HB 99

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 99 (The Speaker)(By Request - Administration)
Ways and Means

Small Business Relief Tax Credit

This Administration bill creates a credit against the State income tax for a small business that employs fewer than 50 employees and provides specified employee benefits to a qualified employee who earns 200% or less of the annual federal poverty guidelines for a single-person household. The credit is the lesser of $1,000 for each qualified employee or the total amount of qualified employer benefits accrued by qualified employees. The Department of Commerce (Commerce) may issue tax certificates not exceeding $5 million in tax year 2018, $15 million in tax year 2019, $35 million in tax year 2020, $75 million in tax year 2021, and $100 million in tax year 2022 and in each tax year thereafter. **The bill takes effect July 1, 2018, applies to tax year 2018 and beyond, and is contingent on the enactment of Senate Bill 135/House Bill 98 of 2018.**

Fiscal Summary

State Effect: General and special fund revenues decrease by $5 million in FY 2019 and by $40 million in FY 2023. General fund expenditures increase by $33,000 in FY 2019.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	($4,657,100)	($13,971,300)	($32,599,700)	($37,256,900)	($37,256,900)
SF Revenue	($342,900)	($1,028,700)	($2,400,300)	($2,743,100)	($2,743,100)
GF Expenditure	$33,000	$0	$0	$0	$0
Net Effect	($5,033,000)	($15,000,000)	($35,000,000)	($40,000,000)	($40,000,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local highway user revenues decrease by $23,300 in FY 2019 and by $186,600 in FY 2023. Expenditures are not affected.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment as discussed below.

Analysis

Bill Summary: A qualified employer benefit is:

- paid time off provided in accordance with the Paid Leave Compromise Act (SB 135/HB 98 of 2018);
- a qualified transportation fringe;
- a dependent care assistance program;
- an educational assistance program; or
- employer contributions to health savings accounts.

A qualified employee must earn paid time off as provided in accordance with the Paid Leave Compromise Act (SB 135/HB 98 of 2018), which once fully implemented generally requires an employer with 25 or more employees to have a leave policy under which an employee earns at least one hour of paid leave, at the same rate as the employee normally earns, for every 30 hours an employee works to be used for any reason. Additionally, a qualified employee must earn at least one other qualified employer benefit.

The bill specifies the information included on the tax credit application, the application process, and the reporting requirement. Commerce must issue tax credit certificates to qualified applicants on a first-come, first-served basis and adopt regulations related to the bill.

Current Law: The State provides several tax credits to employers for providing employee benefits. The Qualifying Employees with Disabilities Tax Credit allows an employer who hires a qualified individual with a disability to claim a tax credit for certain wages paid to the employee and for child care and transportation expenses paid on behalf of the employee in the first two years of employment. The maximum amount of eligible child care and transportation expenses that can be claimed in each of the first two years is $900.

Chapter 7 of 1998 created a tax credit equal to 5% of an employer’s cost for providing long-term care insurance benefits to employees. The credit is capped at $5,000 or $100 per employee covered.

Maryland-based businesses that provide commuter benefits for employees may claim a tax credit for a portion of the amounts paid during the taxable year. Commuter benefits include certain vanpool costs for an employee’s travel to and from home and the workplace, a Guaranteed Ride Home program, or a parking “Cash-Out” program. The tax credit is 50% of the cost of providing the commuter benefits up to a maximum of $100 per month (based on a $200 employer contribution) for each employee.

Maryland Healthy Working Families Act

Chapter 1 of 2018 requires an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of *paid* sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must at least have a sick and safe leave policy that provides an employee with at least 1 hour of *unpaid* sick and safe leave for every 30 hours an employee works. An employer is not required to allow an employee to earn or carry over more than 40 hours of earned sick and safe leave in a year, use more than 64 hours of earned leave in a year, accrue more than 64 hours at any time, or use earned sick and safe leave during the first 106 calendar days the employee works for the employer. An employer is not required to carry over unused earned sick and safe leave if the leave is awarded at the beginning of each year.

Earned sick and safe leave begins to accrue the later of February 11, 2018, or the date that an employee begins employment with the employer.

Federal Transportation Fringe Benefits

Certain qualified transportation fringe benefits provided by an employer are excluded from an employee's income for federal income tax purposes and from the employee's wages for payroll tax purposes. Qualified transportation fringe benefits include:

- §132(f)(1)(A) *Vanpooling:* The expense of commuting in a six-passenger (or greater) vehicle qualifies for the tax benefit, whether the service is public or private.

- §132(f)(1)(B) *Transit Passes:* A transit pass includes mass transit fares and certain vehicles for hire.

- §132(f)(1)(C) *Qualified Parking:* Qualified parking includes parking provided to an employee on or near the business premises or a location from which the employee commutes by means of mass transit, van pool, or carpooling.

- §132(f)(1)(D) *Qualified Bicycle Commuting:* Reasonable expenses incurred in order to commute via a bicycle on a regular basis.

The amount that can be excluded as qualified transportation fringe benefits in tax year 2018 is limited to $260 per month in combined vanpooling and transit pass benefits and $260 per month in qualified parking benefits. These limits are adjusted annually for inflation.

Employees may exclude $20 of qualified bicycle commuting reimbursements per month, subject to restrictions. Unlike other transportation benefits, this amount is not adjusted for inflation. The exclusion from gross income and wages for qualified bicycle commuting reimbursements is suspended for tax years beginning after December 31, 2017, and before January 1, 2026, under the Tax Cuts and Jobs Act of 2017.

Educational and Dependent Care Assistance Programs

Federal law allows employers to provide educational assistance to employees. Up to $5,250 of payments received by an employee for tuition, fees, books, supplies, etc., under an employer's educational assistance program may be excluded from the employee's gross income.

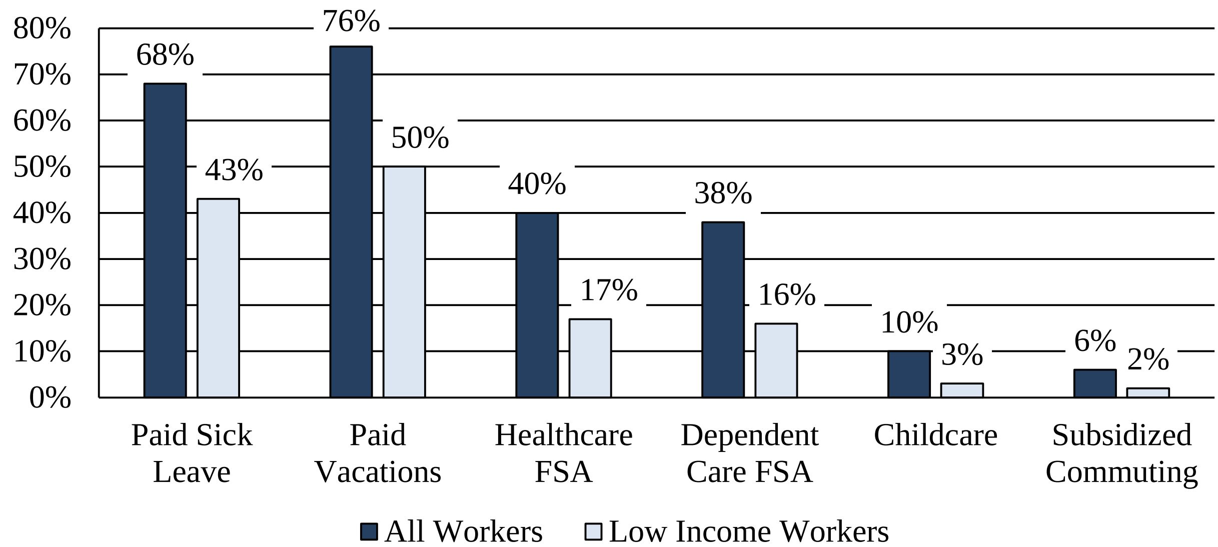
An employee who receives dependent care assistance payments provided under an employer's written nondiscriminatory plan generally may exclude such payments from gross income. The maximum amount that may be excluded from an employee's gross income for dependent care assistance payments made by his or her employer under a dependent care assistance program is $5,000 ($2,500 in the case of a separate return made by a married person). In cases where a child care facility is provided on the employer's premises, the amount excluded will be based on the utilization of the facility and the value of the services provided. The $5,000 ceiling is an annual limit that applies to the value of dependent care services covered by a dependent care assistance program and received by the taxpayer during a tax year regardless of whether or not the taxpayer has received reimbursement from the employer for the year as to which the assistance was provided.

Health Savings Accounts

Employer contributions to an employee's health savings account (HSA) or Archer medical savings account (MSA) may be excluded from an employee's gross income as employer-provided coverage for medical expenses under an accident or health plan to the extent they do not exceed the HSA or MSA limits. If an employer makes such contributions, it must make comparable contributions on behalf of all employees with comparable coverage during the same period.

Background: According to the U.S. Bureau of Labor Statistics, as shown in **Exhibit 1**, nationally in 2017, 68% of workers in private-industry businesses have paid sick leave and 76% of workers in private-industry businesses have paid vacations. The majority of workers in private-industry businesses do not have access to health savings accounts, dependent care flexible spending accounts, childcare benefits, or subsidized commuting benefits. Private sector workers who earn $12.25 or less per hour are less likely to receive these benefits, as shown in Exhibit 1.

Exhibit 1
Private Sector Workers with Access to Benefits



FSA: Flexible Spending Account

Note: Low-income workers are workers with hourly wages of $12.25 or less.

Source: U.S. Bureau of Labor Statistics; Department of Legislative Services

In 2018, 200% of the annual federal poverty guidelines for a single-person household is $24,280.

State Revenues: Commerce may approve a maximum of $5.0 million in credits in tax year 2018, $15.0 million in credits in tax year 2019, $35.0 million in credits in tax year 2020, $75.0 million in credits in tax year 2021, and $100.0 million in credits annually beginning in tax year 2022. Based on data from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau, DLS estimates there are 124,000 employees who earn $24,280 or less and work for a business with fewer than 50 employees. Assuming 40,000 of these employees receive qualified benefits that equal at least $1,000 per employee, Commerce will award the maximum amount of credits for tax year 2018 through 2020, but will likely award approximately $40.0 million in credits annually beginning in tax year 2021. As a result, general fund revenues decrease by $4.7 million in fiscal 2019. Transportation Trust Fund (TTF) revenues decrease by $242,993 in fiscal 2019, and Higher Education Investment Fund (HEIF) revenues decrease by $99,900. **Exhibit 2** shows the estimated State and local revenue impacts resulting from the tax credits. However, to the extent that there are more than 40,000 qualified employees receiving qualified benefits, the decrease in tax revenues could total up to $75 million in fiscal 2022 and $100 million annually beginning in fiscal 2023.

Exhibit 2
State and Local Revenue Impacts
Fiscal 2019-2023

	FY 2019	**FY 2020**	**FY 2021**	**FY 2022**	**FY 2023**
General Fund	($4,657,107)	($13,971,320)	($32,599,746)	($37,256,853)	($37,256,853)
HEIF	(99,900)	(299,700)	(699,300)	(799,200)	(799,200)
TTF	(242,993)	(728,980)	(1,700,954)	(1,943,947)	(1,943,947)
State	*(219,666)*	*(658,998)*	*(1,537,662)*	*(1,757,328)*	*(1,757,328)*
Local	*(23,327)*	*(69,982)*	*(163,292)*	*(186,619)*	*(186,619)*
Total	**($5,000,000)**	**($15,000,000)**	**($35,000,000)**	**($40,000,000)**	**($40,000,000)**

HEIF: Higher Education Investment Fund
TTF: Transportation Trust Fund

This estimate assumes that two-thirds of all credits are claimed against the personal income tax, with the remaining amount claimed against the corporate income tax.

State Expenditures: Commerce reports that it can implement the bill with existing resources by realigning staff. The Comptroller's Office reports that it will incur a one-time expenditure increase of $33,000 in fiscal 2019 to add the credit to the personal and corporate income tax credit forms. This amount includes data processing changes to the SMART income tax return processing and imaging systems and system testing.

Local Revenues: Local highway user revenues decrease by approximately $23,327 in fiscal 2019 and by approximately $186,619 in fiscal 2023, as a result of credits claimed against the corporate income tax, as shown in Exhibit 2.

Small Business Effect: Small businesses that provide specified employee benefits to employees who earn 200% of the annual federal poverty guidelines or less may benefit from claiming the tax credit. There are approximately 100,600 businesses with 50 or fewer employees, but it is unknown how many of these businesses offer qualified benefits to employees who earn $24,280 or less. Small businesses that provide qualified benefits to qualified employees may receive up to $1,000 in tax credits per eligible employee.

Additional Comments: Chapter 1 of 2018 passed the General Assembly during the 2017 session but was vetoed by the Governor. During the 2018 session, the

General Assembly overrode the Governor's veto, thus Title 3, Subtitle 13 of the Labor and Employment Article is now the Maryland Healthy Working Families Act. However, the bill is contingent on the Paid Leave Compromise Act (SB 135/HB 98 of 2018) taking effect, which is drafted in Title 3, Subtitle 13 of the Labor and Employment Article. This analysis assumes Title 3, Subtitle 13 of the Labor and Employment Article refers to the Paid Leave Compromise Act.

Additional Information

Prior Introductions: None.

Cross File: SB 134 (The President)(By Request - Administration) - Budget and Taxation.

Information Source(s): Department of Commerce; Comptroller's Office; U.S. Bureau of Labor Statistics; U.S. Census Bureau; U.S. Department of Health and Human Services; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2018
md/hlb

Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Small Business Relief Tax Credit

BILL NUMBER: SB 134/HB 99

PREPARED BY: Chris Carroll

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

____ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

__X__ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS