

The Tax - General Article Review Committee urges that the General Assembly carefully review the provisions of this subtitle relating to criminal penalties. The current Maryland statutes with respect to criminal violations of the tax laws are a hodgepodge of inconsistent, overlapping, and underlapping provisions, seemingly enacted without consideration to an overall structure and coherence in the definitions and the punishments for criminal activity in Maryland. This note sets forth only a few of the more obvious difficulties with the current pattern.

Statutes with respect to the willful failure to file a return have been enacted only with respect to the income tax, admissions and amusement tax, sales tax, and financial institution franchise tax. Other tax statutes do not contain a provision penalizing the willful failure to file a return.

Some of the criminal statutes (e.g., §§ 13-1002 and 13-1004) include, as part of the definition of criminal activity, "intent to evade". Other criminal statutes do not contain that phrase. The reader is left with the inference that all of the other statutes make certain activity criminal, even though there may not be an "intent to evade the tax".

Many of the sales and use tax criminal statutes impose a penalty on both the taxpayer and on the officer of any corporation that is the taxpayer. Other criminal statutes do not contain any references to "officers of corporations". One is left to speculate whether the other Maryland statutes are intended to immunize from criminal liability officers of corporations who willfully failed to file tax returns or willfully file false tax returns, leaving the penalties to be imposed only on the corporation itself. It is doubtful that the General Assembly intended such a result, but because of the fact that the sales and use tax provisions specifically refer to officers of corporations, a reasonable argument can be made that officers of corporations who evade other types of taxes are not criminally responsible.

The only statute that makes the filing of a false claim for refund a crime is § 13-1004 of this subtitle, relating to income tax. The question is whether the filing of a false claim for refund in connection with any other tax is not intended to be a crime.

There seems to be an omission with respect to the willful failure to pay taxes, as those crimes relate only to admissions and amusement tax, sales and use tax, and income tax. There seems to be no specific criminal penalty for failure to pay the other taxes in the article.

Sections 13-1002 and 13-1004 of this subtitle, relating to income tax and financial institution franchise tax, refer to the willful filing or preparation of a false return, whereas § 13-1003 of this subtitle, dealing with admissions and amusement tax and sales and use tax, refer to the willful making of a false