



Maryland Chamber of Commerce

Legislative Position

SB 94

OPPOSE

**Budget &
Taxation
Committee
1/28/09**

SB 94

Sales and Use Tax – Gross Negligence Penalty for Underpayment

Bill Summary: This bill would provide that underpayment of sales and use tax by 25% or more is *prima facie* evidence of gross negligence, and require the Comptroller to impose a penalty of 25% of the underpayment in such cases.

Chamber Position: The Maryland Chamber of Commerce opposes this bill. While we typically endorse efforts of the Comptroller to ensure effective tax compliance, we believe that this bill as written is unfair to businesses for the following reasons:

1. The bill provides no time period with which to measure the 25% underpayment that would trigger the automatic penalty. At a minimum, language should be added to clarify that the 25% underpayment is measured by the entire period under audit, which would typically be a four-year period.

2. By establishing that an underpayment of 25% is *prima facie* evidence of gross negligence, the bill makes it very difficult for a business owner to effectively contest an underpayment that may have resulted from an honest difference of opinion regarding the taxability of certain transactions. The bill should be amended to provide that a person may rebut the presumption of gross negligence by demonstrating reasonable cause for an underpayment of tax.

We believe that the Comptroller has adequate tools to collect taxes due with the current 10% penalty, 100% penalty in cases of fraud, and 13% interest for delinquent taxes. The fiscal note observes on page 2 that the bill may increase state revenues “by a minimal amount.”

For these reasons, we urge an unfavorable report for this bill. If the Committee feels it necessary to approve the bill, we would suggest the attached amendments.

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AMENDMENTS TO SENATE BILL NO. 94
(First Reading File Bill)

AMENDMENT NO. 1

On page 2, in line 2, after "DUE" insert "FOR A PERIOD UNDER AUDIT".

AMENDMENT NO. 2

On page 2, after line 2, insert

"(C) A PERSON MAY REBUT THE PRESUMPTION OF GROSS NEGLIGENCE BY DEMONSTRATING REASONABLE CAUSE FOR AN UNDERPAYMENT OF TAX UNDER THIS SECTION."