

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 304

(The President)(By Request - Administration)

Budget and Taxation

Judiciary

Taxpayer Protection Act

This Administration bill makes several changes to current provisions of law regarding tax enforcement and compliance.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: Potential increase in fine revenue beginning in FY 2018. General fund expenditures increase by \$56,100 for computer programming and administrative changes at the Administrative Office of the Courts and the Department of Labor, Licensing, and Regulation. Any administrative or operational costs for the Comptroller’s Office and the Attorney General’s Office are assumed to be minimal and absorbable with existing agency budgeted resources.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	-	-	-	-	-
GF Expenditure	\$56,100	\$6,500	\$4,900	\$3,600	\$2,700
Net Effect	(\$56,100)	(\$6,500)	(\$4,900)	(\$3,600)	(\$2,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law:

Registration of Tax Preparers

Generally, a person may not provide, attempt to provide, or offer to provide individual tax preparation services in the State unless registered by the State Board of Individual Tax Preparers. The bill prohibits a person from employing an individual to provide, attempt to provide, or offer to provide individual tax preparation services in the State unless the individual is registered by the State Board of Individual Tax Preparers.

Authorized Taxing Officials

A taxing official under Section 13-203 of the Tax-General Article is defined as (1) a unit or official of another state whom the laws of that state charge with the imposition, assessment, or collection of state taxes; (2) an employee of the U.S. Treasury Department; or (3) a collector of U.S. taxes. The bill includes a U.S. Department of Justice attorney, including a U.S. attorney as a taxing official, and includes the State Board of Individual Tax Preparers as an entity in which tax information may be disclosed.

Field Enforcement Bureau – Police Powers

The Tax-General Article (§ 2-107) authorizes employees of the Comptroller's Field Enforcement Bureau to have police powers relating to alcoholic beverage taxes, tobacco taxes, motor carrier taxes, motor fuel taxes, and motor fuel and lubricants taxes. The bill expands these police powers to include the admissions and amusement, income, and sales and use taxes.

Electronic Filing of W-2 Forms

An employer or payor of payments who is required to withhold State income taxes must submit a statement that shows for the previous calendar year (1) the name of the employer or payor; (2) the name of the person receiving the wages or payment; (3) the total amount of the wages or payment; (4) the total amount of tips reported by the employee; (5) the total amount of income tax withheld; (6) any amount by which the income tax withheld on tips exceeds other net wages paid to the employee; and (7) any other information the Comptroller requires by regulation. Chapters 538 and 539 of 2016 specified that two copies of this statement must be provided to the individual receiving the payment or wages by January 31 of each year and one copy must be provided to the Comptroller. The withholding statements submitted by employers are commonly known as a W-2 or W-2 statement. The bill specifies that this information must be provided in an electronic format

required by the Comptroller, but retains the current law authorization for the Comptroller to waive the requirement of electronic submission if the Comptroller determines that the requirement will result in undue hardship to the employer or payor.

Confidentiality of Tax Information

Confidentiality provisions of Tax-General Article (Title 13) define protected tax information to include any information contained in the following two types of returns: an admissions and amusement tax return; and a sales and use tax return. The bill expands the list of returns considered to be tax information by including the following returns: (1) alcoholic beverage tax return; (2) bay restoration fee return; (3) boxing and wrestling tax return; (4) E-9-1-1 fee return; (5) financial institution franchise tax return; (6) inheritance tax return; (7) Maryland estate tax return; (8) motor carrier tax return; (9) motor fuel tax return; (10) other tobacco products tax return; (11) public service company franchise tax return; (12) savings and loan association franchise tax return; (13) tire recycling fee return; (14) tobacco tax return; and (15) transportation services assessment return.

Penalties and Fines

The bill also alters specified penalty provisions in the Tax-General Article (Title 13). First, the bill authorizes a tax collector to assess a penalty not exceeding 100% of the tax due resulting from a false return on a person hired to prepare a tax return who makes a false tax return with the intent to evade the payment of tax. Second, the bill authorizes the Comptroller to assess a penalty of \$100 for each violation on an employer or payor who willfully failed to provide an annual withholding reconciliation report or provides a false withholding reconciliation report. Finally, the bill authorizes the Attorney General to bring an action in the name of the State or the Comptroller to enjoin a person from acting as an income tax return preparer. This legislation allows a court to issue such an injunction if the court determines that the income tax preparer has either failed to properly identify themselves on tax returns; misrepresented their experience, education, or registration as an income tax preparer; guaranteed the payment of a tax refund or credit; or engaged in other fraudulent or deceptive conduct which interferes with the proper administration of the Tax-General Article, and if such an injunction would prevent the recurrence of such conduct.

Under current law, an income tax return preparer who willfully prepares, assists in preparing, or causes the preparation of a false income tax return or claim for refund with fraudulent intent or the intent to evade income tax is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$10,000 and/or imprisonment of up to five years. The bill adds that an income tax return preparer who willfully attempts to evade any tax

imposed or the payment of the tax imposed is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$10,000 and/or imprisonment of up to five years.

Background: The increased use and ease of electronic tax filing has benefitted both taxpayers and administrators but has also provided additional opportunities to engage in tax refund fraud. In addition, data breaches have become both more common and larger in magnitude over time. These typically result in the compromising of personally identifiable information such as Social Security numbers that can be used to file fraudulent income tax refund claims.

According to the Identity Theft Resource Center, in calendar 2016 there were 1,093 data breaches that compromised a total of 36.6 million personal records nationwide. Just over one-half of the data breaches targeted businesses, including banking, credit, and financial firms (50.1%) and another 34.4% targeted medical/health care companies. The remaining data breaches were aimed at either government agencies or the military (6.6%) and educational institutions (9.0%)

In calendar 2015, over 20 data breaches targeted Maryland-based organizations ranging from State and local government agencies (including Frederick County public schools and the Department of Human Resources), nonmedical businesses (T. Rowe Price), and medical/health care companies including the largest breach at CareFirst BlueCross BlueShield (1.1 million records). In addition, two data breaches at the U.S. Office of Personnel Management involved the theft of the personal records of 22.1 million people. Impacted individuals include current and former federal employees, federal retirees, and family members and other contacts listed on federal background investigations.

In calendar 2015 through November, the Internal Revenue Service (IRS) rejected or suspended the processing of 4.8 million suspicious income tax returns. Of these returns, the IRS confirmed 1.4 million cases of identity theft seeking \$10.9 billion in refunds. The IRS has established several initiatives to combat the problem including the Security Summit Initiative, a partnership between the IRS, state revenue departments, and the tax services industry. The goal of the initiative is to develop processes to help protect taxpayer identities and prevent income tax refund fraud.

State Fiscal Effect: General fund expenditures increase for the Judiciary (Administrative Office of the Courts) by \$37,500 in fiscal 2018. This estimate reflects the cost of computer programming changes to the agency's case management and financial systems. The estimate assumes that the changes will require approximately 451 hours of computer programming at an average hourly cost of \$82.50.

The Department of Labor, Licensing, and Regulation advises that the State Board of Individual Tax Preparers would incur a general fund expenditure increase of \$18,600 in

fiscal 2018 to update the board's computer systems in order to establish and maintain a file transfer protocol between the board and the Comptroller's Office. The additional costs also reflect other administrative expenditures related to administrative hearings that may occur due to the bill's provisions. Future year expenditures increase by \$6,500 in fiscal 2019 and \$2,700 by fiscal 2022.

Additional Information

Prior Introductions: HB 162 of 2016, a similar bill, passed the House and the Senate with amendments, but no further action was taken.

Cross File: HB 424 (The Speaker)(By Request - Administration) - Judiciary.

Information Source(s): Attorney General's Office; Comptroller's Office; Judiciary (Administrative Office of the Courts; Department of Labor, Licensing, and Regulation; Maryland Department of the Environment; Maryland Department of Transportation; Howard County Register of Wills; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Taxpayer Protection Act

BILL NUMBER: SB304/HB424

PREPARED BY: Governor's Legislative Office
(Dept./Agency/GLO)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS