

# HOUSE BILL 162

Q3, Q7, P4

6lr0125

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By: **Chair, Judiciary Committee (By Request – Departmental – Comptroller)**

Introduced and read first time: January 21, 2016

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 17, 2016

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Comptroller – Taxpayer Protection Act**

3 FOR the purpose of ~~altering the statute of limitations for certain offenses arising under the~~  
4 ~~Tax – General Article~~, altering a certain definition of “public record” to exclude  
5 certain documents related to certain State employees; providing certain employees  
6 of the Field Enforcement Bureau of the Comptroller’s Office with certain police  
7 powers when enforcing laws pertaining to certain taxes; repealing the authority of  
8 certain employers or payors to submit certain information to the Comptroller in a  
9 certain format; requiring ~~all~~ certain employers or payors required to submit certain  
10 information to the Comptroller to submit the information in a certain format;  
11 providing that a certain definition of tax information includes certain information  
12 contained on certain types of returns filed with the Comptroller; requiring a tax  
13 collector to impose a certain penalty on certain paid tax preparers; requiring the  
14 Comptroller to assess a certain penalty on a person required to provide a certain  
15 annual report if the person fails to provide the report or provides a false report;  
16 authorizing a certain civil action to enjoin a person from acting as an income tax  
17 preparer under certain circumstances; providing when a court may enjoin a person  
18 from acting as an income tax preparer; requiring the Attorney General, ~~if a certain~~  
19 ~~request is made~~, to bring a civil action in certain counties; making stylistic changes;  
20 and generally relating to the collection and enforcement of taxes.

21 ~~BY repealing and reenacting, with amendments,~~  
22 ~~Article – Courts and Judicial Proceedings~~  
23 ~~Section 5-106(l)~~  
24 ~~Annotated Code of Maryland~~

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~(2013 Replacement Volume and 2015 Supplement)~~

BY repealing and reenacting, with amendments,  
 Article – General Provisions  
 Section 4–101(j)  
 Annotated Code of Maryland  
 (2014 Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,  
 Article – Tax – General  
 Section 2–107(a), 10–911, 13–201, and 13–703  
 Annotated Code of Maryland  
 (2010 Replacement Volume and 2015 Supplement)

BY adding to  
 Article – Tax – General  
 Section 13–706.1 and 13–715(c)  
 Annotated Code of Maryland  
 (2010 Replacement Volume and 2015 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
 That the Laws of Maryland read as follows:

~~**Article – Courts and Judicial Proceedings**~~

~~5–106.~~

~~(4) A prosecution for an offense arising under the Tax – General Article with respect to the sales and use, admissions and amusement, financial institution franchise, income, or motor fuel tax shall be instituted within [3] 6 years after the date on which the offense was committed.~~

**Article – General Provisions**

4–101.

(j) (1) “Public record” means the original or any copy of any documentary material that:

(i) is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;

- 1                                    2.     a computerized record;
- 2                                    3.     correspondence;
- 3                                    4.     a drawing;
- 4                                    5.     film or microfilm;
- 5                                    6.     a form;
- 6                                    7.     a map;
- 7                                    8.     a photograph or photostat;
- 8                                    9.     a recording; or
- 9                                    10.    a tape.

(2) "Public record" includes a document that lists:

**(I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, the salary of an employee of a unit or an instrumentality of the State or of a political subdivision; OR**

**(II) THE SALARY OF AN ELECTED OFFICIAL OF THE STATE OR OF A POLITICAL SUBDIVISION OF THE STATE.**

**(3) "PUBLIC RECORD" DOES NOT INCLUDE A DOCUMENT THAT LISTS THE SALARY OF AN EMPLOYEE OF A UNIT OR AN INSTRUMENTALITY OF THE STATE OR OF A POLITICAL SUBDIVISION IF THE DOCUMENT LISTS THE SALARY IN RANGES OF LESS THAN \$5,000.**

**(4) "PUBLIC RECORD" DOES NOT INCLUDE A DOCUMENT THAT LISTS THE CLASSIFICATION OR GRADE AND STEP OF AN EMPLOYEE OF A UNIT OR AN INSTRUMENTALITY OF THE STATE OR OF A POLITICAL SUBDIVISION.**

**[(3)] (5) "Public record" does not include a digital photographic image or signature of an individual, or the actual stored data of the image or signature, recorded by the Motor Vehicle Administration.**

**Article – Tax – General**

2–107.

(a) Authorized employees of the Field Enforcement Bureau of the Comptroller’s Office:

1 (1) shall be individuals who are sworn police officers; and

2 (2) have all the powers, duties, and responsibilities of a peace officer for the  
3 purpose of enforcing the laws pertaining to:

4 (i) **ADMISSIONS AND AMUSEMENT TAX;**

5 **(II)** alcoholic beverage tax;

6 [(ii) tobacco tax;]

7 **(III) INCOME TAX;**

8 **(IV) MOTOR CARRIER TAX;**

9 [(iii) **(V)** motor fuel tax;

10 [(iv) motor carrier tax;]

11 [(v) **(VI)** motor fuel and lubricants; [and]

12 **(VII) SALES AND USE TAX;**

13 **(VIII) TOBACCO TAX; AND**

14 [(vi) **(IX)** transient vendors within the meaning of Subtitle 20A of  
15 Title 17 of the Business Regulation Article.

16 10–911.

17 (a) Each employer or payor required under § 10–906 of this subtitle to withhold  
18 income tax for an employee or a person who receives a payment subject to withholding shall  
19 prepare a statement that shows for the previous calendar year:

20 (1) the name of the employer or payor;

21 (2) the name of the employee or person who receives the payment subject  
22 to withholding;

23 (3) the total amount that the employer paid to the employee as wages or  
24 the total amount that the payor has paid to the person;

25 (4) the total amount of tips that the employee reported;

1 (5) the total amount of income tax that has been withheld under this  
2 subtitle;

3 (6) any amount by which income tax required to be withheld on tips  
4 exceeds the other net wages paid to the employee; and

5 (7) any other information that the Comptroller requires by regulation.

6 (b) **[An] ON OR BEFORE JANUARY 31 OF EACH YEAR, AN** employer or payor of  
7 a payment subject to withholding shall:

8 (1) provide 2 copies of the statement required under subsection (a) of this  
9 section to the employee or person who receives a payment subject to withholding **[on or**  
10 **before January 31 of each year]**; and

11 (2) submit 1 copy of the statement to the Comptroller **[on or before**  
12 **February 28 of each year]**.

13 (c) (1) Except as provided in paragraph (2) of this subsection, an employer or  
14 payor shall submit statements required under subsection (a) of this section **[on magnetic**  
15 **media or in other machine-readable or] IN AN** electronic format that the Comptroller  
16 requires by regulation~~],~~ if:

17 (i) the total number of statements of that statement type that the  
18 employer or payor is required to submit equals or exceeds ~~25~~ **10**; or

19 (ii) a lower threshold applies for federal income tax purposes~~].~~

20 (2) The Comptroller:

21 (i) shall adopt regulations to provide a process for an employer or  
22 payor that is required to submit statements **[on magnetic media or in other**  
23 **machine-readable or] IN AN** electronic format under paragraph (1) of this subsection to  
24 request a waiver from the requirement; and

25 (ii) may waive the requirement that an employer or payor submit  
26 statements **[on magnetic media or in other machine-readable or] IN AN** electronic format  
27 under paragraph (1) of this subsection if the Comptroller determines that the requirement  
28 will result in undue hardship to the employer or payor.

29 13-201.

30 In this subtitle, "tax information" means:

1 (1) the amount of income or any other particulars disclosed in a tax return  
2 required under this article, if the return contains return information, as defined in § 6103  
3 of the Internal Revenue Code;

4 (2) any return information, as defined in § 6103 of the Internal Revenue  
5 Code, required to be attached to or included in a tax return required under this article; or

6 (3) any information contained in:

7 (i) an admissions and amusement tax return; [or]

8 (II) AN ALCOHOLIC BEVERAGE TAX RETURN;

9 (III) A BAY RESTORATION FEE RETURN;

10 (IV) A BOXING AND WRESTLING TAX RETURN;

11 (V) AN E-9-1-1 FEE RETURN;

12 (VI) A FINANCIAL INSTITUTION FRANCHISE TAX RETURN;

13 (VII) AN INHERITANCE TAX RETURN;

14 (VIII) A MARYLAND ESTATE TAX RETURN;

15 (IX) A MOTOR CARRIER TAX RETURN;

16 (X) A MOTOR FUEL TAX RETURN;

17 (XI) AN OTHER TOBACCO PRODUCTS TAX RETURN;

18 (XII) A PUBLIC SERVICE COMPANY FRANCHISE TAX RETURN;

19 [(ii)] (XIII) a sales and use tax return;

20 (XIV) A SAVINGS AND LOAN ASSOCIATION FRANCHISE TAX  
21 RETURN;

22 (XV) A TIRE RECYCLING FEE RETURN;

23 (XVI) A TOBACCO TAX RETURN; OR

24 (XVII) A TRANSPORTATION SERVICES ASSESSMENT RETURN.

1 (A) If, with the intent to evade the payment of tax, a person, including an officer  
2 of a corporation, or a governmental unit makes a false tax return, the tax collector shall  
3 assess a penalty not exceeding 100% of the underpayment of tax **RESULTING FROM THE**  
4 **FALSE RETURN.**

5 (B) **IF, WITH THE INTENT TO EVADE THE PAYMENT OF TAX, A PERSON HIRED**  
6 **TO PREPARE A TAX RETURN MAKES A FALSE TAX RETURN, THE TAX COLLECTOR**  
7 **SHALL ASSESS THE HIRED PREPARER A PENALTY NOT EXCEEDING 100% OF THE**  
8 **UNDERPAYMENT OF TAX RESULTING FROM THE FALSE RETURN.**

9 **13-706.1.**

10 **IF A PERSON IS REQUIRED TO PROVIDE AN ANNUAL WITHHOLDING**  
11 **RECONCILIATION REPORT UNDER § 10-911 OF THIS ARTICLE, THE COMPTROLLER**  
12 **SHALL ASSESS A PENALTY OF \$100 FOR EACH VIOLATION IF THE PERSON**  
13 **WILLFULLY:**

14 (1) **FAILS TO PROVIDE A REQUIRED ANNUAL WITHHOLDING**  
15 **RECONCILIATION REPORT; OR**

16 (2) **PROVIDES A FALSE ANNUAL WITHHOLDING RECONCILIATION**  
17 **REPORT.**

18 **13-715.**

19 (C) (1) ~~A CIVIL~~ **THE ATTORNEY GENERAL MAY BRING AN ACTION IN THE**  
20 **NAME OF THE STATE OR THE COMPTROLLER TO ENJOIN A PERSON FROM ACTING AS**  
21 **AN INCOME TAX RETURN PREPARER AS DEFINED IN § 7701 OF THE INTERNAL**  
22 **REVENUE CODE MAY BE COMMENCED AT THE REQUEST OF THE TAX COLLECTOR.**

23 (2) **A COURT MAY ENJOIN A PERSON FROM ACTING AS AN INCOME TAX**  
24 **RETURN PREPARER IF THE COURT DETERMINES:**

25 (I) **THAT THE INCOME TAX RETURN PREPARER:**

26 1. **HAS FAILED TO COMPLY WITH § 10-804(B)(2) OR**  
27 **(C)(3) OF THIS ARTICLE;**

28 2. **MISREPRESENTED THE INCOME TAX RETURN**  
29 **PREPARER'S EXPERIENCE, EDUCATION, OR REGISTRATION AS AN INCOME TAX**  
30 **RETURN PREPARER;**

1 **3. GUARANTEED THE PAYMENT OF A TAX REFUND OR A**  
2 **TAX CREDIT; OR**

3 **4. ENGAGED IN ANY OTHER FRAUDULENT OR**  
4 **DECEPTIVE CONDUCT THAT SUBSTANTIALLY INTERFERES WITH THE PROPER**  
5 **ADMINISTRATION OF THIS ARTICLE; AND**

6 **(II) THAT INJUNCTIVE RELIEF IS APPROPRIATE TO PREVENT**  
7 **THE RECURRENCE OF THE CONDUCT SPECIFIED IN THIS PARAGRAPH.**

8 **(3) ~~IF A REQUEST IS MADE UNDER PARAGRAPH (1) OF THIS~~**  
9 **~~SUBSECTION, THE~~ THE ATTORNEY GENERAL SHALL BRING THE ACTION IN THE**  
10 **COUNTY WHERE THE DEFENDANT:**

11 **(I) RESIDES; OR**

12 **(II) ENGAGES IN THE PRACTICE OF INCOME TAX RETURN**  
13 **PREPARATION.**

14 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July**  
15 **1, 2016.**

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.