MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:
UNFAVORABLE
Senate Bill 859
Fair Share for Maryland Act of 2025
Senate Budget & Taxation Committee

Wednesday, March 5, 2025

Dear Chairman Guzzone and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic growth and prosperity for Maryland businesses, employees, and families.

Senate Bill 859 would, among other things, mandate that certain corporations compute their Maryland income tax using the worldwide combined reporting method -- a highly complex system of determining taxable income among all countries in which a company does business. SB 859 also mandates adoption of the throwback rule where sales that are not taxed in the destination state are "thrown back" into the state where the sale originated, despite the income not being earned there. Lastly, SB 859 imposes a potential additional 2.5% tax on Maryland pass-through entities (PTEs), our state's smallest businesses. This change would force Maryland PTEs to pay income at the corporate rate instead of the current personal rate.

Worldwide Combined Reporting

Requiring worldwide combined reporting is a bad tax policy choice for Maryland.

- Data collected by the Maryland Comptroller's Office showed that the revenue impact of mandatory combined reporting would be volatile, including revenue losses in some years. These same issues would be exacerbated on a worldwide basis. **States such as Minnesota, Vermont and New Hampshire have recently rejected worldwide combined reporting because of the revenue volatility. Further, this will lead to prolonged litigation and audit activity for Maryland.**
- In 2004, the Maryland General Assembly enacted provisions into the state's tax law that addressed the perceived abuses of "shipping profits outside the state" via intercompany transactions. The Maryland Chamber has supported legislation during the 2024 session to allow the Comptroller's Office to hire outside entities to help with enforcement of this provision and continues to support funding the Comptroller's office at levels that allow for enforcement of the add-back statute.

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- The complexity of the worldwide combined reporting system would require significant training of the Comptroller's personnel and would likely require additional staff. There would also be a need for educational outreach to Maryland taxpayers and tax practitioners. **Again, no state has adopted mandatory worldwide combined reporting so achieving an appropriate level of education and expertise will require significant investment.**
- The complexity of the combined reporting system will further add to the cost of compliance by Maryland's businesses and add to the costs of the State's administration of the income tax.
- **Every state that has considered a mandatory worldwide combined reporting scheme has rejected it.** Mandatory worldwide combined reporting threatens to impose significant double taxation on non-U.S. companies, is inconsistent with state, federal and international tax norms, and violates principles of U.S. tax treaties. Mandatory worldwide reporting will create disputes with treaty partners. In the past, some foreign governments have even enacted retaliatory action in response to states seeking to adopt a tax structure without a true water's edge system.
    - New Hampshire and Maine have both carefully studied mandatory worldwide combined reporting and firmly rejected such a policy.
    - Minnesota decided not to adopt mandatory worldwide combined reporting in 2023.
- **The federal government does not impose worldwide combined reporting.** In 2021, approximately 140 countries, including the U.S., agreed to a minimum 15% corporate global minimum tax, which several countries have begun to implement. The details, mechanics and implementation are still to be worked out, but this should alleviate some of the perceived concerns surrounding tax havens.

Throwback Rule

SB 859 seeks to institute a rule requiring the reapportionment on the sales of tangible personal property to be included in the numerator of the sales factor for property that is delivered or shipped to a purchaser within the state from outside the state or on goods shipped from Maryland to a state where those goods are not taxable. This is commonly referred to as the "throwback rule." The bottom-line objective is to collect corporate income taxes off sales from outside the state on goods that originate in Maryland but are then not taxable in that other state.

The "throwback rule" is seen by some as a magic fix for taxing "nowhere income," and the primary concerns remain that this scheme will create tax inequality and competitive disadvantage for Maryland businesses. In some cases, the "throwback rule" can even result in double taxation. For small, export-oriented Maryland businesses, this would have an outsized effect since they are less likely to have a nexus (e.g., facilities) in other states, meaning a larger portion of their income could become subject to this proposed additional taxation.

Finally, like combined reporting, Maryland's own Business Tax Reform Commission previously considered this issue and ultimately recommended the "throwback rule" not be adopted because it represents a tax on product originators, thereby discouraging investment and business location in Maryland. Again, none of Maryland's neighbors--Pennsylvania, Delaware, Virginia or West Virginia--utilize a throwback rule. It is simply good tax policy that a company's tax liability in one state should not be measured by their tax liability in another state.

Pass-through Entity Tax Increase

As introduced, SB 859 would impose a 2.5% tax increase (the difference between Maryland's highest personal tax rate and the Maryland corporate rate) on Maryland pass-through entities for revenues more than $1,000,000. This change stands to increase the Maryland income tax burden on Maryland's smallest businesses.

SB 859 does not address the disparity that would exist with the accompanying change in the bill to increase Maryland's personal income tax rate to 7% for those making more than $1,000,000. Members of a PTE take income directly as personal income from their business revenues. Because of that, PTEs pay their income tax at a special PTE rate (5.75%) designed to be likened to the personal tax rate. SB 859 would make changes to tax small business owners at 8.25% while only raising the rate on other individuals making the same amount pay at the 7% rate. This discrepancy places a clear burden on Maryland small businesses and disincentivizes the entrepreneurial spirit being championed by the Governor.

Finally, consider that the Tax Cuts and Jobs Act of 2017 created a 20% deduction for PTEs at the federal level, this deduction is set to expire in 2026. The US Chamber has estimated that the collective tax benefit loss of this deduction going away will be upwards of $2.7 billion.[1] The new tax proposed in SB 859 would be in addition to the significant burden being shouldered by Maryland's Main Street businesses when the federal 20% deduction expires.

Maryland's economy is stagnant and the state's budget is reflective of that situation. It is also not a secret that Maryland continues to lag our regional neighbors in business friendliness and the cost of doing business.[2] As such, Governor Moore has rightly focused his attention on jumpstarting private sector investment and job growth. Implementing new tax schemes that raise rates on small businesses and are proven to deter business investment is not how we will jumpstart Maryland's economy.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 859**.

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[1] https://www.uschamber.com/taxes/impact-of-the-20-percent-pass-through-deduction?state=md

[2] https://www.mdchamber.org/advocacy/competitiveness/