

HOUSE BILL 366

Q7

2lr0620
CF SB 477

By: **Delegate Lierman**

Introduced and read first time: January 19, 2022

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 22, 2022

CHAPTER _____

1 AN ACT concerning

2 **Office of the Comptroller – Legal Division and Private Letter Ruling Procedures**

3 FOR the purpose of establishing a Legal Division in the Office of the Comptroller to provide
4 certain guidance to taxpayers and perform other duties relating to private letter
5 rulings as assigned by the Comptroller; requiring the Comptroller to issue certain
6 private letter rulings on the request of a person, except under certain circumstances;
7 authorizing the Comptroller to deny a private letter ruling request under certain
8 circumstances and establishing procedures for the denial; authorizing a person to
9 withdraw a private letter ruling request under certain circumstances; establishing,
10 subject to certain exceptions, the circumstances under which a private letter ruling
11 binds the Comptroller or may be relied on by a person; requiring the Comptroller to
12 publish certain private letter rulings on the Comptroller’s website in a certain
13 manner under certain circumstances; and generally relating to the Office of the
14 Comptroller and private letter rulings.

15 BY adding to

16 Article – Tax – General

17 Section 2–102.1; and 13–1A–01 through 13–1A–05 to be under the new subtitle

18 “Subtitle 1A. Private Letter Rulings”

19 Annotated Code of Maryland

20 (2016 Replacement Volume and 2021 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

22 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Tax – General

2–102.1.

(A) THERE IS A LEGAL DIVISION IN THE OFFICE OF THE COMPTROLLER.

(B) (1) THE HEAD OF THE LEGAL DIVISION IS THE DIRECTOR.

(2) SUBJECT TO THE SUPERVISION OF THE COMPTROLLER, THE DIRECTOR HAS ADMINISTRATIVE CONTROL OF THE LEGAL DIVISION.

(C) (1) THE DIRECTOR SHALL APPOINT OTHER OFFICERS AND EMPLOYEES OF THE LEGAL DIVISION IN ACCORDANCE WITH THE PROVISIONS OF THE STATE PERSONNEL AND PENSIONS ARTICLE, INCLUDING A MINIMUM OF SIX ATTORNEYS.

(2) OFFICERS AND EMPLOYEES OF THE LEGAL DIVISION ARE ENTITLED TO A SALARY AS PROVIDED IN THE STATE BUDGET.

(D) THE LEGAL DIVISION SHALL:

(1) PROVIDE EXPANDED AND DETAILED TAX GUIDANCE TO TAXPAYERS, INCLUDING PRIVATE LETTER RULINGS; AND

(2) PERFORM OTHER RELATED DUTIES AS ASSIGNED BY THE COMPTROLLER IN ACCORDANCE WITH TITLE 13, SUBTITLE 1A OF THIS ARTICLE.

SUBTITLE 1A. PRIVATE LETTER RULINGS.

13–1A–01.

IN THIS SUBTITLE, “PRIVATE LETTER RULING” MEANS A WRITTEN DETERMINATION ISSUED BY THE COMPTROLLER ON THE APPLICATION OF TAX LAWS AND REGULATIONS UNDER THIS ARTICLE TO A SPECIFIC SET OF FACTS THAT IS INTENDED TO APPLY ONLY TO THAT SPECIFIC SET OF FACTS.

13–1A–02.

(A) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE COMPTROLLER SHALL ISSUE A PRIVATE LETTER RULING ON THE WRITTEN REQUEST OF A PERSON AS SOON AS PRACTICABLE AFTER THE DATE ON WHICH THE COMPTROLLER RECEIVED THE WRITTEN REQUEST.

(2) (1) A PERSON REQUESTING A PRIVATE LETTER RULING SHALL INCLUDE IN THE WRITTEN REQUEST A STATEMENT AS TO WHETHER THE PERSON IS

1 THE SUBJECT OF AN ONGOING TAXATION MATTER, INCLUDING AN AUDIT, A CLAIM
2 FOR REFUND, A TAX PROTEST, OR AN APPEAL TO THE TAX COURT OR ANY OTHER
3 COURT WITH JURISDICTION OVER THE MATTER.

4 (II) IF THE PERSON IS THE SUBJECT OF AN ONGOING TAXATION
5 MATTER, THE STATEMENT REQUIRED UNDER THIS PARAGRAPH SHALL INCLUDE ANY
6 RELEVANT CASE NUMBERS OR OTHER IDENTIFYING INFORMATION.

7 (B) (1) THE COMPTROLLER, AS APPROPRIATE, MAY REQUEST
8 ADDITIONAL INFORMATION FROM THE PERSON REQUESTING THE PRIVATE LETTER
9 RULING.

10 (2) THE PERSON SHALL SUBMIT THE INFORMATION TO THE
11 COMPTROLLER WITHIN 30 DAYS AFTER THE DATE ON WHICH THE PERSON RECEIVES
12 THE COMPTROLLER'S REQUEST UNDER THIS SUBSECTION.

13 (C) (1) THE COMPTROLLER MAY DENY A REQUEST FOR A PRIVATE
14 LETTER RULING FOR GOOD CAUSE, INCLUDING:

15 (I) THE ISSUE IS THE SUBJECT OF EXISTING GUIDANCE TO
16 TAXPAYERS PUBLISHED BY THE COMPTROLLER;

17 (II) THE PERSON DID NOT TIMELY SUBMIT THE ADDITIONAL
18 INFORMATION REQUESTED BY THE COMPTROLLER IN ACCORDANCE WITH
19 SUBSECTION (B) OF THIS SECTION;

20 (III) THE ISSUE IDENTIFIED IN THE REQUEST:

21 1. IS UNDER EXTENSIVE STUDY OR REVIEW; OR

22 2. IS CURRENTLY BEING CONSIDERED IN A RULEMAKING
23 PROCEDURE, CONTESTED CASE, OR ANY OTHER AGENCY OR JUDICIAL PROCEEDING
24 THAT MAY RESOLVE THE ISSUE;

25 (IV) THE REQUEST INVOLVES A HYPOTHETICAL SITUATION OR
26 ALTERNATIVE PLANS;

27 (V) THE TRANSACTION FOR WHICH THE PRIVATE LETTER
28 RULING IS REQUESTED IS DESIGNED TO AVOID TAXATION;

29 (VI) THE FACTS OR ISSUES IDENTIFIED IN THE REQUEST ARE
30 UNCLEAR, OVERBROAD, INSUFFICIENT, OR OTHERWISE INAPPROPRIATE AS A BASIS
31 ON WHICH TO ISSUE A PRIVATE LETTER RULING; ~~OR~~

1 (VII) THE REQUEST IS TO DETERMINE WHETHER A STATUTE IS
2 CONSTITUTIONAL UNDER THE MARYLAND CONSTITUTION OR THE UNITED STATES
3 CONSTITUTION;

4 (VIII) THE ISSUE IS CLEARLY AND ADEQUATELY ADDRESSED BY
5 STATUTE, REGULATION, OR COURT DECISION; OR

6 (IX) THE ISSUE INVOLVES THE TAX CONSEQUENCE OF ANY
7 PROPOSED BUT NOT YET ENACTED FEDERAL, STATE, OR LOCAL LEGISLATION.

8 (2) IF THE COMPTROLLER DENIES A REQUEST FOR A PRIVATE
9 LETTER RULING UNDER THIS SECTION, THE COMPTROLLER SHALL NOTIFY THE
10 PERSON IN WRITING:

11 (I) OF THE REASONS FOR THE DENIAL AND WHY THOSE
12 REASONS CONSTITUTE GOOD CAUSE; AND

13 (II) WITHIN 60 DAYS AFTER THE DATE ON WHICH THE REQUEST
14 WAS SUBMITTED TO THE COMPTROLLER.

15 (D) A PERSON MAY WITHDRAW, IN WRITING, THE REQUEST FOR A PRIVATE
16 LETTER RULING AT ANY TIME BEFORE THE ISSUANCE OF THE PRIVATE LETTER
17 RULING UNDER THIS SECTION.

18 13-1A-03.

19 (A) A PRIVATE LETTER RULING ISSUED UNDER THIS SUBTITLE MAY BE
20 RELIED ON SOLELY AND PROSPECTIVELY BY THE PERSON FOR WHOM THE PRIVATE
21 LETTER RULING IS REQUESTED UNLESS THERE IS AN INTERVENING STATUTORY OR
22 REGULATORY CHANGE OR THE PRIVATE LETTER RULING IS REVOKED BY THE
23 COMPTROLLER.

24 (B) A PRIVATE LETTER RULING IS BINDING ON THE COMPTROLLER FOR A
25 PERIOD OF ~~3~~ 7 YEARS UNLESS:

26 (1) THERE HAS BEEN A MISSTATEMENT OR OMISSION OF MATERIAL
27 FACTS IN THE REQUEST;

28 (2) THE ACTUAL FACTS ARE DETERMINED TO BE MATERIALLY
29 DIFFERENT FROM THE FACTS ON WHICH THE PRIVATE LETTER RULING WAS BASED;

30 (3) THERE HAS BEEN A CHANGE IN LAW OR A FINAL DECISION IN A
31 CONTESTED CASE THAT THE COMPTROLLER DETERMINES AFFECTS THE VALIDITY
32 OF THE PRIVATE LETTER RULING; OR

1 **(4) THE COMPTROLLER HAS MODIFIED OR REVOKED THE PRIVATE**
2 **LETTER RULING.**

3 **(C) AN UNFAVORABLE PRIVATE LETTER RULING DOES NOT BIND THE**
4 **PERSON FOR WHOM THE PRIVATE LETTER RULING WAS REQUESTED.**

5 **(D) THE MODIFICATION OR REVOCATION OF A PRIVATE LETTER RULING BY**
6 **THE COMPTROLLER MAY NOT BE APPLIED RETROACTIVELY TO TAXABLE PERIODS**
7 **OR TAXABLE YEARS BEFORE THE EFFECTIVE DATE OF THE MODIFICATION OR**
8 **REVOCATION.**

9 **13-1A-04.**

10 **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE COMPTROLLER**
11 **SHALL PUBLISH PERIODICALLY ON THE COMPTROLLER'S WEBSITE COPIES OF**
12 **PRIVATE LETTER RULINGS THAT THE COMPTROLLER DETERMINES TO BE OF**
13 **INTEREST TO THE GENERAL PUBLIC.**

14 **(B) THE COMPTROLLER SHALL REDACT PERSONALLY IDENTIFIABLE**
15 **INFORMATION IN A PUBLISHED PRIVATE LETTER RULING IN ORDER TO ENSURE THE**
16 **CONFIDENTIALITY OF ANY PERSON THAT IS THE SUBJECT OF THE PRIVATE LETTER**
17 **RULING.**

18 **13-1A-05.**

19 **THE COMPTROLLER SHALL ADOPT REGULATIONS NECESSARY TO CARRY OUT**
20 **THE PROVISIONS OF THIS SUBTITLE, INCLUDING REGULATIONS THAT ESTABLISH:**

21 **(1) THE PROCEDURE, FORM, AND TIME PERIODS FOR SUBMITTING A**
22 **REQUEST FOR A PRIVATE LETTER RULING;**

23 **(2) THE TERMS AND CONDITIONS UNDER WHICH A PRIVATE LETTER**
24 **RULING MAY BE REVOKED OR MODIFIED;**

25 **(3) THE LIMITATIONS ON THE APPLICABILITY OF A PRIVATE LETTER**
26 **RULING TO SPECIFIC PERSONS, TRANSACTIONS, FACTUAL CIRCUMSTANCES, AND**
27 **TIME PERIODS;**

28 **(4) THE CIRCUMSTANCES UNDER WHICH A REQUEST FOR A PRIVATE**
29 **LETTER RULING MAY BE DENIED BY THE COMPTROLLER FOR GOOD CAUSE; AND**

30 **(5) GUIDELINES FOR THE PUBLICATION OF PRIVATE LETTER**
31 **RULINGS.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
2 1, 2022.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.