

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 982  
Ways and Means

(Delegate Jones)

Budget and Taxation

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Admissions and Amusement Tax - Charges Subject to Tax

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This bill clarifies that an admissions and amusement tax applies to 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 also places limits on potential claims for refunds on certain admissions and amusement taxes paid prior to July 1, 2003.

The bill is effective July 1, 2003.

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Fiscal Summary

**State Effect:** None. This bill would not have an effect on the administration of the admissions and amusement tax by the Comptroller of Maryland.

**Local Effect:** Local revenues of approximately \$3.6 million annually would be maintained beyond FY 2003. Local expenditures could increase in FY 2004 due to refunds for admissions and amusement taxes paid in prior fiscal years and filed for before September 30, 2003.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** A claim for refund of admissions and amusement tax paid before July 1, 2003 may not be filed after September 30, 2003 if the claim is based on the sale or service of 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. Also, the bill does not create a right to appeal a final determination of an assessment of admissions and amusement tax.

**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.

Generally, taxpayers have three years in which to seek a refund for taxes paid to a unit of government.

**Background:** The Comptroller's Office has 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 \$3.5 million in admissions and amusement taxes in fiscal 2002 and is expected to generate approximately \$3.6 million in fiscal 2004.

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 Special Appeals upheld the lower court's ruling 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, or did not have any minimum purchase requirements while entertainment was provided. The Comptroller and local government attorneys are currently appealing the court's decision. If the ruling is upheld, the Comptroller estimates that approximately \$8.4 million in admissions and amusement tax collected during fiscal 2001 through fiscal 2003 would be subject to a refund.

Counties have the authority to impose the admissions and amusement tax. 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. Caroline County is the only jurisdiction that does not impose an 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.

**Local Fiscal Effect:** Local revenues of approximately \$3.6 million annually would be maintained beginning in fiscal 2004 from the admissions and amusement tax on merchandise, refreshments, and services sold or served in connection with entertainment. Baltimore City and Anne Arundel, Baltimore, and Worcester counties would be most affected by the bill. For more information see **Exhibit 1**. Local expenditures could increase due to refunds issued for admissions and amusement taxes paid before July 1, 2003 and filed for before September 30, 2003. However, it is not known how many commercial businesses that paid admissions and amusement taxes would seek refunds within this limited timeframe.

**Small Business Effect:** Small businesses could be positively impacted due to refunds issued for admissions and amusement taxes paid in prior years. It is not known how many small businesses that paid admissions and amusement taxes in fiscal 2001, 2002, and 2003 would seek refunds under the bill's provisions. Small businesses would be negatively impacted by the requirement to pay admissions and amusement taxes on goods and services sold when entertainment is provided beginning in fiscal 2004.

**Additional Comments:** Local government finances and small businesses could be affected differently if the Maryland Court of Appeals overturns the lower court's ruling. Existing county revenues of approximately \$3.6 million would be maintained, but county expenditures would not be affected since there would be no legal basis for businesses to seek refunds of admissions and amusement taxes. Accordingly, small businesses would be negatively impacted by not having the legal basis to seek refunds for admissions and amusement taxes paid in fiscal 2001, 2002, and 2003.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Anne Arundel County, Calvert County, Caroline County, Montgomery County, Prince George's County, Comptroller's Office, Department of Legislative Services

**Fiscal Note History:** First Reader - March 11, 2003  
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**Exhibit 1**  
**Admissions and Amusement Taxes**  
**Sales with Entertainment**  
**Estimated Refunds for Fiscal 2000-2002 and Fiscal 2004 Collections**

	<b>FY 00-02</b>	<b>% of</b>	<b>FY 04</b>	<b>% of</b>
	<b>Eligible for</b>	<b>Total</b>	<b>Collection</b>	<b>Total</b>
	<b>Refund</b>		<b>Estimate</b>	
Allegany	\$36,442	0.43%	\$14,544	0.41%
Anne Arundel	1,342,966	15.97%	503,883	14.07%
Baltimore City	2,527,990	30.07%	1,206,698	33.70%
Baltimore	769,729	9.16%	422,618	11.80%
Calvert	143	0.00%	0	0.00%
Caroline	40,709	0.48%	0	0.00%
Carroll	96,643	1.15%	47,866	1.34%
Cecil	131,853	1.57%	64,784	1.81%
Charles	119,128	1.42%	84,184	2.35%
Dorchester	13,251	0.16%	1,761	0.05%
Frederick	28,230	0.34%	12,612	0.35%
Garrett	72,709	0.86%	22,289	0.62%
Harford	145,803	1.73%	39,364	1.10%
Howard	173,295	2.06%	91,555	2.56%
Kent	262,913	3.13%	18,544	0.52%
Montgomery	516,046	6.14%	245,031	6.84%
Prince George's	214,530	2.55%	100,952	2.82%
Queen Anne's	108,043	1.29%	60,393	1.69%
St. Mary's	41,613	0.49%	24,439	0.68%
Somerset	8,015	0.10%	461	0.01%
Talbot	63,611	0.76%	3,887	0.11%
Washington	97,281	1.16%	42,754	1.19%
Wicomico	206,805	2.46%	76,369	2.13%
Worcester	1,389,323	16.53%	496,166	13.85%
<b>Total</b>	<b>\$8,407,071</b>		<b>\$3,581,153</b>	

Source: Bureau of Revenue Estimates, March 3, 2003