

Maryland Audits

Victoria Eve Kelly, Esq.
Victoria Eve Kelly, LLC
www.veklc.com | victoria@veklc.com
Phone: 240-242-9074
10411 Motor City Drive, Suite 750
Bethesda, Maryland 20817

Resources for MVLS Volunteers:

Looking for Pro Bono Cases?

The image shows a screenshot of the Maryland Volunteer Lawyers Service (MVLS) website. The header features the MVLS logo on the left, which includes the text "EST. 1961" and "and Justice for All". The main navigation menu includes "Who We Are", "What We Do", "Get Legal Help", "Volunteer", "News & Events", and "Donate". A dropdown menu is open under the "Volunteer" link, listing several options: "Ways to Get Involved", "Apply to Be A Volunteer Lawyer", "Attorney Resources", "Pro Bono Portal", "Judicare-Family Law Reduced-Fee Panel", "Forms", and "MVLS CAN (Community Advocacy Network)". The "Pro Bono Portal" option is highlighted with a dark background and a red circle. A large teal "DONATE" button is visible on the right side of the page. The background of the website features large, stylized text including "MVLS" and "...and Justice".

New Pro Bono Portal

WELCOME TO THE MVLS PRO BONO PORTAL!

Select a case today by reviewing available cases shown below in real time. You can click "Learn More" to express your interest in the case, or click "Share Case" to forward the available case to a colleague.

If you are not currently a MVLS volunteer, please [click here](#) to register.
By taking a case today, you are helping MVLS to ensure Justice For All.

[All](#) [Bankruptcy](#) [Debt Collection](#) [Deed Transfer](#) [Estates](#) [Expungement](#) [Family](#) [Foreclosure/Tax Sale](#) [Landlord-Tenant](#) [Tax](#) [Other Category](#)

Search ... [All Counties](#) ▼

Single Mom Can't Afford A Large Payment

Client is being sued by her former landlord for \$4146.59. She admits she owes some but not all of the debt and is hoping to reduce the amount she has to pay. Court date set for 7/20/18 at 1:30pm.

Location: Baltimore County Ref. #: 18-0138741 Case Type: Debt Collection

[Share Case](#)

[Learn More](#)

I Admit To The Debt, But Can We Negotiate A Settlement.

Client is being sued for \$933.00 for failing to make payments towards a debt. Client agrees that she owes the debt. There are no judgments entered in the case. Client has paid approximately \$300 toward the debt and would like to work out a settlement for the remaining. Affidavit Judgment Hearing: 7/23/18 at 1:00PM. Trial: 8/3/18 at 9:00AM.

Location: Washington Ref. #: 18-0138685 Case Type: Debt Collection

[Share Case](#)

[Learn More](#)

You Have Left Me No Other Choice But To File For Rent Escrow.

Client wishes to initiate a rent escrow case after nothing has been done to make repairs. Client has lived in the property since October 2016 and problems in the unit began in December 2017. To date LL, has not tried to resolve the mold issue, flooding, falling attic stairs, and the hole in the ceiling.

Location: Baltimore County Ref. #: 18-0138671 Case Type: Landlord-Tenant

[Share Case](#)

[Learn More](#)

Landlord Requests The Move, Now Refusing My Security Deposit.

Client filed suit against her previous Landlord for the return of her security deposit and three times the amount. Client only lived in the property for 3

Looking Towards A Fresh Start

Client seeks help with expunging her criminal record.

Here's To New Beginnings!

Client seeks to go over her criminal record with a volunteer and to have the eligible cases expunged from her record.

Follow us on social media!



facebook.com/MVLSProBono/



Maryland Volunteer Lawyers Service



@MVLSProBono

Visit www.mvlslaw.org/events for more info on upcoming training and clinics!

Maryland initiating audits

This makes it more important than ever to understand Maryland audit procedure.

Maryland is more informal than IRS.

Much of what's in the Maryland tax return depends on what's in the federal tax return.

There isn't the same body of statutes, regulations, publications and procedures governing audits.

Discussion in two parts:

1. Maryland tax procedure generally, including references to federal law.
2. Focus on the Comptroller's provisions and procedures most relevant to audits.

Much of Maryland's tax law is federal law

Like other states, Maryland's computations begin with federal adjusted gross income ("AGI")*, and adjust with additions and subtractions

*Sections 10-203, 10-218(b), 10-304(1) (for corporations)

Maryland tax law is federal law

Md. Tax-General Code Ann. Sec. 10-107

To the extent practicable, the Comptroller shall apply the administrative and judicial interpretations of the federal income tax law to the administration of the income tax laws of this State.

(Usually, if federal law allows something, Maryland will allow it.)

Maryland tax law is federal tax law

Comar 03.04.02.02.02

Maryland resident filing status shall be same as on federal return

Maryland tax law is federal law

Sec. 13-409

When federal adjustment made:

Comptroller adjusts taxes accordingly

Taxpayer must report federal adjustments to tax within 90 days. Must include:

- ❖ A statement
- ❖ An explanation, if taxpayer believes the adjustment is erroneous

Maryland adjustments based on IRS determination

- [https://taxes.marylandtaxes.gov/Individual Taxes/Individual Tax Compliance/Why Do I Owe/My Individual Return Was Audited.shtml](https://taxes.marylandtaxes.gov/Individual_Taxes/Individual_Tax_Compliance/Why_Do_I_Owe/My_Individual_Return_Was_Audited.shtml)
- **CP2000** - include income not previously reported.
- **Federal Adjusted Gross Income Match (FAGIM)**- Adjustment of Maryland return to increase the income to agree with what was reported on your federal return.
- **Revenue Agent Report (RAR)** - We received information from the Internal Revenue Service advising us of changes they made to your federal return as a result of an audit, and incorporate all changes which impacted your Maryland return.
- **Earned Income Credit** – We adjusted your return to eliminate or reduce the Earned Income Credit (EIC), Local EIC and Refundable EIC based on information we received from the Internal Revenue Service.
- **Withholding Verification**- We have adjusted your Maryland income tax return to reduce the Maryland withholding tax claimed to agree with the withholding shown on the wage and tax statements (W-2's) issued to you by your employer(s).
- **Pension Exclusion** – As part of our audit program, we verify the individual claiming the pension exclusion had income from a qualifying employee retirement system and that the individual was at least 65 years old, or totally disabled, or had a spouse who was totally disabled, during the year in question. If criteria is not met, an adjustment is made to eliminate the pension exclusion claimed, or correctly calculate it.

After federal adjustment finalized,
file amended Maryland return

Comptroller cannot adjust Maryland liability until after the IRS finalizes federal liability*

*Andrew Jay Maschas, “The Postman . . . Usually Rings Twice: Resolving State Tax Liabilities After an Adjustment by the IRS”, Volume XXI, No. 1 Tax Talk 2, (Spring 2013),

https://cdn.laruta.io/app/uploads/sites/7/legacyFiles/uploadedFiles/MSBA/Member_Groups/Sections/Taxation/taxtalkspring13.pdf

Statutes of Limitations

Comptroller

Sec. 13-1102 4 years: from date tax is due to recover income taxes

Sec. 13-1103 7 years: from date tax is due to collect income taxes.

(Any judgement entered is enforced or renewed like any other judgement.)

Taxpayer

Sec. 13-1104 3 years: to obtain refund from date the tax, interest, or penalty was paid.

When tax return not filed:

- 13-303 Comptroller may file notice and demand for return within 30 days
- 13-304 Comptroller may send notice and compel the filing of a return, and payment of tax w/in 30 days. May file action in court to enforce.
- 13-402 If Comptroller computes a substitute tax return, may
- ❖ Estimate Income
 - ❖ Assess tax on income not exceeding **twice** the amount of tax due on the estimate

If a tax return is filed, the Comptroller has the authority to audit it.

Sec. 13-101 The Comptroller may examine or audit a tax return.

Sec. 13-302 To determine whether a tax return is correct, or otherwise enforce the tax code, the Comptroller may examine records or other data, conduct an investigation, hold a hearing, administer oaths, take testimony and other evidence, and subpoena a relevant person or document

Assessments

When a tax return isn't filed, or after one's been filed and examined, the Comptroller may assess a deficiency.

Assessments may be imposed in three situations.

Sec. 13-401

Assess after deficiency discovered upon examination and audit (per slide 13).

Sec. 13-402

Assess when tax return not filed. Comptroller may compute income via best information available, and assess tax at up to 2X estimated amount due (per slide 12).

Sec. 13-409

Assess federal adjustment made (per slide 8 - 10).

Assessments

Sec. 13-410

Comptroller must mail notice of assessment.

Sec. 13-413

Interest, penalties and collection fees may be assessed and collected in the same manner as a tax.

Enforcement of Assessment

Maryland may refuse to renew license

No threshold amount

Can hold license for \$1 liability

Business License

Following a failure to submit payroll taxes, computers will schedule a hold within one or two months

Individual License

Following assessment, may take some years for computers to schedule a hold

Appeal of Assessment

Sec. 13-508 An appeal must be filed within 30 days after the date the notice of assessment issues.

If taxpayer fails to file a timely appeal, the assessment becomes final.

If the assessment is timely appealed, the Comptroller shall hold an “informal” hearing.

After the hearing, the Comptroller shall act, and

- may assess additional tax, penalties and interest. (Statute does not speak to the possibility of an abatement.)
- shall mail notice of final determination

“Informal” Hearing on Appeal of Assessment

Sec. 13-508 refers to hearing on appeal as “informal”. The Comptroller’s website refers to a “structured meeting”. *

Taxpayers can represent themselves.

Prior to hearing:

Contact with hearing officer permissible. Can submit documents in advance, or discuss removal of interest and penalties.

During hearing:

- **Taxpayer has burden of proof - NOT a *de novo* hearing**
- Hearing recorded
- Subpoenas may issue
- Witnesses may be under oath
- Comptroller’s auditor, or a member of Collections, may attend.

* See, “What Happens After I file an Appeal?”

https://taxes.marylandtaxes.gov/Tax_Compliance_and_Enforcement/Tax_Compliance_Information/Dispute_It/What_Happens_After_I_File_an_Appeal.shtml

Erroneous Assessment: Abatement

Sec. 13-509 Comptroller has authority to order a decrease or abatement of assessments

EVEN IF APPEAL NOT TIMELY FILED

Order must clearly state reasons

Order is final, not subject to appeal

Refusal to enter order is likewise final, and not subject to appeal

Erroneous Assessment: Abatement

COMAR 03.04.01.08 .08 Abatement of Income Tax Assessment

Reasons for abatement of assessment:

- Assessment is in excess of correct tax liability, or otherwise erroneous or illegally made
- It was imposed after expiration of the statute of limitations
- Collection isn't warranted because of administrative and collection costs

Appeal to Maryland Tax Court

13-510 Within 30 days after a notice of determination from appeals, a taxpayer may appeal to tax court

If the taxpayer appeals the denial of a refund, and there's no action after six months, the taxpayer may appeal the denial to tax court.

13-514 The taxpayer must exhaust administrative remedies before an appeal will lie.

13-515 An individual may represent him or herself

Tax Court may provide *de novo* review

6 STEPS IN AUDIT PROCESS:

1. **PREVENTION:** address issues in tax return before the Comptroller does
2. **PREPARATION:** know what the Comptroller knows
3. **DISCOVERY:** limit issues and disclosure
4. **AUDIT RECONSIDERATION (Sec. 13-509) or APPEAL**
5. **CLOSING AGREEMENT:** no Maryland form
 - Sign auditor's working papers after audit
 - Agree to certain language after settlement on appeal
6. **REFERRAL TO CRIMINAL DEFENSE ATTORNEY**

Whom does Maryland audit?

Data analytics:

- Programs match W-2 income with AGI reported on federal and Maryland returns.

Was W-2 income substantially higher than AGI?

- Certain schedules:

Schedule A, Itemized Deductions (esp. charitable deductions)

Schedule C, Profit or Loss From Business (all cash businesses)

Schedule E, Supplemental Income and Loss

Whom Does Maryland Audit?

For individual income tax, the Comptroller conducts two programs:

- Manual
- Automated

Whom Does Maryland Audit?

The Comptroller collects statistics based on manual & automated programs.

Questionable returns/fraud audits

Look for things like unsubstantiated business losses, bogus Schedule C businesses, unsubstantiated Schedule A deductions, and fraudulent W-2s or 1099s.

2018	14,027
2017	8,867

Whom Does Maryland Audit?

Compliance audits

Frequently review returns to ensure credits are being properly claimed and income is properly reported.

2018: 4,243

2017: 4,996

Whom Does Maryland Audit?

Automated Match Audits

Compare information available to the Comptroller from the IRS with information reported on the Maryland return.

2018:	118,553
2017:	151,712

Whom does Maryland Audit?

Corporate income tax audits numbers:

2018	180
2017	122

Step 1: PREVENTION: address issues in tax return before the Comptroller does

AUDIT PREVENTION BEGINS WITH THE TAX RETURN.

Not just about correct numbers.

Also about answering questions before the Comptroller asks them.

- Consider attaching statements or documentation to explain unusual or questionable items
- Given Maryland's dependence on federal law, clarifying items on the federal return may help with Maryland

STEP 2: PREPARATION - know what the Comptroller knows

Obtain from taxpayer:

- Returns for taxpayer and related entities for year in question
- Returns for at least two years prior to look for repeated errors
- Notices and correspondence from tax authorities to taxpayer
- Correspondence from taxpayer to tax authorities
- Record of conversations between tax authorities and taxpayer
- Taxpayer's credit report

Copy of tax return from

Comptroller, by asking in person (works better than writing)

Case officer or appeals officer

Actual copy of return, if paper return filed

Screen shot of return, if filed electronically

Maryland Public Information Act,
Md. General Provisions Code Ann. Sec. 4-101 (“MPIA”)

Send MPIA requests to Attention of Comptroller’s Records Custodian:

John T. Gontrum, Assistant Comptroller
80 Calvert Street
Annapolis, MD 21404
(o) (410) 260-7562
jgontrum@comp.state.md.us

- Undertake representation by filing Form 548, *Power of Attorney*
- Send MPIA request asap, since may take time for response
- Response should include documents that would be available from client, including audit working papers, if any
- Should contain personal/factual information about taxpayer not otherwise exempt from disclosure

STEP 3: DISCOVERY: Limit issues and disclosure

1. Correspondence Exam

By mail

Largely automated

Resolve limited issues by production of documents

Schedule A, Charitable Deductions

Schedule C

Schedule E

Non-filers

2. Office Exam

If too many documents to handle as Correspondence Exam

3. Field Audits

Handled at place of business

Auditor may request records for period under audit

May accept an agreed upon sample of relevant records

Audit may take from 1 – 3 hours

Ensure discovery observes appropriate parameters

Communication

After filing Form 548, *Power of Attorney*, communication should only be through you as representative.

As a rule, taxpayer should not speak directly with Comptroller. Representative can handle audits, appeals and tax court appearances on taxpayer's behalf.

What Maryland Auditors Look for: Review Internal Revenue Manual

Generally: IRM 4.10.3 Examination Techniques,
https://www.irs.gov/irm/part4/irm_04-010-003

Also includes “Handbooks” for specific types of taxes:

Employment, Excise, Estate & Gift, Pass-through Entity Handbook, Employee Plans,
Exempt Organizations

IRS Audit Technique Guides for specific industries:

<https://www.irs.gov/businesses/small-businesses-self-employed/audit-techniques-guides-atgs>

From Aerospace to Wine industries

Scope of Audit

Confirm issues under audit.

The Comptroller must be truthful.*

Comptroller should provide explanation if it expands issues under audit. **

* See, basic rights for all taxpayers, including “fair treatment . . . helpful advice. . . free assistance”. *Taxpayer Bill of Rights and Consumer Guide*, https://taxes.marylandtaxes.gov/Resource_Library/Taxpayer_Assistance/Taxpayer_Rights/taxpayer-bill-of-rights.pdf

** See, *Your Rights Regarding Audits*, https://taxes.marylandtaxes.gov/Resource_Library/Taxpayer_Assistance/Taxpayer_Rights/Your_Rights_Regarding_Audits.shtml

Privilege

Is the audit seeking privileged material?

Tax returns themselves aren't privileged, even if prepared by an attorney.

They're intended for disclosure to third parties.

See U.S. v. Lawless, 709 F.2d 485, 487 (7th Cir. 1983).

But advice relating to a tax return may be privileged

Maryland's Attorney-Client privilege.*

Maryland's CPA privilege for communications from clients who employ the CPA to audit, examine, or report on any account, book, record, or statement of the client.**

Exceptions for bankruptcy, criminal, State Board proceedings.

* MD Courts and Judicial Proceedings Code Ann. Sec. 9-108

** MD Courts and Judicial Proceedings Code Ann. Sec. 9-110

Other Privileges:

Maryland Work Product Doctrine

Privilege protects work product of attorneys *and other consultants* * prepared in anticipation of litigation. Md. Rule 2-402.

Does this include work product prepared for an administrative proceeding that could lead to litigation?

5th Amendment privilege against self-incrimination

*Federal Rules of Civil Procedure, Rule 26(b)(3) only protects attorney work product

4. **AUDIT RECONSIDERATION (Sec. 13-509) or APPEAL**

- Reconsideration even if appeal not timely filed under Sec. 13-509
 - Some analogy to audit reconsideration under IRS procedure
 - But no appeal

- Appeal within 30 days of assessment

5. **CLOSING AGREEMENT:** no Maryland form

➤ Finalizing field audit

Closing conference

Auditor reviews audit working papers with taxpayer

Taxpayer receives copy of auditor's working papers

Signs acknowledgement of review and receipt

➤ Finalizing settlement on appeal

Settlement agreement will indicate:

Waiver of appeal to Tax Court

Consequences of breaching settlement agreement

6. REFERRAL TO CRIMINAL DEFENSE ATTORNEY

Maryland has some stiff civil and criminal penalties

CIVIL

- Sec. 13-703 Filing a false return (100% tax due)
- Sec. 13-704 Fraudulent failure to file a return (100% tax due)
- Sec. 13-705 Frivolous income tax return (\$500)

CRIMINAL

- Sec. 13-1001 Willful failure to file income tax return is a misdemeanor with a maximum fine of \$10,000, or imprisonment not exceeding 5 years
- Sec. 13-1023 Negligent failure to provide information required under the tax code is a misdemeanor subject to a maximum fine of \$500
- Sec. 13-1024 Willful failure to provide information required under the tax code is a misdemeanor subject to a maximum fine of \$5,000, imprisonment not exceeding 18 months, or both

Volunteer for MVLS!

Janice Shih and MVLS network are wonderful to work with.