



## Senate Bill 193

### *Income Tax - Interest Rate - Wynne Case*

MACo Position: **OPPOSE**

To: Budget and Taxation Committee

Date: January 31, 2018

From: Barbara Zektick

The Maryland Association of Counties (MACo) **OPPOSES** SB 193. This bill would establish a punitive interest rate paid by the State to income tax payers receiving refunds under the *Maryland State Comptroller of the Treasury v. Brian Wynne* court decision, overriding prior General Assembly action to set the rate for this class of refunds at a more reasonable market-based rate.

Interest rates for tax overpayments and underpayments are appropriately seen as compliance measures. State law charges a deliberately high interest rate on overdue tax payments to encourage timely payment. It is unfair to the many timely taxpayers to allow a deficient payer to make a calculated decision to wait to pay – so an above-market interest rate effectively maintains a strong incentive for overdue taxes to be paid.

Using a similar logic, a punitive interest rate on taxpayer refunds nominally encourages the tax collector to promptly resolve any administrative ambiguities, and to process refunds in a timely fashion. When applied to the most common occurrence, this incentive serves its intended purpose – the State and counties issue refund checks in days rather than weeks or months, to avoid accumulation of undue interest.

This bill, however, exceeds the boundaries of this logic. The large slew of refunds arising from the *Wynne* court case do not signal administrative error or indifference on the part of the Comptroller, the General Assembly, or especially county governments. Rather, they arise from a completely new legal theory that was without precedent in Maryland or elsewhere.

Retroactively granting the 11.5 percent punitive interest rate to these refunds simply creates an unjust enrichment of a few, at the expense of the many. There is no “incentive” effect at work; the Office of the Comptroller has very diligently processed refund requests and has satisfied the majority of them promptly. There is no administrative inertia or misdeed worthy of the punitive interest rate.

The eventual effects of these interest payments land on the local governments and the residents we serve. Passage of SB 193 would cost local taxpayers tens of millions of dollars – enriching a limited set of lucky beneficiaries at the expense of schools, law enforcement, roadways, and the other local government functions upon which all county residents depend.

MACo does not contest the need to refund taxpayers based on prior overpayment, and to compensate them fairly with interest. The General Assembly’s actions in 2014 anticipated this eventuality – and correctly determined that these cases merited reasonable, but not punitive, compensatory interest payments. The issuance of a 3% “market rate” interest (substantially greater than what the State earned on these holdings during that time, incidentally) accomplishes this balanced policy goal.

This bill creates an unwarranted windfall to taxpayers who have suddenly benefitted from an unexpected court ruling, at the expense of other taxpayers and local services. For these reasons, MACo recommends an **UNFAVORABLE** report on SB 193.