Julie Palakovich Carr
Legislative District 17
Montgomery County

Ways and Means Committee

The Maryland House of Delegates
6 Bladen Street, Room 202
Annapolis, Maryland 21401
410-841-3037 · 301-858-3037
800-492-7122 *Ext.* 3037
Julie.PalakovichCarr@house.state.md.us

THE MARYLAND HOUSE OF DELEGATES
Annapolis, Maryland 21401

Testimony in Support of HB 191
Income Tax - Payments of Fines, Penalties, and Other Amounts - Addition Modification

Corporate wrongdoing shouldn't be rewarded with a tax deduction. Yet, because of a loophole in federal tax law, companies that harm the environment, engage in financial wrongdoing, or sell dangerous products can write off their restitution payments on their taxes. This bill closes this loophole in Maryland for all restitution payments paid to a local, state, or federal government entity.

Tax Giveaways for Corporate Wrongdoing

When large companies harm the public, they often negotiate out-of-court settlements that resolve the charges in return for stipulated payments or promised remedies. Under current federal law, if legal action is taken against a business and there is a settlement between the parties or a fine ordered by a court, the company can deduct restitution and remediation payments from their federal taxable income. Because Maryland uses a taxpayer's federal taxable income as the starting point for calculating state income taxes, we also give a tax deduction for corporate wrongdoing.

This unjust tax break reduces both the incentive of companies to comply with state and federal laws and the value of the redress these bad actors pay. This practice lowers the real value of settlement payments and lowers their power to prevent recidivism. Moreover, Marylanders are left in the dark as to how much corporations are actually paying for alleged wrongdoing and how much of those payments are being picked up by taxpayers.

Large Corporations Commonly Use this Tax Loophole

Corporate tax deductions on settlements are commonplace and are often treated as part of the cost of doing business. For instance, more than half of the $80 billion in settlements reached by a handful of federal agencies in 2012 to 2014 were able to be deducted by companies.[1] The U.S. Government Accountability Office similarly found that among 34 settlements worth collectively $10 billion, more than half of the involved companies had some or all of their payments deducted.[2]

Some particularly egregious examples include the 2010 Deepwater Horizon rig explosion and oil spill, where at least 80% of the $42 billion paid out by BP qualified for a tax deduction. BP saved an estimated $10-14 billion.[3] Many of the banks that contributed to the financial crisis of 2007-2008 were able to deduct part of their multibillion-dollar settlements. JPMorgan Chase wrote off $7 billion of its $13 billion deal with the Justice Department.[4] And $12 billion of Bank of America's $17 billion settlement was eligible for a tax break.

Changes in Federal Law Make State Enforcement Easier

The federal Tax Cuts and Jobs Act of 2017 made an important change to how the federal government handles the taxation of penalties and fines; it required government agencies to report details of settlement payments to the IRS.[5] Tax year 2022 is the first year where these details are being reported. This federal reporting requirement will help our Comptroller's Office to administer the addback required under this bill.

Why This Bill Is Needed

Every dollar in tax savings companies enjoy from the federal deduction of restitution penalties must ultimately be paid for by Marylanders. In 2022 alone, Maryland's Attorney General reached several multi-million dollar settlements with corporations, including a $40 million settlement with the Sackler family for its role in the opioid crisis, a $13 million settlement with Juul over its sales practices, a $9 million settlement with Google over its privacy practices, and a $3 million settlement with Jared Kushner-owned Westminster Management over poor housing conditions.

These companies engaged in wrongdoing and shouldn't get a tax break paid for by Marylanders. Instead of subsidizing companies that violate laws designed to protect people from financial wrongdoing, environmental harm, fraud, or dangerous products, HB 191 would keep this money in the hands of the State for public use and benefit.

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[1] "Subsidizing Bad Behavior: How Corporate Legal Settlements for Harming the Public Become Lucrative Tax Write Offs." https://pirg.org/wp-content/uploads/2013/01/Subsidizing-Bad-Behavior-USPIRG-EF_10.pdf
[2] GAO Tax Administration report: "Systematic Information Sharing Would Help IRS Determine the Deductibility of Civil Settlement Payments". https://www.gao.gov/assets/gao-05-747.pdf
[3] The New York Times: When Company Is Fined, Taxpayers Often Share Bill
[4] *Id.*
[5] The IRS created Form 1098-F to report such payments of $50,000 or more.