Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 229 (Delegate Stewart)
Ways and Means

Corporate Income Tax – Throwback Rule

This bill applies a "throwback" rule in determining whether sales are considered in the State for purposes of the State's corporate income tax apportionment formula. **The bill takes effect July 1, 2022, and applies to tax year 2022 and beyond.**

Fiscal Summary

State Effect: General fund revenues increase by $12.6 million in FY 2022 from additional corporate income tax revenues. Transportation Trust Fund (TTF) revenues increase by $0.8 million and Higher Education Investment Fund (HEIF) revenues increase by $0.3 million in FY 2022. TTF expenditures increase by $0.1 million in FY 2022 and by $0.3 million in FY 2026. The Comptroller's Office can implement the bill with existing resources.

($ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	$12.6	$44.3	$46.9	$43.1	$43.5
SF Revenue	$1.1	$4.0	$4.2	$3.9	$3.9
SF Expenditure	$0.1	$0.4	$0.4	$0.3	$0.3
Net Effect	$13.6	$47.9	$50.7	$46.7	$47.2

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

Local Effect: Local highway user revenues increase by $0.1 million in FY 2022 and by $0.3 million in FY 2026. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: Sales of tangible personal property must be included in the numerator of the sales factor used for determining the Maryland taxable income of a multistate corporation if (1) the property is delivered or shipped to a purchaser within the State, regardless of the point from where it is shipped or other conditions of the sale or (2) the property is shipped from an office, store, warehouse, factory, or other place of storage in the State and the corporation is not taxable in the state of the purchaser. The bill provides that a corporation is considered taxable in a state if (1) in that state the corporation is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or (2) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, the state imposes a tax.

The Comptroller must assess interest and penalties if a corporation pays estimated tax of less than 90% of the required tax for tax year 2022.

Current Law: Under existing Maryland apportionment of income rules, the sales factor of the apportionment fraction is generally determined by including in the denominator all sales of the corporation and by including in the numerator only those sales of property delivered or shipped to a purchaser within the State, regardless of point of shipment or other conditions of sale, making Maryland a "destination" state. However, federal law essentially prevents other states from imposing corporate taxes on sales by Maryland corporations, even though they make sales in those states, if the corporation limits its activities in the other states to specified permissible activities. The interaction of Maryland's corporate taxation rules and the federal restriction therefore results in "nowhere income" – income that is apportioned nowhere for state income tax purposes. Under the bill, in calculating the sales factor of the apportionment fraction, sales of goods to a purchaser located in another state where the seller is not taxable are included (or "thrown back") in the numerator if the property is shipped from Maryland.

The Comptroller's Office issued in March 2013 its most recent analysis of the revenue impact of adopting the throwback rule on corporate income tax returns filed in tax year 2010. The Comptroller's Office estimated that under a throwback rule, 144 entities would have had $4.6 billion of income from sales made into states in which they did not have nexus thrown back to Maryland. After apportioning this income and accounting for losses, corporate income tax revenues would have increased by $15.7 million, with 94 of the entities paying additional taxes. If sales to the federal government were also thrown back to Maryland, which is not required by the bill, corporate income taxes would have increased by an additional $28.1 million. In tax years 2006, 2007, 2008, and 2009, adoption of a throwback rule that did not include government sales was estimated to have increased corporate income tax revenues by $44.3 million, $31.3 million, $32.8 million, and $96.5 million, respectively.

The Comptroller's Office states that the actual revenue gain from the throwback rule in each tax year would have been greater as single-entity corporations and noncorporate entities were exempt from the reporting requirements.

State Revenues: The bill requires the adoption of a throwback rule under the corporate income tax beginning in tax year 2022. Fiscal 2022 revenues will increase by a little less than 30% of the tax year 2022 increase. As a result, general fund revenues increase by $12.6 million, TTF revenues increase by $0.8 million, and HEIF revenues increase by $0.3 million in fiscal 2022. **Exhibit 1** shows the fiscal impact of the bill in fiscal 2022 through 2026.

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Exhibit 1
Fiscal Impact of Legislation

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
General Fund	$12,623,000	$44,306,000	$46,853,000	$43,114,000	$43,545,000
HEIF	330,000	1,159,000	1,225,000	1,128,000	1,139,000
TTF	803,000	2,820,000	2,982,000	2,744,000	2,771,000
Total	**$13,756,000**	**$48,285,000**	**$51,060,000**	**$46,986,000**	**$47,455,000**
TTF Expenditures	**$108,000**	**$381,000**	**$403,000**	**$263,000**	**$266,000**

HEIF: Higher Education Investment Fund
TTF: Transportation Trust Fund

This estimate is based on the Comptroller's estimate of the adoption of a throwback rule and assumes that pass-through entities will be required to comply with the throwback rule. Accordingly, the estimate assumes 40% of the revenue is from corporations and 60% is from pass-through entities.

State Expenditures: A portion of TTF revenues are used to provide capital transportation grants to local governments. Thus, any increase in TTF revenues from corporate income tax revenues results in a 13.5% increase in TTF expenditures to local governments (9.6% beginning in fiscal 2025). Accordingly, TTF expenditures increase by $0.1 million in fiscal 2022 and by $0.3 million in fiscal 2026, as shown in Exhibit 1.

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 increase by $0.1 million in fiscal 2022 and by $0.3 million in fiscal 2026.

Additional Information

Prior Introductions: Similar bills were introduced in the 2017, 2018, and 2020 sessions. HB 473 of 2020 passed the House and was referred to the Senate Budget and Taxation Committee, but no further action was taken. SB 538 of 2018 and SB 833 of 2017 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. HB 1051 of 2018 and HB 639 of 2017, the cross file of SB 833, received a hearing in the House Ways and Means Committee, but no further action was taken.

Designated Cross File: None.

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

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