

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 345 (Senator King)  
Budget and Taxation

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**Income Tax Refunds - Wynne Case - Eligibility**

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This bill allows a taxpayer who did not file a protective claim to file an amended income tax return to claim a refund pursuant to the final decision under *Maryland State Comptroller of the Treasury v. Brian Wynne, et ux.*, 431 Md. 147 (2013) (Wynne case). In order to qualify, the individual must not have used a tax return preparer in the applicable taxable year and must file an amended return by December 31, 2017. An individual who claims a tax refund may not receive interest on the income tax refund.

The bill takes effect July 1, 2017, and applies to tax years 2006 through 2014.

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**Fiscal Summary**

**State Effect:** Any increase in expenditures for the Comptroller's Office to implement the bill is assumed to be reimbursed from the local income tax reserve account. No effect on revenues.

**Local Effect:** Local income tax revenues decrease by an estimated total of \$14.5 million in fiscal 2019 through 2024. Local expenditures are not affected.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law:** In general, a taxpayer seeking a claim for an income tax refund must file an amended income tax return within the later of (1) three years from the time a return was filed or (2) two years from the time the tax was paid.

A protective claim is a claim for a specific amount of refund filed on an amended return with a request that the Comptroller delay acting on the refund request. The claim for refund may not be based on a federal audit. The delay requested must be due to a pending decision by a State or federal court which will affect the outcome of the refund, or for reasonable cause. The protective claim must be filed in accordance with specified limitations. If the Comptroller rejects a protective claim a taxpayer has a right to a hearing. A protective claim may only be filed if an original income tax return has been filed.

**Background:** In the Wynne case, the Maryland Court of Appeals upheld a ruling of the Howard County Circuit Court that the failure of the State to allow a credit with respect to the county income tax for out-of-state income taxes paid to other states on pass-through income earned in those states discriminates against interstate commerce and violates the Commerce Clause of the U.S. Constitution. The State appealed the decision to the U.S. Supreme Court, which affirmed the judgment of the Maryland Court of Appeals on May 18, 2015.

The Budget Reconciliation and Financing Act of 2015 (Chapter 489) requires the Comptroller to (1) pay certain interest and refunds for tax years 2006 through 2014 from the Wynne case from the local income tax reserve account and (2) if a local government does not reimburse the account in a timely manner, withhold the affected local government's quarterly income tax distributions in nine equal installments beginning in fiscal 2017. Chapter 24 of 2016 altered the time period for reimbursing the local income tax reserve account, if a local government does not reimburse the account in a timely fashion, by requiring the Comptroller to withhold from the affected local government's quarterly income tax distributions in 20 equal installments beginning in the fourth quarter of fiscal 2019 and ending in fiscal 2024.

As of December 2016, the Comptroller's Office has processed 30,840 income tax returns that claimed a total of \$236.2 million in refunds for tax years 2006 through 2014. **Exhibit 1** shows the number of income tax returns filing for a refund in each year and the total refunds claimed against the local income tax. In tax year 2015, the first year in which taxpayers could claim the local tax credit from the beginning of the tax year, taxpayers claimed a total of \$52 million in out-of-state income taxes paid to other states against the local income tax.

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**Exhibit 1**  
**Tax Returns and Refund Amounts – Wynne Case**  
**Tax Years 2006-2014**

<u>Tax Year</u>	<u>Returns</u>	<u>Total Refunds</u> <u>(\$ in Millions)</u>
2006/2007	779	\$15.2
2008	1,373	16.3
2009	1,990	18.9
2010	2,049	23.8
2011	2,767	35.2
2012	6,113	42.3
2013	6,526	39.4
2014	9,243	45.1
<b>Total</b>	<b>30,840</b>	<b>\$236.2</b>

Source: Comptroller's Office

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**Local Revenues:** The bill allows a taxpayer who did not file a protective claim to file an amended income tax return to claim a refund pursuant to the final decision under the Wynne case. In order to qualify, the individual must not have used a tax return preparer in the applicable taxable year and must file the claim by December 31, 2017. The Comptroller's Office advises that under current law taxpayers who did not file a protective claim generally may not file an amended return to receive a refund for tax years 2006 through 2012. A total of 340,500 tax returns claimed the out-of-state credit during this time period but have not filed for a refund pursuant to the Wynne decision. Of these returns, 109,800 did not use a paid tax preparer to file the return. Based on the existing refunds paid to date, the Comptroller's Office estimates that if 25% of these taxpayers file an amended return, local income tax revenues will decrease by an estimated total of \$14.5 million in fiscal 2019 through 2024. The largest overall impact is expected to be in Montgomery and Baltimore counties. As a percentage of collections, however, the largest impact is expected to be in Cecil and Worcester counties.

Of the refunds paid in tax years 2006 through 2014, a majority was paid to taxpayers who filed an amended return. In order to process these returns, the Comptroller's Office incurred additional expenditures of approximately \$600,000. Based on the assumptions above, State expenditures may increase by \$500,000 in fiscal 2018 due to the additional resources required to process the additional returns filed as a result of the bill. It is assumed

that the Comptroller's Office deducts this amount from the local income tax reserve administrative cost account.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Comptroller's Office; Department of Legislative Services

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