HB 171

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 171 (Chairman, Ways and Means Committee)
(By Request – Departmental – Assessments and Taxation)

Ways and Means Budget and Taxation

Public Service Company Franchise Tax - Returns and Collection

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This departmental bill provides penalties for failing to file or for filing a false public service company franchise tax return. A person convicted of failing to file a return is guilty of a misdemeanor and subject to maximum penalties of imprisonment of five years and/or a fine of $5,000. A person who files a false return with the intent to evade tax due is subject to the penalty of perjury. The bill also extends existing requirements and procedures regarding Internal Revenue Service (IRS) final determinations that affect other State taxes to include determinations that affect the public service company franchise tax. Finally, the bill requires that any assessment for public service company franchise tax due must be made within three years of the later of when the date a return was filed or due, except as provided under current law for the financial institution franchise and income taxes.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: The State Department of Assessments and Taxation (SDAT) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: No penalties exist for the willful failure to file or for filing a false public service company franchise tax return. A taxpayer required to file certain other State tax returns and who willfully fails to file the return is on conviction guilty of a misdemeanor. The maximum fine and/or time of imprisonment on conviction for failing to file each type of return are: admissions and amusements, boxing and wrestling ($500 and/or six months); financial institution franchise ($5,000 and/or five years); and income, sales and use ($10,000 and/or five years). A taxpayer who willfully files a false return with the intent to evade payment of tax due under the income and financial institution franchise tax is subject to the penalty of perjury. Perjury is a misdemeanor offense punishable by imprisonment for up to 10 years.

If the IRS issues a final determination that increases federal taxable income, federal estate, or federal generation-skipping transfer tax on a federal return; the State assesses additional tax on, with the basis of increase in parentheses, the financial institution tax (net earnings), income tax (Maryland taxable income), Maryland estate tax (federal credit or State death tax), and Maryland generation-skipping transfer tax (federal credit). Within 90 days after a taxpayer receives a final determination issued by the IRS, the taxpayer is required to submit to the appropriate State tax agency a statement of the increase and, if the taxpayer is contending the increase, an explanation for the contention. If a report of federal adjustment is filed within 90 days, any assessment on the financial institution franchise tax or income tax must be made within one year of receipt by the State tax agency of the adjustment. None of these requirements or procedures apply to an IRS final determination that increases the gross receipts of a public service company.

There are no limitations on when an assessment for the public service company franchise tax must be executed. An assessment of tax due for the financial institution franchise tax or income tax may only be made within three years of the later of the date the return was filed or date the return was due. However, an assessment of tax due can be made at any time if a(n): (1) false return is filed with the intent to evade taxes due; (2) willful attempt is made to evade the tax; (3) required return is not filed; (4) incomplete return is filed; or (5) required report of federal adjustment is not filed within the time period required.

Background: Approximately 400 companies pay the public service company franchise tax. In fiscal 2005, the tax generated approximately $133.3 million, which was deposited into the State's general fund.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provision for cases heard in District Court. The bill's provisions limiting the time in which an assessment must be made and expansion of existing requirements related to IRS final determinations are not expected to affect revenues. SDAT advises that it does not currently make assessments after three years and that most IRS final determinations impact the net income, and not gross receipts, of a taxpayer.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at $1,974 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is $341 per month. Excluding medical care, the average variable costs total $134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2007 are estimated to range from $17 to $65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from $33 to $119 per inmate in fiscal 2007.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Comptroller's Office, Department of Legislative Services

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