SB 717

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 717 (Senator Rosapepe)
Budget and Taxation

Income Tax - Subtraction Modification - Losses From Theft or Fraud

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This bill allows a subtraction modification against the personal income tax for (1) the amount of personal casualty loss (within the meaning of § 165(h)(3) of the Internal Revenue Code (IRC)) related to a theft or fraud scheme that occurred during the tax year that was allowed as a deduction under § 165 before January 1, 2018, and (2) any expenses or penalties incurred during the tax year related to the theft or fraud scheme. The amount of the subtraction is reduced by the amount of any related deduction allowed under § 165 for the tax year. To qualify for the subtraction, a taxpayer must attach to the taxpayer's income tax return a police report or affidavit establishing that the theft or fraud scheme occurred. **The bill takes effect July 1, 2024, and applies to tax year 2024 and beyond.**

Fiscal Summary

State Effect: General fund revenues may decrease by more than $1 million annually in FY 2025 and 2026 and/or future years, as discussed below. The Comptroller's Office can implement the bill's changes with existing budgeted resources.

Local Effect: Local income tax revenues may decrease by more than $700,000 annually in FY 2025 and 2026 and/or future years, as discussed below. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: Section 165 of the IRC provides for the deduction of losses sustained during the tax year that are not compensated for by insurance or otherwise. In the case of an individual, the deduction is limited to (1) losses incurred in a trade or business; (2) losses incurred in a transaction entered into for profit; and (3) losses of property not connected with a trade, business, or transaction entered into for profit if such losses arise from fire, storm, shipwreck, or other casualty or from theft ("personal casualty loss").

The first $100 of a personal casualty loss is nondeductible. The deduction is further limited to the amount of personal casualty gains for the tax year, plus the amount of net personal casualty loss that exceeds 10% of the individual's adjusted gross income. For tax years 2018 through 2025 only, the federal Tax Cuts and Jobs Act of 2017 (TCJA) limited the deductibility of net personal casualty losses to losses attributable to a federally declared disaster.

State/Local Revenues: As discussed above, for tax years 2018 through 2025, the TCJA generally limited the scope of the personal casualty loss deduction to losses attributable to a federally declared disaster. (Other personal casualty losses may still be deducted up to the amount of any personal casualty gain.) The bill effectively restores the State income tax benefit for personal casualty losses related to a theft or fraud scheme for tax years 2024 and 2025. In addition, this fiscal and policy note assumes that the bill also extends this income tax benefit to individuals who, regardless of the TCJA's changes to the federal personal income tax, do not itemize federal deductions but who otherwise incur losses that meet the bill's criteria.

Based on an analysis of historical federal income tax statistics published by the Internal Revenue Service and estimated federal tax expenditures associated with the personal casualty loss deduction for federal fiscal 2023 through 2027 published by the U.S. Joint Committee on Taxation, the Department of Legislative Services (DLS) estimates that, were the bill to *fully* restore the State tax benefit associated with the personal casualty loss deduction as it existed prior to January 1, 2018, State general fund revenues would decrease by approximately $2.4 million annually in fiscal 2025 and 2026, and local income tax revenues would decrease by approximately $1.6 million annually in fiscal 2025 and 2026.

However, due to data limitations, DLS is unable to reliably estimate the portion of such revenue losses attributable to deductions for *theft or fraud loss, specifically*, as contemplated under the bill, nor is DLS able to reliably estimate the amount of related penalties or expenses that may be subtracted from income under the bill. Further, as noted above, it is assumed that the bill not only restores the pre-2018 State income tax benefit for deductible personal casualty losses related to theft or fraud scheme but also extends this benefit to individuals who, regardless of the TCJA's changes to the federal income tax, do not itemize federal deductions but incur eligible losses. Due to data limitations, the number of potentially eligible taxpayers and the amount of their excludable losses are unknown.

For purposes of this fiscal and policy note, it is assumed that, in fiscal 2025 and 2026 and/or future years, State general fund losses resulting from the bill may exceed $1 million annually, and local income tax revenue losses may exceed $700,000 annually. As noted above, under the bill, the amount of the subtraction modification is reduced by the amount of any related deduction allowed under § 165 of the IRC for the tax year; under current federal law, the TCJA limitations on the federal personal casualty loss deduction expire after tax year 2025. Thus, it is assumed that the bill's effect on State and local revenues is reduced in fiscal 2027 and future years.

Additional Information

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

Designated Cross File: None.

Information Source(s): Comptroller's Office; Internal Revenue Service; U.S. Joint Committee on Taxation; CCH AnswerConnect; Department of Legislative Services

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