Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 458 (Senator Guzzone, *et al.*)

Budget and Taxation Ways and Means

Corporate Income Tax - Single Sales Factor Apportionment - Deferred Tax Relief

This bill creates a subtraction modification against the State corporate income tax for a corporation that was publicly traded or affiliated with a publicly traded corporation on or before April 24, 2018, if the enactment of Chapters 341 and 342 of 2018 resulted in an aggregate: (1) increase to the corporation's net deferred tax liability, (2) decrease to the corporation's net deferred tax asset, or (3) change from a net deferred tax asset to a net deferred tax liability. The subtraction modification is equal to one-tenth of the amount necessary to offset that increase, decrease, or change. The subtraction may be used to reduce the corporation's Maryland modified income for 10 consecutive years beginning with the first taxable year that begins after December 31, 2028. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: The bill has no fiscal impact until FY 2029, at which time general fund, Transportation Trust Fund (TTF), and Higher Education Investment Fund (HEIF) revenues and TTF expenditures will decrease and general fund expenditures for the Comptroller's Office will increase.

Local Effect: The bill has no fiscal impact until FY 2029, at which time local highway user revenues will decrease. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The subtraction calculated under the bill may not be reduced as a result of any event that occurs after the calculation, including the disposition or abandonment of any asset. The subtraction must be calculated without regard to the federal tax effect and may not alter the tax basis of any asset.

If the subtraction exceeds Maryland modified income computed without regard to the subtraction, the excess amount may be carried forward to succeeding tax years until the excess is fully used.

By July 1, 2020, a corporation that intends to claim a subtraction under the bill must file with the Comptroller a statement that specifies the total amount of the subtraction that the corporation intends to claim. The Comptroller may review and alter the amount of the subtraction specified in the statement or the subtraction claimed on a tax return for any taxable year.

Current Law: A corporate income tax rate of 8.25% is applied to a corporation's Maryland taxable income. In general, the Maryland corporate income tax is computed using federal provisions to determine income and deductions.

Every Maryland corporation and every corporation that conducts business within Maryland, including public service companies and financial institutions, are required to pay the corporate income tax. The tax base is the portion of federal taxable income, as determined for federal income tax purposes and adjusted for certain Maryland addition and subtraction modifications, that is allocable to Maryland. Federal taxable income for this purpose is the difference between total federal income and total federal deductions (including any special deductions). The next step is to calculate a corporation's Maryland taxable income. The Maryland taxable income of a corporation that operates wholly within the State is equal to its Maryland modified income. Corporations engaged in multistate operations are required to determine the portion of their modified income attributable to Maryland, based on the amount of their trade or business carried out in Maryland. The apportionment factor is multiplied by the corporation's modified income to determine Maryland taxable income.

Chapters 341 and 342 of 2018 altered the apportionment formulas, so in general, sales represent 60% of the final apportionment factor in tax year 2018, 66.67% of the final apportionment factor in tax year 2019, 71.42% of the final apportionment factor in tax year 2020, 75% of the final apportionment factor in tax year 2021, and 100% of the final apportionment factor in tax year 2022 and beyond**.** Corporations engaged primarily in manufacturing activities must use a single sales apportionment factor.

A corporation may elect annually to use a three-factor formula that incorporates property, payroll, and a double-weighted sales factor if the corporation included in a group of corporations, including a parent corporation, is a worldwide headquartered company that filed a federal corporate income tax return for the taxable year, filed a specified form with the Securities and Exchange Commission, has its principal executive office in the State, and employs at least 500 full-time employees during a specified period.

To determine the Maryland modified income of a corporation or group of corporations that is a worldwide headquartered company that filed a federal corporate income tax return for the taxable year, gross income from intangible investments, including dividends, interest, royalties, and capital gains from the sale of intangible property, must be included in the calculation of the numerator based on the average of the property and payroll factors.

The majority of corporate income tax revenues are distributed to the general fund with 6% of corporate income tax revenues distributed to HEIF. A portion of corporate income tax revenues are also distributed to TTF, of which 13.5% of TTF revenues are used to provide capital transportation grants to local governments. Beginning in fiscal 2025, the local share declines to 9.6%.

Background: Connecticut, the District of Columbia, Massachusetts, and New Jersey provide similar tax incentives.

State Revenues: The bill has no immediate fiscal impact. Subtraction modifications may be claimed beginning in tax year 2029. As a result, fiscal 2029 revenues will decrease by approximately 30% of the tax year 2029 decrease stemming from the subtraction modification due to corporations adjusting estimated tax payments. General fund, TTF, and HEIF revenues further decrease in fiscal 2030. The Comptroller's Office advises that fewer than five corporations would be able to claim the subtraction, but they are not able to disclose the fiscal impact of the bill due to taxpayer confidentiality. However, the Comptroller's Office advises that the revenue loss would likely not be significant.

State Expenditures: The bill requires a corporation to submit a statement by July 1, 2020, that specifies the total amount of the subtraction that the corporation intends to claim on the form the Comptroller requires. The Comptroller's Office can provide the form and review it with existing resources since only a small number of corporations are expected to submit the statement. However, the Comptroller's Office reports that it will incur a one-time expenditure increase of $40,000 in fiscal 2030 to add the subtraction modification to the corporate income tax return. This includes data processing changes to the income tax return processing and imaging systems and system testing.

A portion of TTF revenues are used to provide capital transportation grants to local governments. To the extent that TTF revenues decrease as a result of taxpayers claiming the subtraction modification against the corporate income tax, TTF expenditures decrease by 9.6% of the TTF revenue decrease beginning in fiscal 2029. TTF revenues also fund the State capital program; thus, a decrease in TTF revenues decreases expenditures for the State capital program.

Local Revenues: The bill has no immediate fiscal impact. Local governments receive a portion of corporate income tax revenues as local highway user revenues through capital transportation grants. Thus, local highway user revenues decrease beginning in fiscal 2029 to the extent that corporations claim the subtraction modification.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Department of Legislative Services

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Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510