCOME THAT IS ATTRIBUTABLE TO INVESTMENT MANAGEMENT SERVICES.**

14 **(3) A PARTNER OR SHAREHOLDER IS NOT SUBJECT TO THE TAX**
15 **UNDER THIS SUBSECTION IF, DURING THE TAXABLE YEAR, AT LEAST 80% OF THE**
16 **AVERAGE FAIR MARKET VALUE OF THE SPECIFIED ASSETS OF THE PARTNERSHIP, S**
17 **CORPORATION, OR OTHER ENTITY CONSISTS OF REAL ESTATE.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Comptroller shall notify
19 the Department of Legislative Services within 5 days after determining that the United
20 States Congress has passed and the President of the United States has signed legislation
21 having an identical effect to this Act applicable to income attributable to investment
22 management services earned in all of the states and territories.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
24 1, 2020, and shall be applicable to all taxable years beginning after December 31, 2019. It
25 shall remain effective until 30 days after the day on which the Department of Legislative
26 Services receives notice under Section 2 of this Act, and at the end of the 30th day, and with
27 no further action required by the General Assembly, this Act shall be abrogated and of no
28 further force and effect.