

# HOUSE BILL 789

Q7

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By: **Delegate Rosenberg**

Introduced and read first time: February 8, 2016

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Tax Procedure – Assessments, Penalties, and Interest Rate on Tax Deficiencies**  
3 **and Refunds**

4 FOR the purpose of altering a certain provision of law concerning a certain assessment of  
5 taxes, following a certain federal adjustment, for the federal deductions, rather than  
6 credits, for the State death and State generation–skipping transfer taxes; altering  
7 the contents of the report of federal adjustment a person shall submit to a certain  
8 tax collector under certain circumstances; repealing the calculation of the interest  
9 rate on tax deficiencies and refunds; providing that the interest rate on tax  
10 deficiencies and refunds is a certain rate; repealing a requirement that the  
11 Comptroller annually set the interest rate on tax deficiencies and refunds; requiring  
12 the Comptroller to assess, in addition to certain penalties, a certain penalty against  
13 a person subject to a certain penalty under the Internal Revenue Code; requiring the  
14 Comptroller to interpret and apply a penalty under this Act in a certain manner;  
15 providing a rebuttable presumption that a person shall be entitled to certain  
16 equitable relief under certain circumstances; providing for a delayed effective date;  
17 and generally relating to tax collection procedures concerning assessments, the  
18 interest rate on tax deficiencies and refunds, and penalties.

19 BY repealing and reenacting, with amendments,  
20 Article – Tax – General  
21 Section 13–409 and 13–604  
22 Annotated Code of Maryland  
23 (2010 Replacement Volume and 2015 Supplement)

24 BY adding to  
25 Article – Tax – General  
26 Section 13–718  
27 Annotated Code of Maryland  
28 (2010 Replacement Volume and 2015 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – Tax – General**

4 13–409.

5 (a) If the Internal Revenue Service issues a final determination that increases  
6 federal taxable income, federal estate, or federal generation–skipping transfer tax reported  
7 on a federal return, the tax collector shall assess the financial institution franchise tax,  
8 public service company franchise tax, income tax, Maryland estate tax, or Maryland  
9 generation–skipping transfer tax on the increase in the taxable net earnings, gross receipts,  
10 Maryland taxable income, federal **[credit] DEDUCTION** for State death tax, or federal  
11 **[credit] DEDUCTION** for State generation–skipping transfer tax that results from the  
12 federal adjustment.

13 (b) Within 90 days after the Internal Revenue Service issues to a person the final  
14 determination to which subsection (a) of this section refers, the person shall submit to the  
15 tax collector a report of federal adjustment that includes:

16 (1) a statement of the amount of the increase; **[and]**

17 (2) **IF THE INTERNAL REVENUE SERVICE IMPOSED OR INCREASED A**  
18 **PENALTY AGAINST THE PERSON, A STATEMENT OF THE AMOUNT AND NATURE OF**  
19 **THE PENALTY IMPOSED; AND**

20 (3) if the person contends that the final federal determination is erroneous,  
21 an explanation of the reasons for the contention.

22 13–604.

23 **[(a)]** The rate of interest for each month or fraction of a month **[is the percent equal**  
24 **to one–twelfth of the annual interest rate that the Comptroller sets for the calendar year**  
25 **under subsection (b) of this section] FOR INTEREST ON REFUNDS AND MONEY OWED TO**  
26 **THE STATE IS ONE–TWELFTH OF THE UNDERPAYMENT RATE THEN IN EFFECT**  
27 **UNDER § 6621 OF THE INTERNAL REVENUE CODE.**

28 **[(b)]** On or before October 1 of each year, the Comptroller shall set the annual  
29 interest rate for the next calendar year on refunds and moneys owed to the State as the  
30 percent, rounded to the nearest whole number, that is at the percent that equals the greater  
31 of:

32 (1) 13%; or

1           (2)    3 percentage points above the average prime rate of interest quoted by  
2 commercial banks to large businesses during the State's previous fiscal year, based on  
3 determination by the Board of Governors of the Federal Reserve Bank.]

4   **13-718.**

5           **(A)    IN ADDITION TO ANY OTHER PENALTY ASSESSED UNDER THIS SUBTITLE,**  
6 **THE COMPTROLLER SHALL ASSESS A PENALTY IN ACCORDANCE WITH THIS SECTION**  
7 **IF THE INTERNAL REVENUE SERVICE IMPOSED A PENALTY ON THE PERSON UNDER**  
8 **§ 6662 OF THE INTERNAL REVENUE CODE.**

9           **(B)    THE COMPTROLLER SHALL ASSESS A PENALTY NOT EXCEEDING 4% OF**  
10 **THE UNPAID TAX FOR THE PORTION OF THE UNDERPAYMENT OF THE PERSON'S**  
11 **FEDERAL TAX LIABILITY ATTRIBUTABLE TO EACH OF THE FOLLOWING ITEMS:**

12                   **(1)    NEGLIGENCE OR DISREGARD OF A FEDERAL RULE OR**  
13 **REGULATION;**

14                   **(2)    A SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX;**

15                   **(3)    UNLESS THE PENALTY UNDER SUBSECTION (C)(1) OF THIS**  
16 **SECTION APPLIES, A SUBSTANTIAL VALUATION MISSTATEMENT UNDER CHAPTER 1**  
17 **OF THE INTERNAL REVENUE CODE;**

18                   **(4)    A DISALLOWANCE OF CLAIMED TAX BENEFITS DUE TO A**  
19 **TRANSACTION LACKING ECONOMIC SUBSTANCE WITHIN THE MEANING OF § 7701 OF**  
20 **THE INTERNAL REVENUE CODE OR FAILING TO MEET THE REQUIREMENTS OF A**  
21 **SIMILAR RULE OF LAW; OR**

22                   **(5)    AN INCONSISTENT ESTATE BASIS.**

23           **(C)    IF THE INTERNAL REVENUE SERVICE IMPOSED A PENALTY UNDER §**  
24 **6662(H) OR (J) OF THE INTERNAL REVENUE CODE, THE COMPTROLLER SHALL**  
25 **ASSESS A PENALTY NOT EXCEEDING 8% OF THE UNPAID TAX ATTRIBUTABLE TO:**

26                   **(1)    ONE OR MORE GROSS VALUATION MISSTATEMENTS; OR**

27                   **(2)    AN UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENT.**

28           **(D)    THE COMPTROLLER SHALL INTERPRET AND APPLY A PENALTY**  
29 **IMPOSED UNDER THIS SECTION CONSISTENT WITH THE ANALOGOUS PENALTY**  
30 **PROVISION UNDER § 6662 OF THE INTERNAL REVENUE CODE.**

1           **(E) IF A PERSON IS RELIEVED OF FEDERAL INCOME TAX LIABILITY UNDER §**  
2 **6662 OF THE INTERNAL REVENUE CODE, THERE SHALL BE A REBUTTABLE**  
3 **PRESUMPTION THAT THE PERSON SHALL BE ENTITLED TO EQUIVALENT RELIEF**  
4 **FROM LIABILITY UNDER THIS SECTION TO THE EXTENT THAT, FOR THE SAME**  
5 **TAXABLE YEAR, THE PERSON HAS AN UNDERSTATEMENT OF MONEYS OWED UNDER**  
6 **THIS ARTICLE THAT IS ATTRIBUTABLE TO THE SAME ERRONEOUS ITEM OR ITEMS TO**  
7 **WHICH THE PERSON'S FEDERAL INCOME TAX LIABILITY WAS ATTRIBUTABLE.**

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 January 1, 2017.