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FISCAL AND POLICY NOTE

House Bill 358 (Delegate Gordon, *et al.*)
Ways and Means

Income Tax - Subtraction Modification for Long-Term Care Provided by an Eligible Caregiver

This bill creates a subtraction modification under the Maryland income tax for individuals who provide long-term care to certain individuals. The amount of the subtraction modification is equal to $1,000 per tax year. Individuals who provide long-term care and who have a federal adjusted gross income over $200,000 in a tax year or individuals who provide long-term care to individuals who have a federal adjusted gross income over $10,000 in a tax year cannot claim the subtraction modification.

The bill takes effect July 1, 2005 and applies to tax year 2005 and beyond.

Fiscal Summary

State Effect: The extent of the general fund revenue loss depends on the number of individuals who provide qualifying long-term care and cannot be reliably estimated. Under one set of circumstances, general fund revenues could decrease by approximately $3.4 million annually beginning in FY 2006.

Local Effect: Based on the assumptions above, local revenues would decline by $2.1 million annually beginning in FY 2006.

Small Business Effect: None.

Analysis

Bill Summary: In order to claim the subtraction modification for providing long-term care to a spouse or dependent, the spouse or dependent must be certified by a licensed physician as requiring long-term care needs for at least 180 consecutive days during the tax year.

The bill defines an individual with long-term needs as an individual who: (1) is unable to perform without substantial assistance at least three of the daily activities as defined in Section 7702B (C) (2) (B) of the Internal Revenue Code; or (2) is unable to perform without substantial assistance at least one of the daily activities as defined in Section 7702B (C) (2) (B) of the Internal Revenue Code *and* requires substantial supervision to protect the individual from health and safety threats due to severe cognitive impairment. The daily activities defined by the Internal Revenue Code include eating, toileting, bathing, dressing, and continence.

Individuals can be claimed as a dependent if they are of the following relation to the taxpayer claiming the subtraction modification: parent, stepparent, grandparent, child, stepchild, sibling, aunt, uncle, or son-, daughter-, mother-, or father-in-law. Taxpayers can claim the subtraction modification if, regardless of relation, they provide long-term care to someone who lives in the same household for the entire tax year. Individuals who provide long-term care and who have a federal adjusted gross income over $200,000 in a tax year or individuals who provide long-term care to individuals who have a federal adjusted gross income over $10,000 in a tax year cannot claim the subtraction modification.

A subtraction modification of $1,000 can be claimed in a tax year for providing qualifying long-term care. The subtraction modification can be carried forward five years if the taxpayer does not have sufficient tax liability.

Current Law: Certain long-term care providers could qualify for existing State and federal law tax benefits.

For federal income tax purposes, there are two existing tax incentives for child and dependent care expenses: the dependent care credit and the employer-provided dependent care spending account.

The dependent care credit is allowed for child care expenses for children through age 12 or for day care expenses for disabled spouses or dependents. These expenses qualify only if they are necessary in order for the person claiming the credit to work or seek work. The federal Economic Growth and Tax Relief Reconciliation Act of 2001 increased the percentage of allowed expenses from 30% to 35%. The Act also increased the amount of eligible expenses to $3,000 for one qualified dependent and $6,000 for two or more qualified dependents (from $2,400 and $4,800, respectively). The beginning point for the phase-out of the credit was increased to adjusted gross income over $15,000. As a result, the percentage of allowed expenses is reduced to 20% for individuals with income over $43,000.

The federal employer-provided dependent care spending account allows an employee to receive up to $5,000 tax-free each year, to be placed in a "flexible spending account" from which the employee gets reimbursed for dependent care expenses. The amount placed in the spending account reduces the amount that may be claimed under the dependent care credit, so that an individual making full use of a dependent care spending account does not get to claim the credit. Not all employers provide these accounts.

The State provides an income tax credit for child and dependent care expenses equal to 32.5% of the federal child and dependent care credit. The maximum allowable income is $50,000 ($25,000 for a married individual filing a separate return). If an individual's federal adjusted gross income for the taxable year exceeds $41,000, the Child and Dependent Care Credit is reduced by 10% for each $1,000 or fraction of $1,000, by which the individual's federal adjusted gross income exceeds $41,000. For a married individual filing a separate return, if the individual's federal adjusted gross income for the taxable year exceeds $20,500, the credit is reduced by 10% for each $500, or fraction of $500, by which the individual's federal adjusted gross income exceeds $20,500.

In addition to the credit described above, Maryland also allows an income tax subtraction modification for qualified child and dependent care expenses of up to $3,000 for one dependent or $6,000 for two or more dependents. Maryland's treatment of dependent care expenses is tied to the federal dependent care credit, in that only expenses allowed in computing the federal dependent care credit are allowed in calculating Maryland's subtraction modification. In addition, amounts contributed to a dependent care spending account are excluded from Maryland taxable income since the starting point for determining Maryland taxable income is federal adjusted gross income (which excludes that amount).

Finally, Maryland taxpayers are allowed to claim an exemption for dependents. For tax year 2004, the amount of the exemption is $2,400.

Background: The Maryland Department of Planning estimates that approximately 40% of Marylanders over age 65 and approximately 17% of Marylanders aged 21-64 years report having a disability. The Census Bureau reports that nationally about 9 million people of all ages have disabilities so severe that they require personal assistance to carry out everyday activities. About 80% of people who take on the role of primary helper are relatives, and nearly half of these primary helpers live with the person with the disability.

Based on the Survey of Income and Program Participation data of the Census Bureau, one study estimates that, on average, caregivers spend 24 hours a week providing long-term care assistance. Individuals with low to moderate income, women, and individuals aged 55 to 64 are more likely to be caregivers. Caregivers provide, on average, 5 years of long-term care assistance while children of an individual requiring assistance typically provide nearly 10 years of assistance.

State Revenues: The actual cost of the bill, which cannot be reliably estimated at this time, depends on the number of qualifying individuals who provide long-term care and cannot be reliably estimated.

For illustrative purposes only, general fund revenues could decline by $3.4 million beginning in fiscal 2006 under one set of assumptions. An estimated 70,609 individuals would be able to claim the subtraction modification in fiscal 2006 for providing long-term care to individuals. These estimates are based on the following facts and assumptions:

- there are approximately 3.4 million Marylanders aged 18 to 65 years old;
- according to a 2001 study conducted by the Agency for Healthcare Research and Quality under the federal Department of Health and Human Services, 2.1% of individuals aged 18-64 require long-term care assistance;
- approximately 77% of individuals requiring long-term care assistance receive that care informally from individuals who are not compensated for providing care;
- of the individuals who received informal long-term care, approximately 83% reported being unable to perform one to two daily activities;
- based on a study conducted for the federal Office of Aging and the Comptroller's *2002 Income Tax Summary Report*, it is estimated that approximately 4% of caregivers have federal adjusted gross incomes over $200,000 and would not be able to claim the subtraction modification;
- based on data from the Survey of Income and Program Participation data of the Census Bureau, it is estimated that approximately 20% of qualifying caregivers provide assistance to an individual who earns more than $10,000 and would not be able to claim the subtraction modification; and
- individuals will have sufficient tax liability to earn the entire amount of the subtraction modification in 2005.

Based on these assumptions, revenues could decrease by $1.7 million for taxpayers who provide qualifying care to individuals age 18 to 65.

There are approximately 607,300 Marylanders aged over 65. Using estimates that apply to the over-65 population that receive long-term care in the same studies cited in the analysis for individuals aged 18-64, it is estimated that 36,134 individuals would claim the subtraction modification for providing long-term care for individuals aged 65 and above. Based on these similar assumptions, revenues could decrease by $1.7 million for taxpayers who provide qualifying care to individuals over age 65.

Additional Information

Prior Introductions: HB 823 of 2004, an identical bill, was not reported from the House Ways and Mean Committee.

Cross File: None.

Information Source(s): Comptroller's Office, Maryland Department of Planning, U.S. Census Bureau, U.S. Department of Health and Human Services, U.S. Administration on Aging, Department of Legislative Services

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