SENATE BILL 1068 – MEETING #2
OCTOBER 24TH PROPOSED DISCUSSION

Items at issue:

I. **Promotional Program to Educate** - Increased awareness to Employer responsibilities is a necessity for Maryland. As recently as 2012, the IRS has published standard disclosures referencing Employer responsibility in the monitoring of tax funds collected by TPP (Third Party Processors) and paid by the same TPP on their behalf. The IRS has recommended that Employers enroll in their EFTPS (Electronic Federal Tax Payment System) to confirm payments made on their behalf. In correlation the same effort in disclosure to employers enrolling in Maryland's BFile system to monitor payments can proactively remind them of their responsibility of checking payments managed by their contracted TPP.

II. **Address of Record** - In creating a contractual relationship with the employer the TPP acts as the tax processor and is obligated to forward timely payments to designated jurisdictions. In the case of AccuPay it is assumed that they performed the misappropriation of client funds in one of two ways: a) Changed the address of the taxpayer on file with the jurisdiction to Accupay's address thereby *intercepting* late payment tax penalty notices from the client and/or b) denied the late notice verbally to the client and told the client they would "research the error". Notification of any address change request to the employer reflecting the prior address on record and the new requested address change would enable the employer to discover the deception.

III. **Victim Relief** – Effective early outreach to victims can alleviate the tremendous stress and anxiety concerning the tax penalties and interest that may be assessed on unpaid tax obligations. Communication and clear policies directing taxpayers in this area would be helpful. If the state of Maryland could possibly assign a task force or departmental contact *should* an employer discover they have been a victim of business tax misappropriation, then the Employer can reach out immediately upon the discovery working with the state on a gradual repayment plan without an assessment of penalty and interest on the underpayment.

IV. **Timely Reconciliation** – Currently the state of MD has no interim reconciliation to the reporting of withholding taxes at any time during the year. Therefore, it is not aware of payments made outside of a mandated schedule of "Accelerated" or "Monthly" frequency. An employer payment frequency is dictated by the state based on the total expected withholding dollars an employer may remit during the year. It is recommended that the state develops a quarterly reconciliation of tax withholding based on payroll frequencies of Accelerated or Monthly filers so that all employers will be monitored for timely payments. If an employer does not remit on time, the state would be able to assess penalty and interest. This reconciliation mandate will further generate additional revenue to the state if the employer is assessed these fees and add accountability throughout the year not just at W2 reconciliation (one time per year).

V. **Annual Reconciliation** – Currently the state of MD reconciles annually by collecting employer withholding taxes during the year and compares the amount remitted according to MW508 Annual Reconciliation accompanying employee W2 statements. Any discrepancies between the amount remitted and the MW508 are *reported nearly eight (8) months* after the annual February due date of the MW508 immediately following the end of the tax year. (Example 2013 MW508 W2 reconciliation is due on February 28, 2014. Approximately six months after the reconciliation the state informs the Employer of the discrepancy). Most TPP's have electronically filed the data by the due dates and the state should be able to reconcile these electronic files shortly after receipt. Discrepancy notices could become available and mailed as early as March. Similarly BFile users can also be notified in the same time period since the new mandate of W2 submissions must be electronic (rather than submitted by paper) if there are more than 50 Employee W2s. Late filers, or taxes that have not been paid in full by employers, can be assessed penalty and interest quickly as a result of electronic file reconciliation shortly after February each year. IF a quarterly reconciliation is in process, the four quarter reconciliation totals can be electronically stored during the year and then compared quickly to the newly *filed* MW508 to kick out discrepancy notices. This would allow the state expedient annual reconciliation by use of electronic data comparison between quarterly returns and annual return totals.

VI. **Insurance or Bonding Requirement** – Third Party Processors can be held accountable by stringent reporting agent requirements. Most states now require a Power of Attorney (IRS form 2848) or some type of form identifying the relationship to the Employer. The use of TPP's has grown annually and do provide valuable services especially in the area of employment tax collection and payment. TPP's provide timely statements of collection and payment with each payroll and at a minimum, quarterly interim reporting. Employers currently have available access to the IRS's Electronic Filing Payment Tax System (EFTPS) to periodically check on payments made by the service provider and likewise, the state of MD should be able to provide access through their BFile system. If the IRS and the State continue to hold the Employer fully responsible for the tax payments and timely remittance then they will need to provide full electronic access to verify payments.

Insurance or Bonding requirements are very expensive and not easily obtained by the TPP. Most TPP's have more tax funds held in escrow than insurance carriers will *underwrite*. Therefore, if a TPP would close their doors, *which* employers could collect on an undervalued insurance policy? (Example: TPP has \$10 million average daily balance but insurance carrier will only underwrite for \$2 million based on providers Financial statements = Shortage of \$8 million in coverage). This is a costly and inadequate measure to hold TPP's accountable when stringent reporting methods can be put in place to alleviate question of accurate and timely payment and tax return reporting.