HB 1502

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1502 (Delegate Norman, *et al.*)
Judiciary

Civil Actions - Statute of Limitations for Certain Specialties

This bill repeals an exemption for a specialty taken for use of the State from the 12-year statute of limitations for the filing of a civil action on specified specialties.

The bill applies prospectively to causes of action arising on or after the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: Potential significant increase in future general fund expenditures for affected State agencies, including the Comptroller and the Judiciary, if the bill's provisions require agencies to hire additional personnel to pursue enforcement civil actions on specialties (including judgments) within a compressed time period. Future general fund revenues increase or decrease, perhaps significantly, depending on the overall effect of the bill on the State's collection of unpaid judgments.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful impact on small businesses subject to judgments held by the State if the bill's provisions result in increased enforcement of judgments by the State or if the State is unable to file a civil action to enforce the judgment because the statute of limitations has expired.

Analysis

Current Law:

Specialties: A civil action must be filed within three years from the date it accrues, unless otherwise provided by State law. State law provides a longer statute of limitations for filing civil actions for specialties, including a promissory note or other instrument under seal; a bond, except a public officer's bond; a judgment; a recognizance; and a contract under seal. With the exception of a specialty taken for the use of the State, a civil action for a specialty must be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner. *Black's Law Dictionary* defines a "specialty" as (1) "a contract under seal" or (2) "a writing sealed and delivered, containing some agreement," including one "given as a security for the payment of a debt, in which such debt is particularly specified."

Money Judgments: Under Maryland Rules 2-625 and 3-625, a money judgment expires 12 years from the date of either the entry of the judgment or the most recent renewal. At any time before expiration of the judgment, the judgment holder may have a judgment renewed for an additional 12-year period. In practice, one such renewal may be filed. Neither rule specifies an exemption for a judgment held by the State.

Background: In *State v. Buckingham*, 214 Md. App. 672, 78 A.2d 909 (2013), the Maryland Court of Special Appeals held that the Circuit Court for Baltimore County erred when it declared that a judgment held by the State against a State lottery agent for over 12 years without renewal had "expired" and quashed the two subsequent writs of garnishment against the agent. According to the court, even though Maryland Rule 2-625 does not specify an exemption for judgments held by the State, the rule implements the statute of limitations found in the Courts and Judicial Proceedings Article, § 5-102. Since that statute does exempt a judgment taken for use of the State from the general 12-year statute of limitations for actions on judgments, Maryland Rule 2-625 does not extinguish an unrenewed judgment held by the State after 12 years.

State Revenues: The effect of the bill on State revenues depends on (1) the extent to which the State pursues civil action on specialties after the end of the 12-year statute of limitations and any renewal period applicable to other specialty holders; (2) whether the bill's provisions result in more aggressive and earlier State enforcement of judgments and other specialties held by the State; and (3) whether affected State agencies, lacking resources to pursue civil actions within a compressed time period, decide not to pursue civil action to enforce judgments or other specialties.

Data is not readily available on the number of judgments or specialties for which the State takes more than 12 years to file a civil action. Under the "more aggressive enforcement" scenario, State revenues may increase significantly. Under the "lack of resources to enforce" scenario, State revenues decrease, perhaps significantly.

The bill may also affect State revenues to the extent that less interest and fewer penalties are collected on enforced judgments and other specialties as a result of earlier enforcement.

State Expenditures: Potential significant increase in future general fund expenditures for the Comptroller and the Judiciary to comply with the bill's provisions beginning 12 years after the bill's effective date (October 1, 2026). Potential significant increase in future expenditures for other affected State agencies.

The Comptroller's Office advises that it is the position of the office that once a tax lien is filed and recorded in the circuit court, it is indefinite until the sale of the property or the satisfaction of the tax debt. Restricting the time limit to 12 years causes the office to forgo significant revenues, refile liens, or enforce foreclosures.

The Comptroller's Office reports that in fiscal 2013, 66,587 liens were filed, including 7,958 business tax liens. While information is not available as to collections directly attributable to liens, the total collections for the individual and business tax units in fiscal 2013 were $300 million and $251 million, respectively.

To refile liens and handle foreclosures under the compressed timeline created by the bill, the Comptroller's Office needs eight additional personnel (five revenue collectors for individual taxpayers, one clerical employee, one revenue collector for business taxpayers, and one attorney) at an annual cost in excess of $450,000.

However, given that the bill applies prospectively to causes of actions arising on or after the bill's October 1, 2014 effective date, and assuming that a cause of action "arises" once the original lien is filed, this need for additional personnel likely does not apply immediately and can be implemented at some point between the bill's October 1, 2014 effective date and October 1, 2021, which is before the first 12-year statute of limitations period to which the bill applies. However, this estimate assumes that the Comptroller will need several years of lead time to implement policies and establish case management systems prior to the expiration of the statute of limitations.

The Comptroller's Office further advises that it does not pursue foreclosures as a means of collecting tax debts; instead, the office waits until the property is eventually transacted to collect on debts. The bill's removal of this option via a 12-year statute of limitations may result in pursuit of foreclosures to settle tax debts.

Future general fund expenditures for the Judiciary may increase significantly to the extent that the Judiciary, as an agency of the State, is also required to enforce specialties within the statute of limitations. The Judiciary advises that it is unable to reliably estimate the fiscal impact of the bill's application of the statute of limitations at this time, due to a lack of information concerning (1) the number of specialties the Judiciary presently needs to enforce; (2) the number of specialties the Judiciary needs to enforce in the future; and (3) to what extent the bill's provisions hamper future enforcement efforts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Comptroller's Office, Judiciary (Administrative Office of the Courts), Maryland State Treasurer's Office, *Black's Law Dictionary, The Daily Record*, Department of Legislative Services

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