Feb. 2, 2023

The Honorable Vanessa Atterbeary
Ways & Means Committee
House Office Building
Annapolis, MD 21401

RE: HB 39, “*Effective Corporate Tax Rate Transparency Act of 2023*” - **UNFAVORABLE**

Dear Chair Atterbeary and members of the committee,

The Maryland Association of CPAs’ State Tax Committee is composed of CPA members with expertise in the area of state and local tax. Our committee does not take a position on the “best possible solution” for state tax issues. Rather, we encourage in-depth analysis of the issues, undertaken through an organized and logical process with the goal of enacting good tax policies.

One of our guiding principles of good tax policy is “simplicity.” Simple tax laws are necessary so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner. Another guiding principle is “effective tax administration,” which involves keeping costs of collecting taxes at a minimum for both the state and the taxpayers.

HB 39 would require all publicly traded corporations and their subsidiaries to report new and unique information to the state, including the calculation of an “effective tax rate” based on the amount of their book (financial statement) income that is allocable to Maryland compared to the current Maryland income tax liability, together with an explanation of how the effective tax rate was calculated. Maryland implemented a change from three factor apportionment to Single Sales Factor Apportionment (fully phased-in for 2022), or an alternate calculation for larger corporations which double-weights the sales factor. Therefore, three-factor apportionment fraction calculation proposed in HB 39 (pg.3 lines 5-12) conflicts with existing law.

The reporting required by this bill will be complex and will not provide any helpful information for the state to use in administering tax policies, while simultaneously adding significant time and costs for the companies and for the Comptroller’s Office staff. We therefore see HB 39 as not being good tax policy, as it is contrary to the principles of simplicity and effective tax administration.

Book income is determined in accordance with “Generally Accepted Accounting Principles” (GAAP), which are promulgated by the Financial Accounting Standards Board and required by the Securities and Exchange Commission. On the other hand, income to be reported on Maryland’s income tax return for the calculation of state income tax liability is based, with some state-level adjustments enacted by the General Assembly, on the laws contained in the U.S.

Internal Revenue Code (IRC) as enacted by the U.S. Congress and incorporated into Maryland's tax statute. There are many differences in how or when income and deductions are reportable under GAAP versus the IRC and state statute. Depreciation expense is only one example of a difference in timing; it is calculated differently and reflected in different years in a company's financial statements versus its income tax returns. U.S. obligation interest is an example of a permanent difference; it is reported as book income but is never taxable by the state. There are these and many other legal reasons why a corporation's book income is different from its tax return income.

How taxable income is calculated is information that is already provided in the corporation's Maryland income tax return and its federal income tax return that, by law, accompanies the Maryland return. We believe HB 39 will do nothing to improve Maryland's tax policies, compliance, or administration, and therefore request an unfavorable report.

MACPA's State Tax Committee appreciates the opportunity to provide these comments. Should you have questions, please contact Mary Beth Halpern at the MACPA office at marybeth@macpa.org or (443) 632-2330.

Sincerely,

MACPA State Tax Committee

cc: Nick Manis, Manis Canning & Associates