

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1149
Ways and Means

(Delegate Cox)

Small Business Tax Relief - State of Emergency Orders

This bill establishes tax incentives for qualified small businesses if the State or county in which the business is located was under a state of emergency declared by the Governor and the declaration required the business to close or limit its operations. The bill allows a qualified small business to (1) exempt 100% of the small business income earned in a taxable year; (2) exempt purchases of taxable goods and services from the State sales and use tax; and (3) exempt payment of State and local property taxes. **The bill takes effect June 1, 2021; the provisions affecting the income tax and sales tax take effect July 1, 2021.**

Fiscal Summary

State Effect: State revenues decrease significantly beginning in FY 2022 due to (1) income tax exemptions for small business income; (2) sales tax exemptions for small business purchases; and (3) property tax exemptions for small businesses. General fund expenditures increase by \$141,300 in FY 2022 due to one-time implementation costs at the Comptroller's Office.

Local Effect: Local revenues decrease significantly beginning in FY 2022 due to the small business income and property tax exemptions. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful. Qualified small businesses will benefit from reduced income, sales, and property taxes.

Analysis

Bill Summary: To be eligible for the tax incentives, the business must be classified as a small business under the U.S. Small Business Administration size standards.

Business Income Tax Exemption

A qualified small business can exempt 100% of the income earned by the business in a taxable year in which (1) the State or county in which the business is located was under a state of emergency declared by the Governor and (2) the declaration required the business to close or limit its operations. This exemption can be claimed beginning with tax year 2020.

Sales and Use Tax Exemption

Purchases of taxable goods and services by a qualified small business are exempt from the State sales and use tax if (1) the State or county in which the business is located was under a state of emergency declared by the Governor and (2) the declaration required the business to close or limit its operations. A business must provide vendors with evidence of eligibility for the exemption issued by the Comptroller. This exemption can be claimed beginning in fiscal 2022.

In addition, a qualified small business may claim a refund for State sales and use taxes paid from March 5, 2020, through June 30, 2021. A claim for a refund must be filed with the Comptroller by December 31, 2021. This provision of the bill terminates June 30, 2023.

Property Tax Exemption

Property owned by an eligible small business is exempt from State and local property taxes if (1) the county where the business is located was under a state of emergency declared by the Governor and (2) the declaration required the business to close or restrict its operations. This exemption applies to taxable years beginning with fiscal 2020.

In addition, a qualified small business may claim a refund for State and local property taxes paid from July 1, 2019, through June 30, 2021 (fiscal 2020 through 2021).

Current Law: No similar State income tax exemption, sales and use tax exemption, or property tax exemption exists. Recent federal and State legislation provides for enhanced tax benefits and financial assistance to businesses impacted by the COVID-19 global pandemic and economic recession.

COVID-19 Public Health Emergency

The Governor declared a public health emergency on March 5, 2020, with the declaration being extended several times since. The public health emergency is still in effect, and the most recent renewal occurred on February 19, 2021.

State Fiscal Effect: State general fund and Annuity Bond Fund (ABF) revenues decrease by a significant amount in fiscal 2022 and in any year that a state of emergency is declared by the Governor and the declaration requires a business to close or limit its operations. The amount of the decrease cannot be reliably estimated and depends on several factors, including (1) the number of eligible small businesses that claim the various exemptions proposed by the bill; (2) small business income; (3) purchases of goods and services by eligible small businesses; and (4) property taxes paid by eligible small businesses.

The size standards for the U.S. Small Business Administration classify small businesses based on either gross income or number of employees, depending on the industry classification. As such, there is no accurate way to determine the number of Maryland businesses that may qualify for the exemptions and refunds proposed by the bill.

Business Income Tax Exemption

Qualified small businesses may exempt 100% of their income beginning in tax year 2020. Due to the current state of emergency, it is expected that a significant number of businesses will qualify for the exemption in tax years 2020 and 2021. The provision is effective July 1, 2021; accordingly, tax year 2020 revenue losses are assumed to occur in fiscal 2022. As a result, general fund revenues will decrease significantly in fiscal 2022.

To the extent exemptions are claimed against the corporate income tax, a portion of tax credits claimed will decrease Transportation Trust Fund and Higher Education Investment Fund revenues.

The Comptroller's Office reports that it will incur a one-time general fund expenditure increase of \$60,000 in fiscal 2022 to add the subtraction modification to the income tax forms. This includes data processing changes to the income tax return processing and imaging systems and systems testing.

Sales and Use Tax Exemption

Qualified small businesses may exempt 100% of their purchases beginning in fiscal 2022, to the extent the state of emergency is still in effect and in any other year a health-related state of emergency is issued. Due to the current state of emergency, it is expected that a significant number of businesses may qualify for the sales tax exemption in fiscal 2022, to

the extent the state of emergency is still in effect. As a result, general fund revenues will decrease significantly in fiscal 2022. General fund revenues will decrease in future fiscal years to the extent the Governor declares a health-related state of emergency that limits business operations.

Also, due to the current state of emergency, it is expected that a significant number of businesses will qualify for the refund for sales and use taxes paid in fiscal 2020 and 2021. The provision is effective July 1, 2021; accordingly, refunds are assumed to be issued in fiscal 2022. As a result, State general fund revenues decrease by a significant amount in fiscal 2022. The amount of the revenue decrease depends on the number of eligible businesses that apply for a refund and the amount of sales and use taxes paid.

The Comptroller's Office will incur a one-time expenditure increase of \$81,300 in fiscal 2022 to notify the approximately 130,000 sales and use tax account holders of the sales tax changes.

Property Tax Exemption

Qualified small businesses are entitled to a 100% exemption for property taxes paid beginning in fiscal 2020 as a result of a health-related state of emergency. Due to the current state of emergency, it is expected that a significant number of businesses may qualify for the property tax exemption in fiscal 2022, to the extent the state of emergency is still in effect. As a result, ABF revenues may decrease significantly in fiscal 2022. ABF revenues will decrease in future fiscal years to the extent the Governor declares a health-related state of emergency that limits business operations.

Also, due to the current state of emergency, it is expected that a significant number of businesses will qualify for the refund for property taxes paid in fiscal 2020 and 2021. The provision is effective June 1, 2021; accordingly, refunds are assumed to be issued in fiscal 2022. As a result, State special fund revenues decrease by a significant amount in fiscal 2022. The amount of the revenue decrease depends on the number of eligible businesses that apply for a refund of State property taxes and the amount of State property taxes paid.

Local Fiscal Effect:

Business Income Tax Exemption

Local income tax revenues and local highway user revenues decrease significantly beginning in fiscal 2022 due to the small business income tax exemption.

Property Tax Exemption

County and municipal property tax revenues will decrease in fiscal 2022, to the extent the state of emergency is still in effect as well as in future fiscal years in which the Governor declares a state of emergency that limits business operations.

Due to the current state of emergency, it is expected that a significant number of businesses will qualify for the property tax refund for property taxes paid in fiscal 2020 and 2021. The provision is effective June 1, 2021; accordingly, refunds are assumed to be issued in fiscal 2022. As a result, county and municipal revenues decrease by a significant amount in fiscal 2022. The amount of the revenue decrease depends on the number of eligible businesses that apply for a refund of county and municipal property taxes and the amount of county and municipal property taxes paid.

The following summary provides an overview on the amount of property tax revenues collected by county governments and their overall reliance on the commercial property tax base. Additional information on local property tax rates and revenue amounts for Maryland counties and Baltimore City can be found in the [County Revenue Outlook](#) report. A copy of the fiscal 2021 report is available on the Department of Legislative Services [website](#).

Property Tax Collections – County Governments

County property tax collections are projected to total \$9.1 billion in fiscal 2021. A considerable portion of these revenues are generated by commercial establishments. As shown in **Exhibit 1**, commercial real property accounts for approximately 25% of the total real property base. In Baltimore City, commercial real property accounts for over 40% of the total real property base. Of the 2.4 million real property tax accounts in the State, approximately 2.5% are either improved commercial accounts (47,700) or improved commercial condominium accounts (15,800). As shown in **Exhibit 2**, the average real property assessment is \$2.1 million for commercial accounts and \$721,600 for commercial condo accounts. The average local property tax amount for these accounts total \$25,300 for commercial real property and \$8,600 for commercial condo real property.

Exhibit 1
Real Property Base
Fiscal 2019

<u>County</u>	<u>Commercial Real Property</u>	<u>Total Real Property</u>	<u>% Commercial</u>
Allegany	\$983,411,141	\$3,647,463,426	27.0%
Anne Arundel	21,336,377,969	91,133,376,067	23.4%
Baltimore City	19,910,869,418	45,557,036,733	43.7%
Baltimore	24,978,591,308	87,945,647,348	28.4%
Calvert	1,361,803,590	12,184,658,610	11.2%
Caroline	408,078,102	2,625,018,052	15.5%
Carroll	2,636,162,950	20,099,491,617	13.1%
Cecil	2,275,859,595	10,181,215,060	22.4%
Charles	3,387,114,025	18,369,902,013	18.4%
Dorchester	525,149,231	2,877,705,939	18.2%
Frederick	6,366,822,557	31,978,786,534	19.9%
Garrett	477,260,496	4,413,279,645	10.8%
Harford	5,855,085,796	28,583,847,626	20.5%
Howard	12,397,250,972	53,313,887,877	23.3%
Kent	414,795,733	2,970,482,813	14.0%
Montgomery	46,217,229,938	195,345,501,347	23.7%
Prince George's	28,728,368,112	97,654,459,098	29.4%
Queen Anne's	1,055,072,365	8,397,765,444	12.6%
St. Mary's	1,811,217,943	12,594,358,576	14.4%
Somerset	273,368,437	1,376,668,778	19.9%
Talbot	1,094,068,494	8,493,110,859	12.9%
Washington	3,984,619,028	12,880,995,194	30.9%
Wicomico	1,642,878,307	6,306,778,804	26.0%
Worcester	2,702,769,121	15,893,364,746	17.0%
Total	\$190,824,224,628	\$774,824,802,206	24.6%

Source: State Department of Assessments and Taxation

Exhibit 2
Commercial and Commercial Condo Real Property Accounts
July 2020

County	Commercial Real Property			Commercial Condominium Real Property		
	Accounts	Value	Avg. Value	Accounts	Value	Avg. Value
Allegany	2,033	\$819,950,975	\$403,321	51	\$2,633,400	\$51,635
Anne Arundel	4,014	12,541,073,574	3,124,333	1,701	738,442,901	434,123
Baltimore City	7,955	11,809,975,616	1,484,598	695	1,508,098,830	2,169,926
Baltimore	6,265	11,956,855,486	1,908,516	469	810,733,166	1,728,642
Calvert	553	758,266,546	1,371,187	146	39,970,995	273,774
Caroline	511	258,823,497	506,504	0	0	n/a
Carroll	1,651	1,921,249,897	1,163,689	345	97,711,199	283,221
Cecil	1,318	1,188,439,662	901,699	182	15,643,600	85,954
Charles	1,055	1,990,673,638	1,886,894	674	182,520,421	270,802
Dorchester	709	380,002,708	535,970	0	0	n/a
Frederick	2,097	4,007,082,388	1,910,864	693	264,464,228	381,622
Garrett	808	382,472,265	473,357	250	31,584,000	126,336
Harford	2,197	3,426,238,776	1,559,508	157	90,292,433	575,111
Howard	1,179	5,282,329,132	4,480,347	1,368	694,140,298	507,412
Kent	509	357,727,700	702,805	12	5,984,167	498,681
Montgomery	2,927	22,963,239,791	7,845,316	3,821	5,351,718,399	1,400,607
Prince George's	3,543	11,937,267,704	3,369,254	2,938	888,429,836	302,393
Queen Anne's	601	747,184,099	1,243,235	573	56,528,867	98,654
St. Mary's	1,113	1,149,494,318	1,032,789	142	70,439,731	496,054
Somerset	646	199,838,937	309,348	23	2,913,199	126,661
Talbot	930	853,530,539	917,775	212	54,060,419	255,002
Washington	1,781	2,264,385,743	1,271,413	110	136,550,527	1,241,368
Wicomico	1,541	1,029,168,763	667,858	339	68,841,156	203,071
Worcester	1,729	2,365,456,663	1,368,107	850	254,955,027	299,947
Total	47,665	\$100,590,728,417	\$2,110,369	15,751	\$11,366,656,799	\$721,647

Avg.: average

Source: State Department of Assessments and Taxation

Additional Comments: The American Rescue Plan Act of 2021 (H.R. 1319), as passed by the Senate, includes approximately \$219.8 billion in funding for state governments to (1) respond to the COVID-19 public health emergency and cover related costs, including assistance to households, small businesses, nonprofits, and affected industries such as tourism, travel, and hospitality; (2) provide government services to the extent of lost revenue from the public health emergency; and (3) make investments in water, sewer, or broadband infrastructure. Maryland is estimated to potentially receive \$3.9 billion of this federal funding.

However, the Senate version of the bill places restrictions on the how the states may use the federal dollars received. The funds may not be used to (1) reduce taxes directly or indirectly between March 3, 2021, and the last day of the fiscal year in which all funds received have been spent or returned and (2) make payments to pension funds.

The Act requires states to repay any funds whose use does not comply with these uses. For tax reductions, states will be required to repay the lesser of (1) the net tax reduction and (2) the amount received under this program or through a transfer from local governments.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Maryland Municipal League; Comptroller's Office; Maryland State Treasurer's Office; State Department of Assessments and Taxation; Department of Legislative Services

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