

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 162

(Chair, Judiciary Committee)(By Request - Departmental
- Comptroller)

Judiciary

Judicial Proceedings and Budget and Taxation

Comptroller - Taxpayer Protection Act

This departmental bill makes several changes to current provisions regarding tax enforcement and compliance.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: General fund revenues increase beginning in FY 2017 to the extent the bill prevents revenue losses from improper income tax refunds. Potential increase in fine revenue. Any administrative or operational costs for the Comptroller's Office are assumed to be minimal and absorbable with existing agency budgeted resources. Potential expenditure increase for the Attorney General's Office depending on increased prosecutions and litigation resulting from the bill.

Local Effect: Local income tax revenues may increase beginning in FY 2018 due to a decrease in improper income tax refunds. Local expenditures are not affected.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law: Prosecution for offenses relating to the sales and use, admissions and amusement, financial institution franchise, income, or motor fuel tax must be filed within three years of the date of the offence.

The bill alters the definition of “public record” under the Maryland Public Information Act. The bill specifies that a public record includes the salary of an elected official of the State or a political subdivision of the State, but it does not include a document that lists the salary of an employee of a government unit, an instrumentality of the State, or a political subdivision if the document lists the salary in ranges of less than \$5,000. In addition, the bill excludes any document that lists the classification or grade and step of an employee of a government unit, an instrumentality of the State, or a political subdivision.

The Tax-General Article (§ 2-107) authorizes employees of the Comptroller’s Field Enforcement Bureau to have police powers relating to alcoholic beverage taxes, tobacco taxes, motor carrier taxes, motor fuel taxes, and motor fuel and lubricants taxes. The bill expands these police powers to include the admissions and amusement, income, and sales and use taxes.

An employer or payor of payments required to withhold State income taxes must submit a statement that shows for the previous calendar year (1) the name of the employer or payor; (2) the name of the person receiving the wages or payment; (3) the total amount of the wages or payment; (4) the total amount of tips reported by the employee; (5) the total amount of income tax withheld; (6) any amount by which the income tax withheld on tips exceeds other net wages paid to the employee; and (7) any other information the Comptroller requires by regulation. Two copies of this statement must be provided to the individual receiving the payment or wages by January 31 of each year and one copy must be provided to the Comptroller by February 28 of each year. The withholding statements submitted by employers are commonly known as a W-2 or W-2 statement. The bill accelerates, from February 28 to January 31, the date by which employers or payors of specified withholding payments must submit a withholding statement to the Comptroller.

Confidentiality provisions of Tax-General Article (Title 13) define protected tax information to include any information contained in the following two types of returns: an admissions and amusement tax return and a sales and use tax return. The bill expands the list of returns considered to be tax information by including the following returns: (1) alcoholic beverage tax return; (2) bay restoration fee return; (3) boxing and wrestling tax return; (4) E-9-1-1 fee return; (5) financial institution franchise tax return; (6) inheritance tax return; (7) Maryland estate tax return; (8) motor carrier tax return; (9) motor fuel tax return; (10) other tobacco products tax return; (11) public service company franchise tax return; (12) savings and loan association franchise tax return;

(13) tire recycling fee return; (14) tobacco tax return; and (15) transportation services assessment return.

The bill also alters specified penalty provisions in the Tax-General Article (Title 13). First, the bill authorizes a tax collector to assess a penalty equal to 100% of the underpayment of tax resulting from a false return on a person hired to prepare a tax return who makes a false tax return with the intent to evade the payment of tax. Second, the bill authorizes the Comptroller to assess a penalty of \$100 for each violation on an employer or payor who failed to provide an annual withholding report or provides a false withholding report. Finally, the bill authorizes the Attorney General to bring an action in the name of the State or the Comptroller to enjoin a person from acting as an income tax return preparer. This legislation allows a court to issue such an injunction if the court determines that the income tax preparer has either failed to properly identify themselves on tax returns; misrepresented their experience, education, or registration as an income tax preparer; guaranteed the payment of a tax refund or credit; or engaged in other fraudulent or deceptive conduct which interferes with the Tax-General Article, and if such an injunction would prevent the recurrence of such conduct.

Background: The increased use and ease of electronic tax filing has benefitted both taxpayers and administrators but has also provided additional opportunities to engage in tax refund fraud. In addition, data breaches have become both more common and larger in magnitude over time. These typically result in the compromising of personally identifiable information such as Social Security numbers that can be used to file fraudulent income tax refund claims.

According to the Identity Theft Resource Center, in calendar 2015 there were 781 data breaches that compromised a total of 169.1 million personal records nationwide. Most (two-thirds) of the data breaches targeted medical/health care companies followed by government agencies and the military (about one-fifth) with nonmedical companies comprising the remaining incidents.

Over 20 of these data breaches targeted Maryland-based organizations ranging from State and local government agencies (including Frederick County public schools and the Department of Human Resources), nonmedical businesses (T. Rowe Price), and medical/health care companies including the largest breach at CareFirst BlueCross BlueShield (1.1 million records). In addition, two data breaches at the U.S. Office of Personnel Management involved the theft of the personal records of 22.1 million people. Impacted individuals include current and former federal employees, federal retirees, and family members and other contacts listed on federal background investigations.

In calendar 2015 through November, the Internal Revenue Service (IRS) rejected or suspended the processing of 4.8 million suspicious income tax returns. Of these returns

the IRS confirmed 1.4 million cases of identity theft seeking \$10.9 billion in refunds. The IRS has established several initiatives to combat the problem including the Security Summit Initiative, a partnership between the IRS, state revenue departments, and the tax services industry. The goal of the initiative is to develop processes to help protect taxpayer identities and prevent income tax refund fraud.

Several states have recently enacted additional procedures to combat tax refund fraud. The Illinois Department of Revenue recently announced that it would likely not process income tax refunds until after March 1 due to increased concerns over identity theft-related tax fraud. The North Dakota Tax Commission also announced additional measures to combat tax fraud, resulting in slower refund processing times. North Dakota, along with several other states, is also requesting a copy of a driver's license or other state-issued identification from those who file income taxes electronically.

The Comptroller's Office reports that in 2007 it prevented 314 fraudulent tax returns totaling \$656,000. In 2015, the office prevented 19,150 fraudulent returns totaling approximately \$38.6 million.

State Fiscal Effect: The bill requires employers and payors of payments subject to State withholding taxes to submit a withholding statement to the Comptroller by January 31 of each year.

The Comptroller's Office advises that verifying the information and income reported by an income tax refund claimant to that reported on the W-2 statement is an effective tool for identifying fraudulent claims and will improve its rate of refund fraud detection. Based on a representative sample of tax year 2014 fraudulent income tax claims, the Comptroller's Office estimates that receiving employer-submitted W-2 statements earlier as proposed by the bill will decrease revenue losses resulting from improper and fraudulent refund claims. The Comptroller estimates that general fund revenues will increase by an estimated \$6.7 million in fiscal 2017, \$10.7 million in fiscal 2018, and \$14.9 million annually beginning in fiscal 2019.

The Attorney General's Office reports that it may require additional personnel to the extent the bill results in increased prosecutions and litigation. The Department of Legislative Services advises that additional personnel can be requested through the annual budget process to the extent it is needed in future years to meet the requirements of the bill.

Local Revenues: Local income tax revenues will increase to the extent that the bill prevents income tax losses caused by improper and fraudulent claims. Based on the process of reconciling local income tax revenue distributions and refund amounts, local income tax revenues may increase beginning in fiscal 2018.

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), Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2016
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Taxpayer Protection Act

BILL NUMBER: HB 162

PREPARED BY: Comptroller's Office

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 proposal will have no impact on Small Business