



**SB 679 - Disclosure of Tax Information - Tax Compliance Activity
and Binding Data Use Agreements
Senate Budget and Taxation Committee
February 14, 2024
Legislative Position: Favorable with Amendments**

The Maryland Association of Certified Public Accountants (MACPA) is a membership organization with more than 8,000 CPA members serving thousands of individuals and businesses of all sizes throughout the state.

CPAs want to be able to support SB679. Currently, our position is "Favorable with Amendments" on the bill, which would allow the Comptroller to share privileged tax information with third parties assisting the State in tax compliance activity. We have met with the Comptroller's Office about our suggested amendments and are continuing those discussions.

We understand the reasons for the bill: the Comptroller's goal of closing the "tax gap" by finding the scofflaws who are not paying their legally owed taxes and providing additional resources to support the currently small audit staff in those audit and compliance functions. CPAs represent good taxpaying citizens and businesses, and we want all to pay the proper amounts under the law.

While we support the bill's goals, CPAs do continue to have concerns about the First Reader version and also about the several amendments the agency recently presented. We suggest continued consideration of amendments to address several matters:

- Protection of taxpayers' private information demands that the recipients of that information be required to enter into a binding written agreement with the Comptroller's Office that describes in detail such terms as the permitted uses of the taxpayer information, that the recipients' activities will always be under the direction and control of the Comptroller's Office, the penalties for misuse of the information, and other terms. We understand that the "may require" versus "shall require" such a binding written agreement is under further review. We strongly believe that "shall require" is of paramount importance.
- Clarity is needed regarding to whom the Comptroller can provide taxpayers' private information. The amendment that lists only "government entities" and "tax compliance organizations" (such as the Multistate Tax Commission and similar) does not seem to include the "data" organizations that we understand to be one of the target categories of recipients. It also leaves open the question, and our concern listed below, as to whether any of those recipients can hire third party auditors who would not be under the control of Maryland's Comptroller and who could be paid on a contingency fee basis.

- Any third parties who will be involved in tax audit activities, whether hired by the Maryland Comptroller's Office or by other entities with whom Maryland has agreements, should not be paid on a contingency fee basis. Many CPAs have had very bad experiences where other states have given private taxpayer information to third-party auditors, especially those that are paid on a contingent basis, i.e., their fee is based on the amount of the proposed assessment they issue. Such auditors have an incentive to quickly issue a large proposed assessment that ends up being incorrect but only after the taxpayer, its CPA, and the state hearings officers spend many, many hours and dollars reviewing and correcting the assessment. Our request for this amendment is restricted to audit activities of "taxes" that are covered by the Tax-General Article, as the only Article to which all of SB679 relates, so as not to upend the current arrangements that Maryland has with third parties who audit for Unclaimed Property remittances that are covered by the Commercial Law Article.
- All recipients of tax information should be "subject to the direction and supervision of the Comptroller at all times." We thank the Comptroller for including this in the most recent submitted amendments and ask that it remain in the bill.
- We suggest adding to the statute the specific reference to the Internal Revenue Code section that deals with confidentiality and nondisclosure rules, and that those rules are incorporated into the written agreement between the Comptroller's Office and the person receiving the private tax information. Saying only "consistent with state and federal requirements" is not helpful to the reader of our law – what "federal requirements" do we mean? Citing Internal Revenue Code section 6103 and its components informs the reader of the Legislature's intent and seriousness of the parameters that are to be employed.
- We believe it important that Maryland increase the penalty applied to any person who improperly discloses tax information. It is our view that the current \$1,000 penalty in Maryland law is not a sufficient disincentive. We recommend that in order to have penalties that might make bad actors think twice about improper actions, the penalties in current Tax-General Article section 13-1018 should be amended to reflect the same penalties that are contained in the Internal Revenue Code section 7213. Maryland draws much of its tax policies from the IRC; we suggest that these penalties should be the same too.

We appreciate the Comptroller's team's time that they are spending with us and their willingness to work with us on amendments. We look forward to an amended bill that CPAs can fully support.

For more information about this position, please contact marybeth@macpa.org or Nick Manis nmanis@maniscanning.com.