

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 1045 (Delegate Hucker)
 Ways and Means

Civil Rights Tax Relief Act

This bill creates a subtraction modification under the State income tax for the noneconomic damages received by a claimant in satisfaction of a claim of unlawful discrimination.

The bill takes effect July 1, 2011, and applies to tax year 2011 and beyond.

Fiscal Summary

State Effect: General fund revenues decrease by about \$400,000 annually beginning in FY 2012 due to subtraction modifications claimed against the personal income tax. General fund expenditures increase by \$22,000 in FY 2012 for one-time tax form changes and computer programming modifications.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	(\$400,000)	(\$400,000)	(\$400,000)	(\$400,000)	(\$400,000)
GF Expenditure	\$22,000	\$0	\$0	\$0	\$0
Net Effect	(\$422,000)	(\$400,000)	(\$400,000)	(\$400,000)	(\$400,000)

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

Local Effect: Local revenues decrease by about \$250,000 annually beginning in FY 2012. Expenditures are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Eligible noneconomic damages received by a taxpayer include amounts received as a result of a claim of unlawful discrimination, whether by judgment or by settlement, minus any compensation for (1) punitive damages; or (2) lost wages, salary, or other compensation attributable to services performed or that would have been performed as an employee or a former or prospective employee but for a claimed violation of law.

Current Law /Background: Noneconomic damages received by a taxpayer as part of a discrimination claim settlement are taxable for federal and State income tax purposes.

Federal tax law allows taxpayers to deduct the costs of certain legal fees and court costs paid by, or on behalf of, a taxpayer in connection with any action involving a claim of unlawful discrimination. The Maryland income tax conforms to federal tax law, so these deductions flow through for State income tax purposes and typically will reduce the State and local income tax liability imposed on a settlement or judgment.

Under the Internal Revenue Code (IRC), unlawful discrimination is any act that is unlawful under (1) specified federal civil rights legislation, including the Civil Rights Act of 1991, the National Labor Relations Act, the Fair Labor Standards Act of 1938, Title IX of the Education Amendments of 1972, Section 105 of the Family and Medical Leave Act of 1993, the Civil Rights Act of 1964, the Fair Housing Act, and the Americans with Disabilities Act of 1990; (2) provisions of federal law related to whistleblower protection provisions; and (3) any provision of federal, state, or local law or common law claims permitted under federal, state, or local law providing for the enforcement of civil rights or regulating any aspect of the employment relationship, discrimination against an employee, or any other retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law. Section 62(e) of the IRC lists all of the applicable civil rights laws under which a claim of unlawful discrimination can be filed.

Compensatory and punitive damages may be awarded in employment-related cases involving intentional discrimination based on a person's race, color, national origin, sex (including pregnancy), religion, disability, or genetic information. Compensatory damages pay victims for out-of-pocket expenses caused by the discrimination (such as costs associated with a job search or medical expenses) and compensate them for any emotional harm suffered (such as mental anguish, inconvenience, or loss of enjoyment of life). Punitive damages may be awarded to punish an employer who has committed an especially malicious or reckless act of discrimination. There are limits on the amount of compensatory and punitive damages a person can recover and range from \$50,000 for

employers with less than 100 employees to \$300,000 for employers with more than 500 employees.

The Case Processing Division of the Maryland Commission on Human Relations (MCHR) provides intake, investigation, mediation, and processing services for complaints related to housing, public accommodation, and employment. The division receives complaints directly from individuals who believe they have been victims of unlawful discrimination and also processes cases for the U.S. Department of Housing and Urban Development and the federal Equal Employment Opportunity Commission (EEOC). In fiscal 2009, the division received a total of 834 individual complaints of discrimination, with 85% employment related, 10% related to housing, and 5% related to public accommodation. The division obtained \$760,000 in monetary benefits for individuals in fiscal 2009.

Complaints may also be filed with the EEOC or applicable local government offices in Montgomery, Prince George's, Howard, and Baltimore counties. Most litigants in civil rights disputes are required to seek administrative remedies involving applicable federal or State agencies. Litigants not satisfied with these administrative outcomes can file a civil rights lawsuit to seek monetary or injunctive relief.

In federal fiscal 2009, a total of \$294.2 million in monetary benefits was paid in all charge receipts filed and resolved under all statutes enforced by EEOC. According to the U.S. Bureau of Justice Statistics, about 35,000 civil rights cases were filed in U.S. District Courts in calendar 2006. Ninety percent of cases concluded from 1990 to 2006 involved private parties, and one-third of all cases were won by the plaintiff. Typically, three-quarters of all cases in which the plaintiff wins involves a monetary award. The median amount awarded ranged from \$114,000 to \$154,500, depending on the type of case. As with complaints filed with MCHR, employment related trials were the largest category (40%); however, federal courts deal with a much more diverse range of civil rights categories.

State Revenues: Subtraction modifications may be claimed beginning in tax year 2011. As a result, general fund revenues will decrease by about \$400,000 annually beginning in fiscal 2012. This estimate is based on the amount of monetary benefits obtained for complaints involving MCHR, and also assumes that 2% of the estimated monetary damages paid to individuals filing complaints in U.S. District Courts and with EEOC are attributable to Maryland residents. While data were unavailable on the percentage of monetary benefits paid that would be eligible under the bill, it is assumed that 25% of monetary benefits will qualify. To the extent that a higher percentage qualifies, revenue losses will be greater.

State Expenditures: The Comptroller's Office reports that it will incur a one-time expenditure increase of \$22,000 in fiscal 2012 to add the subtraction modification to the personal income tax form. This amount includes data processing changes to the SMART income tax return processing and imaging systems and systems testing.

Local Revenues: Local income tax revenues decrease by about 3% of the amount of the total subtraction modifications claimed. Accordingly, local income tax revenues decrease by about \$250,000 annually beginning in fiscal 2012.

Additional Information

Prior Introductions: HB 1248 of 2010 received a hearing in the House Ways and Means Committee, but no further action was taken. Its cross file, SB 781, received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Cross File: None.

Information Source(s): Human Relations Commission, Comptroller's Office, U.S. Bureau of Justice Statistics, U.S. Equal Employment Opportunity Commission, Department of Legislative Services

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ncs/jrb

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