

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1448
Economic Matters

(Delegate Hill, *et al.*)

Commissioner of Labor and Industry - Classification of Employees and
Independent Contractors - Guidelines

This bill requires the report on an entity's personal property submitted to the State Department of Assessments and Taxation (SDAT) to also include a certification that the individual filing it has knowledge of and authority over the entity's pay practices, has read guidelines established by the bill, and complies with the law relating to pay practices of employees and independent contractors. An entity that does not make the required certification may not be considered in good standing with SDAT. The Commissioner of Labor and Industry, in consultation with the Office of the Attorney General, must develop written guidelines that explain in plain language the meaning of specified terms, the consequences of misclassifying and treating an employee as an independent contractor, and steps to ensure compliance with the law. The guidelines must be revised and updated annually, be no longer than five pages long, be provided in writing on request, and be available on the website of the Maryland Department of Labor (MDL).

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Chapter 188 of 2009 (the Workplace Fraud Act) established, for the purpose of enforcement only, a presumption that work performed by an individual paid by an employer creates an employer-employee relationship, subject to specified exemptions. It prohibits construction companies and landscaping businesses from failing to properly classify an individual as an employee and establishes investigation procedures and penalties for noncompliance.

The “ABC test” incorporated in the Workplace Fraud Act is used by MDL to establish whether an employer-employee relationship exists for the purpose of determining whether an employee has been misclassified under the Act. While only used to detect workplace fraud in the specified industries, MDL is required to use the ABC test in determining whether an individual is an employee in any industry for the purpose of determining whether the employer should pay unemployment insurance (UI) for the individual. The ABC test has three components, all of which must be met to establish that an individual is an independent contractor and not an employee:

- A. the individual is free from control and direction over his or her performance both in fact and under the contract (*Alone*);
- B. the individual customarily is engaged in an independent business or occupation (*Business*); and
- C. the work performed is outside the usual course of business, or outside the place of business, of the person for whom work is performed (*Control*).

The Act distinguishes between an employer who *improperly* misclassifies an employee and an employer who *knowingly* misclassifies an employee, and penalties are more severe for an employer who is guilty of knowingly misclassifying an employee.

Appendix – Personal Property Taxation in Maryland provides an overview of how personal property taxes are imposed and collected in Maryland.

Background: When a company hires an employee, it is responsible for paying half of that employee’s Social Security and Medicare taxes, as well as premiums for workers’ compensation and UI coverage. Employers also typically withhold federal, state, and local income taxes. An employee is responsible for half of his or her Social Security and Medicare taxes, as well as any state and federal income tax in excess of the amounts withheld by the employer.

By contrast, an independent contractor pays all of his or her Social Security and Medicare taxes and has no income taxes withheld but is still responsible for paying them in full. Independent contractors are not covered by workers’ compensation or UI, nor do they

receive overtime compensation or benefits such as health insurance. They are treated by the law as temporary, freelance workers and are comparable to self-employed individuals.

In fiscal 2019, 5,894 workers were interviewed by MDL for possible worker misclassification, and 74 workers were found to have been misclassified as independent contractors.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; State Department of Assessments and Taxation; Department of Legislative Services

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af/mcr

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Appendix – Personal Property Taxation in Maryland

In Maryland, there is a tax on business-owned personal property that is imposed and collected by local governments. Personal property generally includes business property including furniture, fixtures, office and industrial equipment, machinery, tools, supplies, inventory, and any other property not classified as real property. To provide for uniform assessments, the State Department of Assessments and Taxation (SDAT) is responsible for assessing all personal property. Each county or municipal government is responsible for issuing the tax bills and collecting the tax. The tax year begins on July 1, and ends on June 30. The personal property tax has been a local tax exclusively since 1984 when the State tax rate on personal property was set at zero.

At the beginning of each calendar year SDAT notifies business entities on record that a personal property tax return must be filed by April 15. This tax return must include personal property located in Maryland as of January 1, the date of finality. The “date of finality” is the date used to determine ownership, location, value, and liability for tax purposes. Since 2017, all tax returns have been filed electronically. An annual report fee is required to be paid to SDAT with the personal property tax return. The annual report fee is for the privilege of maintaining the legal entity’s existence in the State. **Exhibit 1** identifies the amount of the report fee that each legal entity is required to pay.

Exhibit 1 Annual Reporting Fee Requirement

<u>Business Entity</u>	<u>Fee</u>	<u>Business Entity</u>	<u>Fee</u>
Stock Corp	\$300	Domestic Statutory Trust	\$300
NonStock Corp	0	Foreign Statutory Trust	300
Foreign Insurance Corp	300	Real Estate Investment Trust	300
Foreign Interstate Corp	0	Certified Family Farm	100
Limited Liability Company	300	Sole Proprietorship	0
Limited Liability Partnership	300	General Partnership	0
Limited Partnership	300	Amended Return	0

Personal property, except inventory, is assessed based on the original cost less an annual depreciation allowance. The depreciation rate is determined based on the category of property. Seven rate categories (A through G) each pertain to different types of personal property. Except for data processing equipment and canned software, property may not be depreciated below 25%. For example, an item that was purchased for \$400 would be

reduced by the depreciation factor each year until it reaches a minimum value of \$100. Inventory is valued at its fair average value using the cost or market value, whichever is lower.

Certain personal property is exempt by statute or local law. Exemptions generally fall into two categories: those mandated by State law and those that are optional to local governments. There are certain organizations or groups whose personal property is exempt throughout the State. These organizations include religious groups, governmental entities, nonprofit hospitals, cemetery and mausoleum companies, and certain other groups that meet specified strict use criteria. In addition, State law requires that certain types of personal property be fully exempt throughout the State. These include aircraft, farming implements, residential (nonbusiness) property, most registered vehicles, boats not more than 100 feet in length, hand tools of mechanics or artisans, and intangible personal property (*e.g.*, stocks, bonds, patents, goodwill, trademarks, *etc.*).

State law authorizes local governments to exempt certain types of business personal property. The county or municipality where the property is located may authorize a full or partial exemption. The most significant categories that may be exempt from the personal property tax are commercial inventory, manufacturing and research and development inventory, and manufacturing and research and development machinery. Most counties offer exemptions for 100% of all three of these categories, but tax other types of business personal property. In addition, seven counties (Caroline, Dorchester, Frederick, Garrett, Kent, Queen Anne's, and Talbot) have elected to exempt all business personal property from county taxation. Garrett County does not tax business personal property, however the county does tax property of non-utility generators at the county personal property tax rate.

Chapter 102 of 2018 provides an exemption from personal property valuation and taxation if the total original cost of the personal property was less than \$2,500.

Personal Property Tax Rates and Assessable Base Amounts

As shown in **Exhibit 2**, the statewide assessable base for business personal property totals \$12.6 billion in fiscal 2020. Among counties that impose the business personal property tax, the assessable base ranges from a high of \$2.2 billion in Montgomery County to a low of \$85.0 million in Somerset County. On a per capita basis, business personal property ranges from \$1,424 in Charles County to \$4,245 in Worcester County. Tax rates on business personal property range from \$2.1130 in Worcester County to \$5.62 in Baltimore City.

Exhibit 2
County Business Personal Property Base
Fiscal 2020

County	Tax Rate	Assessable Base
Allegany	\$2.4375	\$180,000,000
Anne Arundel	2.3370	1,600,000,000
Baltimore City	5.6200	1,270,000,000
Baltimore	2.7500	1,850,000,000
Calvert	2.2300	159,000,000
Caroline	2.4500	0
Carroll	2.5150	285,000,000
Cecil	2.6035	401,000,000
Charles	3.0125	230,000,000
Dorchester	0.0000	0
Frederick	0.0000	0
Garrett	0.0000	0
Harford	2.6049	680,000,000
Howard	3.1250	1,025,000,000
Kent	0.0000	0
Montgomery	2.4768	2,170,000,000
Prince George's	3.4350	1,600,000,000
Queen Anne's	0.0000	0
St. Mary's	2.1195	175,000,000
Somerset	2.5000	85,000,000
Talbot	0.0000	0
Washington	2.3700	420,000,000
Wicomico	2.1715	210,000,000
Worcester	2.1130	220,000,000
Total		\$12,560,000,000

Source: State Department of Assessments and Taxation
