

Maryland Tax Whistleblower Reward Program

Added by Acts 2021, c. 515, eff. Oct. 1, 2021.

MD Code, Tax - General, § 1-401 et seq.

§ 1-401. Definitions

(a) In this subtitle the following words have the meanings indicated.

(b) “Covered enforcement action” means an enforcement action brought by the Comptroller under this article that concerns:

(1)(i) the State and county income tax liability of an individual taxpayer or a couple that is married and files jointly whose federal adjusted gross income is at least \$250,000; or

(ii) the State and county tax liability of a business, including those persons who are jointly and severally liable for the State tax liability of a business under this article, the annual gross receipts or sales of which are at least \$2,000,000; and

(2) taxes in dispute exceeding \$250,000.

(c) “Original information” means information that:

(1) is derived from the independent knowledge or analysis of a whistleblower;

(2) is not known to the Comptroller from any other source, unless the whistleblower is the original source of the information;

(3) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation or from the news media, unless the whistleblower is a source of the information; and

(4) is provided to the Comptroller in a sworn affidavit for the first time on or after October 1, 2021.

(d) “Related action” means any judicial or administrative action brought by a State or local agency or entity based on the original information provided by a whistleblower to the Comptroller under this subtitle.

(e)(1) “Whistleblower” means an individual or entity who provides, or two or more individuals or entities acting jointly who provide, in accordance with this subtitle, information to the Comptroller in a sworn affidavit relating to a violation of State tax law, including a rule or regulation, that has occurred, is ongoing, or is about to occur.

(2) “Whistleblower” includes an individual who provides information to a law enforcement agency before providing the information to the Comptroller.

§ 1-402. Eligibility for award; allocation of awards

(a) Subject to the limitations of this subtitle and except as provided in subsection (b) of this section, a whistleblower who voluntarily provides original information to the Comptroller 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, shall be entitled to receive a monetary award of at least 15% but not exceeding 30% of the taxes, penalties, and interest collected through the enforcement action or related action.

(b) 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 under subsection (a) of this

section may not be entitled to an award unless the information provided by the whistleblower materially adds to the information previously reported to the Comptroller.

(c) If two or more whistleblowers are eligible for an award under subsection (a) of this section arising out of the same covered enforcement action or related action:

(1) the total award may not exceed 30% of the taxes, penalties, and interest collected through the enforcement action or related action; and

(2) the Comptroller shall determine the allocation of the award among the eligible whistleblowers.

§ 1-403. Amount of award; exceptions to eligibility

(a)(1) The determination of the amount of an award made in accordance with § 1-402 of this subtitle shall be solely in the discretion of the Comptroller.

(2) In determining the amount of the award, the Comptroller shall consider:

(i) the significance of the information provided by the whistleblower to the success of the covered enforcement action or related action;

(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered enforcement action or related action;

(iii) the amount of the unpaid taxes owed the State that may be recovered under the covered enforcement action or related action;

(iv) the interest of the State in deterring violations of this article and promoting the reporting by whistleblowers of information relating to those violations; and

(v) any additional relevant factors that the Comptroller may establish by regulation.

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

(1) 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;

(2) was convicted of a criminal violation related to the covered enforcement action or related action for which the whistleblower otherwise could receive an award under this section;

(3) 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 under this section had the whistleblower provided the original information before the expiration of any applicable statute of limitations for prosecution or assessment of the whistleblower; or

(4) when submitting information under this subtitle, 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.

(c)(1) A determination of the Comptroller under this section may be challenged in accordance with Title 10, Subtitle 2 of the State Government Article if the challenge is brought within 45 days of the date of the determination.

(2) In bringing a challenge in accordance with paragraph (1) of this subsection, the whistleblower may not challenge:

- (i) the decision to conduct or the method of conducting an investigation arising from the original information provided by the whistleblower;
- (ii) the amount of any unpaid taxes, penalties, or interest due to the State arising from the original information provided by the whistleblower;
- (iii) the result of a covered enforcement action or related action arising from the original information provided by the whistleblower; or
- (iv) any settlement between the State and a person having a tax liability that arises from the original information provided by the whistleblower.

§ 1-404. Contract; counsel; notice; disclosure of information

(a) A contract with the Comptroller, the Office of the Attorney General, or any other agency may not be required in order for a whistleblower to receive an award under this subtitle.

(b)(1) A whistleblower who makes a claim for an award under this subtitle may be represented by counsel.

(2)(i) A whistleblower who anonymously makes a claim for an award under this subtitle shall be represented by counsel if the whistleblower anonymously submits the information on which the claim is based.

(ii) Before payment of an award claimed in accordance with subparagraph (i) of this paragraph, the whistleblower shall disclose the whistleblower's identity and provide any other information that the Comptroller may require, directly or through counsel.

(3) Nothing in this subsection may be construed to imply or infer that a whistleblower is entitled to compensation for any costs or attorney's fees incurred to claim an award under this subtitle.

(c) Within 15 days after receiving original information provided by a whistleblower, the Comptroller shall provide written notice to the whistleblower or, if the whistleblower is represented by counsel, the whistleblower's attorney that:

(1) acknowledges that the original information has been received by the Comptroller; and

(2) indicates the name of the individual in the Comptroller's Office who shall serve as a contact with the whistleblower.

(d)(1) Information that could reasonably be expected to reveal the identity of the whistleblower is not subject to disclosure under the Public Information Act.

(2) Except as provided in paragraph (3) of this subsection, the Comptroller may not disclose any information that could reasonably be expected to reveal the identity of the whistleblower unless that information is required to be disclosed to a party in connection with an action or proceeding brought by the Comptroller or otherwise by court order.

(3)(i) Subject to subparagraph (ii) of this paragraph, as determined by the Comptroller to be necessary to accomplish the purposes of this article, information that could be expected to reveal the identity of a whistleblower may be made available to appropriate regulatory and law enforcement authorities of this State, another state, the federal government, a foreign government, or self-regulatory organizations.

(ii) An authority to which the Comptroller makes information available in accordance with subparagraph (i) of this paragraph shall agree to maintain that information in accordance with any assurances of confidentiality that the Comptroller deems appropriate.

§ 1-405. Retaliation

(a) A current or prospective employer, contractor, or agent may not discharge,

demote, suspend, threaten, or harass, directly or indirectly, or in any other manner discriminate or retaliate against an individual in the terms and conditions of employment because of a lawful act done by that individual:

(1) in providing information to the Comptroller or a law enforcement agency concerning a possible violation of State tax law, including a rule or regulation, that has occurred, is ongoing, or is about to occur;

(2) in initiating, testifying in, or assisting in an investigation or judicial or administrative action of the Comptroller or law enforcement agency or a related action;

(3) in reporting a violation of this title to another governmental entity or to a director, supervisor, or compliance officer of the employer, contractor, or agent; or

(4) in refusing or declining any agreement that would provide for arbitration of claims arising under this article.

(b)(1) An individual who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated or retaliated against in the terms and conditions of employment or is otherwise harmed or penalized by an employer or a prospective employer in violation of subsection (a) of this section shall be entitled to all relief necessary to make the individual whole, including:

(i) an injunction to restrain continued discrimination;

(ii) hiring, contracting, or reinstatement to the position that the individual would have had but for the discrimination or to an equivalent position;

(iii) reinstatement of full fringe benefits and seniority rights;

(iv) compensation for lost wages, benefits, and other remuneration, plus

interest;

(v) removal of any adverse personnel record entries based on or related to the violation; and

(vi) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(2) An individual seeking relief under this subsection may bring an action in the appropriate circuit court for relief.

(3) Nothing in this subsection may be construed to limit the rights, privileges, or remedies of a whistleblower under federal or State law or under a collective bargaining agreement.

(c)(1) The rights and remedies provided for under this section may not be waived by an agreement, a policy form, or a condition of employment.

(2) Salary and wages earned by a whistleblower during the whistleblower's employment and any consideration provided to the whistleblower in connection with the whistleblower's severance from employment may not be recovered by any action brought by the employer if the salary, wages, or consideration is related to original information provided by the whistleblower or the covered enforcement action.

§ 1-406. Construction of subtitle

Nothing in this subtitle may be construed to:

(1) preempt, limit, or restrict the authority or discretion of the Comptroller to investigate or enforce a violation of this article;

(2) limit any power otherwise granted in this article or other laws to the

Comptroller, Attorney General, State agencies, or local governments to investigate or enforce possible violations of this article;

(3) authorize a private right of action involving a violation of this article, except as specifically authorized in this article;

(4) prevent or prohibit a person from voluntarily disclosing any information concerning a violation of this article to any law enforcement agency or self-regulatory organization; or

(5) preempt, limit, restrict, or otherwise affect the rights and rewards provided to qui tam plaintiffs under the Maryland False Claims Act.

§ 1-407. Reports

On or before December 31, 2022, and each December 31 thereafter, the Comptroller shall report to the Governor and, in accordance with, § 2-1257 of the State Government Article the General Assembly on:

(1) the total number of cases reported by whistleblowers during the previous fiscal year;

(2) the number of cases that resulted in a payout to a whistleblower during the previous fiscal year;

(3) the total amount of taxes collected by the State during the previous fiscal year as a result of the original information provided by whistleblowers; and

(4) the total amount of rewards paid to whistleblowers under this subtitle during the previous fiscal year.

§ 1-408. Regulations

The Comptroller shall adopt regulations to implement this subtitle, including regulations establishing procedures for the submission of original information by whistleblowers and protocols governing the determination of awards in accordance with this subtitle and the timely payment of awards to whistleblowers.