MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION
Unfavorable
House Bill 473
Corporate Income Tax - Throwback Rule
House Ways and 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. Part of that work includes evaluating and maintaining the best approaches for business tax policies for the state.

HB 473 seeks to institute a rule requiring the reapportionment on the sales of tangible personal property to be included in the numerator of the sales factor for property that is delivered or shipped to a purchaser within the state from outside the state or on goods shipped from Maryland to a state where those goods are not taxable. This is commonly referred to as the "throwback rule." The bottom-line objective is to collect corporate income taxes off sales from outside the state on goods that originate in Maryland but are then not taxable in that other state. This piece of corporate tax legislation was introduced in 2017 and 2018, with each receiving a public hearing. Further action was not taken on either. A similar piece of legislation was introduced in 2011 and received an unfavorable report from the Senate Budget and Taxation Committee.

The "throwback rule" is seen by some as a magic fix for taxing "nowhere income," and the primary concerns remain that this apparatus will create tax inequality and competitive disadvantage for Maryland businesses and may even prove to be counterproductive if any loss in economic activity outweighs that of gains in revenue. In some cases, the "throwback rule" can even result in double taxation.

The Council On State Taxation, a nonprofit trade association whose objective is to promote equitable and nondiscriminatory tax policies across the Unites States, says a company's tax liability in one state should not be measured by their tax liability in another state.

For small, export-oriented Maryland businesses, this would have an outsized effect since they are less likely to have a nexus (e.g., facilities) in other states, meaning a larger portion of their income could become subject to this proposed additional taxation.

Finally, Maryland's own Business Tax Reform Commission previously considered this issue and ultimately recommended this tax scheme not be adopted because it represents a tax on product originators, thereby discouraging investment and business location in Maryland. This is particularly important as none of Maryland's neighbors--Pennsylvania, Delaware, Virginia or West Virginia--utilize a throwback rule.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **Unfavorable Report** on HB 473.