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WRITTEN TESTIMONY SUBMITTED TO THE MARYLAND HOUSE WAYS AND MEANS COMMITTEE REGARDING HOUSE BILL 330 JANUARY 28, 2021

Thank you for the opportunity to submit written testimony. My name is Matthew Gardner. I am a senior fellow at the Institute on Taxation and Economic Policy (ITEP), a nonprofit research group based in Washington, DC. ITEP's research focuses on state and federal tax policy issues, with an emphasis on fairness, sustainability and transparency.

My testimony today focuses on House Bill 330, which would require certain publicly traded corporations to make a confidential disclosure of basic information about their tax returns to the Comptroller. The testimony emphasizes that many of the most profitable American corporations are paying little or no state and federal income taxes, for reasons that are usually difficult to quantify; that policymakers need access to basic information about state-specific corporate tax payments to effectively evaluate and reform Maryland's tax system; and that HB 330 represents an important step toward achieving greater transparency in Maryland's tax system.

STATE (AND FEDERAL) CORPORATE TAX AVOIDANCE BY LARGE CORPORATIONS

It is now widely understood that, both at the state and federal level, America's largest and most profitable corporations are routinely paying effective corporate income tax rates far below the statutory tax rates that these companies should, in theory, be paying. A comprehensive 2017 ITEP study of the state income tax disclosures made by 240 publicly traded Fortune 500 corporations that were consistently profitable between 2008 and 2015 found that:

- While the nationwide weighted-average state corporate tax rate was about 6.25 percent, these companies collectively paid state income taxes equal to less than 2.9 percent of their U.S. pretax income, nationwide.
- This finding implies that profitable Fortune 500 corporations are, as a group, sheltering more than half of their U.S. income from state corporate income tax.
- Ninety two of these 240 companies were able to reduce their nationwide state income taxes to zero in at least one profitable year during this 8-year period, despite telling their shareholders they made $348 billion in U.S. pretax income during those no-tax years.
- By paying less than the statutory state income tax rates in effect during this period, these companies collectively reduced state tax collections by $126 billion over the 8 year period.

ITEP's work has found a similar pattern of corporate tax avoidance at the federal level. A companion study found that in the same eight year period studied in our state report, profitable Fortune 500 corporations paid just over 21 percent of their U.S. income in federal incomes taxes, at a time when the statutory tax rate was 35 percent. More recently, ITEP has found that in the first year under the 21 percent federal income tax rate enacted by Congress in 2017, profitable companies paid an effective federal income tax rate of just 11.3 percent, little more than half the 21 percent legal tax rate. This finding strongly suggests that the federal tax breaks companies were using before the passage of the 2017 tax law remain very much available to companies under the new tax rules.

Current Tax Disclosures are Inadequate to Diagnose Tax Avoidance and Evaluate Tax Incentives

All of the information used by ITEP in compiling these tax avoidance estimates was taken directly from the annual financial reports these companies are required to file each year with the Securities and Exchange Commission (SEC). But the SEC's disclosure requirements on income taxes are all national in scope: companies aren't required to disclose income or taxes related to specific states, nor are they required to disclose the value (or even the existence) of tax breaks these companies claimed from specific states. This means that the bleak picture of rampant tax avoidance sketched out by ITEP's report, while raising important questions about the taxpaying behavior of companies in each state, leaves entirely unanswered the question of whether any or all of these companies are actually paying state income taxes in any specific state. In particular, when a Maryland-headquartered corporation reports, in its financial statements, paying no state income tax nationwide on $100 million of U.S. income, Maryland lawmakers simply can't know what that means about that company's taxpaying behavior—or taxable income—in Maryland.

This is especially problematic because when lawmakers enact corporate tax breaks, they almost always do so as a means of achieving a social policy goal, such as research and development, job creation or capital investment. When lawmakers don't know which companies are claiming job creation tax breaks, they can't evaluate whether these tax provisions are having the desired effect.

House Bill 330 Would Give Maryland Policymakers an Important Tool for Evaluating the Tax System

House Bill 330 is designed to provide the Maryland-specific information on companies' income and tax profile that state policymakers currently lack. The bill would require certain publicly traded corporations to provide the Comptroller's office with information on the corporation's "effective tax rate," defined as its Maryland income tax liability as a share of its Maryland book income. The bill would also require companies to disclose the value of major factors affecting the company's effective tax rate, including legal deductions, credits and other adjustments to taxable income or tax liability.

The legislation would also require the Comptroller's office to annually submit a report to the Governor including aggregate data summarizing the effective tax rates paid by the companies disclosing this information. The Comptroller's report is required to provide separate estimates for different industries, and for companies of different sizes. The Comptroller's report would also identify the tax provisions that appear to be responsible for differences between effective tax rates and the statutory rate.

HB 330’s disclosure requirements would give state policymakers an important analytical tool for understanding how the state’s legal corporate tax breaks are affecting specific industries and specific companies. This information would help lawmakers to evaluate whether the revenue Maryland is forgoing by providing various tax breaks is money well spent.

Corporate Disclosure Would not Impose Administrative Burdens

All multi-state companies, including the publicly traded companies that would be affected by HB 330 and the privately owned companies that would not, already must apportion their taxable income between each of the states (and foreign jurisdictions) in which they do business. The data reporting required by HB 330 includes only information that these companies are already calculating in the regular course of filing state income tax returns. This means that the disclosure provisions in HB 330 cannot be said to impose a meaningful administrative burden on these companies.

Conclusion

Maryland’s corporate income tax plays an important role in raising needed tax revenues in an equitable and sustainable way. If the biggest corporations are finding ways—whether clearly legal, or less so—to avoid paying any tax to the state of Maryland, state lawmakers should have the tools they need to know when this is happening, and why it is happening. House Bill 330’s disclosure provisions would represent an important step toward this goal.

Thank you for the opportunity to submit this testimony.