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By: **Delegate Hixson**

Introduced and read first time: March 6, 2006

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Voluntary Compliance Program for Abusive Tax Avoidance**  
3 **Transactions**

4 FOR the purpose of requiring the Comptroller to establish a voluntary compliance  
5 program and amnesty period for the payment of certain Maryland State and  
6 local income tax liabilities related to the use of certain tax avoidance  
7 transactions; allowing certain eligible taxpayers to elect to participate in the  
8 voluntary compliance program under one of two methods; requiring the  
9 Comptroller to waive certain penalties for taxpayers participating in the  
10 voluntary compliance program under certain circumstances; providing that a  
11 taxpayer participating in the voluntary compliance program may not be charged  
12 with certain criminal offenses under certain circumstances; requiring the  
13 Comptroller to impose a certain penalty for certain unpaid tax under certain  
14 circumstances; authorizing the Comptroller to make certain inquiries and  
15 requiring certain taxpayers to cooperate with certain inquiries; and generally  
16 relating to a voluntary compliance program and amnesty period for the payment  
17 of certain Maryland State and local income tax liabilities related to the use of  
18 certain tax avoidance transactions.

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That:

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) (i) "Abusive tax avoidance transaction" means any plan or  
23 arrangement devised for the principal purpose of avoiding federal or state income tax.

24 (ii) "Abusive tax avoidance transaction" includes any listed  
25 transaction, within the meaning of § 6011 of the Internal Revenue Code and  
26 regulations adopted under that section.

27 (3) "Eligible taxpayer" means a taxpayer that as of June 1, 2006, has a  
28 Maryland income tax liability for any taxable year that began before January 1, 2006,  
29 that was unreported, underreported, or unpaid as a result of the use of an abusive tax  
30 avoidance transaction.

1 (b) (1) The Comptroller shall establish a voluntary compliance program and  
2 amnesty period for eligible taxpayers from June 1, 2006, through October 1, 2006,  
3 both inclusive.

4 (2) Except as provided in paragraph (3) of this subsection, the voluntary  
5 compliance program and amnesty period provided under this Act shall apply to  
6 Maryland State and local income tax liabilities for any taxable year beginning before  
7 January 1, 2006, that as of June 1, 2006, remain unreported, underreported, or  
8 unpaid as a result of the taxpayer's use of an abusive tax avoidance transaction.

9 (3) The voluntary compliance program and amnesty period provided in  
10 this Act do not apply to any Maryland corporation income tax that has been or may be  
11 assessed by the Comptroller on the basis of issues that were ruled on by the Maryland  
12 Court of Appeals in the decisions in *Comptroller of the Treasury v. SYL, Inc.*, and  
13 *Comptroller of the Treasury v. Crown Cork & Seal Company (Delaware), Inc.*, 375 Md.  
14 78 (2003), whether or not the assessment is or was issued before or after the date of  
15 the decisions, and whether or not the taxpayer participated in the Settlement Period  
16 provided under Chapter 557 of the Acts of the General Assembly of 2004.

17 (c) (1) (i) For any taxable year, an eligible taxpayer that meets the  
18 requirements of subsection (d) of this section may elect to participate in the voluntary  
19 compliance program under:

20 1. Voluntary compliance without appeal under paragraph (2)  
21 of this subsection; or

22 2. Voluntary compliance with appeal under paragraph (3) of  
23 this subsection.

24 (ii) An election under this subsection shall be made separately for  
25 each taxable year in the form and manner prescribed by the Comptroller and shall be  
26 irrevocable.

27 (2) Subject to paragraph (4) of this subsection, for any taxable year as to  
28 which an eligible taxpayer elects voluntary compliance without appeal:

29 (i) The Comptroller shall waive all civil penalties attributable to  
30 the underreporting or underpayment of income tax for that taxable year that was  
31 attributable to the use of an abusive tax avoidance transaction;

32 (ii) The taxpayer may not be charged with a criminal tax offense for  
33 that taxable year with respect to the use of an abusive tax avoidance transaction; and

34 (iii) Notwithstanding any other provision of law, the taxpayer may  
35 not file a claim for a credit or refund for that taxable year with respect to a tax  
36 liability related to the abusive tax avoidance transaction.

37 (3) Subject to paragraph (4) of this subsection, for any taxable year as to  
38 which an eligible taxpayer elects voluntary compliance with appeal:

1 (i) 1. The Comptroller shall waive all civil penalties attributable  
2 to the underreporting or underpayment of income tax for that taxable year that was  
3 attributable to the use of an abusive tax avoidance transaction, other than the  
4 penalty under § 13-701(b) of the Tax - General Article for failure to pay the income  
5 tax when due; and

6 2. Unless the underpayment of income tax for the taxable  
7 year attributable to the use of an abusive tax avoidance transaction exceeds 10% of  
8 the amount required to be shown on the income tax return for the taxable year, the  
9 Comptroller shall waive the penalty under § 13-701(b) of the Tax - General Article for  
10 failure to pay the income tax when due;

11 (ii) The taxpayer may not be charged with a criminal tax offense for  
12 that taxable year with respect to the use of an abusive tax avoidance transaction; and

13 (iii) The taxpayer may file a claim for credit or refund with respect  
14 to a tax liability related to the abusive tax avoidance transaction.

15 (4) (i) The waiver of civil penalties under paragraphs (2)(i) and (3)(i) of  
16 this subsection does not apply to:

- 17 1. Previously assessed fraud penalties;
- 18 2. Penalties paid before June 1, 2006; or
- 19 3. Penalties attributable to an assessment of taxes that  
20 became final before June 1, 2006.

21 (ii) The amnesty from criminal charges under paragraphs (2)(ii)  
22 and (3)(ii) of this subsection does not apply to:

- 23 1. Any criminal charges pending in the courts of the State; or
- 24 2. Any criminal charges under investigation by an office with  
25 the constitutional authority to prosecute persons for violation of the criminal laws.

26 (iii) For purposes of this paragraph, an office with constitutional  
27 authority to prosecute persons for violation of the criminal laws:

28 1. Includes the Office of the Attorney General of Maryland,  
29 the Office of the State Prosecutor, and the Office of State's Attorney for any of the  
30 political subdivisions of the State; and

31 2. Does not include the Office of the Comptroller.

32 (d) (1) In order to participate in the voluntary compliance program  
33 established under this section, an eligible taxpayer shall, during the amnesty period  
34 from June 1, 2006, through October 1, 2006, both inclusive, shall:

35 (i) File an application for participation in the voluntary compliance  
36 program in the form and manner prescribed by the Comptroller;

1 (ii) File an income tax return or an amended return in the form and  
2 manner prescribed by the Comptroller for the taxable year for which the taxpayer  
3 used an abusive tax avoidance transaction to underreport or underpay the taxpayer's  
4 Maryland State or local income tax liability, reporting the total Maryland taxable  
5 income and tax liability for that taxable year computed without regard to the tax  
6 avoidance transaction; and

7 (iii) Subject to paragraph (2) of this subsection, make full payment  
8 of the additional Maryland State and local income tax liability and interest due for  
9 that taxable year that is attributable to the use of the abusive tax avoidance  
10 transaction.

11 (2) (i) The Comptroller may enter into an installment payment  
12 agreement in lieu of the full payment required under paragraph (1)(iii) of this  
13 subsection.

14 (ii) Failure by the taxpayer to fully comply with the terms of an  
15 installment payment agreement entered into under this paragraph shall render the  
16 waiver of penalties under this section null and void and the total amount of tax,  
17 interest, and all penalties shall be immediately due and payable.

18 (3) If the Comptroller subsequently determines that the correct amount  
19 of Maryland State and local income tax was not paid for a taxable year, the waiver of  
20 penalties and amnesty provided under this section do not apply to any unpaid portion  
21 of the underpayment attributable to an abusive tax avoidance transaction.

22 (e) If an eligible taxpayer entitled to participate in the voluntary compliance  
23 program and amnesty period established under this section fails to participate and  
24 has a deficiency with respect to Maryland State or local income tax for a taxable year  
25 beginning before January 1, 2006, that is attributable to the use of an abusive tax  
26 avoidance transaction, for any tax remaining due and unpaid after October 1, 2006,  
27 the Comptroller shall assess a penalty equal to 100% of the interest payable for the  
28 period beginning on the date the tax was originally due and ending on the date the  
29 tax is paid.

30 (f) (1) In addition to any other authority to examine returns, for the purpose  
31 of improving State tax administration, the Comptroller may inquire into the facts and  
32 circumstances related to the use of abusive tax avoidance transactions to underreport  
33 the tax liabilities for which a taxpayer has participated in the voluntary compliance  
34 program under this section.

35 (2) Taxpayers shall cooperate fully with an inquiry under this  
36 subsection.

37 (3) Failure by a taxpayer to fully cooperate in an inquiry under this  
38 subsection shall render the waiver of penalties and amnesty under this section null  
39 and void and the taxpayer may be assessed any penalties that may apply.

1 (g) The fact of a taxpayer's participation in the voluntary compliance program  
2 may not be considered evidence that the taxpayer in fact engaged in an abusive tax  
3 avoidance transaction.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 June 1, 2006.