Department of Legislative Services
2014 Session

FISCAL AND POLICY NOTE

House Bill 438 (Delegate Summers, *et al.*)
Ways and Means

Income Tax - Subtraction Modification - Overtime Compensation Earned by Certain Individuals

This bill creates a subtraction modification against the State income tax for the overtime compensation earned by a (1) career fire, law enforcement, emergency medical services, paramedic, or rescue employee or (2) veteran. The amount of the subtraction modification cannot exceed $5,000. In order to qualify, the overtime compensation must be required under the Federal Fair Labor Standards Act of 1938 (FLSA). The Comptroller is required to adopt regulations to implement the bill and specify the documentation necessary to claim the subtraction modification.

The bill takes effect July 1, 2014, and applies to tax years 2014 through 2023.

Fiscal Summary

State Effect: General fund revenues decrease by $9.8 million in FY 2015, which represents the impact of one and one-half tax years. Future year revenue decreases reflect forecasted increases in eligible compensation. General fund expenditures may increase beginning in FY 2015 due to implementation costs at the Comptroller's Office.

($ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	($9.8)	($6.9)	($7.1)	($7.4)	($7.6)
GF Expenditure	-	-	-	-	-
Net Effect	($9.8)	($6.9)	($7.1)	($7.4)	($7.6)

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

Local Effect: Local income tax revenues decrease by $6.4 million in FY 2015 and by $4.9 million in FY 2019. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law/Background: No similar State income tax subtraction modification exists.

FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. Certain employees are exempt from both provisions while others are specifically exempted from overtime requirements. Employees exempt from overtime requirements include commissioned sales employees; certain computer professionals; drivers, loaders, and mechanics; certain farm workers; and certain executive, administrative, professional, and outside sales employees.

Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency that employs less than five employees during the workweek in law enforcement or fire protection activities. Under prescribed conditions, a state or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

In Maryland there were 224,000 employed veterans in the labor force in 2011, about 9% of the total nonfarm employment.

State Revenues: Subtraction modifications may be claimed beginning in tax year 2014. It is assumed that most taxpayers will adjust withholdings and estimated payments. As a result, fiscal 2015 revenues will decrease by the change in tax year 2014 revenues and also by one-half of tax year 2015, resulting in an overall decrease of $9.8 million in fiscal 2015. This estimate is based on the following assumptions:

- The Board of Revenue Estimates projects that Maryland wages and salaries will total $185.8 billion in calendar 2014.
- Based on data from the Congressional Budget Office and the National Compensation Survey, overtime compensation comprises about 1% of all wages and salaries paid in Maryland.
- The federal Department of Labor estimates that 155 million workers nationally are covered by FLSA.
- Nontaxable returns and the maximum value of the subtraction modification reduce revenue losses by 15%.

- Veterans and protective services workers specified by the bill comprise an estimated 10% of Maryland employment.

State Expenditures: The Comptroller's Office reports that it will incur a one-time expenditure increase of $48,000 in fiscal 2015 to add the subtraction modification to the personal income tax return. This includes data processing changes to the SMART income tax return processing and imaging systems and system testing. The Comptroller's Office also reports that it will incur additional costs in order to verify subtraction modification claims and would require three additional revenue specialists.

Local Revenues: Local income tax revenues decrease by about 3% of the total net State subtraction modification claimed. Accordingly, local revenues decrease by $6.4 million in fiscal 2015, $4.5 million in fiscal 2016, $4.6 million in fiscal 2017, $4.8 million in fiscal 2018, and $4.9 million in fiscal 2019.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): U.S. Bureau of Labor Statistics, Comptroller's Office, Congressional Budget Office, U.S. Department of Labor, Department of Legislative Services

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