GIVING AWAY THE STORE

GIVEAWAYS TO THOSE WHO NEED THEM LEAST IN THE MARYLAND STATE TAX CODE

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March 2013

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THE OUTRAGEOUS EIGHT
THE SURVIVING SEVEN:
THE MOST UNJUSTIFIABLE GIVEAWAYS
IN THE MARYLAND TAX CODE

Progressive Maryland Education Fund has updated its “Giving Away the Store” report, documenting a slew of giveaways to wealthy individuals and big corporations in the Maryland state tax code that cost ordinary taxpayers at least $215 million annually from 2007-2012 and perhaps as much as $336 million. At the top of the list are these eight seven that have managed to survive years of efforts to eliminate them:

Power Surge. Utility companies pushed hard for and won electricity deregulation in 1999, which is now widely recognized as the Enron-fueled folly that it was. But what most people don’t realize is that the electricity monopolies continue to reap millions in windfall profits from tax credits they don’t need and the state can’t afford – averaging $1.6 million annually from 2007-2012.

“Can You Hear Me Now… Taking Advantage of the Taxpayers?” Electric companies actually had to give up a tax break in 2006 that allowed them a corporate income tax credit for 60% of property tax paid on operating property other than land. But others got to keep this lucrative credit – Verizon and other telecommunications corporations, totaling $10.5 million in FY2012.

Golden Opportunity. People who purchase large quantities of gold or platinum are among the most affluent members of society. Why should they get a sales tax exemption – worth $2.9 million in FY2012 -- for large purchases of bullion and precious metals? Why is there no similar exemption for books, coats, and diapers?

Subsidizing Global Warming. In recent years, Maryland taxpayers have been expending $4.5 million of public revenues annually (increasing to $6 million in 2013 and 2014 before falling to $3 million a year from 2015 to 2020) to subsidize Maryland’s rapidly shrinking coal mining industry, which employs no more than several hundred workers to produce a mere 0.2% of the nation’s coal. While Governor O’Malley has targeted this credit for elimination and pressed for investment in cleaner sources of energy, our lawmakers have opted to underwrite global warming by preserving this credit.

Ahoy Giveaway? The excise tax on boats is reduced by the value of trade-ins, costing the state $1.6 million annually from 2007 to 2012. That tax break might be justified for a self-employed waterman. But why should multi-millionaires get this giveaway when they trade up to a bigger yacht?

Death and Taxes…Or Not. Thanks to George W. Bush’s cuts to the federal estate tax since 2000, the percent of estates in Maryland paying the federal estate tax dropped from 2.3% in 2000 to 0.6% in 2009. Maryland was smart enough to decouple from the federal estate tax in the last decade, helping to preserve this revenue source. But Maryland also raised the estate tax
exemption amount to $1 million and created a complete exemption from the inheritance tax for siblings and lineal descendants. The inheritance tax exemption alone cost the state $43 million annually from FY2007 to FY2012. The result: These two revenue sources have been stagnant at 1-2% of state general fund revenues even as income and wealth at the top have risen rapidly in recent years, indicating that Maryland stands to miss out on its share of the largest inter-generational wealth transfer in American history.

**Manufacturer Windfalls.** In 2001, manufacturing companies persuaded the General Assembly to give them a multi-million-dollar tax cut under a plan called “single-sales factor” apportionment. The manufacturers promised that the tax cut would free up capital to create new jobs in Maryland. Instead, the manufacturing sector continued to shrink. In 1990, Maryland had 200,000 manufacturing jobs, about 9% of employment. By 2000 that number was down to 180,000, or about 7% of employment. Now it’s barely 110,000, which is just 4% of all jobs. For this gift of declining manufacturing employment, the Comptroller estimated in 2010 that single-sales factor cost the state $19 million in 2006 and $14.2 million in 2007.

**Last But Not Least: Getting Away Scot Free.** According to figures from the Comptroller, over one-third of the biggest corporations in the state paid not a dime of income taxes in Maryland in 2007, 2008, 2009, and again in 2010, the latest year reported. How did they get away with it? Because Maryland policymakers have failed to pass Combined Reporting to shut down the tax loopholes that benefit out-of-state corporations – at an average cost to taxpayers of $60 million per year (including the worst years of the recent recession). Meanwhile, the Council on State Taxation, a national business group that does not have to tailor its message to the self-serving Chamber of Commerce claims that Maryland is a “tax hell,” has consistently found that Maryland has one of the most business-friendly tax climates in the nation.
“GIVING AWAY THE STORE” REPORT

The Good News

Let’s start with the good news: Since Progressive Maryland Education Fund’s first “Giving Away the Store” report in 2004, three of the tax loopholes identified in that report have been legislated out of existence, according to the state’s 2012 Tax Expenditure Report\(^2\) and the results of the first special legislative session of 2012. They are:

<table>
<thead>
<tr>
<th>Tax Break</th>
<th>State Code Reference</th>
<th>$$\textit{ in FY 2004}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate income tax credit for certain property taxes paid by electric utilities</td>
<td>Art.TG. SEC. 10-712</td>
<td>$8.2 million</td>
</tr>
<tr>
<td>Exemption from insurance premium tax of premiums collected by for-profit HMOs</td>
<td>Art INS SEC. 6-101</td>
<td>$34.8 million</td>
</tr>
<tr>
<td>Corporate income tax credit for 60% of property tax paid by telecom businesses on operating property other than land (repealed in 2012 special session by SB 1302)</td>
<td>Art.TG. SEC. 10-708</td>
<td>$7.2 million ($10.5 million in FY 2012, according to 2012 Tax Expenditure Report)</td>
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</table>

The elimination of Verizon’s special tax break during last year’s special session followed years of work by PMEF and its partner Progressive Maryland educating legislators, media, and the general public about the lack of any public benefit from this tax expenditure. But it’s not the only one. While Maryland is better off for the over $50 million in additional annual revenue (measured in 2004 dollars, worth millions more today), that total pales in comparison to the hundreds of millions of dollars in revenue lost to unjustifiable ongoing giveaways. Which brings us to…

The Bad News

Progressive Maryland Education Fund has identified hundreds of millions of dollars in unnecessary tax giveaways to some of the least needy and most greedy interests in our state. Following four years in which billions of dollars were cut from public budgets in a state already ranked as one of the lowest-revenue, smallest-government states in the nation, several hundred million dollars would have paid for a lot of new teachers, visits to the dentist, job training, college scholarships, road and transit investments, aid to seniors and the disabled, and a long list of other critically needed and severely underfunded priorities.

Maryland’s Revenue Challenge

Even as Maryland has acted boldly in recent years to boost public revenues, and has succeeded in climbing out of the revenue basement in the national rankings, it has still not fully eliminated
its structural deficit or met its pressing need for enhanced investment in education, public health, infrastructure, and other critical priorities that directly impact the standard of living of Maryland’s working families.

In terms of the structural deficit, even the budget passed on March 15, 2013 by the House of Delegates projects hundreds of millions of dollars in revenue shortfalls through FY2016.  

The most recent figures show that in 2010 Maryland ranked 45th among the 50 states for the level of public revenues and the size of government, according to the most reliable measure. While this represents progress over the state’s former ranking in last place, Maryland remains a low-revenue, small-government state. As a result, Maryland has long lacked the resources to address critical needs:

- **Education:** While Education Week ranks Maryland’s public schools #1, the state’s poorest jurisdictions perform far less well. Maryland leads the nation in the percentage of people with advanced degrees, yet an estimated 20 percent of Marylanders over the age of 16 are at the lowest literacy level, one of the highest rates of adult illiteracy in the country.

- **Child care:** It was reported last fall that 22,000 children were on the waiting list for the Child Care Subsidy Program, which provides child care vouchers to a shrinking number of working families, even as the need rises. Funding for the vouchers has dropped from $111 million in FY 2009 to $75 million in the Governor’s FY 2014 budget (including federal funds), meaning that the number of children benefitting next year is expected to be lower than this year’s 16,200.

- **Health care:** It is estimated that over 700,000 Marylanders lack health insurance, including 76,000 children, and that 1-2 Marylanders die preventable deaths every single day due to lack of health insurance.

- **Dental care:** Maryland has made considerable progress since 2007, when Deamonte Driver died because his family couldn’t afford to treat his toothache, and a treatable tooth infection turned into a fatal brain infection. Yet over 100,000 low-income children on Medicaid in Maryland still do not see a dentist every year.

- **Developmental disabilities:** Over 7,000 Marylanders are on a waiting list for developmental disabilities services. The Developmental Disabilities Coalition reported in 2011 that Maryland ranked 43rd in the nation for state funding of disabilities services as a percent of state personal income.

- **Transportation:** After the infamous 2007 collapse of a Minneapolis-St. Paul bridge over the Mississippi River, killing 13 motorists, it was reported that the percentage of Maryland’s bridges rated as structurally deficient or functionally obsolete was over twice as high as Minnesota’s. In 2011, the American Society of Civil Engineers reported that 7% of Maryland’s bridges were structurally deficient and 18.7% functionally obsolete. Even business groups that normally oppose new taxes see the lack of transportation investment as a critical impediment to growth and prosperity, justifying additional revenues. And our neighbor to the south, Republican-controlled Virginia, just this year decided to enact an $880 million annual revenue package for transportation.

- **Environment:** The Chesapeake Bay is in critical condition and our air quality is ranked among the worst in the nation.
Crime: Maryland is rated as one of the most violent states in the nation, imposing immeasurable costs in terms of both human lives and state and local budgets.\textsuperscript{13}

All this in the state ranked as the wealthiest in the nation by median household income.

With billions in budget cuts already carried out in recent years, it is high time that Maryland policymakers seriously confront a tax code riddled with unjustifiable giveaways to individuals and industries that cost the state hundreds of millions of dollars each year.

**Maryland Has Been Making Progress in Fits and Starts**

Maryland has clearly moved in the right direction under Governor O’Malley in addressing its revenue crisis, as the national rankings have shown, but progress has at times been halting and slow.

The 2007 special session saw the passage of the largest state revenue package in a generation, intended to bring in about $2 billion annually, and it included the closing of loopholes and progressive reform of the state income tax.

But then in 2010 and 2011, the General Assembly passed up the opportunity to extend Maryland’s “Millionaires’ Tax”, a small (0.75%) surcharge on income over $1 million. This revenue source was designed to generate up to $100 million annually from households best able to afford it. Polling data indicated that this tax was highly popular, including with upper income groups, who by all indications were ready, willing, and able to step up to the plate and do their part in Maryland’s hour of need. Yet legislators were persuaded, apparently, by spurious claims that higher income earners would leave the state, in spite of those claims having been thoroughly debunked both here in Maryland and elsewhere.\textsuperscript{14}

A second missed opportunity was the decision by the Governor and legislative leadership to oppose Combined Reporting in the December 2010 report of the Business Tax Reform Commission, which recommended “that the Maryland General Assembly not implement combined reporting in the 2011 legislative session.”\textsuperscript{15} Combined Reporting is the reform recommended by the Multi-State Tax Commission and already enacted in 24 states comprising the majority of the U.S. economy, including California, New York, Texas, and even Utah, the state ranked by conservative Forbes Magazine as having the #1 business climate in the nation. Maryland’s leading business news columnist at the time termed it a “no-brainer” in a 2007 column.\textsuperscript{16} Combined Reporting ends the widespread practice on the part of multi-state corporations of inventing creative accounting tricks to hide profits out of state to avoid the state corporate income tax on the ample profits that they make in Maryland. According to data from the Comptroller, the result of Maryland’s ongoing failure, year after year, to implement Combined Reporting is that over one-third of the biggest corporations doing business in Maryland pay absolutely nothing on the profits they make in Maryland every year. The bottom line is that Maryland has lost $60 million annually, on average, based on detailed research by the Comptroller from tax years 2006 to 2010.\textsuperscript{17} It should also be noted that the $60 million figure includes the worst years of the recent recession, the worst since the 1930s, meaning that in a more normal business cycle, the additional revenue could be expected to be considerably higher.
The Maryland Chamber of Commerce has claimed that enacting Combined Reporting and extending the Millionaires’ Tax would drive businesses out of state and that Maryland’s taxes are too high already. Yet, the leading national business consortium on state taxation, the Council on State Taxation, has consistently found that Maryland actually has the single most business-friendly state tax system in the entire nation. In both their 2003 and 2009 analyses comparing the business tax burden in all 50 states, Maryland ranked dead last.\textsuperscript{18} This revelation exposes the truth – that for years our elected leaders in Annapolis have been played for suckers by Chamber of Commerce lobbyists crying crocodile tears over high taxes – while laughing all the way to the bank when successive generations of governors and legislators fall for it.

Fortunately, 2012 saw Maryland take significant steps forward. The passage of SB 1302 in the first of two special legislative sessions further enhanced the progressivity of Maryland’s income tax while generating over $200 million a year in new revenue for state government and over $60 million annually for localities. About three-quarters of the new state revenues come from the wealthiest 13.7\% of Maryland households. The bill also closed the longstanding $10 million-a-year loophole that allowed Verizon and other telecoms to claim a corporate income tax credit for 60\% of property tax paid on operating property other than land.\textsuperscript{19}

While this progress is very encouraging and has contributed to significantly reducing the state’s structural deficit, it has not eliminated it. Moreover, many of the cuts required by revenue shortfalls since 2009 have yet to be restored.

**Eliminating Tax Giveaways Would Recoup At Least $215 Million Each Year**

For this report, Progressive Maryland Education Fund examined the billions of dollars of tax breaks intentionally inserted into the tax code by lawmakers over the years and pulled out only the most egregious examples of unjustifiable giveaways that could easily and quickly be closed with no harm and in fact tremendous benefit to the state. These giveaways are costing taxpayers between $215 million and $336 million each year, on average, over the last six years.

The appended spreadsheet describes each giveaway in detail.

We find giveaways in the income tax, sales tax, property tax, franchise tax, excise tax, titling tax, and inheritance tax. Giveaways to the same millionaires who received the lion’s share of the unfair and irresponsible Bush tax cuts at the federal level since 2001, which amounted to over $100,000 annually for the average millionaire.\textsuperscript{20} Giveaways to profitable manufacturers, energy monopolies, telecom companies, and retail giants.

We even find in the state’s 2010 and 2012 Tax Expenditures Reports a grab-bag category of unspecified corporate tax breaks described as “various corporate income tax subtractions, not separately estimated” and adding up to, on average, $121.3 million annually. Future editions of the state’s Tax Expenditure Report should go into greater detail about these breaks so that citizens and policymakers can evaluate whether they are justified.
This welfare for corporations and the wealthy is the gift that keeps on giving. Once the giveaways get into the tax code, they are a permanent subsidy from ordinary taxpayers to the politically well connected. Buried in the tax code in the foreign language of legalese, these giveaways resist scrutiny, unlike regular annual budget appropriations that are the subject of public hearings and votes every single year.

There’s another reason to eliminate these giveaways: Making the tax code clearer, more uniform, and more transparent would level the playing field for all businesses in our state, spurring future economic growth.

Moreover, it has been widely reported in recent years that corporate America is sitting on literally trillions of dollars in cash that it has no productive use for, because consumer demand is too weak to justify new investments and new hiring. This top-heavy maldistribution of wealth is the direct result of decades of conservative policies that have redistributed the middle class’s income and wealth to the top. Closing corporate tax loopholes would help undo that unfair and unjustified redistribution of wealth and get the money back into circulation in the consumer economy, spurring growth driven by consumer spending and generating new public revenues to finance urgently needed investments in education, health care, infrastructure, and other critical areas.

Thus, for all these reasons, these unfair and unnecessary tax giveaways should be abolished. How can we allow hundreds of thousands of Marylanders to go without health care while subsidizing yachts? How can we give short shrift to public schools budgets affecting average families all over the state while throwing taxpayer dollars at wealthy corporate giants? How long will our lawmakers continue to tolerate these giveaways while short-changing public investments vital to the hardworking families in our state?

One final important question remains: Why did lawmakers enact these tax giveaways in the first place?

**The Campaign Finance Factor Affecting Corporate Welfare in the Tax Code**

Some of the tax breaks we expose in this report may well have been enacted originally in a good faith effort to promote economic growth and create jobs. But it is also clear that many if not most of these giveaways are a form of legalized payoffs to deep-pocketed campaign contributors. Under our current campaign finance system, wealthy individuals and large corporations donate tens of millions of dollars to politicians each election cycle. Most of the money goes to incumbents -- the same powerful incumbents who almost never face a competitive re-election. Why do the donors give if elections are rarely in doubt? They expect return-on-investment. And they get it – many times over. The payoff to the donors comes in the form of pro-worker, pro-consumer, and pro-environmental legislation that gets spiked (usually in committee). And the payoff comes in the form of intentional tax giveaways, such as those examined in this report.

The link between campaign finance and policy outcomes is the major corrupting factor undermining the basic integrity of democracy here in Maryland and throughout the nation. At the federal level, we saw this link at work in the debates over health care and financial reform
during the 111th Congress (2009-2010), where even a Democratic President and Congress were forced to make devastating compromises that call into question the very ability of our political system to respond adequately to the challenges we face. At the state level, we see the influence of campaign money in Maryland’s tax code, larded with giveaways.

The Baltimore Sun reported a little over a year ago, “Some companies with interests in Maryland have found a new way to show support for Gov. Martin O’Malley: They’re contributing tens of thousands of dollars to the Democratic Governors Association. Last December, O’Malley took the helm of the DGA, where as chairman he is charged with raising large sums to elect Democratic governors nationwide. Under his leadership, the group raised a record $11 million during the first six months of this year — including donations from Exelon Corp. and more than a dozen other companies with issues before Maryland lawmakers or regulators, according to federal records…”

Governor O’Malley has been an excellent leader for Maryland, supporting working families in courageous ways, from making Maryland the first state in the nation with a living wage requirement for state service contracts to restructuring the state income tax to make it more progressive. But his decision to step back from his previous support for Combined Reporting at the same time that he was seeking major corporate campaign donations raises questions about whether America’s system of virtually unregulated corporate campaign finance has claimed another victory over the public interest, fair taxation, and good governance.

The best way to guard against this corrupting influence and prevent tax giveaways in the future is to enact public funding of campaigns as practiced successfully during the last decade in a dozen states. Under an optional public campaign finance system, qualified candidates who can demonstrate broad community support may opt in to the voluntary system and thereby receive enough public funds to run a viable campaign for office. In return for the public funding, these candidates agree to limit their private contributions, which means they are relying on and therefore answerable to the taxpayers and voters rather than to big donors. As the results of multiple election cycles demonstrate, the publicly funded candidates who win owe no favors to deep-pocketed special interests. The result in Maryland would be a tax code free of corporate welfare and giveaways to the wealthy, not to mention restored public confidence in our political system.

In Maryland, the Study Commission on Public Funding of Campaigns in Maryland was established by legislation in 2002. The Commission spent two years carefully examining the issue and published its final report in February 2004 recommending that Maryland adopt the optional public campaign finance system for General Assembly races. Legislation to carry out the Commission recommendation was passed in the House of Delegates in 2006 and came within a few votes of passage on the floor of the state Senate in 2008 and 2009.
Conclusion:
End Corporate Welfare to Restore Working Marylanders’ Standard of Living

The nation and our state continue to suffer from a weak economy that is the direct result of the concentration of economic and political power at the top, and for which average working families and small, locally-owned businesses continue to pay the highest price. To ask those very same families and businesses to also put up with worse schools, slower transportation, higher crime, dirtier air and water, and more expensive health care is to add insult to injury.

State government services and investments must be restored and enhanced. Closing the loopholes in the tax code identified in this report is critical to restoring Maryland’s prosperity and standard of living.

* * * * *

DRAFT
## Appendix

### Tax Giveaway Details

<table>
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<tr>
<th>Citations</th>
<th>Short Description</th>
<th>FY04 $millions</th>
<th>FY07 $millions</th>
<th>FY08 $millions</th>
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<td>Art NR. SEC. 8-716</td>
<td>2004: Excise tax exemption for boats traded in to a dealer 2010 &amp; 12: Exclusion of the value of trade-ins from the boat tax</td>
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<td>ART TG SEC. 7-203</td>
<td>Exemption of inheritance tax on property passed to lineal beneficiaries and siblings</td>
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<td>40.9</td>
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<td>42.8</td>
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<td>Franchise tax credit for the purchase of Maryland-mined coal</td>
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<td>Art TG. SEC. 8-417</td>
<td>Franchise tax credit for a public utility making energy sales to a large industrial customer</td>
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<td>1.7</td>
<td>1.7</td>
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<td>4.4</td>
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<td>Sales tax exemption for the sale of precious metals coins or bullions worth over $1,000</td>
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<td>0.9</td>
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<td>Art TG. SEC. 11-215</td>
<td>Sales tax exemption for the sale of out-of-state direct mail advertising materials</td>
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<td>Art. TG. SEC. 11-225</td>
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<td>2.0</td>
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<td>Lost revenue from failure to enact combined reporting (Source: See footnote 17)</td>
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<td>$59.8 m (based on 2006-2010 data) (Finnigan methodology)</td>
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<td>196.8 (Finnigan)</td>
<td>143.6 (Finnigan)</td>
<td>-15.4 (Finnigan)</td>
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<td>Various corporate income tax subtractions, not separately estimated</td>
<td>167.6</td>
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<td>115.7</td>
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<td>$336 million</td>
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**TOTAL** $215 million

**TOTAL** $336 million
Research Methods

This report is based primarily on the 2012 and 2010 editions of the *Maryland Tax Expenditures Report* prepared by the Maryland Department of Budget and Management. This biennial publication identifies exceptions to standard policies in the tax code, including credits, exemptions and special benefits. It also provides citations to the tax code and reports the cost of each tax break. The FY2004 data is drawn from PMEF’s Giving Away the Store report from that year, which was based on that year’s Maryland Tax Expenditures Report. The FY 2007 and 2008 data are from the 2010 edition of the Maryland Tax Expenditures Report. The data for FY 2009-2012 are taken from the 2012 Maryland Tax Expenditures Report.

In addition to previous reports by the Progressive Maryland Education Fund, we also consulted the research of the Institute on Taxation and Economic Policy, the Maryland Budget and Tax Policy Institute, as well as reports in the general media.

About Progressive Maryland Education Fund

Progressive Maryland Education Fund (PMEF) is a 501(c)3 nonprofit organization that researches and reports on public policy issues of concern to working families, engages in non-partisan leadership training focusing on developing young, low-income and of-color leaders, and performs non-partisan voter registration of historically disenfranchised minorities.

ENDNOTES

4 http://www.taxadmin.org/fta/rate/10stl_pi.html -- The Federation of Tax Administrators compares states on the basis of all state and local own-source revenues (which excludes federal dollars and includes the non-tax revenues that typically make up between one-quarter and one-half of all state and local revenues, such as highways tolls and water bills and public university tuition) as a share of state personal income.
5 http://www.dllr.state.md.us/whatsnews/testimonysrhome.shtml
6 http://www.publicnewsservice.org/index.php/?content/article/29163-1
10 Data from http://www.endthewaitnow.com/facts/
15 Both the 2003 and 2009 analyses are posted online at http://cost.org/StateTaxLibrary.aspx?id=17768 entitled “FY09 Business Tax Burden Study” and “FY03 State and Local Business Tax Burden Study”
16 All data from the SB 1302 Fiscal and Policy Note available at http://mgaleg.maryland.gov/2012s1/fnotes/bil_0002/sb1302.pdf
20 http://www.publicampaign.org/briefhistory