

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 438

(Chairman, Ways and Means Committee)

(By Request – Departmental – Natural Resources)

Ways and Means

Budget and Taxation

Vessel Excise Tax - Liability - Corporations and Companies

This departmental bill provides for the personal liability of the vessel excise tax and for the interest and penalties of the tax for specified individuals of corporations, limited liability corporations, and limited liability partnerships under specified conditions. The bill also provides that an assessment of liability for the vessel excise tax is prima facie correct.

The bill takes effect July 1, 2003.

Fiscal Summary

State Effect: If the bill is not enacted, special fund revenues related to the vessel excise tax could decrease, perhaps significantly. Any decrease in special fund revenues could also result in a decrease in federal funds provided for boat safety programs. Expenditures would not be materially affected.

Local Effect: The bill will not affect local government operations or finances.

Small Business Effect: The Department of Natural Resources (DNR) has determined that this bill will have minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: Except under specified conditions, an excise tax is levied at the rate of 5% of the fair market value of a vessel on: (1) the issuance of every original certificate of title required for a vessel; (2) the issuance of every subsequent certificate of title for the sale, resale, or transfer of the vessel; (3) the sale within the State of every other vessel; and (4) the possession within the State of a vessel purchased outside the State to be used principally in the State. If a person obligated to pay the tax fails to pay the tax when due, DNR must assess against the person a penalty of 10% plus interest at the rate of 1.5% per month or fraction of a month from the time the tax was due until paid. This penalty and interest may be waived under specified conditions. If the failure to pay the tax is due to an attempt to defraud, then the penalty is 100% of the tax due plus interest at the rate of 1.5% per month or fraction of a month from the time due until paid. Except for \$225,000 of the amount collected in vessel excise taxes, which is credited to the general fund, revenues from excise taxes, penalties, and interest are paid into the Waterway Improvement Fund.

Background: The revenues generated from the vessel excise tax depend largely on boat sales, which vary from year to year. Excise tax collections have increased from a low of about \$10.9 million in fiscal 1993 to about \$25.9 million in fiscal 2002. The Natural Resources Police (NRP), Boat Tax Enforcement Program attempts to identify those individuals who are delinquent in vessel excise tax payments. To the extent that a vessel owner has been identified as not having paid the tax, DNR sends the individual an assessment indicating the amount of tax and interest owed.

DNR advises that it has enhanced its efforts to more aggressively pursue those persons who use their vessels on Maryland waters and do not pay the vessel excise tax. Until recently, DNR has collected the vessel excise tax from individuals of corporations, limited liability companies, and limited liability partnerships. However, a recent ruling by the Montgomery County Circuit Court held that the provisions of the Tax General Article that permit individual liability when the taxpayer is a business entity do not apply to an assessment of the vessel excise tax. DNR is concerned that this ruling will not only result in the inability to collect excise tax revenues from corporations but also that individual vessel owners may attempt to incorporate their vessels in order to avoid the tax altogether.

DNR advises that the Comptroller of the Treasury had this authority when it was responsible for collecting the vessel excise tax and has this authority today with respect to the sales and use tax. According to DNR, when the authority to collect the vessel excise tax was transferred from the Comptroller to DNR, the provisions relating to the personal

liability of the officers and members of business entities and presumption of correctness were overlooked.

State Fiscal Effect: The vessel excise tax is anticipated to generate an estimated \$24.5 million in revenues for fiscal 2004. DNR advises that of the 400 to 500 vessel excise tax cases handled each year by the Boat Tax Enforcement Unit of NRP, as many as 10% involved corporations and that 18 such cases resulted in \$450,000 in vessel excise tax attainment. With the recent ruling, however, DNR is concerned that not only will it be unable to collect taxes from corporations in the future, but also, individual vessel owners might try to incorporate their vessels in order to avoid paying the vessel excise tax. Accordingly, failure of the bill could result in a decrease in vessel excise tax revenues.

Because federal funds provided by the U.S. Coast Guard for boat safety programs are related to Waterway Improvement Fund expenditures, any decrease in vessel excise tax revenues could result in a decrease in federal funds.

DNR could implement the bill's provisions with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources, Department of Assessments and Taxation, Department of Legislative Services

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