



LEGISLATIVE POSITION:

Favorable

House Bill 129

Taxes-Election for Pass-Through Entities

House Ways & Means Committee

Wednesday, February 12, 2020

Dear Chairwoman Kaiser and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 4,500 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic growth for Maryland businesses, employees and families.

Many small businesses in Maryland are organized as pass-through entities. Pass-through entities include sole proprietorships, partnerships and S-corporations. These businesses are not subject to the corporate income tax. Instead, owners are taxed under the individual income tax.

The federal Tax Cuts and Jobs Act of 2017 (TCJA) imposed a new, \$10,000 limitation on the deductible amount of state and local taxes (income + property, otherwise known as SALT) paid by an individual. The SALT cap impacts all individuals, including small businesses that are organized as pass-through entities since these businesses pay the income tax related to their business income on the owner's individual income tax return. TCJA does not, however, cap the SALT obligations of non-PTE corporations, giving C-corporations a tax advantage compared to individuals and small businesses.

House Bill 129 would have the effect of restoring a federal income tax deduction to individuals and pass-through entities when filing their federal income tax return. The bill would confirm that the state and local tax (SALT) currently remitted to Maryland by pass-through entities is a tax on the *entity*, thereby allowing the owners to take the position that the tax is a business entity tax not subject to the \$10,000 SALT limitation enacted in TCJA. Further, the bill clarifies, if so elected, that at the entity-level the tax under 10.102.1 is a tax on and a tax paid by the PTE itself (and not "paid on behalf of" the owners), thus making the state income tax paid by the entity deductible against business income for federal taxable income purposes.

The bill is revenue neutral for Maryland's treasury. In order to maintain revenue neutrality for the State, the income from the PTE still flows through to the owners' individual income tax return.

Six states have passed similar legislation in response to the SALT cap imposed by TCJA. Most recently, New Jersey enacted a similar statute on January 13, 2020.

Small businesses are the driving force of job creation and economic expansion in Maryland and make up almost 92 percent of the State's registered companies. This relatively minor code change would provide federal tax relief for tens of thousands of Maryland's small business owners, while remaining revenue neutral to the State.

For these reasons, the Maryland Chamber of Commerce respectfully requests a **favorable report** on **HB 129**.

