

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 622 (Senator Carter)
 Budget and Taxation

Community Reinvestment and Repair Fund - Funding (Maryland Reparations Act of 2024)

This bill makes various alterations to the personal income and estate taxes and requires the Comptroller to distribute specified revenues attributable to these alterations to the Community Reinvestment and Repair Fund (CRRF). Specifically, the bill (1) alters individual income tax rates and brackets; (2) imposes an additional 1% income tax rate on net capital gains; and (3) decreases the exclusion amount under the Maryland estate tax from \$5 million to \$1 million. The bill also increases the sales and use tax rate imposed on the sale of adult-use cannabis from 9% to 14% beginning in fiscal 2025. **The bill takes effect July 1, 2024, and applies to tax year 2024 and beyond.**

Fiscal Summary

State Effect: General and special fund revenues increase by an estimated \$18.4 million and \$1.2 billion, respectively, in FY 2025. Future years reflect current revenue forecasts, existing revenue distribution provisions, and the estimated payment schedule of State estate taxes. General fund expenditures increase by \$0.2 million in FY 2025; future years reflect annualization and ongoing costs.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	\$18.4	\$28.1	\$36.8	\$43.7	\$56.2
SF Revenue	\$1,170.2	\$1,285.2	\$1,351.9	\$1,403.0	\$1,449.0
GF Expenditure	\$0.2	\$0.1	\$0.1	\$0.1	\$0.1
Net Effect	\$1,188.3	\$1,313.2	\$1,388.6	\$1,446.6	\$1,505.2

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

Local Effect: Local revenues and expenditures increase *significantly* beginning in FY 2025, as discussed below.

Small Business Effect: Meaningful.

Analysis

Current Law/Bill Summary:

Community Reinvestment and Repair Fund

Chapter 26 of 2022, as amended by Chapters 254 and 255 of 2023, established CRRF, a special, nonlapsing fund administered by the Comptroller, for the purpose of providing funds to community-based organizations that serve communities determined to have been the most impacted by the disproportionate enforcement of the cannabis prohibition before July 1, 2022. For fiscal 2024 through 2033, the fund receives a distribution of 35% of the sales and use tax collected from the sale of adult-use cannabis after required distributions to the Cannabis Regulation and Enforcement Fund (CREF). The fund also consists of one-time medical cannabis license conversion fees, which must be paid in full by affected licensees by January 1, 2025, as well as any other money from any other source accepted for the benefit of the fund.

Under the bill, by June 30 annually, the Comptroller must distribute to CRRF (1) estimated income tax revenues attributable to the bill's alterations to individual income tax rates and brackets; (2) estimated estate tax revenues attributable to the bill's reduction in the value of the unified credit; and (3) revenues attributable to the bill's additional income tax on net capital gains. The bill's alterations to the income and estate taxes are detailed below.

Maryland Individual Income Tax

Exhibit 1 shows Maryland's individual income tax rates and income brackets under current law and under the bill.

Exhibit 1
Maryland Individual Income Tax Rates
Current Law vs. the Bill

Under Current Law

Single, Dependent, Married Filing Separately		Joint, Surviving Spouse, Head of Household	
<u>Rate</u>	<u>Maryland Taxable Income</u>	<u>Rate</u>	<u>Maryland Taxable Income</u>
2.00%	\$1-\$1,000	2.00%	\$1-\$1,000
3.00%	\$1,001-\$2,000	3.00%	\$1,001-\$2,000
4.00%	\$2,001-\$3,000	4.00%	\$2,001-\$3,000
4.75%	\$3,001-\$100,000	4.75%	\$3,001-\$150,000
5.00%	\$100,001-\$125,000	5.00%	\$150,001-\$175,000
5.25%	\$125,001-\$150,000	5.25%	\$175,001-\$225,000
5.50%	\$150,001-\$250,000	5.50%	\$225,001-\$300,000
5.75%	Excess of \$250,000	5.75%	Excess of \$300,000

Under the Bill

Single, Dependent, Married Filing Separately		Joint, Surviving Spouse, Head of Household	
<u>Rate</u>	<u>Maryland Taxable Income</u>	<u>Rate</u>	<u>Maryland Taxable Income</u>
3.00%	\$1-\$3,000	3.00%	\$1-\$4,500
3.50%	\$3,001-\$6,000	3.50%	\$4,501-\$9,000
4.00%	\$6,001-\$12,000	4.00%	\$9,001-\$18,000
4.50%	\$12,001-\$24,000	4.50%	\$18,001-\$36,000
5.00%	\$24,001-\$48,000	5.00%	\$36,001-\$72,000
5.50%	\$48,001-\$96,000	5.50%	\$72,001-\$144,000
5.75%	\$96,001-\$192,000	6.00%	\$144,001-\$288,000
6.50%	\$192,001-\$1,000,000	6.50%	\$288,001-\$1,000,000
7.00%	Excess of \$1,000,000	7.00%	Excess of \$1,000,000

Source: Comptroller's Office; Department of Legislative Services

State Income Tax Treatment of Capital Gains

Maryland conforms to the federal income tax treatment of capital gains, as discussed below. However, under current State law, and unlike the treatment of capital gains income under the federal income tax, net capital gains are taxed at the same State income tax rates as other income. *Under the bill*, net capital gains included in Maryland taxable income are subject to an additional 1% State income tax rate.

Federal Income Tax Treatment of Capital Gains

For purposes of federal income tax, long-term capital gains and losses are distinguished from short-term capital gains and losses. A gain or loss from the disposition of a capital asset held for more than one year is treated as a long-term capital gain or loss; a gain or loss from the disposition of a capital asset that is held for one year or less is treated as a short-term capital gain or loss.

Net capital gain (net long-term capital gain minus net short-term capital loss) is generally taxed at a lower federal income tax rate (0%, 15%, or 20%, depending on the taxpayer's filing status and taxable income) than ordinary income. Net short-term capital gain is taxed as ordinary income with a top marginal rate of 37%.

An individual or other noncorporate taxpayer may deduct up to \$3,000 in net capital losses each year; any unused amount of losses may be carried forward indefinitely. For corporate taxpayers, capital losses may only offset capital gains. Any unused net capital loss may be carried forward to future tax years until fully used.

Special rules apply to the sale of collectibles, investment real estate, principal residences, and to taxpayers who make qualifying investments within federal opportunity zones.

Maryland Estate Tax

The State imposes a tax on property that passes at or after the death of an individual through an estate tax and an inheritance tax. Estates may generally claim a credit against the estate tax for the amount of inheritance taxes paid.

A Maryland estate tax return is required for every estate with a federal gross estate, plus specified adjustments, that equals or exceeds the Maryland estate tax exclusion amount for the decedent's date of death. An estate with a value that exceeds this exclusion amount must file a return if the decedent, at the date of death, was a Maryland resident or the decedent was a nonresident who owned real or tangible personal property having a taxable situs in Maryland.

The federal Tax Cuts and Jobs Act of 2017 decreased federal estate taxes by doubling the federal exclusion amount for decedents dying in calendar 2018 through 2025. The Act's estate tax provisions terminate for decedents dying beginning in calendar 2026. Chapters 15 and 21 of 2018 decoupled the Maryland estate tax from the increased federal exclusion amount enacted by the federal Act. Beginning January 1, 2019, the State exclusion amount equals \$5.0 million. Special rules apply under the Maryland estate tax for qualified agricultural land. *Under the bill*, the State exclusion amount decreases to \$1.0 million.

Chapters 15 and 21 also established "portability" under the State estate tax by allowing, under specified circumstances, the estate of a married taxpayer to pass along the unused part of the estate tax exclusion amount to the surviving spouse. A surviving spouse may subsequently elect to claim the unused portion of the estate tax exclusion amount of the predeceased spouse.

In addition, unless the federal estate tax credit used to calculate the Maryland estate tax is in effect at the time of a decedent's death, the federal credit used to determine the State estate tax may not exceed 16% of the amount by which a decedent's taxable estate exceeds the applicable exclusion amount.

Sales and Use Tax on Adult-use Cannabis

Chapters 254 and 255 established a 9% sales and use tax on the sale of adult-use cannabis. *Under the bill*, the sales and use tax rate imposed on adult-use cannabis increases to 14% beginning in fiscal 2025.

After required distributions to CREF to defray the operating and administrative expenses of the Maryland Cannabis Administration, the Comptroller must distribute sales and use tax collections from the sale of adult-use cannabis as follows:

- for fiscal 2024 through 2033, 35% to CRRF;
- 5% to counties, which must be allocated to each county based on the percentage of revenue collected from that county, as specified;
- 5% to the Cannabis Public Health Fund (CPHF) administered by the Maryland Department of Health;
- for fiscal 2024 through 2028, 5% to the Cannabis Business Assistance Fund (CBAF) administered by the Department of Commerce; and
- any remaining balance to the general fund.

State Revenues: Exhibit 2 displays the bill's estimated State revenue effects by fund and provision. As shown in the exhibit, CRRF revenues increase by an estimated \$1.2 billion

in fiscal 2025. General fund, CPHF, and CBAF revenues are also affected by the bill's alteration to the sales and use tax rate for adult-use cannabis; general fund revenues, specifically, increase by an estimated \$18.4 million in fiscal 2025. Future years reflect current revenue forecasts, existing distribution provisions relating to adult-use cannabis sales and use tax collections, and the estimated payment schedule of State estate taxes.

Exhibit 2
Estimated State Revenue Effects
FY 2025-2029
(\$ in Millions)

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
General Fund	\$18.4	\$28.1	\$36.8	\$43.7	\$56.2
<i>Cannabis SUT Rate Increase</i>	18.4	28.1	36.8	43.7	56.2
CRRF	\$1,166.5	\$1,279.5	\$1,344.6	\$1,394.3	\$1,443.9
<i>PIT Rate/Bracket Alterations</i>	931.7	965.8	1,001.3	1,038.8	1,078.2
<i>Additional Capital Gains Tax</i>	163.7	160.4	160.4	160.4	160.4
<i>Estate Tax Alterations</i>	58.2	133.7	157.1	164.5	169.5
<i>Cannabis SUT Rate Increase</i>	12.8	19.7	25.8	30.6	35.8
CPHF	\$1.8	\$2.8	\$3.7	\$4.4	\$5.1
<i>Cannabis SUT Rate Increase</i>	1.8	2.8	3.7	4.4	5.1
CBAF	\$1.8	\$2.8	\$3.7	\$4.4	\$0.0
<i>Cannabis SUT Rate Increase</i>	1.8	2.8	3.7	4.4	0.0
Total State Revenues	\$1,188.5	\$1,313.2	\$1,388.7	\$1,446.7	\$1,505.3

CRRF: Community Reinvestment and Repair Fund

CPHF: Cannabis Public Health Fund

CBAF: Cannabis Business Assistance Fund

SUT: sales and use tax

PIT: personal income tax

Source: Comptroller's Office; Department of Legislative Services

The Department of Legislative Services cautions that actual revenues under the bill may differ significantly from the above estimate. Of note is the bill's requirement that the Comptroller annually distribute to CRRF (1) estimated revenues attributable to the bill's alterations to the estate tax and individual income tax rates and brackets and (2) revenues

attributable to the bill’s additional income tax on net capital gains. Such estimates are likely to be highly complex and subject to periodic and/or subsequent upward or downward revision, thus adding uncertainty to the timing of distributions to CRRF. Also of note is the volatility of capital gains income; notwithstanding implementation factors, revenues generated from the application of the bill’s income tax alterations for capital gains income are likely to be volatile.

State Expenditures: The Comptroller’s Office incurs general fund expenses in order to implement and administer the bill’s changes. Specifically, general fund expenditures for the Comptroller’s Office increase by \$195,822 in fiscal 2025, which reflects the cost of hiring (1) one regular, full-time revenue policy analyst to assist the Bureau of Revenue Estimates in estimating revenues attributable to the bill’s income tax and estate tax alterations, as required under the bill, and (2) one contractual attorney to assist the Comptroller’s Office in implementing the bill’s changes and updating related guidance. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Position	1
Contractual Position	1
Salary and Fringe Benefits (Regular)	\$63,288
Salary and Fringe Benefits (Contractual)	117,752
Other Operating Expenses	<u>14,782</u>
Total FY 2025 General Fund Expenditures	\$195,822

Future year expenditures reflect (1) termination of the contractual position after fiscal 2025 and (2) a full salary for the regular position, with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Local Fiscal Effect: Local revenues increase *significantly* beginning in fiscal 2025 due to (1) a *significant* increase in distributions from CRRF; (2) additional sales and use tax revenues from the sale of adult-use cannabis, which are estimated to total \$1.8 million in fiscal 2025 and \$5.1 million in fiscal 2029 (as noted above, after required distributions to CREF, local governments receive 5% of the remaining sales and use tax revenues collected from the sale of adult-use cannabis); and (3) any increased funding from CPHF.

Local expenditures increase correspondingly as the funds are used for authorized purposes, including for any related administrative expenses.

Small Business Effect: Small business partnerships, S corporations, limited liability companies, and sole proprietorships are impacted by the bill's alterations to the personal income tax, which may affect the net income tax liabilities of some small business taxpayers. Small businesses may benefit from increased funding to CBAF and CPHF under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Alcohol, Tobacco, and Cannabis Commission; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Register of Wills; Department of Legislative Services

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