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Testimony of

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Before the

Maryland House of Delegates Ways and Means Committee

Hearing on H.B. 1088, Effective Corporate Tax Rate Transparency Act of 2020

February 25, 2020

Chair Kaiser and Members of the Ways and Means Committee, I'm Michael Mazerov, a Senior Fellow with the State Fiscal Policy division of the Center on Budget and Policy Priorities in Washington, D.C. The Center is a non-partisan research and policy institute that pursues federal and state policies designed to reduce poverty and inequality and to restore fiscal responsibility in equitable and effective ways. We apply our expertise in budget and tax issues and in programs and policies that help low-income people, in order to help inform debates and achieve better policy outcomes. I appreciate the opportunity to submit testimony in support of H.B. 1088. Delegate Palakovich Carr's bill would require publicly traded corporations and their subsidiaries taxable in Maryland to calculate and report to the Comptroller their effective state corporate income tax rates. The Comptroller would then issue an annual study reporting these results and explaining them on an aggregate, anonymized basis.

Although I believe all states with corporate income taxes should require publicly traded corporations to report their bottom-line tax liability and certain other line-items from their tax returns on a non-anonymized basis,[1] this bill is a positive step toward giving policymakers and the public a better picture than is currently available of how well Maryland's corporate tax structure is working to ensure all corporations pay their fair share of income tax. As this committee has already heard in taking testimony on several corporate tax reform bills this session, Maryland has a very weak corporate tax structure in comparison to many other states; among other flaws, it does not mandate combined reporting, does not contain a throwback rule, imposes no form of corporate minimum tax, treats all income as apportionable, and will soon allow all corporations to apportion their income using a single sales factor formula. Although, to its credit, the Comptroller's office publishes

[1] See: Michael Mazerov, "State Corporate Tax Disclosure: The Next Step in Corporate Tax Reform," February 14, 2007, https://www.cbpp.org/research/state-corporate-tax-disclosure-the-next-step-in-corporate-tax-reform.

a considerable amount of information extracted from state corporate tax returns,[2] these data are lacking in certain respects. For example, they do not identify a number of important tax breaks that are brought into the Maryland tax code because of its conformity to the federal code, and they do not contain critical information on the share of profits of multistate corporations that are taxable in Maryland. Requiring a calculation of the effective corporate tax rate using book income, as the bill proposes, would address this first shortcoming of the Comptroller's current publication, and an amendment to the bill to be recommended below will help address the second one.

More importantly, there will be great benefit in tasking the Comptroller's office with ensuring the accuracy of corporations' effective tax rate calculations and issuing its own analysis of the factors explaining these data. Outside analysts do not have access to the relevant book income information at all, since publicly traded corporations file consolidated returns but Maryland requires individual members of a consolidated group to file separate returns. And while we could use the data currently published by the Comptroller to develop estimates and analyses of average effective tax rates based on federal taxable income, these would almost inevitably be subject to debate and dispute. The Comptroller's own analyses mandated by the bill are likely be viewed as more authoritative.

While I support enactment of the bill in its current form, I think it could be improved by two amendments. The effective tax rate is actual tax liability divided by a measure of profit earned in Maryland. Under the current wording of the bill, the latter is determined using the existing statutory apportionment rules. However, the current rules were not intended to be an accurate measure of profit attributable to Maryland; they were very deliberately enacted in recent years to provide an economic development incentive. Accordingly, my first recommended amendment would substitute a normative apportionment formula for what is currently in the bill, which ideally would be the original equally-weighted property/payroll/sales formula but could be the double-weighted sales variant of that formula as an acceptable compromise. That change would help identify the impact of the favorable apportionment formula on effective corporate tax rates, which should be carefully studied going forward to determine if the purported economic development benefits justify the forgone revenue.[3]

Second, I would recommend that language be added to the bill that would explicitly authorize the Comptroller to issue guidance or regulations fleshing out the method of calculating the effective tax rate and the "itemized explanation of how the corporation's effective tax rate was calculated" to ensure uniformity among taxpayers.

Again, I thank the Committee for the opportunity to submit written testimony on H.B. 1088. I recommend a favorable report, ideally with the amendments I have suggested. I may be reached at mazerov@cbpp.org if Committee members have any questions.

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[2] See the annual reports available at https://www.cbpp.org/research/state-corporate-tax-disclosure-the-next-step-in-corporate-tax-reform.

[3] There are good reasons to doubt the effectiveness of single sales factor apportionment as a job creation incentive. See: Michael Mazerov, "Case for "Single Sales Factor" Tax Cut Now Much Weaker," April 1, 2015, https://www.cbpp.org/blog/case-for-single-sales-factor-tax-cut-now-much-weaker.