

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 193
Budget and Taxation

(Senator Serafini)

Income Tax - Interest Rate - Wynne Case

This bill repeals the annual interest rate required to be used to calculate interest owed for specified tax refunds resulting from the final decision under *Maryland State Comptroller of the Treasury v. Brian Wynne, et ux.*, 431 Md. 147 (2013) (Wynne case). **The bill takes effect July 1, 2018.**

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 \$28.0 million in FY 2019 through 2024. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Current Law:

Interest Rate – Tax Refunds and Deficiencies

By October 1 of each year, the Comptroller's Office must set the annual interest rate for tax refunds and monies owed to the State for the next calendar year. The rate is equal to the greater of three percentage points above the average prime rate of interest in the previous fiscal year based on a determination by the Board of Governors of the Federal

Reserve Bank or (1) 13% for calendar 2016; (2) 12% for calendar 2017; (3) 11.5% for calendar 2018; (4) 11% for calendar 2019; (5) 10.5% for calendar 2020; (6) 10% for calendar 2021; (7) 9.5% for calendar 2022; and (9) 9% for calendar 2023 and each year thereafter.

Interest Rate – Wynne Case Refunds

The Budget Reconciliation and Financing Act of 2014 (Chapter 464) altered the annual interest rate paid for income tax refunds resulting from the final decision under the Wynne case. The Comptroller's Office must use an annual interest rate equal to the average prime rate of interest during fiscal 2015, based on a determination by the Board of Governors of the Federal Reserve Bank. The provision applies to applicable tax refunds for tax years 2006 through 2014. Based on these requirements, the Comptroller determined that income tax refunds resulting from the Wynne case will be paid an annual interest rate equal to 3%.

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 9 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 2017, the Comptroller's Office has issued a total of \$244.9 million in refunds for tax years 2006 through 2014. 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.

State Expenditures: The Comptroller's Office reports that it has examined, calculated, and paid the interest owed to taxpayers who filed claims for refunds pursuant to the Wynne case. In order to process these returns, the Comptroller's Office incurred additional expenditures of approximately \$500,000. State expenditures may increase by \$250,000 in fiscal 2019 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.

Local Revenues: The Comptroller's Office advises that the agency has paid a total of \$8.5 million in interest payments to taxpayers who received a Wynne case refund and estimates that the bill will require that most taxpayers receive interest payments at an annual interest rate of 13%. Accordingly, local income tax revenues will decrease by approximately \$28 million in fiscal 2019 through 2024 due to additional interest rate payments.

Additional Information

Prior Introductions: SB 1024 of 2016 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Cross File: None.

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

Fiscal Note History: First Reader - January 29, 2018
nb/hlb

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