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Sens. Gay, Hansen, Hoffner, Lockman, Mantzavinos,
S. McBride, Pinkney, Sokola, Sturgeon, Townsend,
Walsh; Reps. Griffith, Lynn, Morrison

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 72

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO PERSONAL INCOME TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1109, Title 30 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1109. Itemized deductions.

4 (a) *General.* —In determining taxable income under this chapter, in lieu of the standard deduction provided by §
5 1108 of this title, a resident individual may elect to deduct the sum of the itemized deductions claimed on the federal
6 income tax return as shall be permitted under the laws of the United States as the same are or shall become effective for any
7 taxable year in determining the federal taxable income, or, if the person does not itemize deductions or elects the credit for
8 foreign taxes paid on the federal return, the person may deduct the sum of the itemized deductions to which the person
9 would have been entitled had the person itemized the deductions (including the deduction for foreign taxes paid) on the
10 federal ~~return~~: return, as follows:

11 (1) ~~Reduced by:~~ by all of the following:

12 a. The amount thereof representing income taxes imposed by this ~~State~~: State.

13 b. The amount of any income tax imposed on the person for the taxable year by another state of the
14 United States or a political subdivision thereof or the District of Columbia on income derived from sources therein
15 if the person elected to take such amount as a credit in accordance with § 1111(a) of this ~~title~~: and title.

16 (2) ~~Increased by:~~ by all of the following:

17 a. An amount equal to the excess of the state employee automobile mileage reimbursement allowance
18 over the standard mileage rate allowed as a charitable deduction for federal income tax purposes for unreimbursed

19 automobile transportation expense incurred by an individual while serving as a volunteer for a charitable
20 organization as defined in § 170(c), Internal Revenue Code ~~[26 U.S.C. § 170(c)]~~; and Code, 26 U.S.C. § 170(c).

21 b. In the case of a self-employed individual, the amount paid during the taxable year for insurance which
22 constitutes medical care for the taxpayer, the taxpayer's spouse and dependents, less the amount allowed the
23 taxpayer as a deduction pursuant to ~~§ 162(f) (26 U.S.C. § 162(f))~~ 26 U.S.C. § 162(f) or successor provision of the
24 Internal Revenue Code. For purposes of this subparagraph, "self-employed taxpayer" shall mean a resident
25 individual whose gross income is more than one-half derived from a trade, business or profession and not derived
26 as an employee. Income in the nature of interest, dividends or other investment income shall not constitute self-
27 employment income. No self-employed taxpayer whose total cost of insurance for health care for the taxpayer,
28 spouse and dependents exceeds the gross income from the trade, business or profession shall be entitled to the
29 deduction under this ~~subparagraph~~; paragraph (a)(2)b.

30 c. For taxable years beginning after December 31, 1986, and before January 1, 1988, an amount equal to
31 12% of itemized deductions determined under this section without regard to this paragraph (a)(2)c.

32 d. For tax years beginning on or after January 1, 2024, for a resident individual who is an active member
33 of a labor organization during the tax year, an amount equal to the annual cost to the resident individual to
34 maintain membership in the labor organization, not to exceed \$500, except that an individual is not eligible for the
35 increase under this paragraph (a)(2)d. as follows:

36 1. If the individual has taken a deduction on their federal income tax return for any cost to maintain
37 membership in a labor organization.

38 2. To the extent the payments are not deductible under applicable federal law, for any amounts paid
39 to or through a labor organization for any of the following:

40 A. For employee benefits, pension contributions, or similar benefits or compensation.

41 B. That were used in connection with lobbying or political expenditures, or settlement or
42 investigatory costs or assessments of a government entity.

SYNOPSIS

In 2017, the federal Tax Cuts and Jobs Act (TCJA), Public Law No. 115-97, suspended many itemized deductions from individual federal taxes until January 1, 2026, including the itemized deduction for costs to maintain membership in a labor organization. Senate Bill No. 72 created a tax credit for resident individuals equal to the annual cost, not to exceed \$500, to the individual to maintain membership in a labor organization. Senate Substitute No. 1 for Senate Bill No. 72 made the annual cost to a resident individual to maintain membership in a labor organization an itemized tax deduction, not to exceed \$500. Senate Amendment No. 1 to SS 1 for SB 72 sunset this itemized deduction when the federal tax deduction for costs to maintain membership in a labor organization is restored.

Like SS 1 for SB 72, Senate Substitute No. 2 for Senate Bill No. 72 creates an itemized tax deduction for the annual cost to a resident individual to maintain membership in a labor organization. SS 2 for SB 72 differs from SS 1 for SB 72 as follows:

1. It does not allow an individual to take this deduction if the individual has taken a deduction on their federal income tax return for any cost to maintain membership in a labor organization.
2. It clarifies that this exemption does not include payments that are not deductible under federal law for amounts paid to or through a labor organization for employee benefits, pension contributions, other compensation, or that were used in connection with lobbying or political expenditures, or settlement or investigatory costs or assessments of a government entity.
3. Does not define “labor organization”, because under § 1101 of Title 30, it has the same meaning as when used in federal law in reference to federal income taxes.

If an individual deducts any cost to maintain membership in a labor organization from their federal income tax return, that deduction flows through to the state return. By limiting this deduction to individuals who have not taken a deduction on their federal income tax return for any cost to maintain membership in a labor organization, SS 2 for SB 72 does not need to sunset, because if federal law restores or creates a similar deduction in the future and an individual uses that deduction, the individual cannot claim the same deduction again on their state income tax return.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Poore