Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 102 (Chairman, Budget and Taxation Committee)
(By Request – Departmental – Comptroller)

Budget and Taxation Ways and Means

Income Tax - Assessment of Income Tax on Amended Returns

This departmental bill provides that an assessment of income tax arising out of an amended return is required to be made within three years after the date that the amended return is filed. The assessment of income tax may only relate to items changed by the amended return.

The bill takes effect July 1, 2003 and applies to all amended tax returns filed after June 30, 2003.

Fiscal Summary

State Effect: Potential minimal revenue increase. The bill codifies administrative practice prior to August 2002.

Local Effect: Potential increase in local government revenue.

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

Analysis

Current Law: Except under specified conditions, an assessment may not be made after three years from the date a tax return is filed or the date a tax return is due. However, a recent court opinion on this section of the Tax-General Article indicated that this three-year limit applied to the date of filing an original return only and not to the filing of an amended return.

Background: The Circuit Court for Anne Arundel County issued a ruling in August 2002 (*Comptroller of Maryland v. Olaf Kolzig*) holding that the statute of limitations for making an assessment on an amended tax return begins running from the date on which the original tax return was filed rather the date on which the amended return was filed. Prior to this ruling the Comptroller's Office had interpreted the statute of limitations on making assessments on an amended return as beginning with the filing of the amended return.

The Comptroller has argued that this ruling places a hardship on both the Comptroller's Office and taxpayers. According to the Comptroller, the issuance of any refund due would have to be delayed until a complete audit is completed of an amended return. On the other hand, if a refund is issued, there would be no way for the Comptroller to recover any amount that was erroneously issued through the assessment process.

State Fiscal Effect: Pursuant to the recent court decision, the State must either conduct a full audit of an amended return prior to allowing the claims contained on the return or allow the claims absent an audit due to time limitation imposed by the law. The bill brings the statute into accord with recent prior practice by allowing the State to potentially recoup revenues that might otherwise be lost due to the filing of amended returns that take advantage of the current limitations. For example, if a taxpayer files an amended return on the last day of the three-year period, the Comptroller has no recourse if a refund is erroneously granted.

Assuming that claims are allowed that would otherwise not be, due to audit or other circumstance, State revenues could be affected in several ways. Deductions or credits claimed by individuals for which they were not entitled would reduce general fund revenues – credits by the amount of the credit and deductions by 4.75% of the deduction taken (and would also reduce local revenues by approximately 2.8% of the deduction taken). Deductions claimed on corporate income tax returns would reduce revenues by 7% of the deduction claimed – 75% of which would be general fund revenues and 25% would be Transportation Trust Fund (TTF) revenues (a portion of which is passed on to local governments). Credits claimed on corporate returns would reduce revenues by the amount of the credit claimed and would affect the general fund and TTF in the manner described above.

Additional Comments: The State Department of Assessments and Taxation was granted the authority to adjust a property tax return for up to three years after the date of the last document filed.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2003
lc/jr Revised - Senate Third Reader - March 17, 2003

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