

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 412 (Senator McFadden)
Budget and Taxation

Admissions and Amusement Tax - Charges Subject to Tax

This bill authorizes counties and municipalities to impose the admissions and amusement tax on gross receipts derived from merchandise, refreshments, or a service sold or served in connection with entertainment at a nightclub or a room in a hotel, restaurant, hall, or other place where dancing privileges, music, or other entertainment is provided, regardless of whether the charge for the merchandise, refreshments, or service is increased because entertainment is provided.

The bill takes effect July 1, 2004.

Fiscal Summary

State Effect: None. The bill would not have an effect on the administration of the admissions and amusement tax by the Comptroller's Office.

Local Effect: Local revenues of approximately \$4.4 million annually would be restored beginning in FY 2005. Local expenditures would not be affected.

Small Business Effect: Minimal.

Analysis

Current Law: An admissions and amusement charge, unless expressly provided otherwise, means a charge for: (1) admission to a place, including any additional separate charge for admission within an enclosure; (2) use of a game of entertainment; (3) use of a recreational or sports facility; (4) use of recreational or sports equipment; and (5)

merchandise, refreshments, or a service sold or served in connection with entertainment at a nightclub or a room in a hotel, restaurant, hall, or other place where dancing privileges, music, or other entertainment is provided.

Background: The Comptroller's Office had a longstanding practice of imposing the local admissions and amusement tax on the sale of merchandise, refreshments, and services sold or served in connection with dancing, music, or entertainment. This generated approximately \$3.6 million in admissions and amusement taxes in fiscal 2002.

In the case of *Comptroller v. Clyde's*, two restaurants, Clyde's of Chevy Chase and Clyde's of Columbia, challenged the imposition of the admissions and amusement tax when the restaurants provided free entertainment without a means to recoup the cost of the admissions and amusement tax from their patrons. The Maryland Court of Appeals upheld rulings by two lower courts that the admissions and amusement tax should not have been imposed by the Comptroller since there was no financial connection between the entertainment provided and the sales of food to support imposition of the tax because Clyde's did not impose a cover charge, did not raise prices during the period of entertainment, and did not have any minimum purchase requirements while entertainment was provided. The Comptroller's Office estimates that approximately \$8.4 million in admissions and amusement tax collected from fiscal 2000 through fiscal 2002 was subject to refunds.

Counties and municipalities have the authority to impose the admissions and amusement tax. In the counties, admissions and amusement tax rates range from a high of 10% in Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, and Prince George's counties to a low of 0.5% in Dorchester County. Calvert County does not impose the admissions and amusement tax on any transaction in which the sales tax is collected. Caroline County is the only jurisdiction that does not impose an admissions and amusement tax. The Maryland Municipal League advises that 45 of the State's 156 municipalities impose the admissions and amusement tax.

The Comptroller administers the admissions and amusement tax on behalf of local jurisdictions and retains a fee to cover the costs of administering the tax.

The Comptroller's Office advises that Baltimore City and Anne Arundel, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties have ordinances that allow their jurisdictions to impose the tax as provided in State law. These counties would automatically receive the revenue generated by the bill. The Comptroller's Office further advises that Allegany, Baltimore, Garrett, Howard,

Montgomery, and Washington counties, as well as some municipalities, would have to amend their local ordinances to receive the revenue generated by the bill.

Local Fiscal Effect: The Comptroller's Office advises that fiscal 2002 was the last year that the tax was collected in this context and that approximately \$3.6 million in admissions and amusement taxes was collected on behalf of the counties and municipalities. The Comptroller's Office assumes annual growth of approximately 7% in the category associated with the application of this tax. Accordingly, the bill would restore \$4.4 million in county and municipal revenues beginning in fiscal 2005.

Small Business Effect: Small businesses would be negatively impacted by the requirement to collect admissions and amusement taxes on goods and services sold when entertainment is provided is restored beginning in fiscal 2005; however this impact is assumed to be minimal.

Additional Information

Prior Introductions: None. However, a substantively similar bill was introduced in the 2003 session as HB 982. The bill was passed by the full House, but no action was taken by the Senate Budget and Taxation Committee.

Cross File: HB 220 (Chairman, Ways and Means Committee) (By Request – Departmental – Comptroller) – Ways and Means.

Information Source(s): Allegany County, Montgomery County, Prince George's County, Talbot County, Wicomico County, Baltimore City, Maryland Municipal League, Comptroller's Office, Department of Legislative Services

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Analysis by: Christopher J. Kelter

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