

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 94

(Chair, Budget and Taxation Committee)(By Request -
Departmental - Comptroller)

Budget and Taxation

Sales and Use Tax - Gross Negligence Penalty for Underpayment

This departmental bill requires the Comptroller to assess a penalty equal to 25% of underpaid sales and use taxes if due to gross negligence, a person makes an underpayment of the required sales and use tax by 25% or more. The bill specifies that an underpayment of 25% or more is *prima facie* evidence of gross negligence.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: Potential minimal increase in general fund and Transportation Trust Fund (TTF) revenues. Expenditures are not affected.

Local Effect: None.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: The penalty for failure to pay the sales and use tax when due is equal to 10% of the unpaid tax, unless fraud can be proven.

Background: The sales and use tax is the State's second largest source of general fund revenue accounting for \$3.7 billion in both fiscal 2009 and 2010, according to the

December 2008 revenue forecast. In addition, the TTF is projected to receive \$0.2 billion in sales and use tax revenues in both fiscal 2009 and 2010. **Exhibit 1** shows the sales and use tax rates in surrounding states.

Exhibit 1
Sales and Use Tax Rates in Maryland and Surrounding States

Delaware	0%
District of Columbia	5.75%
Maryland	6%
Pennsylvania	6% plus 1% in certain local jurisdictions 0% sales tax on clothing
Virginia	5%; 2.5% for food, both rates include 1% for local jurisdictions
West Virginia	6%

State Fiscal Effect: The bill is intended to deter fraudulent or negligent reporting of the State sales and use tax. Accordingly, general fund and TTF revenues may increase by a minimal amount beginning in fiscal 2010 as a result of increased penalty payments under the bill. The amount of the increase depends on the number of underpayments meeting the criteria established by the bill and the amount of each underpayment.

Chapter 10 of the 2008 session altered the distribution of sales and use tax revenues by requiring that, for fiscal 2009 through 2013, 5.3% of revenues be distributed to the TTF. Beginning in fiscal 2014, the amount distributed to the TTF increases to 6.5%. As a result, general fund revenues would increase by 94.7% and TTF revenues will increase by 5.3% of total penalties paid under the bill. *For illustrative purposes only*, for each \$1,000 in sales and use tax penalties collected as a result of the bill, general fund revenues will increase by \$947 and TTF revenues will increase by \$53.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 29, 2009
ncs/hlb

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Sales and Use Tax – Gross Negligence Penalty for Underpayment

BILL NUMBER: SB 94

PREPARED BY: Comptroller of Maryland

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.