

NOTICE OF FINAL ACTION

Published May 4, 2022

Notice is hereby given that the following regulations are adopted effective May 2, 2022.

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Title 03 COMPTROLLER OF THE TREASURY Subtitle 01 OFFICE OF THE COMPTROLLER

Notice of Proposed Action

[22-039-P]

The Comptroller of the Treasury proposes to amend:

- (1) Regulations **.01** and **.04** under **COMAR 03.01.01 General Regulations**; and
- (2) Regulation **.05** under **COMAR 03.01.02 Tax Payments — Immediately Available Funds**.

Statement of Purpose

The purpose of this action is to clarify the situations in which the time limit for producing records may be extended, to update hearings and appeals regulations to include hearings conducted by telephone or video, and to update form references for accuracy.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Krista Sermon, Office of Law and Policy, Comptroller of Maryland, 80 Calvert St., Room 409b, Annapolis, MD 21401, or call 410-260-7319, or email to ksermon@marylandtaxes.gov. Comments will be accepted through March 14, 2022. A public hearing has not been scheduled.

03.01.01 General Regulations

Authority: Tax-General Article, §§2-102 and 2-103; *General Provisions Article*, §§4-201 and 4-206; State Government Article, §§10-122(a), and 10-304(b)[, and 10-613(b)]; Annotated Code of Maryland

.01 Inspection of Public Records.

A.—E. (text unchanged)

F. Any time limit set forth in this regulation[may be extended, with the consent of the applicant, for a period not to exceed 30 days.]:

(1) *May be extended with the consent of the applicant, for a period not to exceed 30 days; or*

(2) *Shall, if the applicant seeks resolution under General Provisions Article, §4-1B-04, Annotated Code of Maryland, be extended pending the resolution of the dispute.*

G. (text unchanged)

.04 Hearings and Appeals.

A. (text unchanged)

B. Hearings — Assessments and Refunds.

(1) Assessments.

(a) (text unchanged)

(b) If an assessment is paid by a taxpayer, an application for refund may not be considered unless the application was made within 30 days of the [mailing] *date* of the notice of assessment.

(2) Refunds.

(a) (text unchanged)

(b) If a person does not submit an application within the 30-day period, the determination becomes final and [nonappealable] *not subject to appeal*.

(c) (text unchanged)

(d) [In the event] *If* the Comptroller withholds a portion of an approved refund pursuant to Tax-General Article, §§13-921 and 13-922, Annotated Code of Maryland, a person who disagrees with the interception of a tax refund for a liability certified by the taxing official of another state may:

(i)—(ii) (text unchanged)

(3) (text unchanged)

B-1.—C. (text unchanged)

D. Scheduling and Attendance.

(1) (text unchanged)

(2) The Comptroller shall notify the person:

(a)—(c) (text unchanged)

(d) That the person may present witnesses and documents at the hearing; [and]

(e) That failure to appear for the scheduled hearing shall be treated as a withdrawal of the request for a hearing[.]; *and*

(f) *If the hearing is by telephone, video, or other electronic means, of instructions on how to appear for the hearing.*

(3) Postponements.

(a) (text unchanged)

(b) Except as provided in §D(3)(d) of this regulation, a request for postponement shall be made in writing and be received by the Comptroller [not less] *no fewer* than 5 business days before the scheduled hearing.

(c)—(d) (text unchanged)

(4) Failure to Attend Hearing.

(a) If a person fails to attend a scheduled hearing *in person or, in the case of a telephone, video, or other electronic hearing, fails to appear as instructed*, the assessment or denial of the application for refund is final and [nonappealable] *not subject to appeal*.

(b) (text unchanged)

(c) If a person fails to attend a scheduled hearing to challenge the certification of a liability owed to another state which resulted in the withholding of a portion of refund, the certification is deemed correct and the intercept is final and [nonappealable] *not subject to appeal*.

E. (text unchanged)

F. Hearings.

(1)—(4) (text unchanged)

(5) Hearings Conducted by Electronic Means.

(a)—(c) (text unchanged)

(d) Default. For a telephone, *video, or other electronic* hearing, the following may be considered a failure to appear resulting in the assessment or denial of the application for refund becoming final and [nonappealable] *not subject to appeal*:

(i) (text unchanged)

(ii) Failure to free the telephone for a hearing; [or]

(iii) *Failure to call into a hearing held by telephone, video, or other electronic means within 15 minutes of the scheduled time for hearing; or*

[(iii)](iv) (text unchanged)

G.—H. (text unchanged)

03.01.02 Tax Payments — Immediately Available Funds

Authority: Tax-General Article, §§2-103, 13-104, and 13-105, Annotated Code of Maryland

.05 Miscellaneous Filing and Reporting Provisions.

A. A person making a tax payment using the ACH credit, ACH debit, direct debit, or wire transfer method shall file the following returns:

- (1) For Maryland individual income tax withholding:
 - (a) Annual Employer Withholding Reconciliation Return using Form MW508 [(COM/RAD-042)];
 - (b) Amended Annual Employer Withholding Reconciliation Return on Form MW508A [(COM/RAD-043)]; and
 - (c) Amended Employer's Return of Income Tax Withheld using Form MW506A [(COM/RAD-062)] or for accelerated filers using Form MW506AM [(COM/RAD-312)];
 - (2) Maryland Corporation Income Tax Return Form 500 [(COM/RAD-001)]; or
 - (3) For Maryland motor fuel-related taxes:
 - (a) Dealer Tax Return Form [GTD-1 (COM/RAD-083)] *GTD100* and all applicable supporting schedules and worksheets;
 - (b) Special Fuel User/Seller Tax Return Form GTD-300 [(COM/RAD-084)] and all applicable supporting schedules and worksheets; [and]
 - (c) Special Return—Jet Fuel and Aviation Gas [Only] *Return* Form [COT/MFT-013 (COM/RAD-086)] *GTD-AV* and all applicable supporting schedules and worksheets[.]; and
 - (d) *Class W Distributor Return Form GTD-100W*.
- B. A person making tax payments using the ACH credit, ACH debit, direct debit, or wire transfer method may not file the corresponding returns or reports if the payment was for any of the following:
- (1) Employer's Return of Income Tax Withheld Form MW506 [(COM/RAD-041)] or for accelerated filers Form MW506M [(COM/RAD-311)];
 - (2) The Declaration of Estimated Corporation Income Tax Form 500D [(COM/RAD-002)];
 - (3) Maryland Application for Extension of Time to File Corporation Income Tax Return Form 500E [(COM/RAD-003)]; or
 - (4) Sales and Use Tax Return Form 202 [(COM/RAD-098)] or *Form 202F*.
- C. (text unchanged)

PETER FRANCHOT
Comptroller

Subtitle 04 INCOME TAX

Notice of Proposed Action

[22-038-P]

The Comptroller of the Treasury proposes to:

- (1) Amend Regulations **.01** and **.02** under **COMAR 03.04.01 General Regulations**;
- (2) Amend Regulations **.04**, **.06**, **.13**, and **.15** under **COMAR 03.04.02 Individual**;
- (3) Amend Regulations **.01**, **.08**, and **.09** under **COMAR 03.04.03 Corporations**;
- (4) Amend Regulation **.01** under **COMAR 03.04.04 Special**;
- (5) Amend Regulations **.01—05** under **COMAR 03.04.07 Pass-Through Entity Tax**;
- (6) Amend Regulation **.03** under **COMAR 03.04.08 Banks and Similar Institutions**;
- (7) Amend Regulations **.02**, **.04**, and **.08** under **COMAR 03.04.12 Nonresident Real Estate Withholding Tax**;
- (8) Repeal Regulations **.01—06** under **COMAR 03.04.13 Credit for Wages Paid to a Qualified Ex-Felon Employee**; and
- (9) Amend Regulation **.01** under **COMAR 03.04.15 Electronic Filing Requirements for Business Tax Credits**.

Statement of Purpose

The purpose of this action is to repeal COMAR 03.04.13, update various outdated statutory references, update definitions, remove out-of-date references, promulgate regulations regarding the taxation of pass-through entities, promulgate regulations regarding single sales factor apportionment, alter the order in which payments for unpaid income tax are applied, and update list of business tax credits.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Krista Sermon, Office of Law and Policy, Comptroller of Maryland, 80 Calvert St., Room 409b, Annapolis, MD 21401, or call (410) 260-7319, or email to ksermon@marylandtaxes.gov. Comments will be accepted through March 14, 2022. A public hearing has not been scheduled.

03.04.01 General Regulations

Authority: Tax-General Article, §§2-103, 10-822, and 10-911, Annotated Code of Maryland

.01 Withholding of Tax at Source.

A.—D. (text unchanged)

E. Year-End Reconciliation Return of Monthly, Quarterly, Annual, and Periodic Returns and Employer Withholding Returns.

(1) (text unchanged)

(2) On or before January 31 of each year, the employer or payor shall file with the Comptroller the following forms, returns, and information:

(a)—(e) (text unchanged)

(f) [Federal Form 1099-R] *Any 1099 series Federal Form*, if the employer or payor is required under federal law to file the form *and Maryland State withholding tax is greater than \$10*.

F. Withholding Agent's Liability.

(1)—(2) (text unchanged)

(3) *The failure of a person, as defined in Tax-General Article, §1-101(p), Annotated Code of Maryland, to furnish an annual withholding reconciliation report as required under Tax-General Article, §10-911, Annotated Code of Maryland, or where the required report so furnished is deemed a fraudulent statement, then the employer or payor shall, for each violation, be subject to a civil penalty in the amount of \$100.*

G. (text unchanged)

.02 Estimated Tax Return.

A. Resident and Nonresident Individuals Other Than Farmers.

(1)—(3) (text unchanged)

(4) Unpaid Tax.

(a) (text unchanged)

(b) The unpaid tax is the lesser of:

(i) (text unchanged)

(ii) 110 percent of the tax paid for the prior taxable year, reduced by any credit allowed under Tax-General Article, [§10-703] §§10-703 and 10-703.2, Annotated Code of Maryland.

(c) (text unchanged)

B. (text unchanged)

03.04.02 Individual

Authority: Tax-General Article, §§2-103, 10-102.1, and 10-823, Annotated Code of Maryland

.04 Filing Composite Return on Behalf of a Nonresident.

A. Who May File.

(1) [Pass-Through Entity.] Subject to the provisions under §§B and C of this regulation, a pass-through entity doing business in this State *that pays tax on behalf of nonresident members as required under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland*, may file a composite return on behalf of all or some of its nonresident members.

(2) *A pass-through entity doing business in this State and electing to pay tax with respect to the distributive or pro rata shares of all members under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland, is not permitted to file a composite return on behalf of any member.*

[(2)] (3) (text unchanged)

B. Nonresident Qualifications. Nonresident members may not be included in a composite return unless:

(1)—(3) (text unchanged)

(4) They agree that the Maryland taxable income reported on the composite return shall be taxed at a rate which is the sum of:

(a) (text unchanged)

(b) The rate of tax imposed under Tax-General Article, §10-106.1, Annotated Code of Maryland; [and]

(5) They agree that the pass-through entity is acting as their agent for the following purposes:

(a)—(b) (text unchanged)

(c) Payment of any tax due[.];

(6) *They are members of a pass-through entity that pays tax on behalf of nonresident members as required under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland; and*

(7) *They have no modifications to income other than the modification required as a result of Maryland's decoupling from the additional depreciation allowance and special 5-year net operating loss carryback provisions that may be claimed on a composite return and, for tax years 2020 and 2021, the subtraction of a coronavirus relief payment under Tax-General Article, §10-207(jj), Annotated Code of Maryland.*

C. Requirements for Filing.

(1)—(2) (text unchanged).

- (3) The composite return shall contain a schedule which includes:
- (a)—(e) (text unchanged)
 - (f) The allowable exemptions for each nonresident member, which equal the total of allowable exemptions for a resident multiplied by a fraction:
 - (i) (text unchanged)
 - (ii) The denominator of which is the distributive or pro rata share of pass-through entity income as defined in COMAR 03.04.07.01B(2) and [(8)] (9);
 - (g) The amount of the standard deduction of each nonresident member which equals the maximum standard deduction allowed a resident having the same filing status multiplied by a fraction:
 - (i) The numerator of which is the [nonresident's] *nonresident* taxable income as defined in COMAR 03.04.07.01; and
 - (ii) The denominator of which is the distributive or pro rata share of the pass-through entity income as defined in COMAR 03.04.07.01B(2) and [(8)] (9);
 - (h)—(m) (text unchanged)
- (4)—(6) (text unchanged)

.06 Maryland Adjusted Gross Income of a Nonresident Individual.

- A.—C. (text unchanged)
- D. A net operating loss generated when an individual is not subject to Maryland income tax law may not be allowed as a deduction to offset the Maryland income from [an earlier] *any* year when that individual [was] *is* subject to Maryland income tax law.

.13 Income Tax Checkoffs.

- A. An individual taxpayer may designate a contribution on the taxpayer's return to be credited towards the:
- (1) (text unchanged)
 - (2) Developmental Disabilities Waiting List Equity Fund, as established under Health-General Article, §7-205, Annotated Code of Maryland; [or]
 - (3) Maryland Cancer Fund, as established under Health-General Article, §20-117, Annotated Code of Maryland[.]; *or*
 - (4) *Maryland Fair Campaign Financing Fund, as established under Election Law Article, §15-103, Annotated Code of Maryland.*
- B.—C. (text unchanged)

.15 Maryland Senator Edward J. Kasemeyer College Investment Plan.

- A. Definitions.
- (1) (text unchanged)
 - (2) Terms Defined.
 - (a) (text unchanged)
 - (b) *"Contributor" means an individual who contributes to a Maryland Senator Edward J. Kasemeyer Prepaid College Trust Account under Education Article, §18-1903, Annotated Code of Maryland.*
 - [(b)] (c) (text unchanged)
 - [(c)] (d) *"Investment option" means the investment portfolios available to account holders in the Maryland Senator Edward J. Kasemeyer College Investment Plan.*
 - [(d)] (e)—[(e)] (f) (text unchanged)
- B. Subtraction Modification.
- (1) Regardless of the number of investment options included in an investment account:
 - (a) All contributions by an account holder *or contributor* on behalf of one qualified designated beneficiary constitute one investment account; and
 - (b) (text unchanged)
 - (2) (text unchanged)
- C. Addition Modification.
- (1) An account holder is required to add to federal adjusted gross income in computing Maryland taxable income any distribution received from the Maryland *Senator Edward J. Kasemeyer* College Investment Plan in the taxable year that is not used on behalf of the qualified designated beneficiary for qualified higher education expenses.
 - (2)—(3) (text unchanged)

03.04.03 Corporations

Authority: Tax-General Article, §§2-103 and 10-306.1(h), Annotated Code of Maryland

.01 Scope.

- A.—D. (text unchanged)
- [E. Application of Tax-General Article, §8-202(a)(2), Annotated Code of Maryland.

(1) Tax-General Article, §8-202(a)(2), Annotated Code of Maryland, terminates the financial institution franchise tax for all taxable years beginning after December 31, 2000, and makes these institutions subject to taxation under Tax-General Article, Title 10, Annotated Code of Maryland.

(2) The following are not factors in determining whether an entity is required to file an income tax return with the Comptroller or to apportion income to the State:

(a) A decision by the former administrator (the State Department of Assessments and Taxation) of the financial institution franchise tax that an entity was not required to file a franchise tax return; or

(b) The failure of an entity to file a franchise tax return, regardless of whether the failure was based on a ruling, guidance, or decision of the former administrator.]

.08 Apportionment of Income.

A. Corporations engaged in [multistate operations] *business within and outside the State* shall allocate income to reflect the amount attributable to this State.

B. [Multistate corporations] *Corporations operating within and outside the State* as unitary businesses shall use an apportionment formula to determine the amount of income to be allocated:

(1)—(4) (text unchanged)

(5) If a return is filed by a [multistate] corporation *operating within and outside the State* which reflects a loss with no income to be apportioned, an apportionment factor shall be calculated for the filing to be considered complete.

C. [Three-Factor] *Apportionment Formula.*

(1) [Multistate corporations] *Corporations operating as a unitary business within and outside the State* shall, for tax years beginning before December 31, 2021, generally use a three-factor formula of property, payroll, and [twice the sales factor. The apportionment factor is a fraction, the numerator of which is the sum of the property factor, payroll factor, and twice the sales factor, and the denominator is four.] *sales to determine the part of the corporation's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State, as follows:*

(a) *For a taxable year beginning before January 1, 2018, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, payroll factor, and twice the sales factor, and the denominator is four;*

(b) *For a taxable year beginning after December 31, 2017, but before January 1, 2019, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor, and three times the sales factor, and the denominator of which is five;*

(c) *For a taxable year beginning after December 31, 2018, but before January 1, 2020, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor, and four times the sales factor, and the denominator of which is six;*

(d) *For a taxable year beginning after December 31, 2019, but before January 1, 2021, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor, and five times the sales factor, and the denominator of which is seven; and*

(e) *For a taxable year beginning after December 31, 2020, but before January 1, 2022, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor, and six times the sales factor, and the denominator of which is eight.*

(2) *Corporations operating as unitary businesses within and outside the State shall, for a taxable year beginning after December 31, 2021, determine the part of the corporation's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State by using a single sales factor apportionment formula, by multiplying its Maryland modified income by 100 percent of the sales factor.*

(3) *A worldwide headquartered company, as defined by Tax-General Article, §10-402(a), Annotated Code of Maryland, may elect to calculate its Maryland modified income derived from or reasonably attributable to trade or business carried on in the State using a three-factor apportionment fraction, the numerator of which is the sum of the property factor, the payroll factor, and twice the sales factor, and the denominator of which is four.*

[(2)] (4) The [three-factor formula is set forth] *three factors* are described in [§C(3)—(5)] §C(5)—(7) of this regulation.

[(3)] (5) (text unchanged)

[(4)] (6) The property factor includes owned as well as rented tangible personal property used in the trade or business during the taxable year and shall be included in the numerator if the tangible personal property is located within this State. The following apply:

(a)—(g) (text unchanged)

(h) Nonrental or below market rate rental shall be adjusted to reflect a reasonable market rental rate and then capitalized as provided in [§C(4)(e)(i)] §C(6)(e)(i) of this regulation.

(i) (text unchanged)

[(5)] (7) (text unchanged)

D. Customers Within this State.

(1) (text unchanged)

(2) Domicile.

(a) (text unchanged)

(b) Business Enterprises.

(i)—(iii) (text unchanged)

Example 2-1: (text unchanged)

Example 3: Service provider C contracts with corporation D, [a multistate] *an enterprise operating within and outside the State*, to redesign the operating software for D's customer billing operation. The principal impetus for this contract is to provide a benefit to the central billing computers. If those computers are located within Maryland, then the revenue earned from these services is included in the numerator of C's sales factor.

Example 4: Service provider E contracts with corporation F, [a multistate] *an enterprise operating within and outside the State*, to redesign all the operating software of F's multistate computer network. If no particular office or place of business can be identified as the principal impetus for this contract, then the revenue earned from this contract shall be included in the numerator of E's sales factor only if F's headquarters or principal place of business management is located within Maryland.

(3)—(6) (text unchanged)

(7) Processing or Similar Services to Business Customers. If a business enterprise provides processing or similar services to a customer having a location in more than one state, then the business enterprise's customers within this State are determined by the point of sale between the ultimate consumer and the business enterprise's customer.

Example 12: A credit card processing company contracts with a major [multistate] retailer *operating within and outside the State*. The processor shall include in the numerator of its sales factor all revenue received from the retailer derived from sales by the retailer in this State.

E.—G. (text unchanged)

.09 Apportionment of Income—Motion Picture and Television Film Producers and Television Networks.

A.—F. (text unchanged)

G. Sales Factor.

(1) (text unchanged)

(2) Under §G(1)(b) of this regulation, the audience is determined by rate card values published annually [in the Television & Cable Factbook, Vol. I, "Stations Volume," Television Digest, Inc., Washington, D.C., if available, or] by [other published] market surveys *or other industry publications*, or, if none [is] *are* available, by population data published by the U.S. Bureau of the Census.

(3) Under §G(1)(c) of this regulation, if the number of subscribers cannot be determined accurately from records maintained by the taxpayer, then the ratio is determined on the basis of the applicable year's statistics on subscribers published [in Cable Vision, International Thompson Communications Inc., Denver, Colorado, if available, or] by [other published] market surveys *or other industry publications*, or, if none [is] *are* available, by population data published by the U.S. Bureau of the Census for all states in which the telecaster has subscribers.

H. (text unchanged)

03.04.04 Special

Authority: Tax-General Article, §2-103, Annotated Code of Maryland

.01 Order of Payment for Unpaid Income Tax.

A. Income tax payments received by the Comptroller shall be applied as follows:

(1) Payments accompanying [timely filed] returns shall be applied to [the tax liability for] the period covered by the return[;] *in the following manner*:

(a) *First to any penalty;*

(b) *Second to accrued interest; and*

(c) *Third to the unpaid tax.*

[(2) Payments accompanying late filed returns shall be applied to the tax liability for the period covered by the return, and then to any penalty and interest assessed by the Comptroller;]

[(3)] (2) (text unchanged)

B. A refund of income tax due a taxpayer shall be applied first as provided for in [§A(3)] §A(2) of this regulation, and then in the following order of priority:

(1)—(2) (text unchanged)

03.04.07 Pass-Through Entity [Nonresident] Tax

Authority: Tax-General Article, §§2-103 and 10-102.1(c) and (f), Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(3) (text unchanged)

(4) "Multistate pass-through entity" means a pass-through entity doing business [in more than one state] *within and outside the State*.

(5)—(8) (text unchanged)

(9) “Pass-through entity’s taxable income” means 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.

[(9)] (10) (text unchanged)

.02 Imposition and Computation of Tax.

A. Imposition of Tax on Nonresident Members.

(1) A tax is imposed on a pass-through entity that [has]:

[(1)] (a) [A] Has a nonresident member; [and]

[(2)] (b) [Nonresident] Has nonresident taxable income for the taxable year[.]; and

(c) Does not elect to pay the tax with respect to the distributive shares or pro rata shares of all members of the pass-through entity under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland.

B. The tax paid under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland, with respect to nonresident members’ distributive or pro rata shares of income shall be treated as a tax imposed on the nonresident member that is paid by the pass-through entity on behalf of the nonresident member.

C. Election to Pay Tax with Respect to All Members

(1) A pass-through entity may elect to pay tax on the distributive or pro rata shares of all members of the pass-through entity under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland.

(2) When a pass-through entity elects to pay tax on the distributive or pro rata shares of all members of the pass-through entity under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland, the tax shall be treated as a tax on the pass-through entity itself.

[B.] D. (text unchanged)

[C.] E. Amount of Tax.

(1) Calculation of Nonresident Tax for Pass-Through Entities Paying Tax with Respect to Nonresident Members’ Distributive or Pro Rata Shares Under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland.

[(1)] (a) If the pass-through entity has one or more nonresident members that are individuals, and does not elect to pay the tax with respect to the distributive or pro rata shares of all members under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland, the amount of tax is the sum of:

[(a)] (i)—[(b)] (ii) (text unchanged)

[(2)] (b) (text unchanged)

[(3)] (c) If the pass-through entity has a nonresident member that is an individual and a nonresident entity member, then the amounts as computed in [§C(1) and (2)] §E(1)(a) and (b) of this regulation shall be summed to arrive at the amount of tax.

(2) Calculation of Tax for Pass-Through Entities Electing to Pay Tax with Respect to All Members’ Distributive or Pro Rata Shares Under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland.

(a) If the pass-through entity has one or more members that are individuals, the amount of the tax is the sum of:

(i) The individual members’ distributive or pro rata share of the pass-through entity’s taxable income, multiplied by the lowest rate of income tax for an individual under Tax-General Article, §10-106.1, Annotated Code of Maryland; and

(ii) The individual members’ distributive share or pro rata share of the pass-through entity’s taxable income, multiplied by the top marginal State tax rate for an individual under Tax-General Article, §10-105(a), Annotated Code of Maryland.

(b) If the pass-through entity has one or more entity members, the amount of the tax is computed by applying the rate of tax for a corporation under Tax-General Article, §10-105(b), Annotated Code of Maryland, to the distributive or pro rata share of the pass-through entity’s taxable income of entity members.

(c) If the pass-through entity has a member that is an individual and an entity member, then the amounts as computed in §E(2)(a) and (b) of this regulation shall be summed to arrive at the amount of the tax paid on all members distributive or pro rata share.

[D.] F. Limitation on Tax Imposed. The tax imposed on a pass-through entity is the lesser of [the]:

(1) [Amount] The amount of tax imposed as computed under [§C] §E of this regulation; [or]

(2) [Sum] For a pass-through entity paying the nonresident tax under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland, the sum of the shares of all the nonresident members in the pass-through entity’s distributable cash flow[.]; or

(3) For a pass-through entity paying tax on all members’ distributive or pro rata shares under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland, the sum of the shares of all members in the pass-through entity’s distributable cash flow.

[E.] G. Special: Certain Members.

(1) A member that is itself a pass-through entity[, which is not a nonresident entity member,] shall comply with the provisions of this regulation with respect to any of its [nonresident] members.

(2) A pass-through entity that has a [nonresident] member that is exempt from income tax under Tax-General Article, §10-104(2), Annotated Code of Maryland, is exempt from complying with the provisions of this regulation with respect to that [nonresident] member.

.03 Filing of Returns and Payment of Tax.

A. [Information] Requirement to File Returns.

(1) [Requirement to File.] *Information Return.* A pass-through entity doing business in this State *and paying tax on behalf of nonresident members under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland*, shall file an information return using Form 510. A pass-through entity *paying tax on behalf of nonresident members under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland*, that is an S corporation may be required to file a corporate income tax return as provided in COMAR 03.04.03.03B(3).

(2) *Income Tax Return.* A pass-through entity doing business in this State *and electing to be taxed on all members' distributive or pro rata shares under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland*, shall file an income tax return using Form 511. An S corporation that pays the tax on all members' shares of income under *Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland*, may be required to file a corporate income tax return as provided in COMAR 03.04.03.03B(3).

[(2)] (3) (text unchanged)

[(3)] (4) Due Date. Except as provided in [§A(4)] §A(5) of this regulation, the due date for filing [an information] a return is:

(a)—(b) (text unchanged)

[(4)] (5) (text unchanged)

B. (text unchanged)

C. Annual Return.

(1) Requirement to File.

(a) A pass-through entity [having a nonresident member] shall file an annual return [on Form 510] whether or not a tax is due. [If estimated tax returns are not required, the annual return shall develop the tax due for the taxable year. If the pass-through entity is required to file estimated tax returns, the]

(b) *The annual return shall reconcile the total estimated taxes paid with the total tax liability computed on the return.*

(c) *If estimated tax returns are not required, the annual return shall develop the tax due for the taxable year.*

(2) Due Date. Except as provided in §C(3) of this regulation, the annual return, with payment of any tax due, shall be filed on or before the due date for the filing of the pass-through entity return as provided in [§A(3)] §A(4) of this regulation.

(3) Extension of Time to File. An extension of time to file an annual return shall be allowed for the same period of time allowed under [§A(4)] §A(5) of this regulation, if:

(a) (text unchanged)

(b) The extension is requested within the time provided under [§A(4)(c)] §A(5)(c) of this regulation.

(4) (text unchanged)

D. Credit for Tax Paid.

(1) Tax required to be paid by the pass-through entity *under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland*, is paid on behalf of the nonresident members.

(2) *Tax elected to be paid by the pass-through entity under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland, is a tax imposed on the entity itself.*

[(2)] (3) The tax attributable to a [nonresident] member's share of the [nonresident] taxable income that was paid by the pass-through entity shall be claimed by that [nonresident] member as a credit, allowed by Tax-General Article, §10-701.1, Annotated Code of Maryland, on:

(a) The tax return of the [nonresident] member; or

(b) [A] *If the entity does not elect to be taxed on all members' distributive or pro rata shares of income, a composite return filed on behalf of the electing nonresident member by the pass-through entity paying the tax on behalf of nonresidents under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland.*

[(3)] (4) For a pass-through entity that has a [nonresident] member that is a fiduciary, the credit allowed by Tax-General Article, §10-701.1, Annotated Code of Maryland, may be claimed by the beneficiary of that fiduciary in an amount in proportion to the distribution of income by the fiduciary to that beneficiary.

[(4)] (5) Overpayments of tax shown on the annual return *of a pass-through entity that paid the tax on behalf of nonresidents under Tax-General Article, §10-102.1(b)(2)(i), Annotated Code of Maryland*, may not be:

(a)—(b) (text unchanged)

(6) *Overpayments of tax shown on the annual return of a pass-through entity that elects to pay on all members' distributive or pro rata shares of income under Tax-General Article, §10-102.1(b)(2)(ii), Annotated Code of Maryland, may be:*

(a) *Refunded to the pass-through entity; or*

(b) *Applied to the current year estimated tax of the pass-through entity.*

E. Member That Is a Pass-Through Entity. A member of a pass-through entity [which files Form 510,] that is itself a pass-through entity[,] also shall file the [Form 510] form as provided under [§A(1)] §A or C(1) of this regulation.

.04 Statements to [Nonresident] Members.

A. Requirements. A pass-through entity shall provide each [nonresident] member with an income tax statement.

B. Form and Contents of Statement.

(1) (text unchanged)

(2) Contents.

(a) Pass-through Entity Income Tax Statement. A pass-through entity that elects to use its own form as provided under §B(1)(b) of this regulation shall label the statement “[Nonresident] Member Income Tax Statement”, and the statement shall contain the following:

- (i)—(iii) (text unchanged)
 - (iv) Name and address of the [nonresident] member;
 - (v) Social Security number or federal employer identification number of the [nonresident] member;
 - (vi) Amount of the [nonresident] member's distributive or pro rata share of income attributable to Maryland sources;
 - (vii) Description and amount of Maryland addition and subtraction modifications allocated to the [nonresident] member;
 - (viii) Amount of the Maryland tax paid on [behalf of the nonresident member] *the member's shares of distributable or pro rata income*; and
 - (ix) Description and amount of Maryland credits allocated to the [nonresident] member.
- (b) Modified Form K-1. A pass-through entity that elects to use a modified Form K-1, in addition to the information provided for federal purposes, shall include the amount of the:
- (i) [Nonresident member's] *Member's* share of income attributable to Maryland sources;
 - (ii) Description and amount of addition and subtraction modifications allocated to the [nonresident] member;
 - (iii) Tax paid on [behalf of the nonresident member] *the member's shares*; and
 - (iv) Description and amount of credits allocated to the [nonresident] member.

.05 Composite Returns.

A. A pass-through entity may file a composite return on behalf of the nonresident members that are individuals (not including fiduciaries) pursuant to COMAR 03.04.02.04.

B. *An electing pass-through entity may not file a composite return on behalf of any members.*

03.04.08 Banks and Similar Institutions

Authority: Tax-General Article, §§2-103, 10-306.1, and 10-402(d), Annotated Code of Maryland

.03 Apportionment and Allocation.

A. (text unchanged)

B. All income which is includable in the Maryland modified income, as defined in Tax-General Article, §10-304, Annotated Code of Maryland, shall be apportioned to this State by multiplying that income by the apportionment percentage. The apportionment percentage is [determined by adding] *a fraction (as described in §D of this regulation) consisting of the taxpayer's property factor (as described in Regulation .05 of this chapter), payroll factor (as described in Regulation .06 of this chapter), and [twice the] receipts factor (as described in Regulation .04 of this chapter)*, together and dividing the sum by four. If any of the factors are missing, the remaining factors are added and the sum is divided by the number of remaining factors. A factor is missing if both its numerator and denominator are zero, but it is not missing merely because its numerator is zero].

C. *The apportionment formulas described in §D of this regulation are required only on original returns filed on or after this regulation's effective date.*

D. *Apportionment Formula.*

(1) *A banking institution operating as a unitary business within and outside the State shall, for tax years beginning before December 31, 2021, use a three-factor formula of property, payroll, and receipts to determine the part of the banking institution's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State, as follows:*

(a) *For a taxable year beginning before January 1, 2018, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, payroll factor, and twice the receipts factor, and the denominator is four;*

(b) *For a taxable year beginning after December 31, 2017, but before January 1, 2019, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor and three times the receipts factor, and the denominator of which is five;*

(c) *For a taxable year beginning after December 31, 2018, but before January 1, 2020, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor, and four times the receipts factor, and the denominator of which is six;*

(d) *For a taxable year beginning after December 31, 2019, but before January 1, 2021, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor, and five times the receipts factor, and the denominator of which is seven; and*

(e) *For a taxable year beginning after December 31, 2020, but before January 1, 2022, the apportionment formula is a fraction, the numerator of which is the sum of the property factor, the payroll factor, and six times the receipts factor, and the denominator of which is eight.*

(2) *A banking institution operating as a unitary business within and outside the State shall, for a taxable year beginning after December 31, 2021, determine the part of the taxpayer's Maryland modified income derived from or reasonably attributable to trade or business carried on in the State by using a single receipts factor apportionment formula, by multiplying its Maryland modified income by 100 percent of the receipts factor.*

[C.] E.—[D.] F. (text unchanged)

03.04.12 Nonresident Real Estate Withholding Tax

Authority: Tax-General Article, §§2-103 and 10-912, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(7) (text unchanged)

(8) “Principal residence” means a residence that[:] *is described in §121 of the Internal Revenue Code (26 U.S.C. §121).*

[(a) Is described in §121 of the Internal Revenue Code (26 U.S.C. §121); and

(b) Is listed as a principal residence with the Department.]

(9)—(11) (text unchanged).

(12) “Transferor” means:

(a) *The person or entity named as grantor on the deed that records the sale or exchange of the property; or*

(b) *In the case of an LLC, where the sole member is an individual or two married individuals, the entity described in §B(12)(a) of this regulation or the member or members of the LLC.*

.04 Certificate of Full or Partial Exemption.

A.—B. (text unchanged)

C. The Comptroller may issue a Certificate of Full or Partial Exemption for any of the following reasons:

(1)—(12) (text unchanged)

(13) The transfer is to a disregarded entity, classified as such under 26 CFR §301.7701-3, that is solely owned by the transferor; [or]

(14) *All or a portion of the gain from the transfer qualifies for the principal residence exclusion from gross income in accordance with §121 of the Internal Revenue Code (26 U.S.C. 121); or*

[(14)] (15) (text unchanged)

D.—F. (text unchanged)

.08 Procedures for Requesting Early Refunds.

A. (text unchanged)

[B. A pass-through entity or a partner, member, or shareholder of a pass-through entity may not file an Application for Tentative Refund of Withholding on Sales of Real Property by Nonresidents.]

B. *When the transferor of real property is a pass-through entity:*

(1) *A member or a shareholder of a pass-through entity may file an Application for Tentative Refund of Withholding on Sales of Real Property by Nonresidents if the applicant provides sufficient documentation of their status as a member of the pass-through entity and:*

(a) *The member or shareholder is the sole member or shareholder of the transferor pass-through entity; or*

(b) *The members or shareholders is one of two members or shareholders and the two members or shareholders are a married couple.*

(2) *A pass-through entity or partner of a pass-through entity may not file an Application for Tentative Refund of Withholding on Sales of Real Property by Nonresidents.*

C. (text unchanged)

D. *The Comptroller may issue a tentative refund of withholding for any of the reasons found in Regulation .04C of this chapter.*

[D.] E.—[E.] F. (text unchanged)

03.04.15 Electronic Filing Requirements for Business Tax Credits

Authority: Tax-General Article, §§2-103 and 10-804, Annotated Code of Maryland

.01 Definition.

A. (text unchanged)

B. Term Defined. “Business tax credit” means:

(1) [Bio-Heating Oil] *Aerospace, Electronics, or Defense Contract Tax Credit;*

(2) *Apprentice Employee Tax Credit;*

[(2)] (3)—[(3)] (4) (text unchanged)

[(4) *Cellulosic Ethanol Technology Research and Development Tax Credit;*

(5)—(7) (text unchanged)

(8) [Health Enterprise Zone Hiring] *Cybersecurity Incentive Tax Credit;*

(9)—(11) (text unchanged)

(12) *Endow Maryland Tax Credit;*

(13) *Endowments for Historically Black Colleges and Universities Tax Credit;*

[(12)] (14) (text unchanged)

(15) *Film Production Activity Tax Credit;*

[(13)] (16) (text unchanged)

(17) *Health Enterprise Zone Hiring Credit;*

(18) *Heritage Structure Rehabilitation Tax Credit;*

[(14)] (19) (text unchanged)

[(15) Long-Term Employment of Qualified Ex-Felons Tax Credit;]
[(16)] (20)—[(17)] (21) (text unchanged)
[(18) Maryland Film Production Activity Tax Credit;]
[(19)] (22)—[(21)] (24) (text unchanged)
(25) *Qualified Vehicle Tax Credit*;
[(22)] (26) Research and Development Tax Credit; and
[(23) Sustainable Communities Tax Credit;]
[(24)] (27) Wineries and Vineyards Tax Credit; and
(25) Work-Based Learning Program Credit].

PETER FRANCHOT
Comptroller

Subtitle 07 CENTRAL PAYROLL BUREAU

03.07.01 General Regulations

Authority: State Personnel and Pensions Article, §2-403, Annotated Code of Maryland

Notice of Proposed Action

[22-040-P]

The Comptroller of the Treasury proposes to amend Regulation .02 under **COMAR 03.07.01 General Regulations**.

Statement of Purpose

The purpose of this action is to require organizations requesting employee payroll deductions of organization dues through electronic means to include control totals and a statement certifying that the organization retains the original employee authorization and to accurately identify the payroll systems to which the regulation applies.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Krista Sermon, Office of Law and Policy, Comptroller of Maryland, 80 Calvert St., Room 409b, Annapolis, MD 21401, or call (410) 260-7319, or email to ksermon@marylandtaxes.gov. Comments will be accepted through March 14, 2022. A public hearing has not been scheduled.

.02 Deduction of Organization Dues.

A. Procedure.

(1) (text unchanged)

(2) *Requests by an organization for initiation, modification, or cancellation of an employee payroll deduction of organization dues submitted to the Central Payroll Bureau by approved electronic means must include control totals and a statement certifying that the organization retains the original employee authorization form in its possession.*

[(2)] (3) [The right to a deduction of organization dues is afforded to employees] *Employees* in the regular, University of Maryland, and [special payments] *contractual* payroll systems *may request a payroll deduction of organization dues.*

[(3)] (4) (text unchanged)

B.—G. (text unchanged)

PETER FRANCHOT
Comptroller

Subtitle 08 TIRE RECYCLING FEE

03.08.01 General Regulations

Authority: Environment Article, §9-228, Annotated Code of Maryland

Notice of Proposed Action

[22-041-P]

The Comptroller of the Treasury proposes to amend Regulation **.01** under **COMAR 03.08.01 General Regulations**.

Statement of Purpose

The purpose of this action is to update the statutory reference for the definition of motor vehicle.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Krista Sermon, Office of Law and Policy, Comptroller of Maryland, 80 Calvert St., Room 409b, Annapolis, MD 21401, or call (410) 260-7319, or email to ksermon@marylandtaxes.gov. Comments will be accepted through March 14, 2022. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "Tire" means a continuous rubber or similar material or synthetic material which is pneumatically designed or intended to cover or encircle a wheel which is manufactured for use on any:

(a) Motor vehicle as defined in Tax-General Article, [§9-101(f)] §9-101(g), Annotated Code of Maryland;

(b)—(d) (text unchanged)

(2) (text unchanged)