

Income/Franchise:

Maryland: Administrative Guidance Explains Optional Pass-through Entity-Level Income Taxation

Administrative Release No. 6, Md. Comptroller (rev. 6/21). Recently issued administrative guidance addresses Maryland's optional election for some pass-through entities to pay tax on all members' shares of income with a corresponding income tax credit for members, applicable to tax year 2020 and onwards [see S.B. 523 (2020) and previously issued Multistate Tax Alert for more details on the enacting legislation], and includes discussion of related clarifying legislation signed into law earlier this year. The guidance explains that a qualifying entity must pay tax on behalf of its 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. Moreover, state law requires each member of a pass-through entity electing this tax treatment to add back to income the amount of the credit for taxes paid by the electing pass-through entity attributable to the member's share of the pass-through entity's taxable income. The guidance additionally explains that S.B. 787 (2021) created an addback to electing pass-through entity income by defining a pass-through entity's taxable income 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." The guidance also states that while a non-electing pass-through entity may elect to file a composite return on behalf of qualified nonresident individual members (*i.e.*, natural persons only), an electing pass-through entity "may not file a composite return on behalf of any members."

URL: https://www.marylandtaxes.gov/forms/Tax_Publications/Administrative_Releases/Income_and_Estate_Tax_Releases/ar_it6.pdf

URL: <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0523>

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/maryland-enacts-optional-election-allowing-pass-through-entities-to-pay-income-tax-with-respect-to-resident-members.html?id=us:2em:3na:stm:awa:tax:062521&sfid=7015Y000003WdGIQAK>

URL: <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0787?ys=2021RS>

Note that the Maryland Comptroller has released a draft of "Maryland Form 511, Pass-Through Entity Election Income Tax Return (DRAFT)," with draft instructions (DRAFT), for filing electing pass-through entity corporate income, individual income, and trust income tax returns for 2020. Please contact us with any questions.

URL: https://www.marylandtaxes.gov/forms/20_draft_forms/511.pdf

URL: https://www.marylandtaxes.gov/forms/20_draft_forms/PTE_Booklet_511.pdf

— Joe Carr (McLean)
Managing Director
Deloitte Tax LLP
josecarr@deloitte.com

Jennifer Alban-Bond (McLean)
Senior Manager
Deloitte Tax LLP
jalbanbond@deloitte.com

Olivia Schulte (Washington, DC)
Manager
Deloitte Tax LLP
oschulte@deloitte.com

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