



Peter Franchot  
Comptroller

## TESTIMONY OF COMPTROLLER PETER FRANCHOT

### Letter of Information – Senate Bill 496 – Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families (RELIEF) Act

*House Ways and Means Committee*

*February 9, 2021*

Chair Kaiser, Vice Chair Washington and members of the Committee, it is my pleasure to provide this Letter of Information related to **Senate Bill 496 – Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families (RELIEF) Act**.

- The impact of making retroactive forms changes for tax year 2020 and the current sales and use tax year may be compounded if other legislative actions, such as corrective legislation regarding pass-through entities (2020 SB523) and certain veto overrides from the 2020 session (HB732) affecting sales and use tax are also enacted, calling for additional retroactive changes to the same tax forms impacted by the changes in this bill.
- Further review is recommended as to where to place the subtractions listed in the bill and amendments.
  - Specifically, the current proposed Tax-General Section 10-207(jj) should be moved to Tax-General Section 10-208.
  - The Tax-General Article has two subtraction sections and one has historically been reserved for federal changes (§ 10-207) and one for state specific changes (§ 10-208).
    - To follow conventions, then the UI subtraction, which is state specific should be in Section 10-208. The grant subtraction could also follow that but could also arguably be a federally related subtraction with federal grants.
- There could also be a revenue impact when applying these subtractions to nonresidents.
  - An inquiry from the General Assembly led to a secondary review of this issue, and when applied to nonresidents, putting the subtraction in Section 10-208 limits the revenue loss to the state.
  - Section 10-208, working in conjunction with other subtitle provisions, only allows a nonresident to subtract an amount that is attributable to Maryland.
    - For example, if a Virginia resident has a Virginia UI payment income and capital gain income attributable to Maryland, the subtraction would not apply to the unrelated capital gain income because the UI is not Maryland source.

- However, if that same provision was in Section 10-207, there is no limitation and the nonresident may take the subtraction if the Virginia UI payment is included in federal adjusted gross income. The same theory may apply to the other subtractions contained in the RELIEF bill as well.
  - If the subtractions remain in Tax-General § 10-207, a subtraction is allowed for nonresidents regardless of the source of income.
- Certain federal tax changes enacted in the December 27, 2020 federal stimulus bill should be considered for inclusion in the RELIEF Act so that Maryland residents are not denied the full benefit of the federal changes by being taxed at the state level due to decoupling/coupling issues which arise out of the application of Tax-General Article §10-108.
  - Specifically, we recommend the General Assembly consider addressing a taxpayer's ability to claim a deduction for business expenses paid for with PPP loans and grants, the ability of individual taxpayers to use their 2019 earned income amount to calculate their 2020 earned income tax credit, and that Maryland be coupled to the provision that allows educators to claim a deduction for the purchase of personal protective equipment (PPE).
    - Each of these is allowed at the federal level, but Maryland may be forced to decouple on 2020 Maryland returns due to the timing of the federal legislation enactment if not specifically allowed by Maryland statute.
  - There are proposals to address the coupling/decoupling issues in separate legislation, but it might be more appropriate to include with the RELIEF Act.
- Clarification: TG 10-207(KK)(2)
  - The Comptroller's Office requests a clarification to the text to indicate that the credit is for the amount that has been forgiven from a loan that qualifies as a coronavirus relief payment. This will avoid any confusion between the total loan amount and the amount forgiven, in the event that they are not the same. We have seen reporting that some PPP loans were not used appropriately, and therefore may not qualify for forgiveness.
    - TG 10-207(KK)(2) FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2019, BUT BEFORE JANUARY 1, 2022, THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE AMOUNT OF A CORONAVIRUS RELIEF PAYMENT, INCLUDING A LOAN **AMOUNT** THAT HAS BEEN FORGIVEN, RECEIVED BY THE PERSON DURING THE TAXABLE YEAR.
- Clarification: TG 10-207 (KK)(3)
  - Responsibility for reporting of the names of coronavirus relief programs would rest with the government units, and be mandatory within 30 days of enactment of the legislation, and that the additional information would be provided upon request. The following was the proposed language for that approach:

- o TG 10-207 (KK)(3)
  - (II) WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF THIS ACT, OR, IF CREATED AFTER THE EFFECTIVE DATE OF THIS ACT, THEN WITHIN THIRTY (30) DAYS OF CREATING A CORONAVIRUS RELIEF PAYMENT PROGRAM, A UNIT OF STATE GOVERNMENT OR A LOCAL GOVERNMENT SHALL PROVIDE TO THE COMPTROLLER THE NAME OF THE CORONAVIRUS RELIEF PAYMENT PROGRAMS ADMINISTERED BY THE UNIT OR LOCAL GOVERNMENT.
  - III) ON REQUEST BY THE COMPTROLLER, A UNIT OF STATE GOVERNMENT OR A LOCAL GOVERNMENT THAT ADMINISTERS A CORONAVIRUS RELIEF PAYMENT PROGRAM SHALL, WITHIN THIRTY (30) DAYS OF THE DATE OF THE REQUEST, PROVIDE TO THE COMPTROLLER, IN THE MANNER REQUESTED BY THE COMPTROLLER, THE FOLLOWING:
    - (A) THE NAMES OF THE CORONAVIRUS RELIEF PAYMENT PROGRAMS ADMINISTERED BY THE UNIT OR LOCAL GOVERNMENT;
    - (B) A LIST OF RECIPIENTS OF A CORONAVIRUS RELIEF PAYMENT, INCLUDING THE NAME, ADDRESS, AND TAX IDENTIFICATION NUMBER OF EACH RECIPIENT;
    - (C) THE AMOUNT OF THE CORONAVIRUS RELIEF PAYMENT PROVIDED TO THE PERSON;
    - (D) THE DATE THE CORONAVIRUS RELIEF PAYMENT WAS PROVIDED TO THE PERSON; AND
    - (E) ANY OTHER REQUESTED INFORMATION REGARDING THOSE CORONAVIRUS RELIEF PAYMENTS.
- Clarification: Page 4, line 1 allows the subtraction of “the amount of a Coronavirus Relief Payment, including a loan that has been forgiven, received by the person during the taxable year.”
  - o It may seem clear that the provision, “including a loan that has been forgiven” is referring to loans received under Coronavirus relief measures. However, persons may argue that this applies to any type of forgiven loan. This provision should be more specific.
- Clarification: Page 8 line 3, the word “for” should be changed to “during.” It currently states the Comptroller ‘shall report the payments made under the Act *for* calendar years 2021 and 2022.’
- Clarification: that any ‘economic impact payments’ should not be subject to any vendor offsets (if they are paid out as a vendor payment via direct deposit or check).
  - o Subtitle 9, Part VI pertains to offsets for debts owed to the federal government. That section applies to refunds and “vendor payments”. Section 13-930(e) broadly defines “vendor payments”. One could interpret that definition to include these economic impact payments, and consequently,

- the bill language should be modified to state that “economic impact payments” shall not be considered a vendor payment.
- Clarification, the following be added to Section 3:
    - “THE SALES AND USE TAX CREDIT DESCRIBED IN THIS SECTION SHALL BE CLAIMED IN THE MANNER PRESCRIBED BY THE COMPTROLLER.”
    - It is highly unlikely given the emergency nature of this bill that there would be time to revise, print, and mail out new paper SUT coupons to accounts.
    - The Comptroller’s Office may need to require electronic filing for those who are claiming these credits.
  - The timing of the changes proposed in Tax General 10-207 would delay the Comptroller’s ability to begin issuing refunds to individuals by approximately 10 business days (to Feb 26).
    - Individual returns could be accepted beginning 2/12, but the processing changes would need to be implemented and tested before refunds are issued.
  - State Finance and Procurement Art. Section 7-222 prohibits the issuance of a warrant for payment of amounts owed by the State to another person if that person owes the State \$50 or more and has not made appropriate arrangements to pay that debt.
    - If the Governor’s intention is not to have the economic impact payments subject to the provision of SPP Section 7-222, the appropriate modification to the bill language must be made.
  - Creating a new subtraction modification for individuals and corporations:
    - Requires forms changes
    - Requires FDF and testing for ITD and RPE
    - Data capture needs to be added to the data warehouse for anticipated reporting
    - Requires third party software developers to change current year returns – this is a big lift, and may be difficult as they also deal with late federal forms changes, and possibly similar late changes from other states
    - Requires complete retraining and approval of forms
  - Subtraction for grants and loan forgiveness would require additional staff:
    - Request one (1) Financial Compliance Auditor I (4539/14/9) \$54,521 for validation of the subtractions and preparing content for publication requirements.
  - Regarding publication of information about the subtractions:
    - There would be no additional charge if the only publication is on the Comptroller’s website. If additional advertising and/or publication is desired, funds would need to be budgeted for this.
  - EITC mailing:
    - Mechanism to accomplish this is still being discussed, but the task is complex.
    - Will likely include costs to hire some contractors to assist in the additional work, as well as the cost for printing, mailing, and postage
  - Page 3 line 4-5 references section 5-549 of the Economic Development article, the definition of small business as follows:

- o “Small business” means a business that is classified as a small business under the U.S. Small Business Administration size standards.’
- o Under that provision of SB496, businesses self-certify themselves as a small business. The standards, requirements for self-certification, and penalties for misclassifying a self-certification are in CFR Title 13, Chapter 1, Part 121.
- o By relying on the SBA definition of a small business, the Governor does not explicitly limit what it means to be a “small business” in order to be eligible for these funds.
- o There should be a provision that states the operative date for determining whether an entity is a small business and the repercussion of misclassification, such as a penalty and an addback provision. The provision allows the MD Small Business Development Financing Authority to convert \$50,000.00 of financing to a grant for these small businesses, but it’s unclear whether the taxpayer must satisfy the elements of a small business on the date they apply for financing or the conversion date.
- There may be a need for a new form to process the RELIEF act subtraction, given that 2020 income tax forms have already been finalized and published. Accordingly, for both TG 10-207 and 10-307, the Comptroller’s Office requests the following text addition:
  - o THE SUBTRACTION DESCRIBED IN THIS SUBSECTION SHALL BE CLAIMED IN THE MANNER PRESCRIBED BY THE COMPTROLLER.
- Section 3, if not its own statute, should be incorporated in an amendment to section 11-105 of Tax-Gen.
  - o Relatedly, the reference to section 11-105 on page 8 line 12 will need to be modified to refer to 11-105(a).

###