SB 645

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 645 (Senator Smith)
Budget and Taxation

State Income and Property Tax Credits - Purple Line Construction Zone

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This bill creates a refundable credit against the State income tax for a qualified business that is impacted by the construction of the Purple Line light rail project in Montgomery and Prince George's counties. The credit is equal to the amount of business income lost during the taxable year as a result of the Purple Line construction. The State must also grant a credit against the State property tax imposed on real property that is located in an impacted area and owned by a qualified business. **The bill takes effect June 1, 2020, and is applicable beginning in tax year 2020 for the income tax credit and beginning in fiscal 2021 for the property tax credit.**

Fiscal Summary

State Effect: Potential significant decrease in general and special fund revenues in FY 2021 through FY 2024. General fund and Transportation Trust Fund (TTF) expenditures increase by over $427,300 in FY 2021 and by over $348,100 in FY 2024 for the Comptroller and the Maryland Department of Transportation (MDOT) to implement the bill; however, this may be partially offset by decreased TTF expenditures resulting from taxpayers claiming the income tax credit against the corporate income tax.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF/SF Rev.	(-)	(-)	(-)	(-)	$0
GF Expenditure	$36,000	$0	$0	$0	$0
SF Expenditure	$391,300	$327,800	$336,800	$348,100	$0
Net Effect	(-)	(-)	(-)	(-)	$0

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

Local Effect: To the extent that income tax credits are claimed against the corporate income tax, local highway user revenues decrease from FY 2021 through 2024.

Small Business Effect: Meaningful.

Analysis

Bill Summary: MDOT must certify qualified businesses and determine the date on which the certification will expire. A qualified business is a business certified by MDOT as having established a loss of business income at a property located in an area impacted by the construction of the Purple Line light rail project. MDOT, in consultation with the Comptroller, must determine the amount of business income eligible for the credit. The bill specifies the application and certification processes for each credit. MDOT must adopt regulations to implement the bill.

Current Law: No similar State income or property tax credit exists. However, business losses can generally offset other types of income on federal and State income tax returns. A net operating loss (NOL) occurs when a taxpayer's business deductions exceed income. Myriad special treatments occur; however, prior to the federal Tax Cuts and Jobs Act of 2017 (TCJA), those losses could generally be carried-back 2 years and carried-forward for 20 years. When carried back, the NOL results in an amended tax return and a refund. When carried forward, the NOL serves to reduce or eliminate taxable income, and therefore tax, in future years.

Under the TCJA, after tax year 2017, excess business losses above specified limitations are no longer allowed in a current taxable year, except in the case of corporations. However, these excess business losses will be allowed to be carried forward and treated as part of the taxpayer's NOL carryforward. The TCJA eliminates the carry-back provision and limits the deduction to 80% of taxable income therefore reducing a taxpayer's ability to fully reduce income in future years. For losses incurred after tax year 2017, the carry-forward provision is allowed indefinitely.

Maryland has effectively decoupled from some of the special NOL provisions but generally permits the federal NOL deduction.

Property Taxes

The State property tax rate is currently $0.112 per $100 of assessment and is set annually by the Board of Public Works (BPW). All State property tax revenues are credited to a special fund, the Annuity Bond Fund, dedicated exclusively to paying the debt service on State general obligation bonds. Local governments generally have the authority to set their own property tax rates.

Background: The Purple Line is a 16.2-mile light rail line that will extend from Bethesda in Montgomery County to New Carrollton in Prince George's County. The Purple Line will operate largely at street level in a combination of dedicated and semi-exclusive right-of-way and also includes segments on elevated structures and in tunnels. The alignment for the Purple Line will provide direct connections to Washington Metropolitan Area Transit Authority stations at Bethesda, College Park, New Carrollton, and Silver Spring. The project will also connect to all three Maryland Area Regional Commuter rail lines, Amtrak, and local bus routes. The project includes 21 stations, 2 storage and maintenance facilities, and 25 light rail vehicles. The project is currently in the construction phase, with construction scheduled to be completed in calendar 2023.

State Fiscal Effect:

Income Tax Credit

Income tax credits can be claimed beginning in tax year 2020. The Department of Legislative Services assumes construction ends in fiscal 2024, so businesses will not incur losses as a direct result of the Purple Line construction after that date. As a result, general fund, TTF, and Higher Education Investment Fund revenues will decrease by a potentially significant amount in fiscal 2021 through 2024. The amount of the revenue decrease depends on the amount of business losses that can be attributable to the Purple Line construction in Montgomery and Prince George's counties, which cannot be reliably estimated.

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 tax credit against the corporate income tax, TTF expenditures decrease by 13.5% of the TTF revenue decrease. TTF revenues also fund the State capital program; thus, a decrease in TTF revenues decreases expenditures for the State capital program.

State Property Tax Credit

Special fund revenues for the Annuity Bond Fund will decrease in fiscal 2021 through 2024 as a result of the State property tax credit. The revenue loss depends on the State property tax imposed on real property that is located in an impacted area and owned by a qualified business, which cannot be reliably estimated.

Debt service payments on the State's general obligation bonds are paid from the Annuity Bond Fund. Revenue sources for the fund include State property taxes; premiums from bond sales; and repayments from certain State agencies, subdivisions, and private organizations. General funds may be appropriated directly to the Annuity Bond Fund to make up any differences between the debt service payments and funds available from property taxes and other sources.

To offset the reduction in State property tax revenues, general fund expenditures could increase in an amount equal to the decrease in the Annuity Bond Fund revenues, or the

State property tax rate would have to be increased by BPW in order to meet debt service payments.

Administrative Expenses

The Comptroller's Office reports that it will incur a one-time expenditure increase of $36,000 in fiscal 2021 to add the income tax credit to the personal and corporate income tax credit forms. Additionally, the Comptroller's Office may incur significant additional costs to determine the amount of business losses attributable to the Purple Line construction.

MDOT must provide qualified businesses with an application to substantiate the business income lost during the Purple Line construction, provide certification to each qualified business, and work with the Comptroller to determine the amount of business income eligible for the credit. Thus, special fund expenditures increase by at least $391,294 in fiscal 2021, which accounts for a 30-day implementation delay from the bill's June 1, 2020 effective date. This estimate reflects the cost of hiring one contractual manager, two contractual administrators, and four contractual administrative officers to review applications; review, evaluate, and certify businesses; and oversee the program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Positions	7
Salaries and Fringe Benefits	$352,619
Operating Expenses	38,675
MDOT Expenditures	**$391,294**
Comptroller Expenditures	**36,000**
Total FY 2021 State Expenditures	**$427,294**

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Local Fiscal Effect: To the extent that income tax credits are claimed against the corporate income tax, local highway user revenues decrease in fiscal 2021 through 2024.

Adding the State property tax credit to the real estate tax forms in Montgomery and Prince George's counties does not materially affect local finances.

Small Business Effect: Small businesses in Montgomery and Prince George's counties that experience business losses attributable to the Purple Line construction benefit from receiving an income tax credit and, if they own real property in the impacted area, a State property tax credit.

Additional Information

Prior Introductions: HB 313 of 2019 and HB 978 of 2018 received a hearing in the House Ways and Means Committee, but no further action was taken. The cross file of HB 978, SB 624, received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Designated Cross File: HB 540 (Delegate Wilkins, *et al.*) - Ways and Means.

Information Source(s): Montgomery and Prince George's counties; Comptroller's Office; Maryland Department of Transportation; State Department of Assessments and Taxation; Department of Legislative Services

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