

ReveNews



Summer 2004

Maryland Tax Information

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www.marylandtaxes.com

Court Overturns Price Posting Statute

On April 30, 2004, the Honorable Judge William D. Quarles, Jr., acting on behalf of the U. S. District Court for the District of Maryland, Northern Division, in the case of TFWS, Inc. v. Comptroller of Maryland, found in favor of the plaintiff. The court determined that the state statute authorizing price postings on wines and distilled spirits and related regulation were a per se violation of the Sherman Act and unlawful, notwithstanding the state's authority to regulate alcoholic beverages under the 21st

Amendment. The court found that the statute and related regulation placing a ban on volume discounts were also a per se violation of the Sherman Act and unlawful. The court entered an injunction prohibiting the Comptroller from enforcing both the price posting and ban on volume discount provisions.

The effect of the ruling was to render the price posting requirement and the prohibition on quantity discounts from wholesaler to retailer for wines and distilled spirits both unenforceable. The Comptroller immediately

requested a stay of the injunction pending an appeal of this matter. On May 11, 2004, the stay was denied by the court. The Comptroller has asked the Attorney General to pursue an appeal and a stay of the injunction will be sought from the appellate court.

Comptroller Collects with Charter Tool

The Corporate Charter Project, another tool the Comptroller uses to collect business tax liabilities, brings in \$2.5 million each year. Beginning in June, approximately 100 warning letters are sent daily to corporations that do not have payment plans and are not in bankruptcy. The taxpayer has 15 days to contact the Collections Section to resolve the issue or face forfeiture of the corporate charter. Taxpayers may resolve their accounts with a down payment of one-third of the liability with the balance to be paid over the next 12 months.

Comptroller's Comments

Fiscal breathing room



I don't think I'm going too far by saying that recent revenue reports make the glass a little more half full than empty for Maryland's budget.

Maryland's economy is growing again and we expect it to get better throughout the year. Many members of the Board of Revenue Estimates' business advisory panel said 2004 would be the best year of the decade.

The state is experiencing a surge in sales and income taxes, as well as from the lottery. All are accelerating and beating expectations. We expect to finish the year more than \$150 million above the estimate, which will solve part of our budget problem for fiscal year 2006. And we still have a fully funded rainy day fund.

These increases will put a dent in the budget gap, but the improvement is also the result of several years of revenue adjustments and tight budgets. For the future, we must continue to be vigilant and disciplined in our spending and not depend on improving revenues alone. We need to continue to practice fiscal responsibility. The people of Maryland deserve no less.

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TAX CHANGES LEGISLATED BY THE 2004 MARYLAND GENERAL ASSEMBLY



Income Tax

HB 219 (Chapter 159) – Job Creation Tax Credit – Extension

Extends the Jobs Creation Tax Credit by three years. Previously, the credit could not be earned for any year beginning on or after January 1, 2007. Under this bill, the credit may now be earned for any year beginning before January 1, 2010. Effective July 1, 2004.

HB 297 (Chapter 556) – Tax Compliance – Holding Companies

Authorizes the Comptroller to allocate certain income, deductions, credits, or allowances between and among two or more related companies. Requires that specified interest expenses and specified intangible expenses to be added to federal taxable income for the purpose of determining Maryland modified income for certain transactions between related companies. A subtraction modification is also allowed for specified royalties, interest, or similar income from intangibles from a related company if the required addition modification has been included on the return of the related member that paid the income. Companies that are subject to the new addition modification must pay estimated taxes of at least 90 percent of the tax year 2004 liability or they will incur interest on the unpaid tax and penalties for the underpayment of estimated tax. For those companies, the hold-harmless provision of 110 percent of the prior year's tax liability will not apply for tax year 2004. Effective July 1, 2004, for tax years 2004 and later.

HB 679 (Chapter 76) – Maryland Heritage Structure Rehabilitation Tax Credit Program

Extends the Maryland Heritage Structure Rehabilitation Tax Credit and makes certain changes to the application of the credit. Except for the expiration date, the law in effect prior to the enactment of this bill applies to the

rehabilitation of a single-family, owner-occupied residence for which an application for approval is submitted on or before June 30, 2004, and to the rehabilitation of a commercial structure for which any application was approved on or before June 30, 2005.

For a single-family, owner-occupied residence for which an application for approval is submitted on or after July 1, 2004, the maximum credit for a single rehabilitation is set at \$50,000. Credits may not be claimed unless the application for approval of a plan is received by the director of the Maryland Historical Trust before July 1, 2008.

For any application approved on or after January 1, 2005, for a commercial rehabilitation, the maximum amount of credits available for all commercial rehabilitations is increased from \$10 million to \$24 million for calendar year 2004; at least \$10 million of this amount must be allocated under a specified competitive award process. The legislation establishes a reserve fund from which initial credit certificates are issued for commercial rehabilitations. The governor must appropriate at least \$20 million to the reserve fund for fiscal year 2006, increasing to \$30 million a year for fiscal years 2007 and 2008, and any unissued amounts may be rolled forward to the following fiscal year. No initial credit certificates may be issued after fiscal year 2008.

For commercial rehabilitations, an application for approval may only be accepted between January 1 and March 31 each year and may not be accepted if a substantial part of the rehabilitation has been completed or if three or more applications for commercial rehabilitations have been submitted by that taxpayer in that year that total more than \$500,000. No more than half of the credit certificates may be issued for projects in a single county or Baltimore City and, if applied for, at least 10 percent must be issued to tax exempt organizations. An initial credit certificate will expire if the

project is not completed by the end of the fiscal year following the fiscal year in which the certificate was issued. Effective July 1, 2004.

HB 1000 (Chapter 392) – Maryland Cancer Fund Checkoff

Creates a third checkoff on the Maryland personal income tax return. Proceeds from donations made through the checkoff will go to the Maryland Cancer Fund and be used for cancer research, prevention and treatment. A portion of the proceeds (up to 5 percent) may also be used to promote further donations to the fund. Effective July 1, 2004, for tax years 2004 and later.

SB 68 (Chapter 22) – Police, Fire, Rescue and Emergency Services Personnel in an Emergency or a Disaster Area

Created a new subtraction modification for the wages of nonresident individuals when earned for police, fire, rescue or emergency services performed in an area covered under a declared State of Emergency. These wages are also exempt from the state's income tax withholding. Furthermore, the bill exempts nonprofit organizations from the requirement to register as a foreign corporation doing business in Maryland if the only activity in the state is supplying police, fire, rescue or emergency services in an area covered under a State of Emergency. Effective July 1, 2004 for tax years 2004 and later.

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TAX CHANGES LEGISLATED BY THE 2004 MARYLAND GENERAL ASSEMBLY



SB 69 (Chapter 23) – Quarterly Withholding Returns – Due Date

Changes the due date for a withholding tax return that is filed quarterly from the last day of the month to the 15th day of the month following the end of the quarter in which the tax withheld. With this change, withholding returns for both the last month of each quarter and quarterly withholding returns are due on the 15th day of the month. Effective January 1, 2005.

SB 187 (Chapter 557) – Holding Companies – Settlement Period

HB 297 requires addition and/or subtraction modifications for certain related-party transactions. This bill allows a taxpayer to elect whether to have the additional tax calculated as though otherwise deductible payments were added back on the return of the paying taxpayer, or reported as income on the return of the receiving taxpayer thus subject the state income tax. The bill mandates that interest of up to only 6.5 percent may be assessed by the Comptroller; all penalties for taxes paid during the settlement period will be waived.

No assessment will be enforced for any tax year beginning before January 1, 1995, if all tax and related interest are paid during the settlement period for tax years 1995 through 2003. Effective July 1, 2004.

SB 508 (Chapter 430) – Budget Reconciliation and Financing Act of 2004

Extends the local income tax, at the lowest local income tax rate (currently 1.25 percent), to nonresidents who are subject to the state income tax, but not otherwise subject to the local tax (effective for tax years 2004 and later). The legislation also permanently decouples from two federal law changes, enacted last year, for purposes of the calculation of the state tax. The federal law changes had increased depreciation deductions for Section 179 property and

for certain heavy-duty sports utility vehicles (SUVs). The state's decoupling is effective for tax years 2003 and later for the federal provision affecting Section 179 property and effective for SUVs placed in service after May 31, 2004.

In addition, the legislation requires that the Comptroller deduct the portion of the administrative cost to administer the corporate income tax that is applicable to the share of corporate income tax revenue distributed to the Gasoline and Motor Vehicle Revenue Account in the Transportation Trust Fund. Effective July 1, 2004.

Sales and Use Tax

HB 1547 (Chapter 424) – Dorchester County – Hotel Surcharge for Chesapeake Bay Conference Center

Imposes a hotel surcharge, in addition to the sales tax, on the cost of a hotel room in hotels with at least 380 rooms located in Dorchester County. The surcharge will not be imposed if the Maryland Economic Development Corporation can certify that bonds they issued, which were secured by the Dorchester County Economic Development Fund, have been paid in full. Proceeds from the surcharge will be used to complete the Chesapeake Bay Conference Center, including construction claims related to the project and bonds issued in connection with such claims. As of July 1, 2004, no such bonds have been issued, therefore, no surcharge will be imposed until further notice. Effective June 1, 2004.

SB 508 (Chapter 430) – Budget Reconciliation and Financing Act of 2004

Extends for another two years the reduction, by half, in the discount allowed to vendors for a timely filed and paid sales and use tax return. Effective July 1, 2004.

Estate Taxes

SB 508 (Chapter 430) – Budget Reconciliation and Financing Act of 2004

Legislation passed during the 2003 Session of the General Assembly decoupled from the federal repeal of the federal estate tax and from the phase-out of the state death tax credit. SB 508 made certain changes to Maryland law as it relates to the decoupling. The legislation requires that the state's estate tax be calculated before deducting any state death tax allowed under Internal Revenue Code '2058.

The bill also clarifies the requirement to calculate the estate tax using a federal unified credit that corresponds to an applicable exclusion of \$1,000,000 and adds a stipulation that, when a federal estate tax return is not required to be filed, the person responsible for paying the inheritance tax for property that passes from a decedent's estate is also responsible for filing a Maryland estate tax return and for payment of any tax due. Applicable to decedents dying after December 31, 2003.

SB 860 (Chapter 145) – Inheritance Tax – Former Stepchildren and Former Stepparents

Exempts former stepchildren and former stepparents of a decedent from the inheritance. Effective July 1, 2004, and applicable to all decedents dying on or after July 1, 2004.

Alcohol and Tobacco Taxes

HB 477 (Chapter 348) – Tobacco Settlement – Escrow Requirements

Changed the formula for the early release of escrow funds deposited by a tobacco product manufacturer not participating in the Master Settlement Agreement (MSA). The formula specifies that the escrow payments be based on the units sold in Maryland. If those

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escrow payments exceed the amount the manufacturer would have been required to pay if it had become a party to the MSA, any excess reverts back to the manufacturer. Effective June 1, 2004.

SB 27 (Chapter 79) – Winery Special Event and Charity Wine Auction Permits

Reduced the fee for a one-day wine auction permit issued to certain charitable organizations from \$500 to \$10; these organizations, as well as government entities, may no longer obtain winery special event permits. The legislation also increases, from one to three, the number of permits for winery special events that may be issued each year for use in the same political subdivision. Effective June 1, 2004.

Motor Fuel Tax

HB 228 (Chapter 161) – Motor Fuel Tax Refunds – Concrete Pump Trucks

Allows refunds for up to 35 percent of the motor fuel tax paid on fuel used in concrete pump trucks. Refunds will be claimed on the same form used for refunds of fuel used in concrete mixing vehicles. Effective July 1, 2004.

HB 829 (Chapter 380) – Registration of Service Station Dealers and Sale of Gasoline Products

Extends the effective date of a requirement, scheduled to take effect on October 1, 2004, that requires gasoline wholesalers to provide fuel on the same terms to all service station dealers. The requirement will now take effect on October 1, 2009. Also, extends to through September 30, 2009, the conditional prohibition on the Comptroller of Maryland from issuing a certificate of registration to a retail service station dealer who markets motor fuel through a retail service station altered, en-

larged or structurally modified after July 1, 1977. Effective October 1, 2004.

Unclaimed Property

SB 276 (Chapter 110) – Interest on Abandoned Property

Repeals the requirement that the Comptroller pay interest on certain property claimed by the owner. Effective July 1, 2004.

SB 508 (Chapter 430) – Budget Reconciliation and Financing Act of 2004

Requires that holders of abandoned property be required to pay or deliver to the administrator all abandoned property at the time the report is filed. Effective July 1, 2004. Reports and remittances for corporations, financial institutes and non-insurance filers for the period ending June 30, 2004, are due October 31, 2004. Reports and remittances for insurance company filers for the period ending December 31, 2004, are due April 30, 2005.

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