

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

House Bill 661 (Delegate Rudolph, *et al.*)

Ways and Means

Income Tax - Preservation and Conservation Easements

This bill allows a State income tax credit for 50% of the fair market value of donations of land or an interest in land to the Maryland Environmental Trust (MET) that are accepted and approved by the Board of Public Works. The bill requires that the fair market value of a donation be substantiated by an appraisal by a certified appraiser. The maximum credit that may be claimed is \$50,000 for an individual and \$100,000 for a corporation. Any unused portion of the credit may be carried forward for up to ten taxable years.

The bill also provides a subtraction modification under the Maryland individual income tax for any gain recognized on the sale or other disposition of an easement or other interest in agricultural land to the Maryland Agricultural Land Preservation Foundation.

The bill takes effect July 1, 2000, and applies to all taxable years beginning after December 31, 1999.

Fiscal Summary

State Effect: Potentially significant general fund and Transportation Trust Fund (TTF) revenue decrease due to the bill's tax credit provision. The extent of any revenue loss depends on the amount of the credits claimed and number of easements donated. The bill's subtraction modification provision would result in a general fund revenue decrease of approximately \$585,000 in FY 2001. Future year losses reflect a 3% increase in the average acquisition cost per acre. No effect on expenditures.

Local Effect: Potential local government revenue loss as a result of the bill's tax credit provision. To the extent that credits are taken by corporations, local revenues would decline

as a portion of the corporate income tax is distributed to the TTF to which a distribution to local governments is made. The bill's subtraction modification provision would result in a local government revenue decrease of approximately \$322,000 in FY 2001.

Small Business Effect: Potential meaningful. Small businesses (e.g., farmers) that donate conservation easements will now be eligible for a credit against the State income tax for donations they would have made without the credit.

Analysis

Current Law: Credits are not allowed to be taken against the income tax for conservation easements donated to the MET. No subtraction modification exists for any gain recognized on the sale or disposition of land to the Maryland Agricultural Land Preservation Foundation.

Background: The General Assembly created the MET in 1967 to protect Maryland's farmland and forest land, wildlife habitat, waterfront, significant area, historic sites, and properties with scenic features. MET fulfills this mission through its four voluntary cooperative programs -- Conservation Easements, Local Land Trust Assistance, Historic Village Protection, and Keep Maryland Beautiful.

MET's most active program has been its Conservation Easement Program. Under this program landowners donate protective conservation easements on lands. The conservation easements generally provide that land will perpetually remain open space. The landowner retains title to the land and may sell or transfer the property at will. The specific provisions of the easement will determine what the landowner may do to modify the appearance, character, and use of the land. If the land is transferred, the new property owner remains subject to the terms of the easement. On a few occasions, MET acquires ownership of the land in fee simple. These purchases are generally encumbered by MET with appropriate conservation restrictions and sold back to the private sector or transferred to other land management agencies.

Through its Conservation Easements Program, MET has acquired 481 easements totaling 62,510 acres through 1998. MET holds easements in each county and in Baltimore City; however, the majority of the easement acres are held in Baltimore, Talbot, Dorchester, and Queen Anne's counties. MET gives priority to easement offers for property over 50 acres that have important ecological, agricultural, or historic features or which have bay or tributary frontage.

State Fiscal Effect:

Tax Credit

The actual cost of the bill's tax credit provision is difficult to reliably estimate at this time due to the fact that the average credit claimed can vary significantly depending on the donor's income and tax liability.

From 1995 through 1999, MET has averaged approximately 41 donations per year, with an average acreage of 110 acres per donation. The average value of development rights per acre is \$1,634. The resulting average value of a conservation easement donated to MET is estimated to be \$180,298.

The bill allows individuals a credit of 50% of the fair market value of the property donated up to a maximum of \$50,000, and corporations a credit of 50% of the fair market value of the property donated up to a maximum of \$100,000. Individuals and corporations are required to include the amount of the credit in taxable income as an addition modification. An individual would need a taxable income of at least \$1 million to take the full \$50,000 credit in one year. However, it is likely that most individuals would have insufficient taxable income to take the full amount of the credit in one year. For example, according to 1998 tax return data, the average tax liability for taxpayers with adjusted gross income over \$200,000 was approximately \$20,500. It is assumed that most persons donating rather than selling conservation easements have higher than average incomes. It is assumed that persons with lower incomes would prefer to sell conservation easements.

The following two scenarios illustrate the potential cost of the bill:

Scenario 1: All 41 donors are individuals with an average tax liability of \$50,000 (taxable income of approximately \$1 million). The maximum general fund revenue loss would be approximately \$1.95 million per year, which reflects the net amount of the credit after the addition modification.

Scenario 2: All 41 donors are individuals with an average tax liability of \$20,500 (taxable income of approximately \$423,000). The maximum general fund revenue loss would be approximately \$800,156 which reflects the net amount of the credit after the addition modification.

Individuals and corporations that are unable to claim the maximum credit in a year are allowed to carry forward the unused portion of the credit for up to ten years.

Credits taken on personal income tax returns result in a reduction of general fund revenues. Seventy-five percent of the credits taken on corporate income tax returns result in a general fund reduction and the remaining 25% result in a reduction in TTF revenues because of the

distribution of corporate income tax revenue to the TTF. At this time, the number of credits expected to be claimed on personal or corporate income tax returns cannot be reliably estimated.

Should this provision result in more individuals and corporations donating conservation easements, general fund and TTF revenues will decrease accordingly.

Subtraction Modification

General fund revenue would decrease by approximately \$585,000 in fiscal 2001 as a result of the bill's subtraction modification provision based on the following facts and assumptions:

- in 1999 the Maryland Agricultural Land Preservation Foundation purchased 104 properties;
- the average number of acres purchased per property was 137; the average acquisition cost price per acre was \$1,619;
- the fiscal 1999 estimated net gain for property sold is 50% of the purchase price;
- the average acquisition cost per acre will increase by 3% annually.

Future year estimates reflect a constant number of properties sold and a 3% increase of the acquisition cost per acre.

To the extent that the gain realized is more or less than 50%, the cost of the subtraction would increase or decrease accordingly.

Local Fiscal Effect: Local government revenues would decline as a result of corporate returns claiming the credits proposed in the bill. As mentioned above, 75% of corporate tax revenues are distributed to the general fund and 25% are distributed to the TTF. Of the 25% distributed to the TTF, approximately 30% is distributed to local jurisdictions. Local government revenue would increase by approximately 2.71% of the amount of the credits claimed on personal income tax returns because the bill requires the amount to the credit to be added back to taxable income. As a result of the bill's subtraction modification provision, local revenues would decline by approximately 2.67% of the total subtraction taken, or 55% of the State loss for recognized gains from the sales of conservation easements. Based on the estimate above, the local government revenue decrease will be approximately \$322,000 in fiscal 2001.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Comptroller of the Treasury (Bureau of Revenue Estimates), Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2000
cm/jr Revised - House Third Reader - March 27, 2000

Analysis by: Michael Sanelli

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510