

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 920  
Ways and Means

(Delegate Valentino-Smith)

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**Tax Liens - Enforceability**

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The bill establishes a statute of limitations on the enforcement of a tax lien on specified real property filed with the appropriate circuit court clerk. The statute of limitations is 12 years from the date of the filing and applies solely to real property sold in an arms-length, third-party transaction for a fair market price to a person not liable for the taxes on which the tax lien is based.

The bill takes effect July 1, 2013. Except in any case pending as of the bill's July 1, 2013 effective date in a court to enforce a tax lien, the bill applies retroactively and must be interpreted to affect all tax liens filed before the bill's effective date.

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**Fiscal Summary**

**State Effect:** General fund revenues decrease significantly for the Comptroller in FY 2014 and subsequent years to account for the inability to enforce liens on real property after 12 years from the filing of the lien. To the extent that the Comptroller chooses to refile the notices of tax liens to restart the 12-year time period, general fund expenditures may increase.

**Local Effect:** The bill does not directly affect local government operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law/Background:** All unpaid tax, interest, and penalties constitute a lien, in favor of the State, extending to all property and rights to property belonging to the person

required to pay the tax or the fiduciary estate on which the tax is imposed. Generally, the tax lien is formed when the tax becomes due and continues until paid or released by a tax collector. The tax collector may release the lien because the lien is unenforceable by reason of lapse of time or uncollectable.

A tax collector may file a notice of tax lien with the clerk of the circuit court for the county where the property is located. Upon receipt of the notice, the clerk must promptly record and index the lien, as well as enter the lien in the court's judgment docket. The filing of such a lien validates the lien against any purchaser, holder of a security interest, mechanic's lien holder, or judgment lien creditor.

If a tax lien is not satisfied or released by the fifteenth day after the aforementioned notice is filed, recorded, and indexed, an action to enforce the lien may be brought by either the Comptroller or, upon request of the tax collector, the Attorney General. The court, in a bench trial, must adjudicate all matters involved in the proceedings and determine the merits of all claims or liens. If the court establishes the State's claim or interest, the court may order a sale of the property or rights to property and a distribution of any proceeds of sale in accordance with the interests of the parties and the State. A tax lien must be first paid and satisfied from the proceeds of the sale any property of the person who owes the tax.

Montgomery County advises that it does not allow a property to be sold (arms-length or otherwise) if it is subject to a tax lien.

**State Fiscal Effect:** General fund revenues decrease significantly for the Comptroller in fiscal 2014 and subsequent years to account for the inability to enforce liens on real property after 12 years from the filing of the lien. Currently, unlike federal tax liens, there is no expiration on State tax liens. The Comptroller advises there are currently over 60,000 active liens that were filed more than 12 years ago. These liens total over \$206 million. Often, if a lien was filed more than 12 years ago, other means of collection, such as garnishment, attachment, or negotiation, have failed. Thus, the Comptroller's only recourse of assuring payment is through the lien on real property. While the amount of decrease in general funds is not quantifiable because it is unknown how many of the 60,000 active liens will be satisfied through the sale of a property, any decrease is expected to be significant.

To the extent that the Comptroller chooses to refile the notices of tax liens to restart the 12-year time period, general fund expenditures may increase. As noted above, State tax liens have no expiration date. According to the Comptroller, a federal tax lien, which gives the Internal Revenue Service (IRS) a legal claim to the taxpayer's property for the amount of the tax debt, is generally released 10 years after a tax is assessed, at which point the IRS may decide to refile the lien. Under the bill, specified State tax liens will

expire after 12 years from the date of filing. While the Comptroller assumes it can refile an expired tax lien, any such process may significantly increase expenditures should the Comptroller adopt that policy.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Howard, Montgomery, and Prince George's counties; Baltimore City; State Department of Assessments and Taxation; Judiciary (Administrative Office of the Courts); Comptroller's Office; Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2013  
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