

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 419  
Ways and Means

(Delegate Frick)

Budget and Taxation

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Personal Property Tax - Liens for Unpaid Tax

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This bill authorizes a secured party with a security interest in personal property of a business to elect to satisfy a tax lien on the secured property by (1) providing a notice to each county and municipality owed taxes, as specified and (2) paying the required pro rata portion of the personal property taxes due and owing, including a pro rata share of accrued penalty and interest. A county or municipality may dispute the amount of the pro rata portion of taxes owed. The bill also establishes the priority for payments when multiple jurisdictions have liens on the personal property of a business. The bill grants the secured party a right of contribution from the business for any taxes, penalties, and interest paid by the secured party.

The bill takes effect June 1, 2013.

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Fiscal Summary

**State Effect:** The bill does not directly affect State governmental finances or operations.

**Local Effect:** Potential decrease in local government revenues due to the increased difficulty in collecting the entirety of personal property taxes owed on the property of a business. No impact on local government expenditures; however, any dispute by a local government of the pro rata portion of personal property taxes owed may have an operational impact on local government staff. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** The bill requires the secured party to send written notice to each county and municipality that has a certified assessment by the State Department of Assessments and Taxation for the business in an amount that is at least equal to the cost basis of the personal property, less the applicable depreciation. The notice must be sent not later than 60 days after a secured party takes repossession in accordance with Title 9 of the Commercial Law Article of a business' personal property after a default by the business that owes personal property taxes. The notice must include specified identifying and valuation information.

If a secured party elects to satisfy the tax lien, the bill also requires the secured party to pay the pro rata portion of personal property taxes owed, including a pro rata share of accrued penalty and interest. If the State has certified an assessment on a business for one or more years and the assessment certifications are to a single county, municipality, or one or more municipalities within a single county, the secured party must pay to the county and municipalities the pro rata portion of the personal property taxes due by the business for each outstanding tax levy, including the pro rata share of accrued penalty and interest, according to the State-certified assessment for each tax levy.

A county or municipality may dispute the secured party's estimate of the pro rata portion of personal property taxes owed, including a pro rata share of accrued penalty and interest, if the county or municipality (1) responds, not later than 45 days after receipt of the aforementioned notice, to the secured party indicating the pro rata amount of personal property taxes and penalties and interest due on the specified personal property as calculated by the county or municipality and (2) makes reasonable attempts to resolve the dispute with the secured party.

If the secured party fails to provide the required notice and payment, the bill prohibits a secured party from satisfying the personal property tax lien on personal property by only paying the pro rata portion of personal property taxes due and owing, including accrued penalties and interest, on the personal property subject to repossession.

The secured party has the burden of proving, with reasonable certainty, the value of the property subject to repossession if the secured party seeks to limit the liability of the county's or municipality's statutory first lien for taxes owed to the value of the property subject to repossession.

The bill does not constitute a release of liability or release of the tax lien of the debtor business, with respect to its principals, officers, members, or directors, or any transferees of property that is encumbered by a tax lien and is owned, used, or leased by the business. Nor does it constitute (1) a reprieve or exemption from a business' annual personal

property reporting duties and responsibilities or (2) a release of liability for taxes levied as a result of subsequent assessments from the State as to any of the property repossessed by the secured party.

### **Current Law:**

*Personal Property Tax:* The State has not imposed personal property taxes since fiscal 1984, and all personal property is exempt from State property tax. However, the counties, municipalities, and special taxing districts are authorized to tax personal property. The State mandates certain exemptions from personal property assessment including aircraft, manufacturing tools, equipment or machinery, research and development property, farm implements, agricultural products, livestock, and residential property (nonbusiness property). Local governments are authorized to exempt tools, equipment, or machinery used in manufacturing from taxation.

All business entities in Maryland may be required to pay local personal property taxes. All assessable tangible personal property located in Maryland and owned by businesses as of January 1 may be subject to a local personal property tax.

A political subdivision may impose a lien consisting of unpaid tax on personal property on both the personal property and the real property of the personal property's owner; however, before the lien attaches to the real property, the notice must be recorded and indexed among the judgment records in the office of the clerk at the appropriate circuit court. In lieu of recording in the appropriate court, a subdivision may use a lien reporting system. If the subdivision uses such a system, it must provide, on request, a lien report or memorandum.

In determining the priority of liens, a first lien consisting of unpaid personal property tax attaches from the date the property tax is due. This method is identical to the determination of priority of a lien consisting of unpaid real property tax.

**Local Fiscal Effect:** Potential decrease in local government revenues due to the increased difficulty in collecting the entirety of personal property taxes owed on the personal property of a business. Currently, when a local government places a tax lien on one item of personal property it is for the entire amount owed by the business for personal property taxes due on all personal property. Generally, a local government does not record the amount of personal property taxes on one piece of equipment. Thus, when a secured party repossesses personal property, the secured party may have to satisfy the entire tax lien amount. Under the bill, the secured party may repossess the personal property and pay only the tax owed on that specific item of property. Montgomery County advises that, by authorizing the secured party to pay a pro rata amount, local government revenues may decrease due to the increased difficulty in collecting the remaining portion of personal property taxes owed.

Montgomery County advises that any dispute of the pro rata amount, and any resulting audit of the amount collected, may have an operational impact on staff.

**Small Business Effect:** The bill may have a meaningful beneficial impact to a secured party that repossesses personal property owned by a business. As noted above, when a secured party repossesses personal property owned by a business, a local government may require the secured party to satisfy the entirety of the personal property tax amount owed by the business on all personal property. Under the bill, the secured party is authorized to repossesses the personal property by paying the amount of taxes owed on that specific item. This would enable the secured party to more easily repossess the item and use any proceeds from a sale to offset the outstanding debt.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Montgomery County; State Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Black's Law Dictionary, Department of Legislative Services

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