June 11, 2018

The Honorable Brian Frosh  
Maryland Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  

Dear Attorney General Frosh:

On behalf of Maryland’s 24 county jurisdictions, the Maryland Association of Counties (MACo) respectfully requests that your office appeal the Maryland Tax Court’s May 23, 2018, decision in Wynne v. Comptroller of Maryland, No. 16-IN-OO-0216, which held that it was unconstitutional to provide a market interest rate on refunds made pursuant to Maryland State Comptroller of the Treasury v. Brian Wynne, et ux., 431 Md. 147 (2013) (the Wynne case). Counties stand at the ready to assist on this front however deemed most helpful and appropriate.

The General Assembly’s action in The Budget Reconciliation and Financing Act of 2014 set the annual interest rate paid for income tax refunds resulting from the Wynne case at the market rate of three percent, as opposed to the punitive interest rate of 13 percent otherwise offered on tax refunds after a certain period of time. The Maryland Tax Court overturned this action, resulting in a cost to Maryland counties ranging from $28 to $38 million. The reason for this, the Court states in its Order, is simply as follows:

The Wynne refunds are the result of income tax provisions relating to income earned in other states by Maryland residents that only allow credits against the state income tax and not against county “piggyback” taxes. The U.S. Supreme Court ruled this was unconstitutional.

Following the exact same logic, granting interest at a lower rate must also be unconstitutional.

We hope that you can represent the Comptroller, and practically, all of Maryland’s counties, by distinguishing the matter of how the refund interest rate is set from the fundamental Commerce Clause issues inherent in the Wynne case.

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.

The consequences of this decision, however, exceed the boundaries of this logic. The large slew of refunds arising from the Wynne 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 constitutional legal theory that was without precedent in Maryland or elsewhere.

Retroactively granting the 13 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.

Of course, the eventual effects of these interest payments land on the local governments and the residents we serve. This tax court decision will potentially cost local taxpayers as much as $40 million – 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 percent “market rate” interest (substantially greater than what the State earned on these holdings during that time, incidentally) accomplishes this balanced policy goal.

This decision creates an unwarranted windfall to a few taxpayers who have already suddenly benefitted from an unexpected court ruling, at the expense of all other taxpayers and local services. We hope that you will elect to pragmatically represent Maryland’s counties, and therefore all of Maryland’s taxpayers, by appealing this expensive and inequitable decision.

Sincerely,

Jerry Walker
President, MACo
Council Vice Chairman, Anne Arundel County

CC: The Honorable Peter Franchot, Maryland Comptroller