Maryland State Tax Controversy Discussion

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Overview of Maryland Tax Controversies

Where to Find Help
Statute of Limitations and Liens
Penalty and Interest Assessments
Sales of Business and Bulk Sales Tax Requirements
Officer Liability for Business Taxes
Offer in Compromise
Avoiding Maryland Tax Controversies

Places to Find Help:
- Taxpayer Service (Baltimore and Annapolis)
- Hearings & Appeals, Compliance Division (Baltimore)
- Offer-in-Compromise (Case Review Board)
- Individual Collections (Annapolis)
- Ombudsman’s Office (Annapolis)
- Voluntary Disclosure Program
- Auditor (or Manager)
Avoiding Maryland Tax Controversies – Resolving Tax Issues Efficiently

First Question – How much does the taxpayer owe?
- Notices of Adjustment, Computation, and Assessment
- Taxpayer Service

Second Question - Do I agree with the tax amount due (or refund denial)?
- Yes!
  - Individual Collections
  - Offer-in-Compromise
- No!
  - Hearings & Appeals
  - Auditor (depending on stage or issues involved)
  - Taxpayer Services (depending on stage or issues involved)
Avoiding Maryland Tax Controversies – Resolving Tax Issues Efficiently

Second Step – Do I agree with the tax liability? Yes!

Individual Collections
- Payment Plans
- Lump Sum Payments
- Referral to Case Review Board
- MVA License Holds

Offer-in-Compromise
- Payment Plans
- Lump Sum Payments
- Compromise Tax Liability
Individual Tax Collections - POA

The Comptroller’s Office will accept:
- a completed federal Form 2848 (Power of Attorney and Declaration of Representative);
- a completed federal Form 8821 (Tax Information Authorization) as power of attorney forms for Maryland tax purposes.
- The Comptroller’s Office will not accept:
  - Federal Form 8655 (Reporting Agent Authorization)
  - Generic Power of Attorney forms.

The POA must contain the following:
- The taxpayer’s name(s), address, Social Security number(s), Signature(s), Date
- Representative’s name, mailing address, daytime telephone number, and signature

Tax Matters Section Must Include:
- Type of tax
- Maryland tax form number (502, MW506)
- Year(s) or period(s) covered
Individual Tax Collections - POA

Power of attorney forms can be mailed, faxed or scanned and e-mailed

- Mailing the forms they can be sent to:
  - Comptroller of Maryland
    Revenue Administration Division
    P.O. Box 1829
    Attn: POA.
    Annapolis, Maryland 21404-1829
- If faxing the forms they can be faxed to 410-260-6213.
- If scanning and e-mailing the forms they can be e-mailed to RADPOA@comp.state.md.us
Individual Tax Collections - Payment Plans

Notice of Income Tax Assessments

Online
- [https://interactive.marylandtaxes.com/Individuals/payagr/](https://interactive.marylandtaxes.com/Individuals/payagr/)
- set up an online payment agreement for your Maryland personal income tax liability
  - need to enter the notice number from a recent tax bill when setting up a new payment agreement.
- set up automatic payments for an existing payment agreement
  - need your payment agreement number in order to set up an automatic payment for an existing payment agreement

Phone: 410-974-2432 or 1-888-674-0016

Extended Payment Plans
- Financial Disclosure Statement
Statute of Limitations and Liens

General Statute of Limitations for Individual and Business Taxes

Extension of the Statute of Limitations

Statute of Limitations to Collect on an Assessment

Duration of Liens
The Life Cycle of a Maryland Tax Controversy

Starts with a Notice of Assessment or Tax Computation with Appeal Rights

Hearings & Appeals ("H&A") is located in Baltimore and Handles Administrative Appeals of Tax Assessments and Refund Denials

Appeal Must be in writing
• Letter to: “Comptroller of Maryland, Hearings & Appeals, 301 W. Preston Street, Room 315, Baltimore, MD 21201”
• E-mail cdhearings@comp.state.md.us
• Online at www.marylandtaxes.com
• Fax to: (410) 333-7745
The Life Cycle of a Maryland Tax Controversy

Notice of Income Tax Assessments
- 30 days to appeal
- From the date of assessment
- Watch the number of days in month
- Postmark date or "mailbox rule"

Refund Denials
- Notice of Tax Computation
- 30 days to Appeal

"Application to Correct An Erroneous Assessment" – TGA 13-509
- "Late" Appeals of assessments made beyond 30 day period
- Length of lateness does not matter, but may only be filed once
- Document Request from Hearing Officer (30 days)
- Review documents to determine if documentation warrants adjustment
- No "late" appeals of refund denials
- No appeal to Maryland Tax Court...decision is final!
- Cannot increase tax liability for late appeal
The Life Cycle of a Maryland Tax Controversy

Hearing Not Required ("HNR")
- Simple Issues
- Resolved with Document Submissions
- Does not warrant personal appearance

Penalty and Interest Waiver Requests ("PWs")
- Appeal of Penalty and Interest Assessments
- Unable to resolve with collections

Hearing Request
- Complex or Novel Legal Issue
- Factual Dispute
- Personal Appearance in Baltimore Office

Application to Correct an Erroneous Assessment
- Missed 30 day window for a timely appeal
The Life Cycle of a Maryland Tax Controversy

Informal Administrative Hearing

Baltimore office only

Format

- 45 minutes for individuals
- Recorded
- Hearing Officer introduces case
- Swearing in parties who are testifying
- Auditor gives overview of assessment
- TP or Representative presents case
- Hearing Officer controls hearing
- Sets Deadline
The Life Cycle of a Maryland Tax Controversy

Respond to Hearing Officer’s Request and Deadline

Hearing Officer evaluates evidence and testimony

May disallow evidence or testimony based on credibility or relevancy

Disputes on constitutional issues, Comptroller’s office policy, legal issues, and evidentiary matters typically go to MD Tax Court

H&A does not waive tax due to financial hardship

One of three decisions:
  - Closing Letter
  - Settlement Agreement
  - Notice of Final Determination

Notice of Final Decision appealable to MD Tax Court
  - Must be appealed within 30 days
  - No extensions for any reason
The Life Cycle of a Maryland Tax Controversy – Typical Tax Court Cases

- High-dollar assessments
- The taxpayer is claiming the Comptroller’s long-standing position is wrong or illegal
- Refunds
- Fraud audits
Assessments and Waivers of Penalty and Interest – In General

Penalty Waivers
- Generally Two Types of Penalties:
  - 10% for Late Payment of Tax
  - $500 for Filing a Frivolous Tax Return
- Waiver of Penalty for Late Payment of Tax for “Reasonable Cause”
  - Case by Case Basis
  - First Time Request
  - Current with tax return filings
  - Reasonable Mistake by Taxpayer
  - Agreement to Pay
Assessments and Waivers of Penalty and Interest – In General

Interest Waivers
- Estimated Tax Interest
- Interest for Late Payment of Tax
  - 13% interest rate
- Waiver of Interest for Late Payment of Tax for “Reasonable Cause”
  - Case by Case Basis
  - Mistake not made by taxpayer
  - Special circumstances
Assessment of “Fraud” Penalties

False Tax Returns
- Tax – General Article 13-703 “If, with the intent to evade the payment of tax, a person, including an officer of a corporation, or a government unit makes a false tax return, the tax collector shall assess a penalty not exceeding 100% of the underpayment of tax.”
- Requirements:
  - Intent to evade the payment of tax
  - Makes a false tax return

Fraudulent Failure to File Returns
- Tax – General Article 13-704 “If, with the intent to evade the payment of tax, a person or government unit fails to file a tax return when required under this article, the tax collector shall assess a penalty not exceeding 100% of the underpayment of tax.”
- Requirements:
  - Intent to evade the payment of tax
  - Failure to file a tax return
Assessments of “Fraud” Penalties


- Department store rented space to a fur manufacturer for the purpose of selling furs
- Auditor determined that fur sales were made to Maryland residents without tax being collected and that incomplete and false records were maintained to create impression that deliveries made to Maryland residents out-of-state
- Burden of proving fraud is on the party asserting a fraud
- Court held fraud penalty was not applicable because Comptroller’s office did not prove that the taxpayer intended to not pay a tax which it knew was due and owing.
- Taxpayer “attempted to apply the law for the benefit of its customers.”
- Tax Evasion vs. Tax Avoidance standard used by the court
Assessment of “Fraud” Penalties

Genie & Company, Inc. v. Comptroller of the Treasury

- Auditor determined that taxpayer engaged in the business of selling diesel fuel was significantly underreporting sales tax by claiming taxable sales as exempt sales
- 7 Badges of Fraud
  - Consistent and substantial understatements of income or sales
  - Failure to maintain adequate records
  - Implausible or inconsistent explanations of behavior, including lack of credible testimony before a tribunal
  - Concealment of assets
  - Failure to cooperate fully with tax authorities
  - Awareness of the obligations to file returns, report income or sales, and pay taxes
  - Failure to file returns.
- “No one badge or factor should be given excessive weight”
- “We do not believe that understatement of income, in and of itself, would be enough to prove fraud”
- “not be required that a specified number of badges be present to invoke the statute.”
- “the more badges demonstrated in any given case would increase the likelihood that clear and convincing evidence of fraud has been shown; nevertheless, proof of tax fraud still must be determined by the specific facts and circumstances in each case.”
A Sales of Businesses or “Bulk Transfers”

Tax-General Article 11-505

- A transferee or auctioneer in a bulk transfer shall mail to the Comptroller the notice of creditors whether or not:
  - 1. the transferor lists the Comptroller as a creditor; or
  - 2. the transferee or auctioneer knows that the transferor owes any sales and use tax

- If the Comptroller finds that the transferor owes sales and use tax, the Comptroller shall file a claim for sales and use tax due from the transferor
- If the Comptroller files a claim, then the transferee or auctioneer shall withhold the amount stated in the claim from distribution to the transferor.
Definition of a Bulk Transfer

Bulk transfer is any transfer in bulk and not in the ordinary course of the transferor’s business of a major part of the materials, supplies, merchandise or other inventory of an enterprise.

A transfer of a substantial part of the equipment of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

All bulk transfers of goods located within this State.

Enterprises subject to Bulk Transfer Statute include:
- Principal business is the sale of merchandise from stock
- Manufacturer and Sellers of Goods
- Restaurants
- Vendors and Sellers of Alcoholic Beverages (wholesales, retailers,
Liability for Sales and Use Tax in a Bulk Transfer of Assets

If the transferee or auctioneer in a bulk transfer fails to file the notice or to retain consideration in an amount equal to the claim of the Comptroller for unpaid sales and use tax:

° Any consideration in the bulk transfer is subject to a first priority right and lien for sales and use tax
° The transferee or auctioneer is personally liable for the sales and use tax, interest, and penalties that the transferor owes
° See Mr. Pizza II, Inc. v. Comptroller case
Officer Assessments for Unpaid Business Taxes

1. Withholding Taxes

2. Sales and Use Taxes

3. Admissions and Amusement Taxes
Officer Liability for Withholding Taxes

Tax General Article Section 10-906

Subsection (d) of 10-906

- "If an employer or payor negligently fails to withholding or to pay income tax...personal liability for that income tax extends to:
  - (1) to the employer or payor;
  - (2) if the employer or payor is a corporation, to:
    - (i) any officer of the corporation who exercises direct control over its fiscal management; or
    - (ii) any agent of the corporation who is required to withhold and pay the income tax; and
  - (3) if the employer is a LLC, to:
    - (3) Any person who exercises direct control over its fiscal management; and
    - (4) Any agent of the LLC who is required to withhold and pay the income tax."
Officer Liability for Withholding Taxes - Issues in Maryland Court Cases

1. **Negligently** fails to withhold or to pay income tax
2. Right of Contribution from Other Officers
3. Fact Patterns Leading to Officer Liability
4. “any officer” vs. “any person” standard
5. President, Vice-President, Secretary, or Treasurer roles
Officer Liability for Sales and Use Taxes

1. In General
   1. Buyers that do not pay the tax to the vendor
   2. Vendors that do not collect the tax from the buyer

2. Officers
   1. Corporation
      1. President, vice-president, or treasurer
      2. Any officer who directly or indirectly owns more than 20% of the stock of the corporation
   2. LLC
      1. All members if no operating agreement
      2. Those individuals who manage the business and affairs of the LLC, if the LLC has an operating agreement
Officer Liability for Sales and Use Tax

Valid corporate formalities or partnership agreement needed?

Lack of Control or Inability to Pay is Not a Defense

"Any Officers" vs. "Responsible Officer" or "Most Responsible Officer" Standards

Management Agreements with Corporations

Documentation That Demonstrates Who are the Officers

- Combined Registration Applications
- Personal Property Tax Returns
- Corporation Income Tax Returns (Federal and State)
- Articles of Incorporation & Amendments (Available at Maryland SDAT)
- Liquor License Applications
Officer Liability for Admissions and Amusement Tax

A person who has the gross receipts subject to A&A tax shall pay the tax on those gross receipts

Liability

- Corporations
  - Personal liability...extends to any officer of the corporation who exercises direct control over its fiscal management

- LLCs
  - Personal liability...extends to any person who exercises direct control over the fiscal management of the LLC
Offer–In–Compromise Program - Overview

The Offer in Compromise ("OIC") Program is used to resolve tax liabilities with the Comptroller when the taxpayer is unable to pay in full and all other efforts to resolve the liability have been unsuccessful.

OIC Program is available for all taxes administered by the Comptroller

OIC Program should not be used to appeal the taxpayer's liability

Under the OIC Program, the Comptroller’s office will:
- look at the taxpayer’s available resources
- consider the resources in the light of your circumstances
- Arrive at an equitable resolution by considering a reduction or abatement of the amount due
Offer-In-Compromise Program – Eligibility Requirements

You have incurred a delinquent tax liability that has resulted in an assessment.

You have exhausted all other avenues of administrative appeal.

You cannot make an offer in compromise if there is any issue remaining that can be appealed.

Two years must have passed since you became liable for the tax.

You must be current with respect to all returns filed or required to be filed to the Comptroller's Office.

You must not be currently involved in an open bankruptcy proceeding.

You are unlikely to be able to make payment in full any time in the foreseeable future due to your financial situation.

You either are without resources or unable to apply present and/or future resources to paying the outstanding tax liability.
Offer-In-Compromise Program – How to Apply

To apply for an Offer in Compromise, taxpayers must submit Form MD 656 to:

- Offer in Compromise Program
- Comptroller of Maryland
- 301 West Preston Street, Rm. 203
- Baltimore, Maryland 21201

Provide all of the reasons you believe you cannot, or should not, pay the full amount due.

- **Doubt as to liability.** If you believe you don't owe the amount due, you must include with Form MD 656 a detailed explanation of the reason(s) you believe you do not owe the tax.

- **Insufficient resources.** If you don't have enough assets or income to pay the full amount, you must include with Form MD 656 a complete financial statement, Form MD 433-A for individuals and/or Form MD 433-B for businesses.

- **Economic or other hardship.** If you have enough assets to pay the full amount, but believe that because of your exceptional circumstances requiring full payment would cause an economic hardship or would be unfair and inequitable, you must include with Form MD 656 a complete financial statement, Form MD 433-A and/or Form MD 433-B.
Offer-In-Compromise Program – Procedural Overview

Comptroller’s office reviews the Offer in Compromise and determine if there is sufficient reason for a reduction or abatement of the assessment.

If the Comptroller’s office determines that the offer is acceptable, the taxpayer or representative will be notified so payment can be made.

If the Comptroller’s office determines that grounds for adjustment exist but that the amount offered is insufficient, the taxpayer will be advised as to an acceptable amount (counteroffer).

If we determine that no grounds for adjustment exist, then you will be notified that your offer has been declined. The Comptroller's Office will consider another offer in compromise if circumstances change.

All decisions under the Offer in Compromise Program are final and cannot be appealed.

You must remain current with respect to future filings for at least three years after the Offer in Compromise is accepted. If you do not, the full liability will become due immediately, and the comptroller will take all necessary action to collect.
Offer-in-Compromise - Decisions

Factors in reaching a decision
- Age
- Taxpayer
- Debt
- Income
- Amount
- Source
- Location of Taxpayer
- Bankruptcy
- Lien filed

Decisions cannot be appealed

Decisions will be writing

If denied, counteroffers can be submitted
Offer-in-Compromise – Practical Tips

- **Complete Application**
  - Form MD 656, Offer in Compromise Statement
  - Doubt as to liability
  - Insufficient Resources
  - Economic or Other Hardship
  - Form 433A, Collection Information Statement
- **Compliance**
  - Contact Taxpayer Service to ensure tax filings and balance due