

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 100

(Chairman, Budget and Taxation Committee)
(Departmental – Comptroller)

Budget and Taxation

Ways and Means

Income Tax - Electing Small Business Trust

This departmental bill requires a fiduciary to include the amount of income of an electing small business trust from stock in an S corporation for the purpose of calculating federal adjusted gross income (FAGI).

The bill takes effect July 1, 2002 and applies to all taxable years beginning after December 31, 2001.

Fiscal Summary

State Effect: General fund revenues would increase to the extent that more taxable income is reported. Any such increase is assumed to be minimal.

Local Effect: Minimal local government revenue increase. Any modification to adjusted gross income will impact local government revenues.

Small Business Effect: The Comptroller has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: A fiduciary is not required to include the portion of income from an electing small business trust that comes from stock in an S corporation when calculating FAGI. As a result, this income is not included in Maryland adjusted gross income because FAGI is the starting point for Maryland adjusted gross income.

Background: An electing small business trust is a trust without any beneficiaries other than individuals or estates eligible to be S corporation shareholders. The portion of any electing small business trust that is made up of stock in one or more S corporations is treated as a separate trust. Under federal law, special rules apply to the taxation of the portion of an election small business trust consisting of stock in one or more S corporations. This income is not included in federal adjusted gross income, but is instead calculated separately and then added to the tax owed by the fiduciary's federal income tax return. Because the starting point for Maryland adjusted gross income is federal adjusted gross income, the income from S corporation stock of an electing small business trust is not included in Maryland adjusted gross income and is therefore not subject to Maryland tax.

State Fiscal Effect: Electing small business trusts are useful estate planning tools. However, they can increase federal income tax liability by a substantial amount. There is no data on electing small business trusts, the value of subchapter S shares held by electing small business trusts, or the value of these shares. However, it is assumed that their use is limited. As a result, it is estimated that any general fund revenue increase resulting from this modification would be minimal.

Local Fiscal Effect: Any modification to adjusted gross income will impact local government revenues. Local government revenues would increase by approximately 55% of any State revenue increase.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mam/jr

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