

**SENATE APPROPRIATIONS COMMITTEE  
FISCAL NOTE**

**BILL NO.** House Bill 17

**PRINTER NO.** 1851

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

January 28, 2019

**PRIME SPONSOR**

Representative Ryan

**DESCRIPTION AND PURPOSE OF BILL**

House Bill 17 amends the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, by adding new sections to Article XXX (relating to general provisions) with regard to the period of time for the collection of assessed taxes and for criminal tax prosecutions.

Time Period for Collection of Assessed Taxes

The legislation adds new section 3003.23 to the Tax Reform Code of 1971 (TRC), which provides that for all taxes administered by the Pennsylvania Department of Revenue (department), except for the Inheritance Tax, the department may collect the tax owed if collection commences within ten years of the date the settlement, determination or assessment of the tax becomes final. The term "tax" is defined as a tax, interest, addition to tax, penalty, fee and other cost, including the cost of collection.

For non-filed returns, the department is required to induce the filing of a return, or to settle, determine or assess the tax liability of a non-filed tax period within ten years of the tax return due date. The filing of a tax lien shall not extend the ten-year period to collect a tax.

The changes implemented by House Bill 17 to establish a ten-year collection period do not affect the department's ability to collect taxes at any time under the following circumstances:

1. For trust fund tax liabilities a taxpayer either collected or withheld (e.g. sales and use tax and employer withholding tax), as an agent of or in trust for the Commonwealth, but willfully failed, grossly neglected or refused to remit;
2. Where a taxpayer files a false and fraudulent tax return or report;
3. Where a taxpayer willfully fails to file a tax return or report as required by law;
4. Where a taxpayer attempts to evade or defeat a tax;
5. For a tax offense for which a taxpayer has been criminally charged and convicted in which tax liabilities remain unpaid; or
6. For liabilities of eligible taxes unknown to the department that have not been extinguished within a ten-year period prior to the commencement of the tax amnesty period of a subsequently enacted or approved tax amnesty program.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

The legislation requires that the collection expiration date be tolled for the time when any of the following events are pending, plus one year:

1. During a bankruptcy or proceeding during which the taxpayer's assets are in the control or custody of an administrative body, court or duly appointed guardian, receiver or trustee;
2. The period during which a taxpayer's offer-in-compromise is under consideration by the department;
3. The duration of an installment agreement or deferred payment plan between the taxpayer and the department;
4. The duration, from commencement through final determination, of a proceeding which constitutes a tax appeal or which opposes a collection action before an administrative tribunal or court of law or in which the taxpayer has filed a lawsuit or brought a cause of action against the department;
5. The duration of a taxpayer's military service for which the taxpayer is eligible for and has received a federal extension; or
6. For a period of time as the taxpayer and the department may agree, in writing, to extend the collection expiration date.

### Time Period for Criminal Tax Prosecutions

House Bill 17 adds new section 3003.24 to the TRC to establish a time limit on criminal tax prosecutions such that a person shall not be prosecuted, tried or punished for an offense under a tax statute administered by the department except if prosecution is instituted within three years after the commission of the offense. Regardless of the three-year time period, a prosecution may be instituted under the following circumstances:

1. An offense a material element of which is either fraud or a breach of fiduciary obligation within one year after the discovery of the offense. However, this provision does not extend the time period otherwise applicable by more than two years.
2. The offense of willfully attempting to evade or defeat a tax or the payment of a tax within one year after the discovery of the offense. However, this provision does not extend the time period otherwise applicable by more than two years.

In addition to a criminal offense identified in the tax statutes administered by the department, a person may be prosecuted for an offense provided for under 18 Pa.C.S. (relating to crimes and offenses), regarding misconduct under the tax statutes, if the prosecution is instituted within five years after commission of the offense. A taxpayer convicted of a tax-related offense is required to pay the department restitution of each tax liability for which a conviction has been entered.

The addition of sections 3003.23 and 3003.24 shall not relieve a person of a tax, interest, addition to a tax, penalty fee and other cost payable by the person on the effective date of the act. If a court determines that a tax cannot be settled, assessed or collected under the procedure provided for in the legislation, the matters shall be settled under the laws in force prior to the effective date of this act.

# **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

With regard to the addition of section 3003.23 relating to the time period for collection of assessed taxes, the ten-year collection period shall begin on the effective date or when the settlement, determination or assessment becomes final, whichever is later.

House Bill 17 provides that a tax lien created prior to January 1, 2021, shall not be impaired, shall remain in full force and effect and shall retain the priority under the provision imposing the tax lien, without the necessity of refileing or revival, until January 1, 2031.

Section 3003.23 of the act shall take January 1, 2021, and the remainder of the act shall take effect immediately.

**FISCAL IMPACT:**

House Bill 17 will have minimal fiscal impact on Commonwealth funds in near-term fiscal years 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 for some time.

The legislation provides that changes to the time period for collections shall not relieve a person of tax liabilities owed on or prior to the effective date of the act, and a tax lien created prior to January 1, 2021, shall not be impaired, shall remain in full force and effect and shall retain the priority under the provision imposing the tax lien, without the necessity of refileing or revival, until January 1, 2031. Therefore, pre-existing tax liabilities and delinquencies can continue to be collected in the same manner as under current law.

Based upon historical collections data, the department estimates that House Bill 17 will decrease General Fund revenue by \$15 million per fiscal year ten years after the January 1, 2021 effective date.

Under current law, there is no expiration as to when the department can collect delinquent taxes. According to the department, the following amounts were collected from payments that were more than ten years past due:

<b>Fiscal Year</b>	<b>Revenue Collected from Payments More Than 10 Years Past Due</b>
2017-18	\$9.7 million
2016-17	\$14.0 million
2015-16	\$15.0 million

The primary purpose of extending the time for criminal tax offenses by adding section 3003.24 to the TRC is to protect collected trust fund taxes, and the indirect effect of the threat of prosecution for stealing such taxes encourages greater compliance by taxpayers.