SIERRA CLUB

P.O. Box 278
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Committee: Budget and Taxation
Testimony on: HB191 – "Income Tax – Payments of Fines, Penalties, and Other Amounts – Addition Modification"
Position: Support
Hearing Date: March 29, 2023

The Maryland Chapter of the Sierra Club supports HB191, which would deny the deductibility under Maryland law of certain expenses incurred in the context of legal settlements and judgements. This issue is directly related to the environment because, under current law, expenses for remediation and restitution are generally treated as deductible for business purposes.[1,2] Because of this deductibility, if a party pays millions or billions of dollars for these expenses due to its damage to the environment, the receipt of tax revenues received by the federal government and the State of Maryland will generally fall.

The sums in question can be quite large.[3] In addition to environmental cases, there are also large recent settlements for dangerous products. When an entity's taxable income allocable to the State of Maryland falls by $100 million due to payments made by the entity for damage it has caused, the State of Maryland receives $8.25 million less tax revenue.[4] The public, in turn, is not truly being made whole for the damage.

The current treatment of these expenses was codified in the 2017 Tax Cuts and Jobs Act.[5] Before this time, however, similar treatment existed in regulation. Like the prior treatment, current law has a number of complexities. Section 162(f) recognizes that some activities do not warrant deductibility, for reasons of public policy. For example, certain fines and penalties that do not constitute remediation or restitution are not deductible. However, large amounts of settlements for inappropriate actions are still being treated as deductible. HB191 would reduce the share of these amounts that result in reduced Maryland tax receipts.

While recognizing that the interactions between state and federal tax law are complex and warrant careful assessment, for the above reasons we think the proposed change to Maryland tax law embodied in HB191 warrants passage.

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[1] Section 162(f) of the Internal Revenue Code. Maryland's income tax treatment of deductions for expenses largely follows federal law unless there are specific exceptions such as the one provided for by HB191.
[2] Internal Revenue Service. Denial of Deduction for Certain Fines, Penalties, and Other Amounts; Related Information Reporting Requirements, Federal Register, January 19, 2021, pp. 4970=4990.
[3] Baxandall, P. and R. Pierannunzi. Subsidizing Bad Behavior: How Corporate Legal Settlements for Harming the Public Become Lucrative Tax Write Offs, with Recommendations for Reform, US PIRG Education Fund, 2013; R.W. Wood. "BP's $20.8 Billion Gulf Spill Settlement Nets $15.3 Billion Tax Write-Off," Forbes, October 6, 2015. J.M. Breslow, "How $80 Billion in Corporate Fines Can Become $48 Billion in Tax Breaks," PBS Frontline, December 4, 2015.
[4] The reduction in federal tax revenue, which would not be changed by HB191, is even greater.
[5] House of Representatives, Conference Report to Accompany H.R. 1, pp. 76-77 and 430-431.