



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 17

PRINTERS NO. 2900

PRIME SPONSOR: Ryan

### REVENUE INCREASE / (DECREASE)

FUND	FY 2019/20	FY 2020/21
General Fund	(\$2,500,000)	(\$3,000,000)

**SUMMARY:** House Bill 17, Printer's number 2900, amends the Tax Reform Code further providing for exclusions in sales and use tax; for administrative bank attachments; and providing for collection of assessed taxes and for criminal tax prosecutions.

**ANALYSIS:** This legislation adds language providing that the sale at retail or use by a financial institution of canned computer software directly utilized in conducting the business of banking is exempt from the sales and use tax. A financial institution is defined as an institution subject to the Bank and Trust Company Shares Tax or the Mutual Thrifts Institutions Tax. Specifically, the exclusion applies to the purchase of canned computer software to be used in transactions with customers and service providers and does not include the purchase of canned computer software by entities, other than a financial institution, such as holding companies and subsidiaries of a financial institution.

Section 3003.22 (Administrative Bank Attachment for Accounts of Obligors to the Commonwealth) is amended adding language providing that a financial institution shall undertake reasonable efforts to provide a report containing identifying information and asset information for any obligor as identified by the Department of Revenue (department) by name and social security number, Federal identification number or other taxpayer identification number (FIDM - financial institution data match). An "obligor" is defined as an entity engaged in a business, a sole proprietor, a shareholder, member or partner of a pass-through entity, or a corporate officer whose corporate employer has been assessed for trust fund taxes, which are subject to a Commonwealth tax lien totaling at least \$1,000. The report and information shall be in the form and format as prescribed by the department and not more often than quarterly.

The department shall provide information to the financial institution in a standard and generally utilized electronic machine readable format and if requested by the financial institution, the department shall coordinate the requests under this section with similar procedures utilized for data exchange to process bank attachments to collect delinquent child support payments with the Department of Human Services. Financial institutions shall provide reports to the department within 30 days of receipt of the requests from the department. Any employee of agent of the department who divulges or retains information in a manner not provided under this section or lacks good faith for a disclosure not authorized under this section commits a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of up to \$1,000 per violation and shall be subject to a term of imprisonment of not more than one year, or both. A financial institution shall be entitled to payment from the department in the amount of \$250 per quarter for conducting data matches pursuant to this section. The department may designate an agent for the collection of information under this section from the financial institutions, which may include an automated data exchange organization.

A person, government agency or financial institution shall not be subject to any civil or criminal liability for providing, reporting or matching information and data or encumbering or surrendering assets as required by law.

The department may impose a penalty upon a financial institution that willfully fails to comply or respond to, or refuses to process without reasonable cause, a request by the department. The department shall provide the financial institution 25 days' notice and a hearing before the Board of Finance and Revenue prior to imposing a penalty. The penalty shall be in an amount equal to \$50 for each record not provided and the total penalty for all such failures during any calendar year shall not exceed \$10,000.

Accounts, funds, and property subject to attachment under the FIDM program shall not include the following: (1) an account subject to a security interest, control agreement or pledged security for a loan or other obligation; (2) funds or property deposited to an account after the time that a financial institution initially attaches the account; (3) an account that a financial institution has a present right to exercise a right of setoff either under an agreement between the financial institution and the obligor or otherwise under applicable law; (4) an account that has an account holder of interest named as an owner on the account; (5) an account that an obligor does not have an unconditional right of access; or (6) an account that may not be attached under federal law.

Finally, this legislation adds Section 3003.23 providing a 10-year time period during which the Department of Revenue (department) must collect any assessed tax. The 10-year period applies to all taxes administered by the department, excluding Inheritance Taxes.

The 10-year period is not applicable and the department shall have no time limitation to collect taxes in the following cases: (1) for a taxpayer that collected or withheld trust fund taxes, but willfully failed, grossly neglected or refused to remit; (2) for a taxpayer filing a false or fraudulent tax return or report or willfully failing to file a tax return or report; (3) for a taxpayer attempting to evade or defeat a tax; (4) for a tax offense for which a taxpayer has been criminally charged and convicted and liabilities remain unpaid; or (5) for liabilities of eligible taxes unknown to the department that have not been extinguished prior to the commencement of a subsequently enacted or approved tax amnesty program.

Additionally, the 10-year period will be tolled under the following circumstances: (1) bankruptcy or legal proceedings have commenced; (2) an offer-in-compromise is under consideration by the department; (3) an installment agreement or deferred payment plan is entered with the department; (4) an assessment of tax is in the appeals process; (5) the taxpayer is deployed for military service and has received a Federal extension; or (6) the taxpayer and department have agreed, in writing, to extend the collection expiration date.

Section 3003.24 is added providing that a person shall not be prosecuted, tried or punished for an offense under a tax statute unless the prosecution is instituted within 3 years after the commission of the offense.

For a settlement, determination or assessment issued before the effective date of Section 3003.23, the 10-year period shall begin on the effective date or when the settlement, determination or assessment becomes final, whichever is later.

The addition of Section 3003.23 (Statute of limitation for collection of assessed taxes) shall take effect January 1, 2021. The amendment of Section 3003.22 (Administrative Bank Attachment for Accounts of Obligors to the Commonwealth) shall take effect in 60 days. The remainder of the act shall take effect immediately.

**FISCAL IMPACT:** The Department of Revenue estimates that the sales and use tax exclusion for canned computer software directly used by financial institutions in the business of banking will reduce General Fund revenues by approximately \$5 million per fiscal year once fully implemented. As this provision is effective immediately, it is estimated that enactment of this legislation will result in a revenue loss of \$2.5 million in fiscal year 2019-20 and \$5 million in fiscal year 2020-21.

Implementation of the FIDM program is expected to generate additional revenues of approximately \$2 million per fiscal year by increasing the department's ability to effectively and efficiently collect delinquent taxes that are subject to a tax lien. Because attachments cannot occur until guidelines are issued, the FIDM program is likely to generate little revenue during the current fiscal year. The legislation specifies that financial institutions are entitled to payment from the department in the amount of \$250 per quarter (\$1,000 per year) to reimburse the financial institutions for the cost of conducting data matches. This cost will be offset by the increased delinquent tax collections resulting from FIDM.

The addition of section 3003.23 will have no fiscal impact on Commonwealth funds in near-term because implementation of the ten-year period to collect assessed taxes begins January 1, 2021. Beginning with assessments issued on January 1, 2021 and thereafter, the Department of Revenue will have ten years to collect the amounts due from assessments, so the legislation's fiscal impact in this regard will be delayed until 2030-31. According to the Department of Revenue, a total of \$38.7 million was collected for the three fiscal years 2015-16 through 2017-18 from payments that were more than 10 year past due (an average of \$12.9 million per year).

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**DATE:** November 21, 2019

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*