

Taxation of Pass-Through Entities

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I. General

A. Recent Legislative History: 2005 through 2021

Under § 10-401 of the Tax-General Article, Annotated Code of Maryland,¹ the portion of a nonresident individual’s federal adjusted gross income derived from income of a business, trade, profession, or occupation carried on in Maryland is subject to tax in this State. Under TG § 10-305, income derived from a trade or business carried on or attributable to this State is taxable and reportable by corporate entities. Nonresident members, including members who are individuals or entities, of a pass-through entity (“PTE”) doing business in Maryland must report their distributive or pro rata shares of income from the PTE and compute their Maryland tax on the applicable Maryland income tax returns.²

Effective July 1, 2020, the General Assembly amended TG § 10-102.1 to allow a Maryland PTE to elect³ to pay the tax imposed with respect to resident members’ distributive or pro rata shares.⁴ The elective tax imposed on resident members’ distributive or pro rata shares of income is considered a tax on the entity.

On February 15, 2021, Governor Lawrence J. Hogan, Jr. signed Senate Bill 496, Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families Act (RELIEF Act). The RELIEF Act was emergency legislation and became effective immediately upon the Governor’s signature. The bill’s primary purpose was to relieve some of the adverse economic effects of the coronavirus pandemic. Additionally, the bill made changes to the PTE tax election described in TG §§ 10-102.1, 10-306, and 10-701.1. Specifically, the bill clarified that an entity must pay tax on behalf of nonresident members, or may elect to pay tax on all members’ shares of income. If making the election, the tax is considered paid by the entity itself. Further, the RELIEF Act required each member of a PTE electing this tax treatment (electing PTE⁵) to add back to the member’s income the amount of the credit for taxes paid by the electing PTE

¹ All statutory references are to the Tax-General Article (TG) of the Annotated Code of Maryland unless otherwise specified.

² In this Technical Bulletin, wherever the term “pass-through entity” or PTE is used, it includes an S-corporation, an association, a limited liability company not taxed as a corporation, a partnership, a business trust or statutory trust not taxed as a corporation, or otherwise, as determined under the Internal Revenue Code. Thus, to the extent a business trust is treated as a partnership, the business trust shall be subject to the requirement to pay tax on behalf of its nonresident beneficiaries. In 2006, TG § 10-102.1 was amended to include a business trust, not taxed as a corporation, within its definition of PTE.

³ The Attorney General of Maryland determined that pursuant to Senate Bill 523 of the 2020 legislative session, TG § 10.102.1(b) should be construed, consistent with the bill’s purpose, as requiring a PTE to pay income tax for its nonresident members but also giving it the option to pay income tax for its resident members, notwithstanding an apparent drafting error, and recommended correction of the drafting error in the next corrective bill or through separate legislation. *Letter of Attorney General Brian E. Frosh to the Honorable Lawrence J. Hogan, Jr. dated April 14, 2020, regarding Senate Bill 523.* Senate Bill 496 of the Acts of 2021 included corrective language.

⁴ The bill also altered the number of employees a worldwide headquartered company must have in order to use a special apportionment formula; this aspect of the bill is beyond the scope of this Technical Bulletin.

⁵ Hereafter in this Technical Bulletin, PTEs that elect to pay tax on all members’ shares of income are referred to as “electing PTEs.” PTEs that do not elect to pay tax on all members’ shares, but rather pay tax on behalf of any nonresident members under TG § 10-102.1(b)(2)(i), are referred to as “non-electing PTEs.”

attributable to the member's share of the PTE's taxable income.⁶

Also, during the 2021 legislative session, the Maryland General Assembly passed Senate Bill 787, which modified the definition of PTE's taxable income. A pass-through entity's taxable income is defined as the portion of a pass-through entity's income under the federal Internal Revenue Code, calculated without regard to any deduction for taxes based on net income that are imposed by any state or political subdivision of a state, that is derived from or reasonably attributable to the trade or business of the pass-through entity in this State.

Additional legislative history is described in Section VI.

B. Tax Base

Nonelecting PTEs must remit tax on nonresident members' shares of the PTE's nonresident taxable income. The PTE's nonresident taxable income includes any income derived from real or tangible personal property in Maryland, any income from business that is in part or wholly carried on in Maryland, any income derived from an occupation, profession or trade carried on in part or wholly in Maryland, and any income derived from Maryland wagering. Nonresident taxable income also includes any income derived from the sale or other disposition of an ownership interest in a PTE where the PTE owns real or personal property in Maryland or conducts business in Maryland. The tax paid by nonelecting PTEs is treated as being paid on behalf of the nonresident members. Nonelecting PTEs with one or more nonresident members must apportion their income.

Electing PTEs are taxed on the PTE's taxable income. A PTE taxable income is defined as "the portion of a pass-through entity's income under the federal Internal Revenue Code, calculated without regard to any deduction for taxes based on net income that are imposed by any state or political subdivision of a state, that is derived from or reasonably attributable to the trade or business of the pass-through entity in this State."⁷ An electing PTE's taxable income is defined for this purpose as the net amount of income/loss for the PTE, less interest from federal obligations, plus the amount of any federal deduction attributable to taxes based on net income. The amount attributable to taxes based on net income does not include taxes with a basis other than net income, such as a gross receipts tax or a commercial activity tax. Multistate electing PTEs must apportion their income.

The taxable income of an electing PTE that is a partnership filing federal Form 1065 equals the net amounts of lines 1 through 11 of federal Form 1065 Schedule K, plus the amount of any federal deduction attributable to taxes based on net income imposed by a state or any political subdivision of a state, including, but not limited to, income taxes included on federal Form 1065 Line 14.

The taxable income of an electing PTE that is an S corporation filing federal Form 1120-S equals the net amount from lines 1 through 10 of federal Form 1120-S Schedule K, plus the amount of any federal deduction attributable to taxes based on net income imposed by a state or any political subdivision of a state, including, but not limited to, income taxes included on federal Form 1120-S Line 12.

C. Tax Rates

The tax rate for a nonelecting PTE is equal to the sum of the top marginal State tax rate for individuals and the lowest county income tax rate.⁸ This rate is applied to the sum of each nonresident individual and nonresident fiduciary member's share of the PTE's nonresident

⁶ TG §10-205(m)

⁷ Senate Bill 787 of the Acts of 2021.

⁸ In 2023, the top marginal State tax rate for individuals was 5.75%; the lowest county income tax rate was 2.25%. The total tax rate for individual members was 8%.

taxable income. The corporate tax rate⁹ is applied to the sum of each nonresident entity member's share of the PTE's nonresident taxable income.

The tax rate for an electing PTE is equal to the sum of the top marginal state tax rate for individuals and the lowest county income tax rate. This rate is applied to the sum of each individual and fiduciary member's share of the PTE's taxable income. The corporate tax rate is applied to the sum of each entity member's share of the PTE's taxable income.

The tax on a nonelecting PTE is limited to the sum of all the nonresident members' shares of the PTE's distributable cash flow. The tax is computed on Form 510.

The tax on electing PTEs is limited to the sum of all the members' shares of the PTE's distributable cash flow.¹⁰ The tax is computed on Form 511.

The cash flow limitation on a nonelecting and an electing PTE does not affect the tax liability of any single member. The limitations operate solely for the relief of those pass-through entities that have taxable income attributable to the members, but do not have sufficient distributable cash flow to pay the total tax.

If a nonelecting PTE calculates its tax based on the applicable tax rate applied to the total distributive or pro rata shares of the PTE's nonresident taxable income, then it is not required to calculate the cash flow limitation. If an electing PTE calculates its tax based on the applicable rate applied to the total distributive or pro rata share of the PTE's taxable income, then it is not required to calculate the cash flow limitation. The imposition of the tax against a PTE does not change the filing requirements or the tax liability of members with income attributable to Maryland.

II. Exemptions

A. Exempt Members

The term "member" does not include a Real Estate Investment Trust as defined by § 856 of the Internal Revenue Code, an organization exempt under the Internal Revenue Code (including IRA's, Keoghs, pension and profit-sharing plans and other such organizations), or any other tax-exempt entity listed in TG § 10-104.

B. Investment Partnerships

Partnerships whose activities and assets are limited to investment in stocks, bonds, futures, options, or debt obligations other than debt instruments directly secured by real or tangible personal property are not subject to Maryland tax merely because the investment decisions, trading orders, research and the like are conducted by a general partner from a Maryland location. Partnerships, however, such as brokerage firms which deal with the general public, are not exempt if the business is conducted within Maryland.

Because an electing PTE is taxed on income at the entity level, an electing PTE must determine, at the entity level, the extent to which income from investments is part of its unitary business income and, therefore, subject to Maryland tax.

C. Examples:

1. Partnership A's business activity is limited exclusively to conducting investment trading activities for its partners only. Partnership A invests exclusively in stocks, bonds, futures, and options. Investment management is conducted by general

⁹ For 2023, the corporate tax rate is 8.25%.

¹⁰ TG § 10-102.1(d)(3)

partner B from a Maryland office. B receives a percentage of assets and/or income that varies according to partnership results and is disproportionate to B's capital interest. The partnership has three nonresident partners: C, D and E. Each of the nonresident partner's share of the trading results of the partnership is proportionate to their investment capital. The partnership is required to file a Maryland income tax return, but it is exempt from the nonresident tax. C, D and E are exempt from filing nonresident income tax returns if they have no other income from Maryland sources. Partnership A should attach a brief description of its activities to its Maryland partnership return to explain the absence of the nonresident tax.

2. Partnership V owns a shopping center in Maryland as well as a substantial investment portfolio consisting of stocks, bonds, and other intangible investments. Management is conducted by general partner X from a New York location. Y and Z are limited partners residing in New York. The partnership is subject to the nonresident tax. X, Y and Z are required to file nonresident income tax returns and the percentage of partnership income allocated to Maryland is determined under TG §10-401 and relevant regulations.

III. Treatment of Tax

A. Nonelecting PTEs

The tax imposed on a nonelecting PTE's nonresident members' distributive or pro rata share of income shall be treated as a tax imposed on the nonresident member and paid on their behalf by the nonelecting PTE. The tax paid by the nonelecting PTE may, therefore, be treated as a tax paid by the nonresident member in computing estimated taxes and may be taken as a credit on that member's income tax return. The amount of tax expected to be paid on behalf of a nonresident individual member by a nonelecting PTE is entered on the Payment Voucher Worksheet for Estimated Tax and Extension Payments, line 14, Maryland income tax to be withheld during the year. Any tax paid by the nonresident members individually¹¹ may not be deducted from the tax imposed on the PTE.

Nonresident members of nonelecting PTEs may take a credit against the State tax imposed on the member for the member's proportionate share of the tax paid by the PTE.¹² If the nonresident member's estimated payments, withholding, and the PTE credit exceed the tax liability, the nonresident member may claim a refund on the member's Maryland income tax return.

In its opinion in *Comptroller of Maryland v. FC-GEN Operations Investments LLC*,¹³ issued December 19, 2022, the Supreme Court of Maryland held that, where a PTE made estimated payments on behalf of its members, and it was later determined that there was a taxable loss for the year, and, therefore, no tax liability, a PTE was entitled to a refund of the estimated tax payments. To the extent a nonelecting PTE's estimated payments exceed the tax owed on nonresident members' distributive or pro rata shares of income, the nonelecting PTE must either claim a refund or request an overpayment be applied to estimated tax for the following tax year. The overpayment may not be distributed to members as a credit. A refund to a PTE is taxable income in the year it is received.

B. Electing PTEs

The tax paid by an electing PTE is an entity-level tax. Tax that is paid on all members'

¹¹ TG § 10-102.1(c)(1)

¹² TG10-102.1(e)

¹³ 482 Md. 343 (2022)

distributive or pro rata shares of income is a tax on the entity itself.¹⁴ Individual members of electing PTEs may include the credit they anticipate receiving from the electing PTE in the calculation of estimated tax on the Payment Voucher Worksheet for Estimated Tax and Extension Payments, line 9, personal and business income tax credits. Any tax paid by a member of an electing PTE individually may not be deducted from the tax imposed on the PTE.

A member of an electing PTE may take a credit against the State tax imposed on the member for the member's proportionate share of the tax paid by the PTE.¹⁵ If the member's estimated payments, withholding, and the PTE credit exceed the tax liability, a refund may be claimed by the member on the member's Maryland income tax return.

To the extent an electing PTE's estimated payments exceed the tax owed on all members' distributive or pro rata shares of income, the electing PTE must either claim a refund or request an overpayment be credited to the following tax year. The overpayment may not be distributed to the members.

IV. Statements to Members

A nonelecting PTE must provide each of its nonresident members with a statement showing the amount of tax paid on their behalf on a Maryland Form 510/511 Schedule K-1, Maryland PTE Member's Information.

An electing PTE must provide each of its members with a statement showing the amount of tax paid by the PTE on the member's distributive or pro rata share of the PTE's taxable income on a Maryland Form 510/511 Schedule K-1, Maryland PTE Member's Information.

To the extent applicable, Maryland addition and subtraction modifications are passed through to members on Maryland Form 510 Schedule K-1 according to their distributive or pro rata shares.¹⁶

V. Filing Returns

A. Election or Nonelection Made with First Filing or Payment

For the tax year that begins after December 31, 2022, the election to be taxed on all members' shares of income at the entity level ("election") or to pay tax on behalf of nonresident members only ("nonelection") must be made with the taxpayer's first filing or payment of the tax year. The election or nonelection is made yearly and is irrevocable for the tax year.

The election or nonelection made with the taxpayer's first filing or payment of the tax year is irrevocable and valid. A late-filed declaration, extension, return, or payment is an irrevocable and valid election so long as it is the taxpayer's first filing of the tax year.

For more information about making the irrevocable election or nonelection with the first estimated payment, see Tax Alert 4-11-2023, Process Change: Instructions for Electing and Nonelecting Pass-Through Entities for Tax Years Beginning after December 1, 2022.

B. Partnerships and S Corporations

1. PTE Declaration of Estimated Income Tax

¹⁴ TG §10-102.1(c)(3)

¹⁵ TG10-102.1(e)

¹⁶ For tax years 2020 and 2021, this includes any RELIEF Act subtractions for which the non-electing PTE or electing PTE may qualify.

a. Requirement to File.

A Declaration must be filed:

- i. For a nonelecting PTE – when the total tax on for all nonresident members is expected to exceed \$1,000.
- ii. For an electing PTE – when the tax for all members is expected to exceed \$1,000.

For tax years beginning after December 31, 2022, a PTE must irrevocably elect to pay tax at the entity level on all members' shares **or** to pay only on behalf of nonresident members with the first filing or payment of the tax year. The election or nonelection made with the first filing or payment of the tax year is irrevocable for that tax year.

b. Due Dates.

- i. Partnership, Limited Liability Company, Business Trust. A partnership, limited liability company, or business trust required to file a Declaration of Estimated Income Tax, Form 510/511D shall file quarterly and pay the tax due on or before April 15, June 15, September 15, and January 15.
- iii. S Corporation. An S corporation required to file a Declaration of Estimated Income Tax, Form 510/511D shall file quarterly and pay the tax due on or before the 15th day of the 4th, 6th, 9th, and 12th months of the tax year.

- c. Reconciliation. The annual return of the PTE will reconcile the total estimated taxes paid with the total tax liability computed on the return. Any underpayment of tax is due when the annual return is filed.

2. Request for Extension of Time to File

See Administrative Release No. 4 Extension of Time for Filing Maryland Income Tax Returns and Estate Tax Returns for information on requesting an extension of time to file the PTE return. An extension of time to file the return does not extend the due date for payment of the tax. A Form 510/511E, Application for Extension to File Pass-Through Entity Income Tax Return is due by the original return due date. A timely filed Form 510/511E will be granted for seven months from the return due date for S corporations and six months from the return due date for other PTEs.

If no money is due, file the extension request on the Comptroller's web. If a payment is due with the extension request, Form 510/511E is required.

The irrevocable election or nonelection is made with the first filing or payment of the tax year. If the extension application is the first filing or accompanies the first payment of the tax year, the election or nonelection is made on the Form 510/511E, and is irrevocable.

3. Annual Returns

Every PTE doing business in Maryland must file either a Pass-Through Entity Income Tax Return (Form 510) or an Electing Pass-Through Entity Income Tax Return (Form 511). The irrevocable election or nonelection is made on the first filing or with the first payment of the tax year. If the first filing of the tax year is the year-end return, a PTE either:

- a. Elects to pay tax at the entity level on all members' shares by filing Form 511; or
- b. Pays tax only on behalf of nonresident members by filing Form 510.

Nonelecting PTEs file Form 510.¹⁷ The election or nonelection must be made with the first filing or payment of the year. A nonelection may not be changed to an election on an amended return. All overpayments are refunded to the nonelecting PTE.

Electing PTEs file Form 511. On line 2, the PTE enters the PTE's taxable income under the federal Internal Revenue Code, calculated without regard to any deduction for taxes based on net income that are imposed by any state or political subdivision of a state, that is derived from or reasonably attributable to the trade or business of the PTE. The taxable income of an electing PTE that is a partnership equals the net amounts of lines 1 through 11 of federal Form 1065 Schedule K, plus the amount of any federal deduction attributable to taxes based on net income imposed by a state or any political subdivision of a state, including, but not limited to, taxes included on federal Form 1065 Line 14. The taxable income of an Electing PTE that is an S corporation filing federal Form 1120-S equals the net amount from lines 1 through 10 of federal Form 1120-S Schedule K, plus the amount of any federal deduction attributable to taxes based on net income imposed by a state or any political subdivision of a state, including, but not limited to, taxes included on federal Form 1120-S Line 12.

The amount attributable to taxes based on net income does not include taxes with a basis other than net income, such as gross receipts tax or a commercial activity tax. Multistate electing PTEs must apportion their income.

A Maryland Form 510/511 Schedule K-1 for each member must be submitted with the information return (Form 510) or the Electing Pass-Through Entity Income Tax Return (Form 511).

In calculating PTE taxable income, the disregarded deduction is adjusted for income on the federal return attributable to a refund of overpayment of the previous year's estimated taxes.

Example: In Year 1, the electing PTE made estimated state and local tax payments of \$10,000; its federal income is \$75,000. Maryland PTE taxable income, calculated without regard to the deduction for state and local income taxes, is \$85,000. The electing PTE's Maryland tax liability is \$6,800, and it receives a refund of \$3,200.

In Year 2, the electing PTE makes estimated state and local tax payments of \$10,000. Its federal income is \$78,200, of which \$3,200 is the refund of overpayment from the Year 1 Maryland tax return. The electing PTE's Maryland taxable income, calculated without regard to the deduction for state and local income taxes, is \$88,200. \$3,200 of this income was taxed by Maryland in the disregarded deduction in Year 1. The electing PTE should adjust the disregarded deduction to \$6,800, bringing PTE taxable income to \$85,000.

4. Due Date.

¹⁷ For tax years beginning before January 1, 2023, only, PTEs that made estimated payments on all members' shares and subsequently decided to withdraw the election (unelecting PTEs) may also file Form 510. An unelecting PTE may request a refund to the extent the estimated payments represent tax on resident member shares. This situation is rare, and generally applies only to pass-through entities that filed 2020 returns after the enactment of the PTE tax as part of 2020 Senate Bill 523, but before the enactment of 2021 Senate Bill 787, which clarified the definition of a PTE's taxable income, resulting in a mid-season revision of the PTE tax return form.

The due dates for year-end returns are:

- a. for a partnership, limited liability company and business trust, the 15th day of the 4th month following the close of the entity's taxable year; and
- b. for an S corporation, the 15th day of the 3rd month following the close of the S corporation's taxable year.

C. Resident Members

Resident individuals and resident entities are generally required to file a Maryland income tax return. Resident individual members must file a resident individual return, Form 502. A fiduciary must file Form 504. Resident corporate or PTE members must file a Form 500, Form 510, or Form 511 as applicable.

Resident members must report their distributive or pro rata share of income received from the PTE attributable to business conducted in Maryland. Such income must be reported in the member's taxable year in which the PTE's taxable year ends. Credit for taxes paid by the PTE must be claimed on the same return on which the resident member reports the income that is subject to tax by the PTE. For example, a calendar year resident shareholder of an S corporation whose taxable year ends March 31, 2022, reports the pro rata share of income received from the S corporation on the 2022 resident return. Credit for taxes paid by the S corporation on that income must be claimed on the 2022 resident return. A copy of the Maryland Form 510/511 Schedule K-1 from the PTE must be attached to the return.

All members of electing PTEs must add back to federal adjusted gross income the amount of the credit received from the PTE.¹⁸ The amount must be added back in the same tax year in which the member received the credit.

D. Nonresident Members

Except as provided in Subsection E of this Section, nonresident individual members must file a nonresident individual return, Form 505. A fiduciary must file Form 504. Nonresident entity members must file a Form 500, Form 510, or Form 511 as applicable. Nonresident members must report their distributive or pro rata share of income received from the PTE attributable to business conducted in Maryland. Such income must be reported in the member's taxable year in which the PTE's taxable year ends. Credit for taxes paid by the PTE must be claimed on the same return on which the nonresident member reports the income that is subject to tax by the PTE. For example, a calendar-year nonresident shareholder of an S corporation whose taxable year ends March 31, 2020, reports the pro rata share of income received from the S corporation on the 2020 nonresident return. Credit for taxes paid by the S corporation on that income must be claimed on the 2020 nonresident return. A copy of the Maryland Form 510 Schedule K-1 from the PTE must be attached to the return.

All members of electing PTEs must add back to federal adjusted gross income the amount of the credit received from the PTE. The amount must be added back in the same tax year in which the member received the credit.

E. Composite Returns

A nonelecting PTE may elect to file a composite return on behalf of qualified nonresident individual members (natural persons only). An electing PTE may not file a composite return on

¹⁸ For tax year 2020, individual and fiduciary members of electing PTEs file a 502LU to report the addback of the credit; Corporate and PTE members of electing PTEs file a 500LU. For tax years beginning after December 31, 2020, the electing entity credit is reported on the 502 CR (individuals), 500 CR (corporations), or 504 CR (fiduciaries). The amount of the credit is reported as an addition.

behalf of any members. All nonresident individual members who qualify and elect to be included on the composite of a non-electing PTE return must agree that the PTE is their agent for the receipt of any refund or for payment of any tax due. If the PTE satisfies the conditions for filing a composite return, then that return shall be considered the return of each nonresident individual member participating in the composite return filing for all purposes, including the date on which the statute of limitations on assessment begins to run. Amendments to composite returns must be made by the PTE filing the composite return. Participating nonresident individual members may not amend the composite return or file separate returns.

1. Requirements

Composite returns may only be filed by non-electing PTEs, and only nonresident individual members may be included on a composite return. Nonresident fiduciary members, nonresident entity members, and resident members cannot be included on a composite return.

To qualify for filing a composite return, the PTE must satisfy the following requirements:

- a. The PTE must be a nonelecting PTE.
- b. A nonresident individual member must choose to join in the filing of a composite return by the nonelecting PTE and must acknowledge his or her awareness that the income included on the composite return is taxed at the highest Maryland individual income tax rate (5.75% for 2023) plus the special nonresident tax rate (2.25% for 2023). A statement, verifying that the election to be included on the composite return and the acknowledgement have been made, must be attached to the return and signed by an authorized official of the PTE. A composite return may be filed even though not all nonresident individual members elect to be included in the return. However, a composite return may not be filed if only one member elects to join the filing of the composite return. Similarly, a PTE may not file a composite return if the entity only has one member.
- c. To be eligible to be included on a composite return, a nonresident individual member must be subject to Maryland income tax solely from the income of the PTE filing the Maryland return. Any nonresident individual member having taxable income derived from other Maryland sources may not be included on a composite return and must file an individual nonresident return.
- d. The PTE must show the percentage ownership of each nonresident individual member.
- e. A schedule must be provided for total income of the PTE and the amount attributable to Maryland sources.
- f. The taxes paid with Forms 510, 510D and 510E may be taken as a credit on the composite return for the nonresident individual members participating in the return.
- g. No credits, other than the credit for taxes paid with Forms 510, 510D and 510E, may be claimed on a composite return.
- h. No flow-through addition or subtraction modifications, other than the modification required as a result of Maryland's decoupling from the

additional depreciation allowance and net operating loss carryback provisions (see Administrative Release No. 38), may be claimed on a composite return. For tax years 2020 and 2021, RELIEF Act subtractions (see RELIEF Act Tax Alert) may also be claimed on a composite return.

- i. A schedule must be attached which includes:
 - iv. The name, address, and social security number of each nonresident individual member.
 - v. The filing status of each nonresident individual member.
 - vi. The distributive income allocable to Maryland for each nonresident individual member.
 - vii. The allowable exemptions for a nonresident individual member, which shall be equal to the sum of the allowable exemptions for a resident multiplied by a fraction:
 - (a) The numerator of which is the total distributive or pro rata shares of the nonresident individual members attributable to income from Maryland sources. (Line 6. of Form 510, excluding the portion applicable to nonresident fiduciary members); and
 - (b) The denominator of which is the total distributive or pro rata shares of the income of the PTE. (Line 2 of Form 510.)
 - viii. The amount of the standard deduction of a nonresident individual member, which shall be the maximum standard deduction allowed a resident having the same filing status multiplied by a fraction:
 - (a) The numerator of which is the total distributive or pro rata shares of the nonresident individual members attributable to income from Maryland sources. (Line 6. of Form 510, excluding the portion applicable to nonresident fiduciary members); and
 - (b) The denominator of which is the total distributive or pro rata shares of the income of the PTE. (Line 2 of Form 510.)
 - j. The taxable income of each nonresident individual member.
 - k. The income tax liability of each nonresident individual member calculated at the rate of 8% (highest individual income tax rate of 5.75% plus special nonresident tax rate of 2.25% for tax year 2023).
 - l. The amount of taxes paid on behalf of each nonresident individual member.
 - m. The balance of tax due which must be paid in full with the filing of the composite tax return.
 - n. The amount of any refund.

2. Forms and Attachments

A PTE that files a composite return must use the Maryland Composite Return, Form 510C, and show the name, address and Federal Employer Identification Number of the PTE. The return must be signed by the president or other authorized officer of an S corporation; a general partner on behalf of a partnership; a member of a limited liability company; or a trustee or authorized officer of a business trust. Attach to the return the schedules and information referred to above.

3. Due Date and Extension

When filing a composite return, Form 510C, the due date is the due date for the filing of a nonresident individual return. Payment on a composite return extension must be remitted separately from the payment for the non-electing PTE extension. To remit payment for the composite return extension, use Maryland Form EL102B.

VI. Legislative History: 1990 - 2005

To assure compliance with the laws governing taxation of Maryland-sourced income, in 1991 the General Assembly added § 10-102.1 to the Tax-General Article, Annotated Code of Maryland, which provides that for all taxable years beginning after December 31, 1990, any partnership or S corporation doing business in Maryland shall pay to the Comptroller a tax for each nonresident individual partner or shareholder.

In 1992, the law was amended to provide that a limited liability company (LLC) shall be treated the same as a partnership with regard to the payment of tax on behalf of its nonresident members. In 1999, Section 12-102 of the Corporations and Associations Article of the Annotated Code of Maryland was amended to provide for the organization and operation of business trusts. This section provides that for purposes of any tax imposed by the Tax-General Article, a business trust shall be classified as a corporation, an association, a partnership, a trust, or otherwise, as determined under the Internal Revenue Code. Thus, to the extent a business trust is treated as a partnership, the business trust shall be subject to the payment of tax on behalf of its nonresident beneficiaries. In 2006, TG § 10-102.1 was amended to include a business trust, not taxed as a corporation, within its definition of PTE.

Prior to July 1, 2005, the tax imposed on the PTE was on each item of net income includable in the nonresident individual member's distributive or pro rata share of the PTE's nonresident taxable income.

Effective July 1, 2005, the General Assembly amended TG § 10-102.1 to alter the rate of the tax imposed on pass-through entities that is paid on behalf of the nonresident individual members. The tax was equal to the sum of the top-marginal State tax rate and the special nonresident income tax imposed under TG § 10-106.1, which is equal to the lowest county income tax rate. This rate was applied to the sum of each nonresident individual member's share of the PTE's nonresident taxable income. Historically, the tax imposed was at the top marginal State tax.

Also effective July 1, 2005, the General Assembly amended TG §10-102.1 to provide that pass-through entities that have a nonresident member that is a nonresident entity (defined as an entity that is not formed under Maryland laws and is not qualified by or registered with the Maryland State Department of Assessments and Taxation to do business in Maryland) and nonresident taxable income must also pay a tax, imposed at the rate for a corporation). This rate was applied to the sum of each nonresident entity member's share of the PTE's nonresident taxable income.

Legal Division
MdCompLegal@marylandtaxes.gov
Telephone: **410-260-7326**
P. O. Box 2983, Annapolis, Maryland 21404
www.marylandtaxes.gov

For the deaf or hard of hearing: call via Maryland Relay at 711 in Maryland
or 1-800-638-2937

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