HB 599

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 599 (Delegate Taylor, *et al.*)
Ways and Means

Income Tax - Subtraction Modification - Creation of a Minority Business Enterprise

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This bill exempts from the State income tax 60% of the income resulting from the sale of a business entity that results in the creation of a minority business enterprise as defined by the bill.

The bill takes effect July 1, 2008 and applies to tax year 2008 and beyond.

Fiscal Summary

State Effect: General fund revenues could decrease significantly beginning in FY 2009 due to subtraction modifications claimed against the personal and corporate income tax. Transportation Trust Fund and Higher Education Investment Fund revenues would decrease beginning in FY 2009 due to subtraction modifications claimed against the corporate income tax. Expenditures would not be affected.

Local Effect: Local revenues would decrease significantly beginning in FY 2009 due to decreased local income tax revenues and local highway user revenues. Expenditures would not be affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill exempts from the State income tax 60% of the gain realized from the sale of a business entity that results in the creation of an MBE. An MBE is defined as any legal entity, except a joint venture, that:

- is organized to engage in commercial transactions;
- is more than 50% controlled and 20% owned by one or more individuals who are socially and economically disadvantaged; and
- is managed by, and has its daily business operations controlled by, one or more of the socially and economically disadvantaged individuals who own it.

The amount of the subtraction modification is required to be recaptured if within seven years of a qualifying sale the business enterprise no longer qualifies as an MBE.

Current Law: A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged. MDOT serves as the MBE certification agency for the State. A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of their membership in a group and without regard to individual qualities. An economically disadvantaged individual is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged. An individual with a personal net worth in excess of $1.5 million is not considered economically disadvantaged.

An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it. MBEs include not-for-profit entities organized to promote the interests of physically or mentally disabled individuals.

Background: The State MBE program establishes a goal that 25% of the value of all State procurement awards should go to certified MBEs, including a goal of 7% to African

American-owned businesses and 10% to women-owned businesses. State agencies are encouraged to meet the MBE program goals through their procurement policies and outreach efforts to MBEs, but they are not required to award contracts only to bidders or offerors that meet those goals. There are no statutory penalties for agencies that fail to meet the MBE program goals.

Local school systems are required to adopt procedures consistent with the State's MBE policies on public school construction contracts.

State Revenues: The bill provides that beginning in tax year 2008 60% of the income realized from the sale of an entity that results in an MBE could be exempted from the corporate and personal income tax. As a result, general fund, TTF, and HEIF revenues would decrease beginning in fiscal 2009. However, the amount of the revenue loss cannot be reliably estimated and depends on the number of entity sales that would qualify for the subtraction modification and the income resulting from these sales. This amount could be significant.

Local Revenues: Local income tax revenues would decrease by about 3% of the total subtraction modification claimed and local highway user revenues would decrease as a result of subtraction modifications claimed against the corporate income tax.

Small Business Effect: Any small business that can exempt income as a result of a qualifying sale would benefit from the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office, Comptroller's Office, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2008
mcp/hlb

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