

Department of Legislative Services  
 Maryland General Assembly  
 2016 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 371

(Senator Peters, *et al.*)

Budget and Taxation

Ways and Means

**Income Tax - Subtraction Modification - Perpetual Conservation Easements**

This bill creates a State income tax subtraction modification for the compensation received by an individual in exchange for the sale of a perpetual conservation easement on real property located in the State. The amount of the subtraction modification may not exceed \$500,000.

The bill takes effect July 1, 2016, and applies to tax year 2016 and beyond.

**Fiscal Summary**

**State Effect:** General fund revenues decrease by \$404,700 in FY 2017 due to subtraction modifications claimed against the personal income tax. Future year revenue decreases reflect projected amounts of State land preservation funding. General fund expenditures increase by \$52,000 in FY 2017 due to one-time implementation costs at the Comptroller’s Office.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	(\$404,700)	(\$428,500)	(\$1,003,700)	(\$1,038,700)	(\$1,072,300)
GF Expenditure	\$52,000	\$0	\$0	\$0	\$0
Net Effect	(\$456,700)	(\$428,500)	(\$1,003,700)	(\$1,038,700)	(\$1,072,300)

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

**Local Effect:** Local revenues decrease by \$250,900 in FY 2017 and by \$664,800 in FY 2021. Local expenditures are not affected.

**Small Business Effect:** Minimal.

## Analysis

### Current Law:

#### *Federal Conservation Easement Tax Deduction*

Individuals who sell or donate conservation easements may claim a federal income tax deduction. A taxpayer who donates an easement to a public charity or government agency may generally deduct its full market value, less any payments received. A temporary enhanced deduction for conservation easements was available through tax year 2014. This deduction had expired until the U.S. Congress in December 2015 permanently extended the benefit, retroactive to January 1, 2015. The enhanced deduction increases the maximum deduction to 50% of the taxpayer's adjusted gross income in the taxable year (qualified farmers and ranchers may deduct up to 100%) and increases, from 5 to 15 years, the number of years a taxpayer can carry forward unused amounts of the deduction. These federal deductions flow through and reduce Maryland adjusted gross income, therefore reducing State and local income taxes.

#### *Preservation and Conservation Easements State Tax Credit*

Individuals who donate or sell a perpetual easement to the Maryland Environmental Trust (MET) or Maryland Agricultural Land Preservation Foundation (MALPF) can qualify for a State income tax credit. The easement must be accepted and approved by the Board of Public Works. The credit may not be claimed for a required dedication of open space for the purpose of fulfilling density requirements to obtain a subdivision or building permit.

The amount of the credit allowed is the amount by which the fair market value of the property before the conveyance of the easement exceeds the fair market value of the property after the conveyance of the easement. The fair market value of the property before and after the conveyance of the easement is substantiated by an appraisal prepared by a certified real estate appraiser. The amount of the credit is reduced by the amount of any payment received for the easement. The amount of the credit allowed for any taxable year may not exceed the lesser of the State income tax liability or \$5,000. If the property is owned jointly by more than one individual such as two spouses, each individual owner is entitled to the credit based on their percentage of ownership. Individual members of a pass-through entity are not eligible for the credit.

Any unused credit may be carried forward for up to 15 years but may not exceed the lesser of the State tax or \$5,000 in any taxable year for a maximum total value of \$80,000.

### *Additional Tax Benefits – Easements*

Under the federal estate tax, property is generally valued at its maximum potential value. Conservation easements limit the development value of a property, which can reduce or eliminate federal estate taxes by decreasing the valuation of the estate. In addition to this reduction, up to 40% of the value of the property, subject to a maximum of \$500,000, can be excluded per owner from the estate for the purposes of calculating estate taxes. This reduction generally flows through to the Maryland estate tax and can result in a reduction in State tax liability.

Unimproved, noncommercial property that is subject to a perpetual conservation easement with the Department of Natural Resources (DNR) or MET receives a 100% State and local property tax credit for 15 years from the date of conveyance. According to MET, 14 counties and Baltimore City may also provide a property tax credit against the county property tax imposed on real property that is subject to a perpetual conservation easement. This credit is in addition to the special property tax assessment of farm property and additional mandatory or optional property tax credits for specified agricultural land.

### *Additional Federal and State Tax Benefits – Farm and Agricultural Property*

The U.S. Congress has enacted several provisions reducing the estate taxes imposed on farms. These include a special provision that allows farm real estate to be valued at farm-use value rather than at its fair-market value, an installment payment provision, and a special deduction for family-owned business interests. Most of these provisions allow for a reduction in the value of the estate for federal estate tax purposes; this reduction generally flows through to the Maryland estate tax and can result in a reduction in State tax liability.

In addition, special rules apply under the Maryland estate tax for qualified agricultural land. Chapters 448 and 449 of 2012 generally exempt from the State estate tax up to \$5.0 million in qualified agricultural property.

These benefits are in addition to several income tax benefits that are available to farmers, some of which also flow through and reduce Maryland income tax liabilities.

### **Background:**

#### *Land Preservation Programs*

MALPF, which was established by the General Assembly in 1977 and is part of the Maryland Department of Agriculture, purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. In addition to funding

from the State transfer tax, MALPF is funded with agricultural land transfer taxes, local matching funds, and the U.S. Department of Agriculture’s Farmland Protection Program. MALPF settled on its first purchased easement in October 1980. The Rural Legacy program, established in 1997 and administered by DNR, supplements State land preservation programs in order to preserve key areas before escalating land values render protection impossible or before the land is lost to development. Program Open Space (POS), also operated by DNR, funds the acquisition and development of state and local parks and the preservation of unique natural areas that harbor rare and endangered species. POS has two components, a local grant component and a component that funds acquisition and recreation facility development by the State.

*Preservation and Conservation Easements Tax Credit*

In tax years 2011 through 2013, an average of 335 tax returns claimed an average credit of \$3,732 and a total of \$1.3 million in annual credits. The amount of the total credits earned by taxpayers significantly exceeds the amount that can be claimed in the tax year, resulting in taxpayers carrying forward unused credit amounts. The unused credit amounts that are carried forward have increased significantly since 2011; in tax year 2013, taxpayers carried forward a total of \$136.6 million in tax credits. **Exhibit 1** shows the amount of taxpayers claiming the credit in tax years 2011 through 2013, the total and average credits claimed, and the amounts carried forward in each year.

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**Exhibit 1**  
**Preservation and Conservation Easement Tax Credits**  
**Tax Years 2011-2013**

<u>Tax Year</u>	<u>Taxpayers</u>	<u>Amounts Claimed</u>		<u>Carry-forward</u>	
		<u>Total</u>	<u>Average</u>	<u>Total</u>	<u>Average</u>
2011	327	\$1,117,615	\$3,418	\$64,636,390	\$197,665
2012	350	1,077,117	3,077	63,731,539	182,090
2013	329	1,559,972	4,742	136,553,689	415,057

Source: Comptroller’s Office

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**State Revenues:** Subtraction modifications may be claimed beginning in tax year 2016. As a result, general fund revenues will decrease by an estimated \$404,700 in fiscal 2017. **Exhibit 2** shows the estimated impact of the bill on State and local revenues.

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**Exhibit 2**  
**State and Local Revenue Impacts**  
**Fiscal 2017-2021**

	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
State	(\$404,700)	(\$428,500)	(\$1,003,700)	(\$1,038,700)	(\$1,072,300)
Local	(250,900)	(265,600)	(622,300)	(644,000)	(664,800)
<b>Total Revenues</b>	<b>(\$655,600)</b>	<b>(\$694,100)</b>	<b>(\$1,626,000)</b>	<b>(\$1,682,700)</b>	<b>(\$1,737,100)</b>

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This estimate is based on the following facts and assumptions:

- the Governor’s proposed fiscal 2017 budget includes \$20.5 million in total funding for the Rural Legacy Program and MALPF;
- in tax year 2010 through 2013, each return claiming the State preservation and conservation easement tax credit had an average net taxable income of \$289,140;
- about 25% of the eligible subtraction modification is already deducted under the federal conservation easement income tax deduction; and
- future year revenue losses are based on the projected State funding amounts provided to Rural Legacy and MALPF.

The estimate does not include the impact from any easements purchased by local governments or private entities. In addition, the State transfer tax is a significant source of funding for State land preservation programs. In recent years, a significant portion of transfer tax revenues has been redirected to the State’s general fund for budget balancing purposes. Among other changes, Chapter 10 (HB 462) of 2016 reduces the amount of transfer tax revenues to be transferred to the general fund in fiscal 2017 and 2018, thereby increasing amounts for land preservation funding. Accordingly, revenue losses may be greater than estimated based on the actual amount of eligible conservation easements sold in each year.

**State Expenditures:** The Comptroller’s Office reports that it will incur a one-time expenditure of \$52,000 to add the new subtraction modification. 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 will decrease as a result of subtraction modifications claimed against the personal income tax. Local revenues will decrease by \$250,900 in fiscal 2017 and by \$664,800 in fiscal 2021, as shown in Exhibit 2.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1643 (Del. Jackson, *et al.*) – Rules.

**Information Source(s):** Comptroller's Office, Internal Revenue Service, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2016  
md/jrb Revised - Senate Third Reader - April 9, 2016

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