

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 621
Appropriations

(Delegate Korman, *et al.*)

Budget and Taxation

County Tax Fairness Act

This bill extends the time period in which local jurisdictions must reimburse the local income tax reserve account pursuant to specified refunds resulting from the final decision under *Maryland State Comptroller of the Treasury v. Brian Wynne, et ux.*, 431 Md. 147 (2013) (Wynne case).

Fiscal Summary

State Effect: The Comptroller’s Office can implement the bill’s requirements with existing resources. Revenues are not affected.

Local Effect: Local income tax revenues for local jurisdictions impacted by the Wynne case increase by approximately \$181.3 million in FY 2021 through 2026 and decrease by a corresponding amount in FY 2027 through 2041. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: The Budget Reconciliation and Financing Act of 2015 (Chapter 489) requires the Comptroller to (1) pay certain interest and refunds for prior tax years 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 the first quarter of fiscal 2017, until the amount is fully reimbursed by the local government for its share of related refunds and interest. Under Chapter 489, the Comptroller would have withheld

quarterly income distributions for affected local governments over three fiscal years – fiscal 2017 through 2019.

Chapter 24 of 2016 delayed and extended the time period for reimbursing the local income tax reserve account, if a local government does not reimburse the account in a timely manner, by requiring the Comptroller to withhold from the affected local government's quarterly distributions in 20 equal installments beginning in fiscal 2019. Chapters 28 and 824 of 2018 subsequently delayed by two years the time period in which the local reserve account must be reimbursed.

As a result, the Comptroller will withhold quarterly income distributions for affected local governments over six fiscal years – fiscal 2021 through 2026.

Local Income Tax Reserve Account

The local income tax reserve account is used by the Comptroller's Office to manage the cash flow of personal income tax payments and distributions to local governments. The account is also used to meet the State's liability for local income taxes according to generally accepted accounting principles. A portion of personal income tax net receipts is put into the account each month, representing an estimate of local income tax payments. In all but two months, a distribution of local income tax revenues is made from the account to local governments.

The Comptroller's Office distributes to each municipality, special taxing district, and county its pro-rata share of income tax revenue based on the income tax collected in each local jurisdiction. After making specified distributions, the Comptroller's Office distributes to each special taxing district and municipality, based on the certification as to the State income tax and county income tax liability of its residents, the greater of 17% of the county income tax liability or 0.37% of the Maryland taxable income of the residents. After making distributions to municipalities and special taxing districts, the Comptroller's Office distributes to each county the remaining revenue attributable to the county income tax.

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.

Local Fiscal Effect: As of fiscal 2019, a total of \$249.6 million in local income tax refunds have been paid from the reserve account and have not been reimbursed by local

governments. Under the bill, the Comptroller must withhold the amount owed from the affected local jurisdiction's quarterly income tax distributions in 80 equal installments beginning with fiscal 2021. **Appendix 1** shows the estimated net impact of altering the repayment schedule for local jurisdictions impacted by the Wynne case. Approximately 90% of the total outstanding amount will be withheld from Montgomery (58%), Baltimore (20%), Anne Arundel (7%), and Howard (3%) counties.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - February 13, 2020
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Appendix 1 – Local Fiscal Impact (\$ in Millions)

<u>Fiscal Year</u>	<u>Current Law</u>	<u>Proposed</u>	<u>Net Impact</u>
2021	\$25.0	\$6.3	(\$18.8)
2022	50.0	12.5	(37.5)
2023	50.0	12.5	(37.5)
2024	50.0	12.5	(37.5)
2025	50.0	12.5	(37.5)
2026	25.0	12.5	(12.5)
2027	0.0	12.5	12.5
2028	0.0	12.5	12.5
2029	0.0	12.5	12.5
2030	0.0	12.5	12.5
2031	0.0	12.5	12.5
2032	0.0	12.5	12.5
2033	0.0	12.5	12.5
2034	0.0	12.5	12.5
2035	0.0	12.5	12.5
2036	0.0	12.5	12.5
2037	0.0	12.5	12.5
2038	0.0	12.5	12.5
2039	0.0	12.5	12.5
2040	0.0	12.5	12.5
2041	0.0	6.3	6.3
Total	\$250.0	\$250.0	\$0.0