

DEPARTMENT OF TAXATION

2025 Fiscal Impact Statement

1. **Patron** Scott A. Surovell

3. **Committee** Senate Finance and Appropriations

4. **Title** Awards for Tax Underpayment Detection Assistance

2. **Bill Number** SB 1343

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would authorize the Department of Taxation ("the Department") to award monetary compensation to individuals who provide information that leads to the successful collection of delinquent taxes owed by other individual or business taxpayers. If the Department proceeds with any administrative or judicial action based on such information, the amount of the award would be at least 15 percent but not more than 30 percent of the collected proceeds, including penalties, interest, additions to tax, and additional amounts, resulting from such action or from a settlement in response to such action. This bill would only apply to actions by the Department:

- Against any individual taxpayer, or married taxpayers, with gross income exceeding \$100,000 or any business taxpayer with gross income exceeding \$500,000; and
- If the tax penalties, interest, additions to tax, and additional amounts in dispute exceed \$50,000.

If enacted during the regular session of the 2025 General Assembly, this bill would become effective July 1, 2025.

6. **Budget amendment necessary:** Yes.

Item(s): 258 and 260, Department of Taxation

Sum-sufficient to pay rewards out of collections

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2025-26	\$151,982	1	GF
2026-27	\$143,996	1	GF
2027-28	\$145,987	1	GF
2028-29	\$147,978	1	GF
2029-30	\$150,095	1	GF
2030-31	\$152,211	1	GF

8. Fiscal implications:

Administrative Costs

The Department of Taxation (“the Department”) would incur estimated expenditures, as shown on Line 7a. Such funding would be necessary to compensate one full-time employee and one wage employee to perform audits. The Department would also need a sum sufficient appropriation to pay awards.

Revenue Impact

This bill would result in an unknown increase in General Fund revenue. The amount of this gain depends on the number of informants and the quality of the information they provide. Because of the delay between the receipt of information and collection of delinquent tax, it would likely be several years before revenue would be generated. During FY 2023, the IRS collected \$338 million in proceeds through its whistleblower program and paid out 121 awards in an amount of \$89 million. Maryland enacted a similar program in 2021, which was estimated to generate \$3.2 million in collections. It is uncertain how much would be collected through a similar Virginia program.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Whistleblower Statute

The Internal Revenue Code has included a whistleblower statute since 1867. In 2006, the Tax Relief and Health Care Act of 2006 made fundamental changes to the IRS informant awards program by creating a non-discretionary awards provision; by adding whistleblower appeal rights; and by requiring the IRS to create a Whistleblower Office. Depending on the circumstances, an award paid to an informant may be mandatory or discretionary.

Federal tax law provides a mandatory award and a discretionary award for certain tax whistleblowers. In order for an individual to be eligible for the mandatory award, the relevant action must be against a taxpayer whose tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$2 million. The statute only applies to actions against individual taxpayers if the individual’s gross income exceeds \$200,000 for any taxable year subject to such action. An individual that qualifies for the mandatory award shall receive an award of at least 15 percent but not more than 30 percent of the collected proceeds resulting from an administrative or judicial action that was based on information provided by that individual. The collected proceeds include penalties, interest, additions to tax, and additional amounts. The Whistleblower Office’s determination of the amount of the award depends upon the extent to which the individual substantially contributed to the action.

If the Whistleblower Office determines the administrative or judicial action is based principally on disclosures of specific allegations from a source other than the individual, the Whistleblower Office is required to reduce the amount of the mandatory award. Such mandatory award may not exceed 10 percent of the collected proceeds resulting from the action. This provision does not apply in cases where the individual is the original source of the information that results in an administrative or judicial action.

Under the mandatory award program, if the Whistleblower Office determines that the claim for an award is brought by an individual who planned and initiated the actions that led to the underpayment of tax or the violation of internal revenue laws, then the Whistleblower Office may appropriately reduce the award. If the individual is convicted of criminal conduct arising from this role, any award shall be denied. Any mandatory award determination may be appealed to the Tax Court within 30 days of the determination.

In cases where the requirements for the mandatory award are not met, the individual that provided information which led to the collection of proceeds in an administrative or judicial action is eligible for the discretionary award. A taxpayer that qualifies for the discretionary award may receive an award up to 15 percent of the amounts collected by reason of the taxpayer's information. The amount of such award may not exceed \$10 million. Discretionary awards are not generally paid when the disclosures were based on public information, or when the informant participated in the tax non-compliance. Discretionary award determinations may not be appealed.

Individual informants do not need to enter into a contract to receive an award under the whistleblower statute. Any individual informant may be represented by counsel. No award may be made unless the information is submitted under penalty of perjury.

State Whistleblower Statutes

Maryland Whistleblower Program

In 2021, Maryland implemented a whistleblower program based on that of the IRS. Whistleblowers who voluntarily provide original information to the Comptroller's Office in a sworn affidavit that because of the original information, results in a final assessment in a covered enforcement action, or a successful outcome against a taxpayer in a related action, is entitled to receive a monetary award of at least 15%, but not more than 30% of the taxes, penalties, and interest collected through the enforcement action or related action. A whistleblower who provides information to the Comptroller in a sworn affidavit that is related to original information previously reported to the Comptroller by another whistleblower who is eligible for an award is not entitled to an award unless the information provided by the whistleblower materially adds to the information previously reported to the Comptroller. The total award may not exceed 30% of the taxes, penalties, and interest collected through the enforcement action or related action if two or more whistleblowers are eligible for an award.

A covered enforcement action is one brought by the Comptroller with taxes in dispute exceeding \$250,000 and which concerns:

- The state and county income tax liability of an individual or a married couple filing jointly whose federal adjusted gross income is at least \$250,000; or
- The state and county tax liability of a business whose annual gross receipts or sales are at least \$2,000,000.

The determination of the award amount is solely at the discretion of the Comptroller. In determining the award amount, the Comptroller must consider:

- The significance of the information provided by the whistleblower to the success of the covered enforcement action or related action;
- The degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered enforcement action or related action;
- The amount of the unpaid taxes owed the State that may be recovered under the covered enforcement action;
- The interest of the State in deterring violations and promoting the reporting by whistleblowers of information relating to those violations; and
- Any additional relevant factors that the Comptroller may establish by regulation.

An award may not be provided to a whistleblower if the Comptroller determines that the whistleblower:

- Is, or was at the time that the whistleblower acquired the original information provided to the Comptroller, a member, an officer, or an employee of a federal, State, or local law enforcement agency responsible for the enforcement of tax-related matters;
- Was convicted of a criminal violation related to the covered enforcement action or related action for which the whistleblower otherwise could receive an award;
- Could have been convicted of a criminal violation or held personally liable for the tax liability related to the covered enforcement action or related action for which the whistleblower otherwise could receive an award had the whistleblower provided the original information before the expiration of any applicable statute of limitations for prosecution or assessment of the whistleblower; or
- When submitting information, knowingly and willfully made false, fictitious, or fraudulent statements to the Comptroller or used any false writing or document knowing the writing or document contained a false, fictitious, or fraudulent statement or entry.

A determination of the Comptroller may be challenged within 45 days of the date of the determination, under specified conditions.

New York False Claims Act

New York provides monetary awards to tax whistleblowers under the New York False Claims Act. Under the False Claims Act, any person who commits an act within the statute which constitutes a claim, record or statement made under tax law is liable for penalties and damages. However, the False Claims Act only applies to claims, records or statements made under the tax law if the net income or sales of the person against whom

the action is brought equals at least \$1 million for any taxable year subject to the action. Further, the total damages pleaded within the relevant action against that person must exceed \$350,000.

New York's False Claims Act allows for individuals to bring *qui tam* civil actions for violations of the act. If proceeds are recovered in such an action, the individual who initiated the action shall receive between 15 percent and 30 percent of the recovered proceeds depending on the circumstances. However, if the court determines that the action is based primarily on the disclosure of specific information relating to the allegations or transactions in court, in a legislative or administrative report, hearing, audit or investigation, or from the news media, then the court may not make an award of over 10 percent of the proceeds. Further, if the court finds that the *qui tam* civil action is being brought by a person who planned or initiated the violation of the False Claims Act, then the court may reduce the award to the extent it deems appropriate. Finally, if the person bringing the *qui tam* civil action is convicted of criminal conduct arising from his role in a False Claims Act violation, then he will not receive any share of the proceeds recovered in such an action.

Texas Contracts for Information

Texas may enter into contracts with people who have information regarding potential claims that the state may pursue in order to recover revenue or other property. The total consideration to be paid to the person with the relevant information must be contingent upon a recovery by the state. Further, the total consideration may not exceed 5 percent of the total revenue or value that the state recovers as a result of the information provided. Finally, the total consideration may be contractually limited to a specific and absolute dollar amount.

Prohibition on the Disclosure of Information Under Virginia Law

Unless an exception applies, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to law, or any former officer or employee of any of the aforementioned offices may not divulge any information acquired in the performance of official duties with respect to the transactions, property, income or business of any person, firm or corporation.

It is also unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which they know or have reason to know is a confidential tax document. Any person who violates these provisions is guilty of a Class 1 misdemeanor.

Proposal

This bill would authorize the Department to award monetary compensation to individuals who provide information that leads to the successful collection of delinquent taxes owed by other individual or business taxpayers. If the Department proceeds with any administrative or judicial action based on such information, the amount of the award would be at least 15 percent but not more than 30 percent of the collected proceeds, including penalties, interest, additions to tax, and additional amounts, resulting from such action or

from a settlement in response to such action. The determination of the amount of such award by the Department would depend on the extent to which the individual informant substantially contributed to such action. Award payments would be paid only from the proceeds collected by reason of the information provided.

This bill would only apply to actions by the Department:

- Against any individual taxpayer, or married taxpayers, with gross income exceeding \$100,000 or any business taxpayer with gross income exceeding \$500,000; and
- If the tax penalties, interest, additions to tax, and additional amounts in dispute exceed \$50,000.

If the Department determines that the administrative or judicial action is based principally on disclosures of specific allegations from some source or sources other than information provided by the individual, then the Department would be authorized to award an amount that he or she deems appropriate. The award payment would not be allowed to exceed 10 percent of the collected proceeds, including penalties, interest, additions to tax, and additional amounts, resulting from such action or from a settlement in response to such action. The Department would be required to take into account the significance of the individual's information and the role played by such individual or his or her legal representative in assisting in such action.

This bill would authorize the Department to deny an award if:

- The claim is brought by an individual who is a federal, state, or local tax official and the information provided was obtained in the course of the individual's official duties;
- The information provided by an individual is information that the Department routinely receives from other sources, such as through an information exchange with the IRS, other state agencies, or local commissioners of the revenue; or
- The claim is brought by an individual who planned or initiated the actions that led to the underpayment of taxes.

If such individual is convicted of criminal conduct arising from a claim for an award, then the Tax Commissioner would be required to deny any award.

If two or more individuals claim an award with respect to the same action, then this bill would require the Department to divide the award in proportion to the significance of each individual's information and the role played by each individual or his legal representative in assisting in such action. The total of all awards would not be allowed to exceed 30 percent of the collected proceeds, including penalties, interest, additions to tax, and additional amounts, resulting from such action or from a settlement in response to such action.

If any portion of the amount collectible is to be collected over time under an installment plan or restitution order, then this bill would prohibit the payment of any awards until all such amounts have been collected. However, this bill would allow an award to be paid

based on amounts collected to date if the Department and the individual agree that the collection of additional amounts is unlikely.

This bill would allow any individual informant that is not satisfied with a determination regarding an award made by the Department to bring an action in the circuit court within 30 days of such determination. The burden of proof would be on the individual to show, by a preponderance of the evidence, that the information he or she provided substantially contributed to the collection of the additional tax proceeds and that the Department abused his discretion in determining the amount of the award. Any information provided to the individual, his representative, or the court about the action would be considered tax information protected from further disclosure unless the person who was the subject of the action is a party to the action in the circuit court.

This bill would authorize the Department to require individuals to submit information in the form of an affidavit under oath in contemplation of eventual proceedings in a circuit court regarding an award determination.

This bill would require the Department to develop guidelines and forms implementing the provisions of this bill.

If enacted during the regular session of the 2025 General Assembly, this bill would become effective July 1, 2025.

cc : Secretary of Finance

Date: 1/19/2025 JLOF
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