HB 1347

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1347 (Chair, Ways and Means Committee) (By Request – Departmental – Assessments and Taxation)

Ways and Means Budget and Taxation

Public Service Company Franchise Tax - Returns and Collection

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 for 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, 2007.

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 currently 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. SDAT advises that it recently determined that one company knowingly filed an incorrect tax return and one company failed to file a required return. In these instances, SDAT was not clear what penalties, if any, it could impose on the companies.

State Fiscal Effect: 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.

General fund expenditures could increase minimally as a result of the bill's incarceration penalties.

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

Additional Information

Prior Introductions: HB 171 of 2006, an identical bill, received a favorable with amendments report from the House Ways and Means Committee, passed the House, and received a favorable report from the Senate Budget and Taxation Committee but did not pass the Senate.

Cross File: None.

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

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