HB 1188

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1188 (Delegate Gilchrist, *et al.*)
Ways and Means

Tax Incentives and Benefits - Credits and Subtraction Modifications

This bill converts specified credits against the State income tax to subtraction modifications.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund revenues increase by $39.1 million in FY 2010. Transportation Trust Fund (TTF) revenues increase by $3.5 million in FY 2010. Future year revenues reflect annualization as well as future tax credit termination provisions. General fund expenditures increase by $104,200 in FY 2010 due to administrative expenses at the Comptroller's Office.

($ in millions)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	$39.1	$29.9	$28.2	$27.5	$26.0
SF Revenue	$3.5	$2.7	$2.5	$2.4	$2.3
GF Expenditure	$.1	$0	$0	$0	$0
Net Effect	$42.5	$32.6	$30.7	$30.0	$28.3

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local highway user revenues will increase as a result of credits no longer being claimed against the corporate income tax, while local income tax revenues decrease due to credits being claimed as subtraction modifications. Net local revenues will decrease by $322,300 in FY 2010 and by $214,400 in FY 2014. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: The bill converts the following income tax credits to subtraction modifications:

- **Enterprise Zone Credit:** Businesses located in a Maryland enterprise zone may be entitled to a tax credit for wages paid to newly hired employees. The local enterprise zone administrator must certify the business to qualify for the credit. The credits are based on the wages paid during the taxable year to each qualified employee. The business must hire at least one employee who: (1) is a new employee or an employee rehired after being laid off for more than one year; (2) worked for the business for at least 35 hours per week for six months or more (3) earns at least 150% of the federal minimum wage; (4) spends at least 50% of the workday either in the enterprise zone or on activities of the business resulting from its location in the enterprise zone or focus area; (5) is hired after the date the enterprise zone was created or the date the business located in the enterprise zone or focus area, whichever is later; and (6) is not hired to replace an individual employed by the business within the last four years.

- **Job Creation Tax Credit:** Businesses that expand or establish a facility in Maryland that results in the creation of new jobs can claim a tax credit. The threshold for eligibility is the creation of 60 new jobs within a two-year period. The new jobs must be full-time, permanent, filled, located in Maryland, and pay at least 150% of the federal minimum wage. The threshold is lowered to (1) 30 new jobs if the average salaries of the new jobs are highly paid as determined by a sliding scale relative to the average State salary; and (2) 25 new jobs if the new jobs are created within a State priority funding area (PFA). The value of the credit depends on the number of jobs created, the wages of those jobs in the year the credit was claimed, and whether the jobs were created in a revitalization area. If the jobs were not created in a revitalization area, then the credit is equal to the lesser of $1,000 or 2.5% of the wages paid associated with those jobs in the year the credit was claimed. If the jobs were created in a revitalization area, the credit is equal to the lesser of $1,500 or 5% of the wages paid associated with those jobs. The credit is ratable for two years. Any unused portion of the credit can be carried forward for up to five tax years. The total credit claimed cannot exceed $1 million for any one business.

- **One Maryland Economic Development Credit:** Businesses that establish or expand a business facility in a priority funding area or as part of a project approved by the Board of Public Works, and that are located in a "distressed" Maryland county, may be entitled to a tax credit for costs related to the new or expanded facility.

  A "distressed" county has an average rate of unemployment that is 150% higher than the statewide average or an average per-capita personal income that is equal to or less than 67% of the statewide average. The credit for start-up costs is the lesser of 100% of eligible start-up costs (up to $500,000), less any credits taken in prior years, or $10,000 multiplied by the number of employees that have filled the newly created, qualified positions. The credit for project costs is the lesser of 100% of eligible project costs (up to $5 million), less any credits taken in prior years, or the State income tax liability for the taxable year from the project. No credit may be claimed against the insurance premium tax for the first year or for the next four years after the project is placed in service. If the credit is more than the tax liability, the unused credit may be carried forward for the next 14 tax years. At any time after the fourth tax year following the tax year in which the project is placed in service, but before the expiration of the fifteenth year, the business may apply the excess credit to nonproject-related taxable income. Excess unused credits may be refunded.

  If the majority of the positions created are paid at 250% or more of the minimum wage and the first notice of intent to seek certification is filed with the Department of Business and Economic Development (DBED) as of July 1, 2002, the excess credit may be used against the tax on nonproject income or refunded two years earlier. For any tax year, the total of any refund claimed for the project cost credit and the amounts used against the taxpayer's nonproject Maryland tax liability for that credit may not exceed State and local taxes that must be withheld from the newly hired employees. For the start-up cost credit, the amount to be refunded may not exceed the State and local taxes required to be withheld from the newly hired employees.

- **Community Assistance Program:** A business can claim tax credits for 50% of the contributions in excess of $500 made to the Department of Housing and Community Development (DHCD) approved projects conducted by nonprofit organizations in a PFA. Donations of real property, in addition to goods and monetary contributions, qualify for the tax credit, which has a maximum value of $250,000.

- **Neighborhood Stabilization:** Tax credits can be claimed against the income tax for property taxes for owner-occupied homes purchased in designated neighborhoods in Baltimore City and Baltimore County.

- **Clean Energy Incentive:** A State income tax credit is available for electricity generated by qualified resources of 0.85 cents per kilo-watt hour, and 0.50 cents per kilo-watt hour for electricity generated from co-firing a qualified resource with coal. These credits can be claimed over a period of five years. Annual tax credits cannot exceed one-fifth of the initial credit certificate issued by the Maryland Energy Administration (MEA). This credit is available to individuals and corporations that build and generate electricity from qualified resources operational on or after January 1, 2006, but before January 1, 2011.

- **Neighborhood Partnership Program:** Businesses that contribute cash or goods to approved projects operated by tax-exempt organizations (under Internal Revenue Code Section 501(c)(3)) are eligible for a tax credit of up to $125,000 per year. This credit is in addition to any charitable contribution deduction that is allowed for these contributions on both the State and federal income tax returns. The credit is 50% of the value of the donation, up to $125,000 per year. Total contributions eligible for the tax credits for all approved projects may not be more than $2 million per fiscal year. If the credit is more than the tax liability, the unused credit may be carried forward for the next five tax years.

- **Work-based Learning Program Credit:** Businesses that hire students as part of an approved work-based learning program in the State may be entitled to a tax credit for a portion of the wages paid to these individuals. The program allows approved employers to claim tax credits in the amount of 15% of the wages paid to secondary or postsecondary students between 16 and 23 years of age who are participating in work-based learning programs. In order to claim the credit, employers must: (1) employ the student for at least 200 hours; (2) provide structured employer-supervised learning that: (a) integrates the student's classroom instruction and provides at least one unit of academic credit; and (b) links each student's career interest. A written approved work-based learning program is required that includes a description of the knowledge and skills to be gained and approval from the student's school. The total credit claimed per student cannot exceed $1,500 for all tax years. Any unused amount of the credit can be carried forward for up to five tax years. The credit can be claimed by individuals against the State income tax and by insurers against the premium tax. A maximum of 1,000 students annually may be approved for participation in the tax credit program.

- **Commuter Tax Credit:** Maryland-based businesses that provide commuter benefits for employees may be entitled to a tax credit for a portion of the amounts paid during the tax year. Commuter benefits include certain costs for an employee's travel to and from home and the workplace, a Guaranteed Ride Home program or a parking "Cash-out" program. The tax credit is 50% of the cost of providing the commuter benefits up to a maximum of $50 per month (based on a $100 employer contribution) for each employee. If the credit is more than the State tax liability, the unused credit may not be carried forward to any other tax year.

- **Tax Credit for Qualified Ex-felons:** A business entity may claim a tax credit for wages paid to a qualified ex-felon employee. For each taxable year, a credit is allowed in an amount equal to: (1) 30% of up to the first $6,000 of the wages paid to the qualified ex-felon employee during the first year of employment; and (2) 20% of up to the first $6,000 of the wages paid to the qualified ex-felon employee during the second year of employment.

- **Maryland-mined Coal Credit:** A public service company or specified electricity suppliers and cogenerators that purchase coal mined in Maryland may be eligible for a tax credit. The credit is $3 per ton of Maryland-mined coal purchased during the taxable year. The tax credit expires in tax year 2021.

- **Employer-provided Long-term Care Credit:** Employers who provide long-term care insurance as part of an employee benefit package may claim a credit for costs incurred. The credit allowed is 5% of the costs. The total claimed for a taxable year for all employees may not exceed $5,000, or $100 per employee, whichever is less. If the credit is more than the tax liability, the unused credit may be carried forward for the next five tax years.

- **Long-term Care Insurance Credit:** Taxpayers can claim a credit against the State income tax for no more than $500 of the eligible premiums paid for long-term care insurance for coverage of the individual or the individual's spouse, parent, stepparent, child, or stepchild. The credit may not be claimed by more than one taxpayer with respect to the same insured individual and can only be claimed on behalf of a State resident. In addition, the credit may not be claimed with respect to an insured individual if: (1) the insured individual was covered by long-term care insurance at any time before July 1, 2000; or (2) the credit has been claimed by any taxpayer more than once for any individual's long-term care insurance policy. Any unused amount of the credit may not be carried forward to any other tax year. Eligible long-term care premiums are as defined under Section 213 (d)(10) of the Internal Revenue Code. The maximum premium amounts under federal guidelines for tax year 2009 based on the age of the insured are: $320 – age 40 or younger; $600 – ages 41 to 50; $1,190 – ages 51 to 60; $3,180 – ages 61 to 70; and $3,980 – ages 71 and over. These amounts are indexed according to the annual increase in the medical component of the Consumer Price Index for all urban consumers.

- **Research and Development Credit:** Businesses that incur qualified research and development expenses in Maryland are entitled to the credit. The total credits approved may not exceed $6 million in a tax year. There are two types of R&D credits available to businesses: (1) the basic research and development credit is equal to 3% of the Maryland qualified research and development expenses paid during the tax year, up to the Maryland base amount; and (2) the growth research and development credit is equal to 10% of the Maryland qualified research and development expenses paid during the year that exceed the Maryland base amount. If the credit is more than the tax liability, the unused credit may be carried forward for the next 15 tax years.

- **Green Buildings Credit:** Businesses that construct or rehabilitate a building that conforms to specific standards intended to save energy and to mitigate environmental impact may take a credit for a portion of the cost. The building must be located in either a PFA or a qualified brownfields site and cannot be located in a wetlands area. The total amount of credits certified for all taxpayers each year (calendar 2003 through 2011) is subject to certain limitations. Credits are allowed for amounts spent on or after July 1, 2001. Allowable costs may not exceed in the aggregate: $120 per square foot for that portion of the building that is owner occupied; and $60 per square foot for that portion of the building that comprises the tenant space. The credit is the sum of four credit components.

  Building Credit Component: A percentage of the allowable costs paid by the owner or tenant to make some portion of the building "green." Each credit is limited by a dollar amount per square foot. For a whole building, 8% of the allowable costs paid for or incurred by the owner or tenant, as outlined: **base building** (areas not intended to be occupied) – 6% of the allowable costs; allowable costs may not exceed $120 per square foot; the maximum credit amount is $7.20 per square foot for the area that comprises the base building; **tenant space** – 6% of the allowable costs; allowable costs may not exceed $60 per square foot; the credit cannot be claimed by the owner if the owner occupies less than 10,000 square feet of the building or by the tenant if the tenant occupies less than 5,000 square feet; the maximum credit amount is $3.60 per square foot.

  Fuel Cell Credit Component: 30% of the costs paid by the owner or tenant to purchase and install a fuel cell in a green whole building, base building, or tenant space. The credit cannot exceed $1,000 per kilowatt hour of capacity and is reduced by nontaxable government grants used to purchase and install the fuel cell.

Photovoltaic Module Credit Component: 25% (20% if building-integrated) of the cost paid by an owner or tenant to purchase and install a photovoltaic module in a green whole building, base building, or tenant space. The costs used to determine the credit amount cannot exceed $3 per watt of capacity and are reduced by nontaxable government grants used to purchase and install the modules. The credit cannot be taken if the Clean Energy Incentive Credit has been claimed for the installation of the photovoltaic modules.

Wind Turbine Component: 25% of the cost to purchase and install wind turbines that qualify as alternative energy sources and will serve a green whole building, base building, or tenant space.

- **Quality Teacher Incentive Credit:** Public school teachers who pay tuition during the tax year for graduate-level courses to maintain either a standard professional or advanced professional certification may be entitled to an income tax credit. An individual must be employed by a local board of education and be a classroom teacher in a public school, hold a standard professional certificate or an advanced professional certificate, and have completed the graduate-level courses with a grade of B or better. The courses taken must be required to maintain certification and the cost of the courses must exceed any amount reimbursed by the county. The credit is 100% of the unreimbursed amount of tuition paid, or $1,500, whichever is less. A credit of up to $1,500 is allowed for each individual. On a joint return, up to $3,000 is allowed if each spouse qualifies for the credit.

- **Preservation and Conservation Easements Credit:** Chapter 676 of 2001 established the Preservation and Conservation Easement tax credit applicable to easements conveyed by the Maryland Agricultural Land Preservation Foundation or the Maryland Environmental Trust. The amount of the credit allowed is the amount by which the fair market value of the property before the conveyance of the easement exceeds the fair market value of the property after the conveyance of the easement. The fair market value of the property before and after the conveyance of the easement is substantiated by an appraisal prepared by a certified real estate appraiser. The amount of the credit is reduced by the amount of any payment received for the easement. The amount of the credit allowed for any taxable year may not exceed the lesser of the State income tax liability or $5,000. Any unused credit may be carried forward for up to 15 years, but may not exceed the lesser of the State tax or $5,000 in any taxable year. The credit may not be claimed for a required dedication of open space for the purpose of fulfilling density requirements to obtain a subdivision or building permit.

- **Aquaculture Oyster Float Credit:** A taxpayer who purchases an aquaculture oyster float on or after July 1, 2002 can claim a credit. An aquaculture oyster float is designed to grow oysters to help restore the oyster population in certain bodies of water. The float must be specifically designed to grow oysters at or under a homeowner's pier. The float must be buoyant and assist in the growth of oysters for the width of the pier. The credit is calculated at 100% of the purchase price of the float or $500, whichever is less.

- **Maryland Disability Employment Tax Credit:** The Qualifying Employees with Disabilities Tax Credit allows employers who hire a qualified individual with disabilities to claim a tax credit for certain wages paid to the employee and for child care and transportation expenses paid on behalf of the employee in the first two years of employment. Employers can claim a credit equal to 30% of the first $6,000 of the wages paid to the employee (20% in year two). Employers can claim a credit of up to $600 of child care or transportation expenses paid on behalf of qualifying employees in the first year of employment ($500 in year two). The amount of the credit may not exceed the tax liability in the year, and any unused amount may be carried forward five tax years. The credit can be claimed with regard to individuals hired on or after June 1, 1995 through June 30, 2009. The program terminates June 30, 2009.

- **Employment Opportunity (Work, Not Welfare Credit):** An income tax credit is available to employers who hire an individual who is a recent recipient of temporary cash assistance from the State to claim a tax credit for certain wages paid to the employee and for child care and transportation expenses paid on behalf of the employee in the first two years of employment. Employers can claim a credit equal to 30% of the first $6,000 of the wages paid to the employee (20% in year two). If the employee was a recipient of temporary cash assistance from the State for at least 18 of the last 48 months, the credit is equal to 40% of the first $10,000 in wages paid if the employee was employed for at least one full year. Employers can claim a credit of up to $600 of child care or transportation expenses paid on behalf of qualifying employees in the first year of employment ($500 in year two). The credit can be claimed with regard to individuals hired on or after June 1, 1995 through June 30, 2009.

- **Bio-heating Oil:** Businesses may claim a credit for each gallon of heating oil blended with biodiesel purchased for space or water heating. For any tax year, the credit allowed under this section may not exceed $500, or the State income tax for that tax year. The credit is available for the tax years beginning on or after January 1, 2008, but before January 1, 2013.

- **Businesses that Create New Jobs:** Businesses located in Maryland that create new positions and establish or expand business facilities in the State may be entitled to a tax credit. To be eligible for the tax credit, businesses must first have been granted a property tax credit by a local government of Maryland for creating the new jobs.

- **Cellulosic Ethanol Technology Research and Development:** A State income tax credit is available for cellulosic ethanol technology research and development conducted in the State. The amount of the tax credit is equal to 10% of the eligible expenses incurred and cannot exceed the tax liability for that year. Any unused amount can be carried forward 15 tax years. The total amount of credits available in each year is limited to $250,000. The credit is available for research and development expenses incurred before January 1, 2017.

Except as noted, the bill applies beginning in tax year 2009. If a taxpayer's tax year for income tax purposes is not the calendar year, for any tax credit that is converted the amount of credit allowable for the tax year that ends in calendar 2009 is limited to amounts based on wages or other expenses paid or incurred on or before June 30, 2009. For tax years after 2009, a person may continue to claim the job creation tax credit, one Maryland, and business that create new jobs if a person was certified as provided under current law as being eligible for the credit before July 1, 2009.

Background: Prior to 1995, with the exception of the Earned Income Credit, income tax credits were not a significant feature of Maryland income tax policy. Other than the Earned Income Credit and the credits allowed for withholding and estimated tax payments and for income taxes paid to another state, the only credits allowed were the Enterprise Zone Credit and the Maryland-mined Coal Credit. Since 1995, however, there has been considerable legislative activity regarding income tax credits, with a significant number of new credits being enacted. The proliferation of tax credits has resulted in a sizeable decrease in State revenues – from about $50 million in tax year 1994 to an estimated $235 million in credits claimed or earned in tax year 2005, about 2% of all general fund revenues.

State Revenues: General fund revenues will increase by $39.1 million in fiscal 2010, while TTF revenues will increase by $3.5 million. This estimate reflects the amount of credits claimed under current law, phase out of credits as provided in the bill, and the change in estimated payments. Future year revenues reflect annualization, estimated amount of credits claimed, and tax credit termination provisions. **Exhibit 1** lists the State fiscal impact in fiscal 2010 through 2014.

Exhibit 1
State Revenues Impact

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
General Fund	$39,119,900	$29,905,500	$28,227,900	$27,509,300	$26,024,100
TTF	3,471,700	2,653,900	2,505,100	2,441,300	2,309,500
State	2,430,200	1,857,800	1,753,500	1,708,900	1,616,600
Local	1,041,500	796,200	751,500	732,400	692,800

State Expenditures: The Comptroller's Office reports that it will incur a one-time expenditure increase of $104,200 in order to update tax forms and implement the bill. This includes data processing changes to the SMART income tax return processing and imaging systems, and systems testing.

Local Revenues: Local highway user revenues will increase as a result of credits no longer being claimed against the corporate income tax; however, local income tax revenues will decrease due to credits being claimed as subtraction modifications. Net local revenues will decrease by $322,300 in fiscal 2010 and by $214,400 in fiscal 2014 as illustrated in **Exhibit 2**.

Exhibit 2
Local Revenue Impact

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Local Income Tax	($1,363,800)	($1,042,600)	($984,100)	($959,000)	($907,200)
Highway User Revenues	1,041,500	796,200	751,500	732,400	692,800
Net Impact	(322,300)	(246,400)	(232,600)	(226,600)	(214,400)

Additional Information

Prior Introductions: HB 849 of 2004 and HB 1084 of 2003 received a hearing in the House Ways and Means Committee, but no further action was taken on either bill.

Cross File: None.

Information Source(s): Comptroller's Office; State Department of Assessments and Taxation, Department of Legislative Services

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