

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 67
Ways and Means

(Delegate Grammer)

Income Tax - Exemption - Individuals Erroneously Convicted, Sentenced, and Confined

This bill exempts from the State income tax an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. The Comptroller must adopt regulations establishing the tax exemption application procedures. **The bill takes effect July 1, 2020, and applies to tax years 2020 and beyond.**

Fiscal Summary

State Effect: General fund revenues decrease beginning in FY 2021 due to individuals claiming an exemption against the personal income tax. It is expected that a limited number of individuals and total amount of income will qualify for the exemption. Accordingly, general fund revenue losses are not expected to be significant in the near term. General fund expenditures increase by \$56,000 in FY 2021 due to one-time implementation costs at the Comptroller's Office.

Local Effect: Local income tax revenues decrease beginning in FY 2021 due to eligible individuals claiming an exemption against the local income tax. Under the assumptions above, the loss is not expected to be significant. Local expenditures are not affected.

Small Business Effect: Individuals who are eligible for the exemption and operate small businesses will benefit from the exemption.

Analysis

Current Law: Federal legislation enacted in 2015 established a federal income tax exclusion for wrongfully incarcerated individuals. Individuals who meet certain requirements may exempt any civil damages, restitution, or other monetary award received that relates to his or her incarceration for the covered offense for which the individual was convicted. A covered offense is any criminal offense under federal or state law and includes any criminal offense arising from the same course of conduct as that criminal offense. Maryland conforms to the federal income tax treatment of these monetary awards, so any amount excluded from the federal income tax is also excluded from the State income tax. Other income received by a wrongfully incarcerated individual is generally subject to the federal and State income tax.

Background: According to the National Governors Association, during the last 30 years, the number of defendants exonerated as a result of erroneous convictions has increased. This has been due to more reporting, better data collection, greater investigation of eyewitness identifications, and the advent of DNA and other forensic testing. However, despite advances in forensics, 78% of these exonerations resulted from factors other than DNA evidence.

According to the National Registry of Exonerations, 33 individuals have been exonerated for crimes in Maryland, representing a combined 446 years in prison. State law authorizes the Board of Public Works (BPW) to grant compensation if (1) the individual has received a full pardon by the Governor or (2) the State's Attorney for the jurisdiction where the conviction occurred certifies that the individual's conviction was in error pursuant to a Writ of Actual Innocence. Since 1989, 3 individuals have made claims to the State under the statute for \$1.4 million, \$900,000, and \$300,000, respectively. In October 2019, BPW approved a plan to pay approximately \$9.3 million to compensate 5 individuals who collectively served 120 years in prison and who were exonerated for crimes they did not commit.

Other recent developments may lead to additional exonerations. The Gun Trace Task Force was created in 2007 as a unit within the Baltimore City Police Department. In 2017, eight of the nine task force members were indicted and either pleaded guilty or were convicted of federal charges. According to news reports, the Baltimore City State Attorney's Office is seeking to vacate 790 cases related to the task force and other police officers named during these trials.

In December 2019, the Maryland State Police announced it was launching a review of about 4,000 cases pursuant to information that an employee within its forensics division may have falsified and/or not followed proper procedures in the ballistics evidence

submitted in these criminal cases. It is not clear how many, if any, exonerations will result from the review.

A recent Brookings Institution study examined the labor outcomes and economic characteristics of individuals who had recently been incarcerated. The study found that these individuals struggled to gain employment and those that did reported modest earnings. In the first full year after release, about one-half of individuals reported less than \$500 in earnings, about one-third earned between \$500 and \$15,000, and about one-fifth earned more than \$15,000. Less than 4 in 10 individuals filed a tax return, and about one-fifth claimed the federal earned income tax credit. The study also concluded that the pattern of poor economic outcomes only modestly improved in future years.

State Revenues: Eligible individuals can claim the exemption beginning in tax year 2020. As a result, general fund revenues may decrease beginning in fiscal 2021. Any revenue loss is not expected to be significant given it is expected that a limited number of individuals will qualify and those that do will likely report modest taxable earnings. Further, a significant portion of individuals will either not have a tax liability and/or claim the State and local earned income credits.

State Expenditures: The Comptroller's Office reports that it will incur a one-time general fund expenditure increase of \$56,000 in fiscal 2021 to add the exemption to the personal income tax forms. This includes data processing changes to the income tax return processing and imaging systems and systems testing.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Brookings Institution; Comptroller's Office; National Governors Association; National Registry of Exonerations; Department of Legislative Services

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