

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 804

(Delegate Palakovich Carr)

Ways and Means

Budget and Taxation

Taxes – Whistleblower Reward Program and Statute of Limitations for Tax Collections

This bill establishes a whistleblower reward program administered by the Comptroller's Office. The bill also alters the statute of limitations for tax collections by increasing the amount of time from when a tax is due until when it can be collected from 7 to 10 years and the amount of time from when a tax is assessed until when the assessment can be collected from 7 to 10 years. The changes to the statute of limitation provisions apply retroactively.

Fiscal Summary

State Effect: General fund revenues may increase by a significant amount depending on the number of whistleblower actions that occur each year. General fund expenditures increase by approximately \$146,100 in FY 2022. Future year expenditures include inflation and annualization.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	-	-	-	-	-
GF Expenditure	\$146,100	\$178,300	\$184,100	\$190,500	\$197,100
Net Effect	(\$146,100)	(\$178,300)	(\$184,100)	(\$190,500)	(\$197,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The following is a summary of key provisions of the proposed whistleblower reward program.

Eligibility for Monetary Award

A whistleblower who voluntarily provides original information to the Comptroller in a sworn affidavit that because of the original information, results in a final assessment in a covered enforcement action, or a successful outcome against a taxpayer in a related action, is entitled to receive a monetary award of at least 15%, but not more than 30% of the taxes, penalties, and interest collected through the enforcement action or related action. A whistleblower who provides information to the Comptroller in a sworn affidavit that is related to original information previously reported to the Comptroller by another whistleblower who is eligible for an award is not entitled to an award unless the information provided by the whistleblower materially adds to the information previously reported to the Comptroller. The total award may not exceed 30% of the taxes, penalties, and interest collected through the enforcement action or related action if two or more whistleblowers are eligible for an award.

Determination of Award Amount

The determination of the award amount is solely at the discretion of the Comptroller. In determining the award amount, the Comptroller must consider (1) the significance of the information provided by the whistleblower to the success of the covered enforcement action or related action; (2) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered enforcement action or related action; (3) the amount of the unpaid taxes owed the State that may be recovered under the covered enforcement action; (4) the interest of the State in deterring violations and promoting the reporting by whistleblowers of information relating to those violations; and (5) any additional relevant factors that the Comptroller may establish by regulation.

Individuals Ineligible to Receive Awards

An award may not be provided to a whistleblower if the Comptroller determines that the whistleblower (1) is, or was at the time that the whistleblower acquired the original information provided to the Comptroller, a member, an officer, or an employee of a federal, State, or local law enforcement agency responsible for the enforcement of tax-related matters; (2) was convicted of a criminal violation related to the covered enforcement action or related action for which the whistleblower otherwise could receive an award; (3) could have been convicted of a criminal violation or held personally liable for the tax liability related to the covered enforcement action or related action for which the whistleblower

otherwise could receive an award had the whistleblower provided the original information before the expiration of any applicable statute of limitations for prosecution or assessment of the whistleblower; or (4) when submitting information, knowingly and willfully made false, fictitious, or fraudulent statements to the Comptroller or used any false writing or document knowing the writing or document contained a false, fictitious, or fraudulent statement or entry. A determination of the Comptroller may be challenged within 45 days of the date of the determination, under specified conditions.

Right to Counsel

A whistleblower may not be required to have a contract with the Comptroller, the Office of the Attorney General, or any other agency in order to receive an award. A whistleblower who makes a claim for an award may be represented by counsel. A whistleblower who anonymously makes a claim for an award must be represented by counsel if the whistleblower anonymously submits the information on which the claim is based.

Disclosure of Whistleblower's Identity

The whistleblower must disclose the whistleblower's identity and provide any other information that the Comptroller may require, directly or through counsel before receiving payment of an award. Within 15 days after receiving original information provided by a whistleblower, the Comptroller must provide written notice to the whistleblower or, if the whistleblower is represented by counsel, the whistleblower's attorney that (1) acknowledges that the original information has been received by the Comptroller and (2) indicates the name of the individual in the Comptroller's Office who is required to serve as a contact with the whistleblower.

Public Disclosure Restrictions

Information that could reasonably be expected to reveal the identity of the whistleblower is not subject to disclosure under the Public Information Act. The Comptroller is prohibited from disclosing any information that could reasonably be expected to reveal the identity of the whistleblower unless that information is required to be disclosed to a party in connection with an action or proceeding brought by the Comptroller or otherwise by court order. As determined by the Comptroller to be necessary to accomplish the specified purposes, information that could be expected to reveal the identity of a whistleblower may be made available to appropriate regulatory and law enforcement authorities of this State, another state, the federal government, a foreign government, or self-regulatory organizations. An authority to which the Comptroller makes information available must agree to maintain that information in accordance with any assurances of confidentiality that the Comptroller deems appropriate.

Prohibiting Retaliation Against Whistleblower

The bill prohibits a current or prospective employer, contractor, or agent from discharging, demoting, suspending, threatening, or harassing, directly or indirectly, or in any other manner discriminating or retaliating against an individual in the terms and conditions of employment because of a lawful act done by that individual (1) in providing information to the Comptroller or a law enforcement agency concerning a possible violation of State tax law, including a rule or regulation, that has occurred, is ongoing, or is about to occur; (2) in initiating, testifying in, or assisting in an investigation or judicial or administrative action of the Comptroller or law enforcement agency or a related action; (3) in reporting a violation to another governmental entity or to a director, supervisor, or compliance officer of the employer, contractor, or agent; or (4) in refusing or declining any agreement that would provide for arbitration of claims arising.

An individual who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated or retaliated against in the terms and conditions of employment or is otherwise harmed or penalized by an employer or a prospective employer is entitled to all relief necessary to make the individual whole, including (1) an injunction to restrain continued discrimination; (2) hiring, contracting, or reinstatement to the position that the individual would have had but for the discrimination or to an equivalent position; (3) reinstatement of full fringe benefits and seniority rights; (4) compensation for lost wages, benefits, and other remuneration, plus interest; (5) removal of any adverse personnel record entries based on or related to the violation; and (6) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An individual seeking relief may bring an action in the appropriate circuit court for relief.

The provisions of the whistleblower reward program may not be construed to limit the rights, privileges, or remedies of a whistleblower under federal or State law or under a collective bargaining agreement. The rights and remedies provided for under the whistleblower reward program may not be waived by an agreement, a policy form, or a condition of employment. Salary and wages earned by a whistleblower during the whistleblower's employment and any consideration provided to the whistleblower in connection with the whistleblower's severance from employment may not be recovered by any action brought by the employer if the salary, wages, or consideration is related to original information provided by the whistleblower or the covered enforcement action.

Special Provisions

The provisions of the whistleblower reward program may not be construed to (1) preempt, limit, or restrict the authority or discretion of the Comptroller to investigate or enforce a violation of the Tax-General Article; (2) limit any power otherwise granted to the

Comptroller, Attorney General, State agencies, or local governments to investigate or enforce possible violations; (3) authorize a private right of action involving a violation of the Tax-General Article, except as specifically authorized; (4) prevent or prohibit a person from voluntarily disclosing any information concerning a violation of the Tax-General Article to any law enforcement agency or self-regulatory organization; or (5) preempt, limit, restrict, or otherwise affect the rights and rewards provided to *qui tam* plaintiffs under the Maryland False Claims Act.

Adoption of Regulations

The Comptroller is required to adopt regulations to implement the whistleblower reward program, including regulations establishing procedures for the submission of original information by whistleblowers and protocols governing the determination of awards and the timely payment of awards to whistleblowers.

Reporting Requirements

By December 31, 2022, and each December 31 thereafter, the Comptroller must report to the Governor and the General Assembly on (1) the total number of cases reported by whistleblowers during the previous fiscal year; (2) the number of cases that resulted in a payout to a whistleblower during the previous fiscal year; (3) the total amount of taxes collected by the State during the previous fiscal year as a result of the original information provided by whistleblowers; and (4) the total amount of rewards paid to whistleblowers during the previous fiscal year.

Current Law: Generally, a tax imposed may not be collected after seven years from the date the tax is due. If a tax collector fails to collect a tax and a receiver or trustee is appointed within a specified period to complete the tax collection, the period for collecting the tax extends for two years from the date that the trustee or receiver is appointed. If the assessment of any tax has been made within the period of limitations applicable to the assessment, a tax may not be collected after seven years from the date of the assessment.

State Revenues: General fund revenues may increase depending on the number of whistleblower actions that occur in a given year, the amount of additional tax revenues collected, and the amount of whistleblower rewards. Based on a similar whistleblower program at the federal level, the potential increase in State revenues could be significant.

Internal Revenue Service Whistleblower Office

Since 2007, the federal whistleblower office at the Internal Revenue Service has collected \$6.1 billion from noncompliant taxpayers, with reward amounts totaling over \$1 billion. In fiscal 2020, \$472.1 million in additional federal tax proceeds were collected, with reward

amounts totaling \$86.6 million. In recent years, the additional federal tax proceeds collected by the whistleblower program has averaged 0.021% of gross federal revenues, with the average reward amount totaling 19.7% of the additional taxes collected.

Potential Increase in State Revenues

Based on the experience of the federal government, establishing a comparable whistleblower program in Maryland could generate a net general fund revenue increase of approximately \$3.2 million annually. This assumes \$4.0 million in additional tax collections resulting from whistleblower actions and reward payments of \$0.8 million. However, as noted, the actual amount of any general fund revenue increase will depend on the number of whistleblower actions that occur and the amount of the additional taxes collected in any given year.

State Expenditures: General fund expenditures for the Comptroller's Office increase by \$146,100 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring one deputy Attorney General to administer the whistleblower reward program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1
Salaries and Fringe Benefits	\$140,507
Operating Expenses	<u>5,581</u>
Total FY 2022 State Expenditures	\$146,088

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 916 (Senator McCray) - Budget and Taxation.

Information Source(s): Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of State Police; Office of Administrative Hearings; Internal Revenue Service; Department of Legislative Services

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