SB 929

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 929 (Senator Washington)
Budget and Taxation

Income Tax - Subtraction Modification From Unrelated Business Taxable Income - Employee Benefits

This bill creates a subtraction modification against the State income tax equal to the amount included in a corporation's unrelated business taxable income (UBTI) under the Internal Revenue Code (IRC) § 512 (A) (7). **The bill takes effect July 1, 2019, and applies to tax year 2019 and beyond.**

Fiscal Summary

State Effect: General fund, Transportation Trust Fund (TTF), and Higher Education Investment Fund (HEIF) revenues decrease by $3.5 million in FY 2020 and by $5.0 million in FY 2024. TTF expenditures decrease by $68,400 in FY 2020 and by $98,400 in FY 2024. General fund expenditures increase by $62,000 in FY 2020 for the Comptroller's Office.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	($2,755,400)	($3,553,400)	($3,759,900)	($3,732,100)	($3,966,300)
SF Revenue	($714,600)	($921,600)	($975,100)	($967,900)	($1,028,700)
GF Expenditure	$62,000	$0	$0	$0	$0
SF Expenditure	($68,400)	($88,200)	($93,300)	($92,600)	($98,400)
Net Effect	($3,463,600)	($4,386,800)	($4,641,700)	($4,607,400)	($4,896,600)

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

Local Effect: Local highway user revenues decrease by approximately $68,400 in FY 2020 and by $98,400 in FY 2024. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: No similar State subtraction modification exists. However, Maryland-based businesses that provide commuter benefits for employees may claim a tax credit for a portion of the amounts paid during the taxable year. Commuter benefits include certain vanpool 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 $100 per month (based on a $200 employer contribution) for each employee.

Background: A tax-exempt organization is subject to tax on UBTI. IRC § 512 (A) (7) requires UBTI to be increased for any qualified transportation fringe, any parking facility used in connection with qualified parking, or any on-premises athletic facility.

Qualified transportation fringe benefits include:

- *Vanpooling:* The expense of commuting in a six-passenger (or greater) vehicle qualifies for the tax benefit, whether the service is public or private.

- *Transit Passes:* A transit pass includes mass transit fares and certain vehicles for hire.

- *Qualified Parking:* Qualified parking includes parking provided to an employee on or near the business premises or a location from which the employee commutes by means of mass transit, van pool, or carpooling.

- *Qualified Bicycle Commuting:* Reasonable expenses incurred in order to commute via a bicycle on a regular basis.

Qualified transportation fringe benefits provided by an employer are generally excluded from an employee's income for federal income tax purposes and from the employee's wages for payroll tax purposes. The exclusion from gross income and wages for qualified bicycle commuting reimbursements is suspended for tax years beginning after December 31, 2017, and before January 1, 2026, under the Tax Cuts and Jobs Act of 2017.

For costs incurred before December 31, 2017, an employer could generally deduct the cost of providing qualified transportation benefits. The federal Tax Cuts and Jobs Act of 2017 (TCJA) (Public Law 115-97) was signed into law on December 22, 2017, and enacted significant changes to federal taxes. The Act generally disallows a deduction for expenses associated with providing any qualified transportation fringe to employees of the taxpayer and, except as necessary for ensuring the safety of an employee, any expense incurred for providing transportation (or any payment or reimbursement) for commuting between the employee's residence and place of employment. A corresponding provision applies to nonprofit organizations, requiring that they include in unrelated business income the cost of qualified transportation fringe benefits.

For employees, the TCJA does not take away the tax-favored status of commuting benefits (other than bicycle commuting benefits repealed for 2018 through 2025) or the option to pay for them with pre-tax dollars. Instead, and effective January 1, 2018, businesses can no longer take a deduction for transportation fringe benefits (including employee parking at the regular workplace). Hence, for both profit and nonprofit businesses, the cost of providing these benefits is generally increased by the corporate income tax rate (21% effective January 1, 2018).

State Revenues: Subtraction modifications may be claimed beginning in tax year 2019. As a result, general fund, TTF, and HEIF revenues will decrease beginning in fiscal 2020. Based on its estimate of the fiscal impacts of TCJA from disallowing a deduction for qualified transportation fringe, the Comptroller's Office estimates income tax revenues decrease by approximately $6.9 million in fiscal 2020 and by $10 million in fiscal 2024. However, that estimate includes the fiscal impact of qualified transportation fringe from all businesses, not just those stemming from UBTI. It is unknown how much qualified transportation fringe stems from UBTI. Assuming UBTI accounts for 50% of deductions for qualified transportation fringe, general fund revenues decrease by $2.8 million in fiscal 2020, HEIF revenues decrease by $208,200, and TTF revenues decrease by $506,400 in fiscal 2020, as shown in **Exhibit 1**.

Exhibit 1
Fiscal Impact
Fiscal 2020-2024

Revenues	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**	**FY 2024**
General Fund	($2,755,400)	($3,553,400)	($3,759,900)	($3,732,100)	($3,966,300)
HEIF	(208,200)	(268,500)	(284,100)	(282,000)	(299,700)
TTF	(506,400)	(653,100)	(691,000)	(685,900)	(729,000)
Total Revenues	**($3,470,000)**	**($4,475,000)**	**($4,735,000)**	**($4,700,000)**	**($4,995,000)**
TTF Expenditures	**($68,400)**	**($88,200)**	**($93,300)**	**($92,600)**	**($98,400)**

HEIF: Higher Education Investment Fund
TTF: Transportation Trust Fund

State Expenditures: The Comptroller's Office reports that it will incur a one-time expenditure increase of $62,000 in fiscal 2020 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. Thus, any decrease in TTF revenues from corporate income tax revenues results in a 13.5% decrease in TTF expenditures to local governments. Accordingly, TTF expenditures decrease by $68,400 in fiscal 2020 and by $98,400 in fiscal 2024 as shown in Exhibit 1. TTF revenues also fund the State capital program; thus, a decrease in TTF revenues decreases expenditures for the State capital program.

Local Revenues: Local governments receive a portion of corporate income tax revenues as local highway user revenues through capital transportation grants. Under this bill, local highway user revenues decrease by approximately $68,400 in fiscal 2020 and by $98,400 in fiscal 2024.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Securities Division); Comptroller's Office; State Department of Assessments and Taxation; Department of Legislative Services

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