COMPTROLLER of MARYLAND
Serving the People

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January 26, 2011

Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401

Honorable Thomas V. "Mike" Miller, Jr.
President, Senate of Maryland
State House
Annapolis, Maryland 21401

Honorable Michael E. Busch
Speaker, Maryland House of Delegates
State House
Annapolis, Maryland 21401

Dear Governor, President and Speaker:

Section 10-108 of the Tax-General Article of the Annotated Code of Maryland requires that the Comptroller's Office report the impact of changes in federal income tax law on State revenues. Several bills have been enacted in the past months that amend the Internal Revenue Code (IRC). Most of these bills have negligible or no impact on Maryland revenues.

On December 22, 2010, President Obama signed into law H.R. 4337, the *Regulated Investment Company Modernization Act of 2010* ("the Act"). The Act amends the Internal Revenue Code (IRC) to modernize and clarify certain federal income and excise tax rules related to dividends paid by registered regulated investment companies (RIC's) under Subchapter M of the IRC, which generally include open-end and closed-end mutual funds. Under current law, if a RIC distributes at least 90 percent of its net ordinary income and tax-exempt interest to its shareholders, a deduction for dividends paid – including regular dividends, capital gains dividends or exempt-interest dividends – is allowed for the RIC, as any taxes on these distributions will be paid by the shareholders to whom the distribution was made.

In general, the Act modifies and clarifies the definition of several federal income tax and excise tax rules related to the calculation of a RIC's federal tax liability when considering dividends paid, including the definition of capital loss carryovers, modifications to gross income and asset tests. In addition, the Act repeals the assessable penalty for deficiency dividends, a dividend paid by the RIC in the current tax year that relates to a prior tax year.

Based on the federal revenue effect as determined by the Joint Committee on taxation, and on the relatively minor modifications to current law, any aggregate effect on State revenues –

whether direct because of modifications to the RIC's federal taxable income or indirect as a result of changes to its available cash as a result of an increase or decrease in its tax liability – will likely be marginal.

On December 22, 2010, President Obama signed into law H.R. 6473, the *Airport Airway and Extension Act of 2010, Part IV* ("the Act"). The Act amends the Internal Revenue Code (IRC) to extend, through March 31, 2011, the excise taxes on aviation fuels and air transportation of persons and property, and the expenditure authority for the Airport and Airway Trust Fund.

This additional temporary extension is intended to provide the U.S. Congress with time to complete its work on a long-term Federal Aviation Administration (FAA) reauthorization bill. This amendment does not affect the calculation of federal adjusted gross income (FAGI) or federal taxable income (FTI) and therefore will not flow through to the Maryland income tax return. There may be small indirect effects to Maryland revenues, as maintaining a higher federal excise tax for aviation fuel – which is also taxed by Maryland – could reduce overall sales, although any impact is expected to be minimal.

On December 29, 2010, President Obama signed into law H.R. 6517, the *Omnibus Trade Act of 2010* ("the Act"). The Act amends the Internal Revenue Code (IRC) to extend various trade adjustment assistance (TAA) programs until July 1, 2012. Specifically, the Act extends to February 12, 2011, a refundable federal tax credit for health insurance premiums – such as COBRA coverage – for workers who lose their jobs due to foreign competition and older retirees in failed pension plans (i.e., retirees whose plans have been taken over by the Pension Benefit Guaranty Corp). The *American Recovery and Reinvestment Act of 2009* increased the credit from 65% to 80% of premiums. Had this legislation not been enacted, the credit percentage would have reverted to 65%. While keeping the credit at 80% of eligible health premiums may have an indirect effect on State sales and use tax revenues, as eligible participants will see a small increase in disposable income, the effect is expected to be negligible.

The Act also amends a previous amendment to the IRC made by the *Hiring Incentives to Restore Employment Act of 2010* by increasing the amount of estimated taxes that corporations with at least $1 billion in assets must pay. Currently, the amount of estimated taxes that must be paid by these corporations in July, August or September of 2015 is 121.5% of assets as of the end of the previous tax year. The Act increases this required amount by 4.5 percentage points to 126.0%, but has no direct impact on State revenues.

On January 4, 2011, President Obama signed into law H.R. 5901, the *Real Estate Jobs and Investment Act of 2010* ("the Act"). The Act, first introduced in July 2010, originally amended the Internal Revenue Code to increase from 5% to 10% the allowable ownership interest in real estate investment trust (REIT) stock for purposes of tax exemptions allowed by the Foreign Investment in Real Property Tax Act, which relates to foreign investment in United States real property interests. However, the final version of the bill contains only provisions related to the appointment and compensation of certain U.S. Tax Court employees. Therefore, this legislation will not affect Maryland revenues.

On January 4, 2011, President Obama signed into law H.R. 1107, *To enact certain laws relating to public contracts as title 41, United States Code, “Public Contracts”* (“the Act”). The Act makes a number of technical amendments to the Internal Revenue Code, as well as to sections of the United States Code. None of the amendments will affect Maryland revenues.

Please do not hesitate to contact me at (410) 260-7450 if you have any questions about this matter.

Sincerely,

David F. Roose
Director

cc: Honorable Peter Franchot