

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 11 (Delegate McMillan)
 Ways and Means

Maryland-Mined Coal Tax Credit - Repeal

This bill accelerates the termination date for the Maryland-mined coal tax credit from tax year 2021 to tax year 2013.

The bill takes effect July 1, 2013, and applies to tax year 2013 and beyond.

Fiscal Summary

State Effect: General fund revenues increase by \$6.0 million in FY 2014. Future year revenue increases reflect the estimated maximum annual amount of credits that can be claimed under current law. Accelerating the termination date increases State revenues by a total of \$30.0 million through FY 2021.

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	\$6.0	\$6.0	\$3.0	\$3.0	\$3.0
Expenditure	0	0	0	0	0
Net Effect	\$6.0	\$6.0	\$3.0	\$3.0	\$3.0

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Public service companies in Maryland can claim a \$3 per ton credit for the amount of Maryland-mined coal purchased in a calendar year. This nonrefundable tax credit can be claimed against the public service company franchise tax and cannot

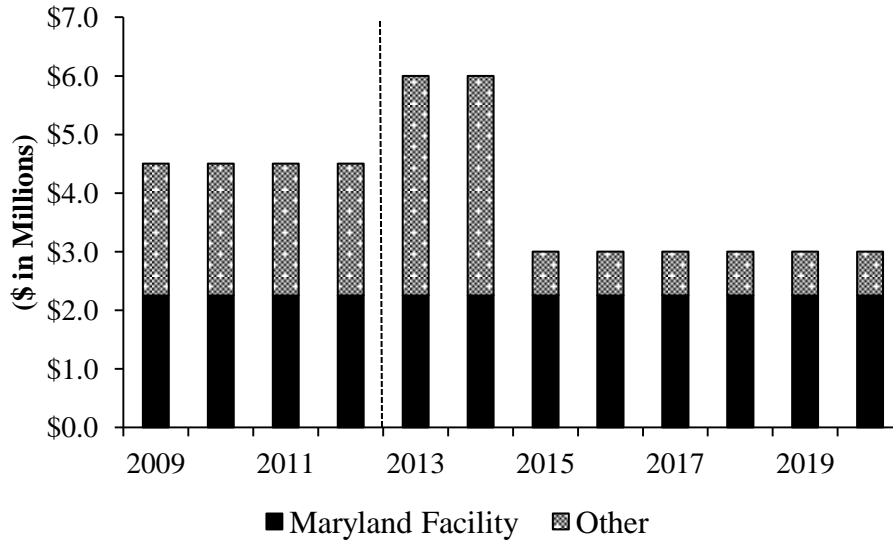
exceed the State tax liability for that tax year. Certain co-generators and electricity suppliers that are not subject to the public service company franchise tax can also claim a \$3 per ton credit for the amount of Maryland-mined coal purchased in a calendar year. This nonrefundable credit can be claimed against the State income tax.

Background: Maryland public service companies and specified co-generators and electricity suppliers can claim a \$3 per ton credit for the amount of Maryland-mined coal purchased in a calendar year. Chapter 247 of 2006 (SB 335) capped the maximum annual amount of credits that can be claimed in tax year 2007 through 2020, and terminated the credit beginning in tax year 2021. The Budget Reconciliation and Financing Act of 2009 (Chapter 487, HB 101) reduced these amounts in tax years 2009 through 2012; the maximum that can currently be claimed is \$6.0 million annually in tax years 2013 and 2014 and \$3.0 million annually in tax years 2015 through 2020. The Budget Reconciliation and Financing Act of 2013 (SB 127/HB 102) proposes to terminate the credit effective in tax year 2013.

Chapter 792 of 1988 established the tax credit for Maryland-mined coal purchased by public service companies, with a sunset provision of June 30, 1991. Subsequent legislation expanded and extended the credit, including Chapter 700 of 2000 (HB 729). Chapter 700 was not approved by the Attorney General's Office for constitutionality and legal sufficiency, in that it was determined that a court is likely to have serious problems with the credit under the Commerce Clause of the U.S. Constitution.

The Attorney General ruled in 1995 that consumption was not a requirement for claiming the credit. As a result, a company that claims the credit can act as a broker, purchasing Maryland-mined coal and selling it to out-of-state companies who consume the coal since the end users are not subject to the public service company franchise tax. The State Department of Assessments and Taxation (SDAT) is required to reserve \$2,250,000 of the annual credits for purchases of Maryland-mined coal that will actually be used in a Maryland facility. **Exhibit 1** shows the total amount of credits SDAT may award in each calendar year, including the amount that must be reserved for purchases of coal that will be used in a Maryland facility. SDAT may approve a maximum of \$6.0 million in each of tax year 2013 and 2014, an increase of \$1.5 million compared with the last four tax years. Beginning in tax year 2015, the maximum annual amount decreases to \$3.0 million.

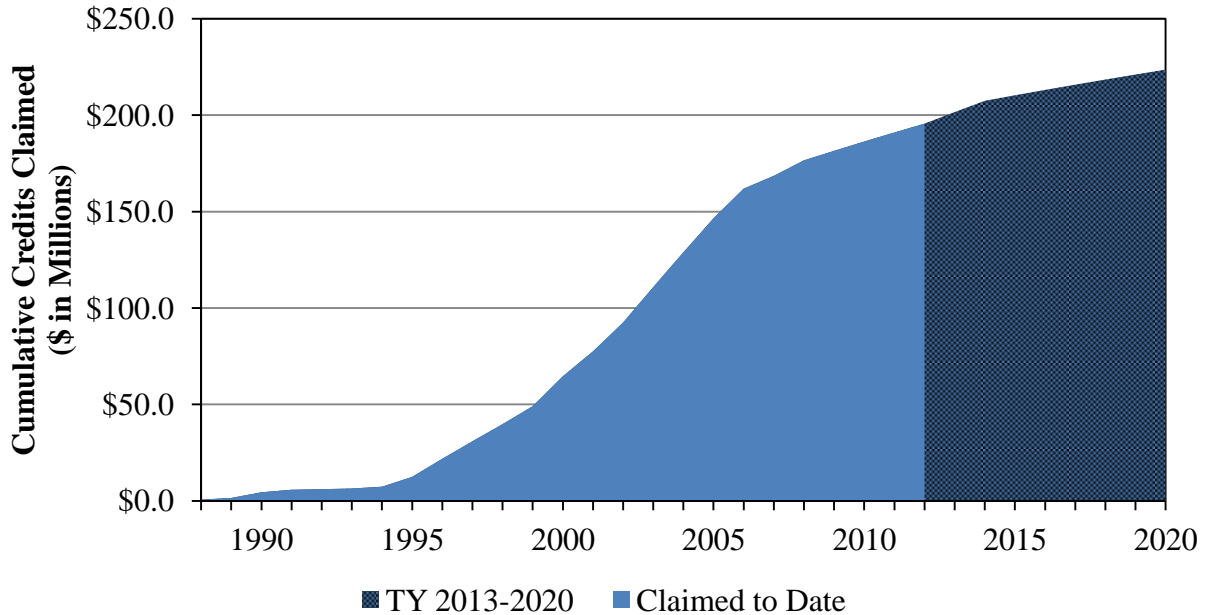
Exhibit 1
Maximum Coal Credits Allowable
Tax Year 2009-2020



Source: State Department of Assessments and Taxation, Department of Legislative Services

Under the program, a total of \$196.5 million in public service company franchise tax credits have been claimed through tax year 2012. About two-thirds of this total was claimed in the eight tax years before 2009, when the maximum cap of \$4.5 million took effect. Through the termination of the credit a total of \$223.6 million in public service company franchise tax credits will be claimed, plus an additional amount of unknown credits against the corporate income tax. **Exhibit 2** shows the cumulative amount of credits claimed against the public service company franchise tax.

Exhibit 2
Cumulative Credits Claimed
Tax Year 1987-2020



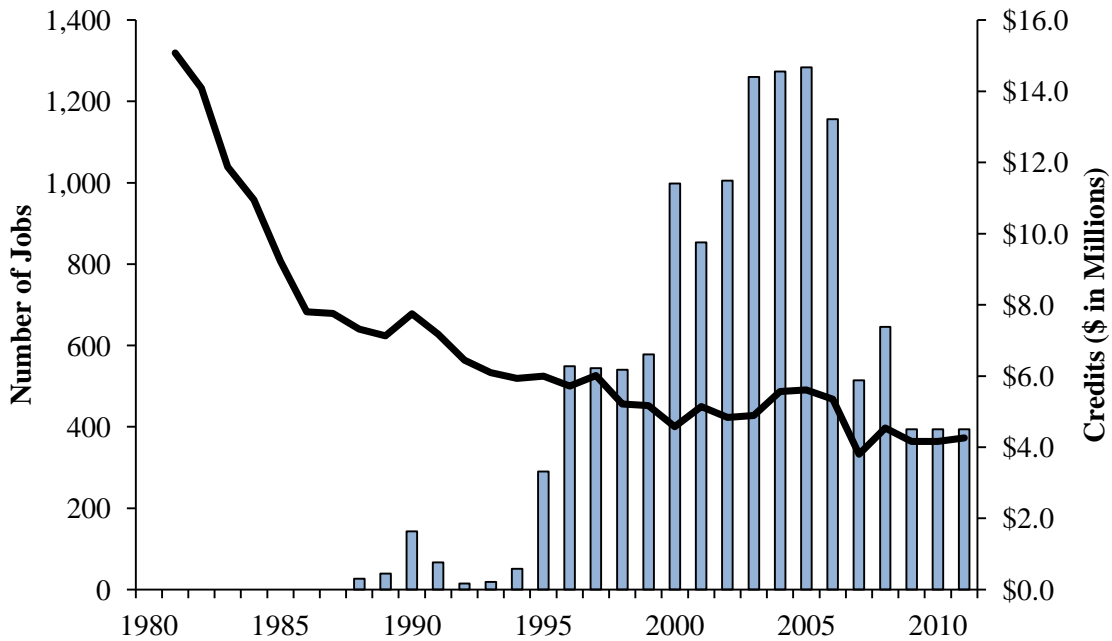
Note: Credits are in constant 2013 dollars and do not include additional amounts claimed against the income tax

Source: State Department of Assessments and Taxation, Department of Legislative Services

According to the U.S. Bureau of Labor Statistics, a little under 600 workers are employed in the natural resources and mining industry (which includes other industries such as timber) in Garrett County and Allegany County, comprising 4.0% and 0.4% of total county employment, respectively. The Maryland Bureau of Mines reports that a total of 373 coal miners were employed in Garrett and Allegany counties during 2011. This number does not include office workers, supervisors, or independent coal truck haulers. Employment has decreased significantly since reaching a peak of 1,300 in 1981, largely reflecting technology gains that have boosted worker productivity. **Exhibit 3** shows the number of coal miners employed in these counties since 1981, and the amount of credits claimed in each year.

Coal production and employment recently decreased after large-scale mining of the Freeport coal seam terminated in 2006. Since then, coal production and employment has stabilized despite the decrease in tax credits awarded.

Exhibit 3
Mining Employment and Credits Claimed
Calendar 1981-2011



Source: Maryland Bureau of Mines, State Department of Assessments and Taxation, Department of Legislative Services

State Revenues: The bill repeals the Maryland-mined coal credit effective in tax year 2013. Based on the amount of coal mined in the State and credits claimed in the last several years, it is estimated that the maximum amount of annual credits will be awarded under current law. All of the credits in recent years have been claimed against the public service company franchise tax; as a result, general fund revenues increase by \$6.0 million in each of fiscal 2014 and 2015 and by \$3.0 million annually in fiscal 2016 through 2021. Accelerating the termination date increases State revenues by a total of \$30.0 million through fiscal 2021.

To the extent taxpayers adjust quarterly payments, revenue increases will be greater than estimated in fiscal 2014.

Additional Information

Prior Introductions: HB 24 of 2012 received a hearing in the House Ways and Means Committee, but no further action was taken. HB 918 of 2011 received an unfavorable report from the House Ways and Means Committee. As introduced by the Governor, the Budget Reconciliation and Financing Acts of 2011 (Chapter 397 of 2011) and 2012 included a provision repealing the credit but it was not included in the legislation passed by the General Assembly.

Cross File: None.

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

Fiscal Note History: First Reader - January 31, 2013
ncs/jrb

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