

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 2019-2

May 17, 2019

**SUBJECT: CREDIT FOR MARYLAND COUNTY AND NONRESIDENT TAX
AGAINST DELAWARE STATE INCOME TAX**

FOR INFORMATION, CONTACT:

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The State of Maryland imposes a personal income tax on Maryland residents which consists of a state income tax (*Md. Tax-Gen. Code Ann.* §10-105(a)) and a county income tax (*Md. Tax-Gen. Code Ann.* §10-103 and §10-106). The county tax is collected by the state and not the county. No distinction is made on the taxpayer's Form W-2 between the state and county taxes. Nonresidents who earn income from sources within Maryland pay state income tax and a nonresident tax in lieu of the county tax (*Md. Tax-Gen. Code Ann.* §10-106.1).

Prior to the United States Supreme Court case of *Comptroller of the Treasury of Maryland v. Brian Wynne et ux.* ("Wynne"), Maryland allowed a credit against the state tax for resident taxpayers who paid state taxes in other jurisdictions. No credit was allowed against the county tax. In *Wynne*, the Supreme Court held that Maryland's practice, as stated above, was unconstitutional, holding that it violated the dormant Commerce Clause because it discriminated against taxpayers who earned income out of state.

Delaware's long-standing policy allows Delaware residents who earn income in Maryland to claim a credit on their Delaware income tax returns for both the state tax and nonresident tax paid. However, if a taxpayer is a part-year resident of each of Maryland and Delaware, the question arises as to the proper credit allowed on the taxpayer's Delaware income tax return.

If a taxpayer has Delaware source income and is a part-year resident of both Delaware and Maryland, the question is whether the taxpayer may claim a credit for the Maryland county taxes paid during the taxpayer's period of residency against the taxpayer's Delaware tax liability.

A part-year Maryland resident is required to file a resident return with Maryland. For Delaware tax purposes, the part-year resident taxpayer can choose whether to file a resident return or a non-resident return as a part-year resident. If the taxpayer files a Delaware resident tax return, the taxpayer may claim a credit on the Delaware return for

both the state and county tax paid to Maryland, because the Delaware-source income has been subject to taxation in both states. If the taxpayer files a Delaware non-resident return, claiming status as a part-year resident, the taxpayer may not claim a credit on the Delaware return for either the state or county tax paid to Maryland.

If a taxpayer has Maryland source income and is a part-year resident of both Delaware and Maryland, Maryland would require the taxpayer to file both a resident and a non-resident return. If the taxpayer files a Delaware resident return, they may claim a credit against Delaware tax for the state and county taxes paid to Maryland. If the taxpayer files a non-resident return as a part-year resident, the only credit due would be for the Maryland state tax and the Maryland non-resident tax paid with the Maryland non-resident return.

Please contact Holly Reynolds concerning the information set forth in this Technical Information Memorandum.

Jennifer R. Hudson
Director of Revenue