HB 769

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 769 (Delegate Montgomery, *et al.*)
Ways and Means

Tax Credits − Purchase of Maryland-Mined Coal − Repeal

This bill repeals the Maryland-mined coal tax credits.

The bill takes effect July 1, 2004 and applies to tax year 2004 and beyond.

Fiscal Summary

State Effect: General fund revenue increase of approximately $14.1 million in FY 2005. Transportation Trust Fund (TTF) increase of approximately $346,800 in FY 2005. These estimates assume that 90% of Maryland-mined coal purchased is claimed as a credit. Out-year estimates reflect 4% annual increase in coal production.

($ in millions)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	$14.10	$14.67	$15.25	$15.86	$16.50
SF Revenue	.35	.36	.38	.39	.41
Expenditure	$0	$0	$0	$0	$0
Net Effect	$14.45	$15.03	$15.63	$16.25	$16.90

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local revenues would increase as a result of the credit no longer being claimed against the corporate income tax. Based on the estimate that 10% of the credits are being claimed on the corporate income tax, local highway user revenues would increase by approximately $104,000 in FY 2005 and increase by approximately 4% annually thereafter.

Small Business Effect: None.

Analysis

Current Law: Public service companies in Maryland can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. This tax credit can be claimed against the public service company franchise tax and cannot exceed the State tax liability for that tax year.

Cogenerators and electricity suppliers that are not subject to the public service franchise tax can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. The credit is restricted to the electricity suppliers that were defined before July 1, 1999 as an electricity company under the Public Utility Companies Article. This restriction does not apply if an electricity supplier is an affiliate of one of the suppliers that were defined as an electricity company prior to July 1, 1999. This credit can be claimed against the State income tax and cannot exceed the tax liability for that tax year.

Background: Chapter 792 of 1988 established the tax credit for Maryland-mined coal purchased by public service companies, with a sunset provision of June 30, 1991. The credit allowed was $3 per ton of coal purchased by a public service company in excess of the number of tons purchased by the public service company in 1986. Chapter 832 of 1989 established a Maryland-mined coal tax credit for cogenerators and electricity producers not subject to the public service company franchise tax. The credit was equal to $3 per ton of coal purchased in excess of the amount that the cogenerator or electricity producer purchased in 1986. A cogenerator is a generating facility that produces electricity and another form of useful thermal energy (such as heat or steam) that is used for industrial, commercial, or heating and cooling purposes. The tax credit for cogenerators and electricity suppliers can be applied against the State income tax.

Chapter 700 of 2000 allowed the credit to be claimed for all amounts of coal purchased for both tax credits, not just the amount in excess of the amount purchased in 1986. Chapter 700 of 2000 also repealed the sunset provision originally established under Chapter 792 of 1988 for the tax credit available to public service companies. Chapter 700 of 2000 was not approved by the Attorney General's Office for constitutionality and legal sufficiency, in that it was determined that a court is likely to have serious problems under the Commerce Clause of the U. S. Constitution.

Maryland-mined coal has relatively high ash content and moderate levels of sulfur as compared to other types of coal such as anthracite. The sulfur and ash content contribute to acid rain and particulate pollution. As a result of amendments to the federal 1990 Clean Air Amendment, public service companies in Maryland significantly decreased their consumption of Maryland-mined coal. The Attorney General ruled in 1995 that consumption was not a requirement for claiming the credit. As a result, many companies have claimed the credit by acting as a broker, purchasing Maryland-mined coal and selling it to out-of-state companies who consume the coal.

Exhibit 1 lists the amount of credits claimed against the public service company franchise and corporate income taxes for tax years 2000-2002. Due to reporting restrictions, the amount of credits claimed against the corporate income tax does not include credits claimed by cogenerators. **Exhibit 1** also lists the estimated amount of coal that is purchased and claimed as a credit. This estimate is based on the amount of credits claimed in each year and the amount of coal produced as reported by the State Bureau of Mines.

Exhibit 1
Amounts of Credits Claimed
Tax Years 2000-2002

Tax Year	Public Service Franchise Tax	Corporate Income Tax	Total	Percent of Coal Produced Known to Be Claimed as a Tax Credit
2000	$11,405,867	$ 900,000	$12,305,867	89%
2001	9,753,644	1,100,000	10,853,644	76%
2002	11,488,131	1,100,000	12,588,131	83%

Source: State Department of Assessments and Taxation; *Maryland Tax Expenditures Report Fiscal Year 2004*, Bureau of Mines

In addition, Maryland-mined coal is subject to State and local taxation. The State imposes a reclamation tax of $0.15 per ton on surface-mined coal. Nine cents per ton goes to the Bituminous Coal Open-Pit Mining Reclamation Fund and $0.06 per ton goes to the county in which the coal was extracted. There is a State $0.17 per ton reclamation tax on deep-mined coal. Counties can impose a $0.30 per ton tax on coal that is surface-mined. In fiscal 2003, Allegany and Garrett were the only counties that assessed this tax and collected a total of $517,022.

State Revenues: As a result of repealing the Maryland-mined coal tax, general fund revenues will increase by approximately $14.1 million in fiscal 2005, and TTF revenues will increase by approximately $346,800. The estimated revenue gains, and out-year projections, are based on the following facts and assumptions:

- Maryland coal production increased by approximately 4% annually from 2000 to 2002;
- public service companies and corporations claiming the credit have sufficient tax liability to claim the entire credit available;
- in tax year 2002, approximately 83% Maryland-mined coal purchases are known to be claimed against either the public franchise or corporate income tax;
- the State Department of Assessments and Taxation has indicated that an additional public service company plans to claim the credit beginning in tax year 2003;
- based on the additional public service company purchases and purchases by cogenerators, total credits claimed could reach approximately 90% of Maryland-mined coal annually; and
- approximately 7% of the reported credits claimed in tax years 2000-2002 were against the corporate income tax. It is estimated that cogenerators will increase the actual amount of credits claimed to 10% of total credits claimed.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Environment (Bureau of Mines), Comptroller's Office, State Department of Assessments and Taxation, Department of Legislative Services

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