

## News

### Maryland Tax News

May 23, 2013

#### Controversial Maryland Tax News

Recently, Governor Martin O'Malley signed into law a very controversial bill that will increase Maryland's gas tax. The first installment of a multi-faceted plan increasing Maryland's gasoline tax will take effect July 1, 2013<sup>[1]</sup>, while a future piece of the plan will be influenced by whether Congress authorizes states to require online sellers to collect tax on internet sales. Maryland's Transportation Infrastructure Investment Act of 2013 replaces Maryland's flat gasoline tax rate of 23.5 cents per gallon with a rate indexed to inflation. Maryland's new law, effective July 1, 2013, indexes the state's previously flat gasoline tax to reflect changes in the federal Consumer Price Index (CPI). The law limits annual inflation driven increases to no more than 8 percent of the prior year's per-gallon rate. It also provides that the rate will remain unchanged and will not be reduced during any years in which the CPI declines or remains stable.

Additionally, the law also adds a new sales tax on motor fuel that would start at 1 percent but could reach 5 percent, unless Maryland's internet taxing authority is expanded. Such sales tax would start at 1 percent beginning July 1, 2013, increase to 2 percent January 1, 2015 and to 3 percent on July 1, 2015. If Maryland's internet taxing authority is expanded, the revenue from online sales would be devoted to transportation and the sales tax component of the fuel tax would likely hold steady at 3 percent. Supporters of Maryland's intention of linking gasoline tax rates to internet sales tax revenues were encouraged recently when the U.S. Senate passed the Marketplace Fairness Act<sup>[2]</sup>, which would allow states to require businesses in other states to collect taxes on internet sales. However, such act will face further scrutiny in the House. Maryland's law sets a target date of Dec. 1, 2015, for any such federal legislation to take effect, with state analysts projecting an annual revenue uptick of more than \$200 million from web-based sales taxes collected from out-of-state sellers during the first few years if such a law is put in place. If no federal law is enacted by the 2015 deadline, the link between the gasoline tax and internet sales will be delayed and Maryland's motor fuel sales tax will increase from 3 percent to 4 percent on Jan. 1, 2016, and then to 5 percent on July 1, 2016, to replace the forgone online sales tax revenue.

Factoring in both the inflation adjustment and the addition of a sales tax, legislative analysts project that motorists could see Maryland's taxes on gasoline rise from the current rate of 23.5 cents per gallon to 37.3 cents in 2018, or as much as 44.6 cents by that time if Congress takes no action on states' internet taxes. The new law also affects Maryland's tax on diesel fuel, currently set at 24.25 cents per gallon, which is estimated to reach 38.15 cents per gallon in 2018 (or 45.45 cents by 2018 with no new revenue from online sales)<sup>[3]</sup>. All of this is in addition to federal fuel taxes, currently at 18.4 cents per gallon of gasoline and 24.4 cents per gallon of diesel fuel. Governor O'Malley supported the legislation even though it differed slightly from a plan he unveiled earlier this year. Upon signing the bill, O'Malley said the new law, when fully implemented, will enable Maryland to invest an average of \$800 million per year in much-needed transportation infrastructure improvements.

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### Same-Sex Married Filers

Also signed by Governor O'Malley was legislation introduced after Maryland legalized same-sex marriage[4]. Such legislation addresses the fact that married same-sex couples may neither file a federal joint return nor file federally as married but filing separately. In those cases, the legislation establishes a presumption for Maryland tax purposes that a married couple had filed under one of those classifications at the federal level. The presumption will be repealed should the federal government ever recognize same-sex marriage for income tax purposes. Further, Governor O'Malley signed legislation[5] which allows a state income tax deduction for individuals who pay health insurance costs on behalf of another individual if the taxpayer and the individual are recognized by the state as lawfully married. Such legislation also specifies that, for purposes of calculating the Maryland estate tax for any death occurring after Dec. 31, 2012, a "surviving spouse" for Maryland estate tax purposes, include any individual recognized by the state as lawfully married to the decedent at the time of the decedent's death.

The following other items also made their way into law recently:

The allowable tax credit that an employer may claim for costs associated with conducting security clearances increases, from \$100,000 to a maximum of \$200,000, effective July 1[6];

An existing tax credit for certain costs incurred by employers who hire qualified individuals with disabilities has been extended indefinitely[7];

A tax credit for 25 percent of the capital cost to establish or improve a winery or vineyard, subject to a statewide total of \$500,000 in annual credits is permitted during tax years 2013 through 2017 only[8];

The transfer of real property between business entities is now exempt from recordation and transfer taxes in certain circumstances if the instrument of writing is for no, or nominal, consideration, effective for a period of five years beginning July 1[9], (see article in the Business Section: 2013 Legislation Lowering Recordation and Transfer Taxes);

An income tax deduction is now allowed for noneconomic damages received by a claimant in satisfaction of a claim of unlawful discrimination, starting in tax year 2013[10];

Maryland's estates and trusts statute is modified to allow a personal representative to file an election for modified administration of an estate if the residuary legatee is a trust, provided that each person with a current interest in the trust is exempt from inheritance tax under specified provisions of state tax law, applying prospectively after Oct. 1[11];

A taxpayer who files an income tax return electronically may use some or all of an income tax refund to purchase U.S. Series I Savings Bonds in \$50 increments, starting in tax year 2015, with the state comptroller instructed to adopt implementing regulations in the interim[12];

A task force will be created to study and report recommendations by Dec. 1 as to whether Maryland should offer an income tax credit for the purchase of electric generators or establish a tax-free period during which the purchase of emergency preparedness equipment would not be subject to sales tax[13]; and

Members of Maryland's Civil Air Patrol, starting in tax year 2015, will be added to the list of persons eligible for an existing tax deduction program under which certain fire, rescue, and emergency personnel may claim a deduction of up to \$3,500[14].

If you have any questions or wish to discuss in greater detail, contact Michael Fellerman at 301-961-5171 or [mfellerman@linowes-law.com](mailto:mfellerman@linowes-law.com).

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[1] H.B. 1515

[2] S. 743

[3] H.B. 1515

[4] H.B. 380

[5] S.B. 658/H.B. 1031

[6] S.B. 482

[7] S.B. 124

[8] H.B. 1017

[9] S.B. 202/H.B. 372

[10] S.B. 639

[11] H.B. 858

[12] S.B. 613/H.B. 644

[13] S.B. 481A

[14] S.B. 774