Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 859 (Senator Hettleman, *et al.*)
Budget and Taxation

Fair Share for Maryland Act of 2025

This bill (1) reduces the Maryland estate tax exclusion amount; (2) expands the application of certain automatic decoupling provisions relating to Internal Revenue Code (IRC) changes; (3) establishes a specified business transportation fee; (4) modifies an existing decoupling modification relating to net operating losses (NOLs); (5) institutes a sales factor "throwback" rule; (6) establishes certain surtaxes on specified pass-through entity (PTE) and net investment income; (7) alters individual income tax rates; (8) alters certain individual income tax credits; and (9) requires worldwide combined reporting for corporations. **The bill generally takes effect July 1, 2025. Provisions relating to (1) business transportation fees take effect July 1, 2026, and apply to tax years 2027 through 2032; (2) the throwback rule and NOLs take effect July 1, 2027, and apply to tax year 2027 and beyond; (3) the individual income tax changes and PTE surtax take effect July 1, 2028, and apply to tax year 2028 and beyond; and (4) combined reporting take effect July 1, 2028, and apply to tax year 2029 and beyond.**

Fiscal Summary

State Effect: No effect in FY 2026. In FY 2027, quantified general and special fund revenues increase by $80.2 million and $6.7 million, respectively; special fund expenditures for local highway user revenue grants increase by $1.0 million. Future quantified revenues reflect the phase-in of the bill's provisions, current revenue forecasts, and annualization. General fund expenditures increase by $3.0 million in FY 2028.

($ in millions)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
GF Revenue	$0	$80.2	$512.2	$799.1	$945.8
SF Revenue	$0	$6.7	$20.7	$37.7	$73.5
GF Expenditure	$0	$0	$3.0	$0	$0
SF Expenditure	$0	$1.0	$2.4	$4.3	$8.3
Net Effect	$0.0	$85.9	$527.6	$832.5	$1,011.0

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

Local Effect: No effect in FY 2026. Local highway user revenues increase by an estimated $1.0 million in FY 2027, $2.4 million in FY 2028, $4.3 million in FY 2029, and $8.3 million in FY 2030. Montgomery County expenditures for its earned income credit supplement program may increase beginning in FY 2029.

Small Business Effect: Minimal.

Analysis

Current Law/Bill Summary:

Estate Tax

The estate tax is imposed on the transfer of the Maryland estate of a decedent who, at the time of death, was (1) a resident of the State or (2) a nonresident whose estate includes any interest in tangible real property located in the State or tangible personal property with a taxable situs in the State. The Maryland estate tax is based on the federal credit for death taxes paid as in effect on December 31, 2001, before the phase-out and repeal of the credit under the federal Economic Growth and Tax Relief Reconciliation Act of 2001. Because the federal credit is calculated based on a marginal rate schedule, no tax rates are specified in Maryland statute. A top marginal rate of 16% is applied to the portion of the adjusted taxable estate in excess of $10,040,000. Estates are allowed a credit against the Maryland estate tax for Maryland inheritance tax paid.

The unified credit allowed against the federal estate tax effectively excludes a portion of the taxable estate from taxation (applicable exclusion amount). Maryland decoupled from increases in the value of the federal unified credit allowed against the federal estate tax for decedents dying after 2003. For decedents dying after 2018, the unified credit for Maryland estate tax purposes is $1,945,800 – the amount which effectively excludes the first $5.0 million of the taxable estate from tax. *Under the bill*, the unified credit for Maryland estate tax purposes is reduced to $745,800 – the amount which effectively excludes the first $2.0 million of the taxable estate – for decedents dying after 2025.

Automatic Decoupling from Internal Revenue Code Changes

In general, an amendment of the IRC that affects the determination of federal adjusted gross income (AGI) or federal taxable income does not affect the determination of Maryland taxable income for a tax year beginning in the calendar year in which the amendment is enacted or any preceding tax year, if the Comptroller determines that the effect of the amendment on State income tax revenue is less than $5.0 million for the fiscal year that begins during the calendar year or any preceding fiscal year. *Under the bill*, this automatic decoupling provision also applies to the tax year that begins in the following calendar year after an amendment is enacted, as specified.

Business Transportation Fee

For tax years 2027 through 2032, the bill imposes a business transportation fee equal to 2.5% of the amount of a corporation or PTE's taxable income that exceeds $10.0 million. Returns and payments of the business transportation fee are due and payable in the same manner as the State income tax. A taxpayer may not claim any credit against the business transportation fee other than credits for installment payments, estimated payments, or overpayments. The Comptroller must distribute revenue from the business transportation fee to the Transportation Trust Fund (TTF).

Net Operating Losses

Maryland recognizes the federal NOL and generally follows the federal carryback and carryforward periods for NOLs. Maryland decoupled from the five-year NOL carryback election under former § 172(b)(1)(H) of the IRC (repealed by the federal Tax Cuts and Jobs Act (TCJA) of 2017); per Tax-General Article § 10-310, invoking § 10-210.1, a corporate taxpayer must adjust federal taxable income to determine the NOL deduction allowed under IRC § 172 without regard to an election under § 172(b)(1)(H). Maryland also automatically decoupled from provisions of the federal Coronavirus Aid, Relief, and Economic Security Act requiring a five-year carryback of and suspension of the 80% carryforward limitation for NOLs arising in tax year 2020.

As detailed in Administrative Release No. 18, Maryland does not allow modification of the federal NOL except in the case of a foreign dividend subtraction carryforward, Maryland decoupling modifications, and Tax-General Article § 10-306.1 related-party transactions. As specified under Tax-General Article § 10-205(e), an addition modification may be required in a carryback or carryforward year if Maryland addition modifications exceed Maryland subtraction modifications in the loss year (NOL modification recapture).

Under the bill, the decoupling modification relating to an election under § 172(b)(1)(H) is altered such that only the first $500,000 in net NOLs may be allowed for tax years 2027 through 2031.

Corporate Income Tax

Maryland's corporate income tax rate is 8.25% of Maryland taxable income. For a corporation, Maryland taxable income is equal to federal taxable income as adjusted for Maryland addition and subtraction adjustments and modifications (Maryland modified income) and multiplied by the Maryland apportionment factor.

Unitary Business Principle

A corporation operating a unitary business within and outside the State must allocate to Maryland income derived or reasonably attributable to trade or business carried on in the State, as provided by Maryland law. However, affiliated corporations must file separate Maryland returns and compute taxable income or loss on a separate basis.

Under the bill, affiliated corporations that are engaged in a unitary business (as defined) must file a combined income tax return, reporting and paying tax on worldwide taxable income as a combined group, reflecting the aggregate income tax liability of all members of the combined group. The combined reporting requirement applies to tax year 2029 and beyond. The Comptroller must adopt regulations to carry out the bill's combined reporting provisions; the regulations must be consistent with principles adopted by the Multistate Tax Commission for determining the existence of a unitary business.

Apportionment of Income to Maryland

For tax years 2022 and beyond, corporations operating as unitary businesses within and outside the State (with the exception of specified worldwide headquartered companies) must use a single-factor apportionment formula based on sales (single sales factor formula) to determine Maryland taxable income. With respect to sales factor sourcing rules, Maryland is considered a "destination" state in that gross receipts from sales of tangible personal property are included in the numerator of the apportionment fraction only if the property is delivered or shipped to a purchaser within the State, regardless of the point of shipment or other conditions of sale.

Under the bill, for tax year 2027 and beyond, sales of tangible personal property must be included in the numerator of the sales factor ("thrown back") if (1) the property is delivered or shipped to a purchaser within the State, regardless of the point of shipment or other conditions of sale or (2) the property is shipped from an office, a store, a warehouse, a factory, or any other place of storage in the State and the corporation is not taxable in the state of the purchaser (as specified). For tax year 2027, the Comptroller must assess interest and penalties if a corporation pays estimated income tax in an amount less than 90% of the tax required to be shown on the corporation's income tax return for the tax year.

Pass-through Entities

A PTE must pay the nonresident PTE tax on the distributive or *pro rata* shares of its nonresident and nonresident entity members at a rate equal to the sum of the top marginal State individual income tax rate and the special nonresident tax rate or, in the case of a nonresident entity member, the State corporate income tax rate.

In response to a provision of the TCJA that limited the allowable state and local tax deduction (SALT deduction) for individuals to $10,000 ($5,000 if married filing separately) in tax years 2018 through 2025, Maryland, like a number of other states, enacted legislation authorizing PTEs to elect to be taxed at the entity level for State income tax purposes. In Notice 2020-75, the Internal Revenue Service clarified that specified income tax payments made by a partnership or S corporation would not be taken into account in the application of the SALT deduction limitation for its individual members.

Under the bill, an 8.25% surtax is imposed on the distributive or *pro rata* share of income distributed to a member of a PTE from the PTE's taxable income that exceeds $1.0 million. The additional tax rate does not apply to the income of sole proprietorships. The surtax applies to tax year 2028 and beyond.

Individual Income Tax

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

Exhibit 1
State Individual Income Tax Rates under Current Law

Single, Dependent, Married Filing Separately		Joint, Surviving Spouse, Head of Household	
Rate	**Maryland Taxable Income**	**Rate**	**Maryland Taxable Income**
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

Source: Department of Legislative Services

Under the bill, for tax year 2028 and beyond, the top marginal income brackets are repealed, and the existing income tax rate schedule applies only to taxpayers whose Maryland taxable income does not exceed $250,001 ($300,001 for joint filers, heads of household, and qualified surviving spouses). (For purposes of this fiscal and policy note, it is assumed that the bill applies the existing income tax rate schedule to taxpayers whose Maryland taxable income does not exceed $250,000, or $300,000 for joint filers, heads of household, and qualified surviving spouses.) For taxpayers whose Maryland taxable income is:

- at least $250,001 ($300,001 for joint filing types) but does not exceed $500,000 ($600,000 for joint filing types), the State income tax rate is 6.0% of Maryland taxable income;
- at least $500,001 ($600,001 for joint filing types) but does not exceed $1,000,000 ($1,200,000 for joint filing types), the State income tax rate is 6.5% of Maryland taxable income; and
- at least $1,000,001 ($1,200,001 for joint filing types), the State income tax rate is 7.0% of Maryland taxable income.

The bill also imposes a 1% surtax on net investment income within the meaning of § 1411 of the IRC (net investment income tax), excluding net gain attributable to parcels of property or portions thereof that are agricultural land and buildings. The surtax applies only to individuals with federal AGI in excess of $350,000.

Earned Income Tax Credit

Maryland's earned income credit offers both refundable and nonrefundable credits against the State income tax and a nonrefundable credit against the local income tax for low- to moderate-income resident taxpayers. The State nonrefundable credit is generally equal to 50% of the amount of an eligible taxpayer's federal earned income credit for the taxable year. A taxpayer for whom the State nonrefundable credit is less than the taxpayer's State income tax liability may also be eligible to claim the State and local poverty level credits.

Individuals without Qualifying Children

Legislation enacted in the 2018, 2021, and 2023 sessions expanded the State's earned income credit for individuals without qualifying children. Specifically:

- Chapters 611 and 612 of 2018 allowed individuals without qualifying children to claim the State and local earned income credits without regard to the federal minimum age requirement for childless claimants;
- for tax years 2020 through 2022, Chapter 39 of 2021 increased the value of the State refundable credit for individuals without qualifying children to 100% of the individual's federal earned income credit (minus any pre-credit State income tax liability), up to a maximum of $530;

- for tax years 2020 through 2022, Chapter 40 of 2021 generally expanded eligibility for Maryland's earned income credit to taxpayers who would be eligible for the federal earned income credit but for specified identification requirements; and
- Chapters 3 and 4 of 2023 permanently extended beyond tax year 2022 the temporary expansions to the earned income credit enacted in 2021 and eliminated the $530 limit on the value of the State refundable credit for individuals without qualifying children.

Thus, for tax year 2023 and beyond, an eligible individual without a qualifying child may claim a fully refundable State earned income credit in an amount equal to the allowable federal earned income credit, without limitation. The federal earned income credit for individuals without qualifying children is equal to 7.65% of an eligible taxpayer's earned income up to the "earned income amount" ($8,490 for tax year 2025), minus 7.65% of the taxpayer's earned income in excess of the "phaseout amount" ($10,620 for tax year 2025). The maximum value of the federal earned income credit for individuals without qualifying children is $649 for tax year 2025.

Under the bill, the State's earned income credit for individuals without qualifying children is further enhanced through an increase in the income threshold at which the credit begins to phase out. Specifically, for tax year 2028 and beyond, the value of the credit is calculated by substituting $19,160 (as adjusted for inflation, as specified) for the federal phaseout amount. (For purposes of this fiscal and policy note, it is assumed that the specified earned income and phaseout amounts are subject to the specified cost-of-living adjustment annually beginning with tax year 2028.)

Child Tax Credit

The State's child tax credit was originally enacted under Chapter 40 and was extended and modified by Chapters 3 and 4. For tax years 2023 and beyond, resident taxpayers who have one or more qualified children and federal AGI of up to $15,000 may claim a refundable income tax credit equal to $500 per qualified child. A qualified child is a qualified dependent of the taxpayer who is (1) younger than age 6 or (2) younger than age 17 and is a child with a disability (as defined).

Under the bill, the child tax credit is decoupled from any changes to the definition of a qualified dependent under § 152 of the IRC after December 31, 2024. The bill also enhances the credit for tax year 2028 and beyond. Specifically, (1) the definition of a qualified child for purposes of the credit is expanded to include qualified dependents younger than 18, regardless of disability status; (2) the value of the credit for a qualified child younger than age 6 is increased to $750, and both values of the credit are adjusted for inflation beginning in tax year 2029; and (3) the existing income eligibility threshold is repealed. The bill further specifies that the amount of the credit for a qualified child must be reduced by $50 for each $1,000, or fraction thereof, by which the taxpayer's federal AGI exceeds $45,000 ($65,000 for joint filers, surviving spouses, and heads of households and $32,500 for married individuals filing separately).

State Revenues: **Exhibit 2** displays the bill's quantified effect on State revenues by provision and fund type. As shown in the exhibit, the bill's net quantified effect on State revenues totals $86.9 million in fiscal 2027, including $80.2 million in net general fund revenues. Future years reflect the phasing in of the bill's various provisions, current revenue forecasts, and annualization.

Exhibit 2
Quantifiable State Revenue Effects
($ in Millions)

	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
By Provision					
Estate Tax Alterations	$0.0	$60.2	$80.8	$80.5	$87.1
Throwback Rule	0.0	26.7	89.0	97.2	100.2
PIT Rate Alterations	0.0	0.0	321.1	929.4	963.1
NII Surtax	0.0	0.0	42.0	120.0	120.0
EITC Alterations	0.0	0.0	0.0	(111.5)	(115.9)
CTC Alterations	0.0	0.0	0.0	(343.2)	(350.3)
Combined Reporting	0.0	0.0	0.0	64.3	215.2
By Fund					
General Fund	$0.0	$80.2	$512.2	$799.1	$945.8
HEIF	0.0	1.6	5.3	9.7	18.9
SEIF	0.0	0.1	0.3	0.6	1.1
TTF	0.0	5.0	15.1	27.4	53.5
Net State Revenue Effect	**$0.0**	**$86.9**	**$532.9**	**$836.7**	**$1,019.3**

CTC: child tax credit
EITC: earned income tax credit
HEIF: Higher Education Investment Fund
NII: net investment income
PIT: personal income tax
SEIF: Strategic Energy Investment Fund
TTF: Transportation Trust Fund

Note: Numbers may not sum to total due to rounding.

Source: Department of Legislative Services

The Department of Legislative Services (DLS) cautions that actual revenues under the bill's quantified provisions may differ significantly from the above estimate. Estimated revenue effects relating to the bill's adoption of a throwback rule and combined reporting for affiliated corporations are based on a previous study conducted by the Comptroller's Office based on data collected from taxpayers in tax years 2006 through 2010, adjusted for subsequent changes in the economy and corporate income tax revenues. The study's examination of the potential impacts of combined reporting contemplated a water's edge election; with the exception of Alaska, which requires worldwide combined reporting for oil and gas companies, no state currently requires worldwide combined reporting as provided by the bill. In its study of the potential State revenue effects of combined reporting, the Comptroller's Office concluded that, while combined reporting would likely increase corporate income tax revenues *on average*, it would also increase the volatility of those revenues; thus, the effect of the proposed change on corporate income tax revenues may be positive or negative in any given year.

Certain other provisions of the bill not quantified result in potentially significant increases in TTF revenues beginning in fiscal 2027 (business transportation fee) and potentially significant increases in general fund revenues beginning in fiscal 2028 (surtax on specified PTE income). Any such revenues cannot be reliably estimated at this time due to data limitations, the volatility of these income sources, and uncertainty regarding the response of affected PTEs to the bill's provisions and the expiration of the TCJA's limitation on SALT deductions after tax year 2025.

Absent clarity regarding the application and effect of the bill's provision relating to NOLs, the provision's impact on State revenues is unclear and is not quantified in this analysis.

State Expenditures:

Comptroller's Office

General fund expenditures for the Comptroller's Office increase by an estimated $3.0 million in fiscal 2028 only for one-time information technology development to accommodate combined reporting. The Comptroller's Office has advised DLS that additional personnel resources, including (1) two regular, full-time senior tax attorneys and (2) four contractual legal consultants for a period of at least 18 months, are needed starting July 1, 2025, (with estimated costs of approximately $800,000 in fiscal 2026) in order to implement the combined reporting requirements. While the transition to combined reporting in tax year 2029 will likely necessitate additional personnel support, DLS is unable to independently verify the timing and cost of Comptroller personnel needs at this time and advises that the Comptroller's Office can request additional resources through the annual budget process as needed. Any related general fund expenditures are not shown above.

Transportation Trust Fund

TTF expenditures for local highway user revenue grants may increase by an estimated $1.0 million in fiscal 2027, $2.4 million in fiscal 2028, $4.3 million in fiscal 2029, and $8.3 million in fiscal 2030.

Local Fiscal Effect: Local highway user revenues may increase by an estimated $1.0 million in fiscal 2027, $2.4 million in fiscal 2028, $4.3 million in fiscal 2029, and $8.3 million in fiscal 2030.

Montgomery County expenditures for the Working Families Income Supplement Program, which provides a match to county residents based on the amount of the State earned income credit, may increase beginning in fiscal 2029.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 766 and HB 1007 of 2024.

Designated Cross File: HB 1014 (Delegate Palakovich Carr, *et al.*) - Ways and Means.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Internal Revenue Service; U.S. Census Bureau; Department of Legislative Services

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