

HOUSE BILL 1209

Q7, Q3, Q4

9lr0754

By: **Delegates Howard and Cardin**

Introduced and read first time: February 13, 2009

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Tax Compliance and Administration Act of 2009**

3 FOR the purpose of altering a certain exception to a certain addition modification
4 required under the income tax relating to certain payments to certain related
5 persons under certain circumstances; requiring certain transferors of certain
6 property to pay certain amounts before recording certain documents under
7 certain circumstances; repealing a certain credit relating to collecting and
8 paying the sales and use tax; exempting from the sales and use tax the sale of
9 certain cigarettes; altering the tobacco tax rate for cigarettes; requiring certain
10 employers to file a sales and use tax return under certain circumstances;
11 requiring certain vendors to file certain declarations of estimated sales and use
12 tax and to pay certain estimated tax with certain declarations; requiring the
13 Comptroller to assess certain interest and penalties for failure to pay estimated
14 sales and use tax when due and for certain underestimation of sales and use
15 tax; altering a certain threshold for purposes of the authority of certain tax
16 collectors to require payment of certain unpaid tax liabilities in immediately
17 available funds; including certain types of payments in a certain offset program;
18 and generally relating to tax compliance and administration.

19 BY repealing and reenacting, with amendments,

20 Article – Tax – General

21 Section 10–306.1(a) and (c)(3), 10–912(c) and (d), 11–221(a), 11–601(b),
22 12–105(a), 13–104(a), and 13–930(e)

23 Annotated Code of Maryland

24 (2004 Replacement Volume and 2008 Supplement)

25 BY repealing and reenacting, without amendments,

26 Article – Tax – General

27 Section 10–306.1(b)

28 Annotated Code of Maryland

29 (2004 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing

2 Article – Tax – General

3 Section 11–105

4 Annotated Code of Maryland

5 (2004 Replacement Volume and 2008 Supplement)

6 BY adding to

7 Article – Tax – General

8 Section 11–501(c), 11–502(a–1), 11–601(b–1), 13–602.1, and 13–702.1

9 Annotated Code of Maryland

10 (2004 Replacement Volume and 2007 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – Tax – General**

14 10–306.1.

15 (a) (1) In this section the following words have the meanings indicated.

16 (2) “Aggregate effective tax rate” means the sum of the effective rates
17 of tax imposed by this State, other states or possessions of the United States, and
18 foreign nations that have entered into comprehensive tax treaties with the United
19 States government, where a related member receiving a payment of interest expense
20 or intangible expense is subject to tax and where the measure of the tax imposed
21 included the payment.

22 (3) [“Bank” means:

23 (i) a bank holding company as defined in the federal Bank
24 Holding Company Act of 1956, as amended, or a bank, trust company, savings bank, or
25 savings and loan association incorporated or chartered under the laws of this State,
26 another state, or the United States; or

27 (ii) a subsidiary or affiliate of an entity described in item (i) of
28 this paragraph.

29 (4)] “Effective rate of tax imposed” means, as to any state, possession of
30 the United States, or foreign nation, the maximum statutory tax rate imposed by the
31 state, possession, or foreign nation multiplied by the applicable apportionment rate.

32 [(5)] (4) “Intangible expense” means:

33 (i) an expense, loss, or cost for, related to, or in connection
34 directly or indirectly with the direct or indirect acquisition, use, maintenance,

1 management, ownership, sale, exchange, or any other disposition of intangible
2 property, to the extent the expense, loss, or cost is allowed as a deduction or cost in
3 determining taxable income for the taxable year under the Internal Revenue Code;

4 (ii) a loss related to or incurred in connection directly or
5 indirectly with factoring transactions or discounting transactions;

6 (iii) a royalty, patent, technical, or copyright fee;

7 (iv) a licensing fee; or

8 (v) any other similar expense or cost.

9 [(6)] (5) “Intangible property” means patents, patent applications,
10 trade names, trademarks, service marks, copyrights, and similar types of intangible
11 assets.

12 [(7)] (6) “Interest expense” means an amount directly or indirectly
13 allowed as a deduction under § 163 of the Internal Revenue Code for purposes of
14 determining taxable income under the Internal Revenue Code.

15 [(8)] (7) “Related entity” means a person that, under the attribution
16 rules of § 318 of the Internal Revenue Code, is:

17 (i) a stockholder who is an individual or a member of the
18 stockholder’s family enumerated in § 318 of the Internal Revenue Code, if the
19 stockholder and the members of the stockholder’s family own directly, indirectly,
20 beneficially, or constructively, in the aggregate, at least 50% of the value of the
21 taxpayer’s outstanding stock;

22 (ii) a stockholder or a stockholder’s partnership, limited liability
23 company, estate, trust, or corporation, if the stockholder and the stockholder’s
24 partnership, limited liability company, estate, trust, or corporation own directly,
25 indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of
26 the taxpayer’s outstanding stock; or

27 (iii) a corporation or a party related to the corporation in a
28 manner that would require an attribution of stock from the corporation to the party or
29 from the party to the corporation under the attribution rules of § 318 of the Internal
30 Revenue Code, if the taxpayer owns directly, indirectly, beneficially, or constructively,
31 at least 50% of the value of the corporation’s outstanding stock.

32 [(9)] (8) “Related member” means a person that, with respect to the
33 taxpayer during all or any portion of the taxable year, is:

34 (i) a related entity;

1 (ii) a component member, as defined in § 1563(b) of the Internal
2 Revenue Code; or

3 (iii) a person to or from whom there is attribution of stock
4 ownership in accordance with § 1563(e) of the Internal Revenue Code.

5 (b) (1) Except as otherwise provided in this section, in addition to the
6 modifications under §§ 10–305 and 10–306 of this subtitle, the amounts under
7 paragraph (2) of this subsection are added to the federal taxable income of a
8 corporation to determine Maryland modified income.

9 (2) The addition under this subsection includes any otherwise
10 deductible interest expense or intangible expense if the interest expense or intangible
11 expense is directly or indirectly paid, accrued, or incurred to, or in connection directly
12 or indirectly with one or more direct or indirect transactions with, one or more related
13 members.

14 (c) The addition required under subsection (b) of this section does not apply
15 to any portion of the interest expense or intangible expense to the extent that the
16 corporation establishes, as determined by the Comptroller, that:

17 (3) (i) during the same taxable year, the related member directly
18 or indirectly paid, accrued, or incurred the interest expense or intangible expense to a
19 person who is not a related member; **OR**

20 (ii) 1. the related member was subject to a tax measured by
21 its net income or receipts in this State, another state or possession of the United
22 States, or a foreign nation that has entered into a comprehensive tax treaty with the
23 United States government;

24 2. a measure of the tax imposed by this State, another
25 state or possession of the United States, or a foreign nation that has entered into a
26 comprehensive tax treaty with the United States government included the interest
27 expense or intangible expense received by the related member from the corporation;
28 and

29 3. the aggregate effective tax rate imposed on the
30 amounts received by the related member is equal to or greater than 4%]; or

31 (iii) in the case of an interest expense, the corporation and the
32 related member are banks].

33 10–912.

34 (c) (1) Except as otherwise provided in this section, in a sale or exchange
35 of real property and associated tangible personal property owned by a nonresident or
36 nonresident entity, the deed or other instrument of writing that effects a change of

1 ownership on the assessment books under the Tax – Property Article may not be
2 recorded with the clerk of the circuit court for a county or filed with the Department of
3 Assessments and Taxation unless payment is made to the clerk of the circuit court for
4 a county or the Department of Assessments and Taxation in an amount equal to:

5 [(1)] (I) the sum of the rate of the tax imposed under § 10–106.1 of
6 this title and the top marginal State income tax rate for individuals under § 10–105(a)
7 of this title, applied to the total payment to a nonresident; or

8 [(2)] (II) the rate of the tax for a corporation under § 10–105(b) of this
9 title of the total payment to a nonresident entity.

10 (2) (I) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN
11 A SALE OR EXCHANGE OF REAL PROPERTY AND ASSOCIATED TANGIBLE
12 PERSONAL PROPERTY OWNED BY A RESIDENT, IF THE TOTAL PAYMENT IS
13 GREATER THAN \$250,000, THE DEED OR OTHER INSTRUMENT OF WRITING THAT
14 EFFECTS A CHANGE OF OWNERSHIP ON THE ASSESSMENT BOOKS UNDER THE
15 TAX – PROPERTY ARTICLE MAY NOT BE RECORDED WITH THE CLERK OF THE
16 CIRCUIT COURT FOR A COUNTY OR FILED WITH THE DEPARTMENT OF
17 ASSESSMENTS AND TAXATION UNLESS PAYMENT IS MADE TO THE CLERK OF
18 THE CIRCUIT COURT FOR A COUNTY OR THE DEPARTMENT OF ASSESSMENTS
19 AND TAXATION IN AN AMOUNT EQUAL TO A RATE EQUAL TO THE SUM OF 3.0%
20 AND THE TOP MARGINAL STATE INCOME TAX RATE FOR INDIVIDUALS UNDER §
21 10–105(A) OF THIS TITLE, APPLIED TO THE AMOUNT BY WHICH THE TOTAL
22 PAYMENT TO A RESIDENT EXCEEDS \$250,000.

23 (II) IF A CERTIFICATION UNDER PENALTIES OF PERJURY
24 THAT THE PROPERTY BEING TRANSFERRED IS THE TRANSFEROR’S PRINCIPAL
25 RESIDENCE AND THAT THE TRANSFEROR WILL FILE A JOINT INCOME TAX
26 RETURN IS PROVIDED BY EACH TRANSFEROR IN THE RECITALS OR THE
27 ACKNOWLEDGMENT OF THE DEED OR OTHER INSTRUMENT OF WRITING
28 TRANSFERRING THE PROPERTY TO THE TRANSFEREE OR IN AN AFFIDAVIT
29 SIGNED BY THE TRANSFEROR OR BY AN AGENT OF THE TRANSFEROR THAT
30 ACCOMPANIES AND IS RECORDED WITH THE DEED OR OTHER INSTRUMENT OF
31 WRITING TRANSFERRING THE PROPERTY, THE PAYMENT UNDER
32 SUBPARAGRAPH (I) OF THIS PARAGRAPH:

33 1. IS REQUIRED ONLY IF THE TOTAL PAYMENT
34 EXCEEDS \$500,000; AND

35 2. SHALL BE REQUIRED IN AN AMOUNT EQUAL TO A
36 RATE EQUAL TO THE SUM OF 3.0% AND THE TOP MARGINAL STATE INCOME TAX
37 RATE FOR INDIVIDUALS UNDER § 10–105(A) OF THIS TITLE, APPLIED TO THE
38 AMOUNT BY WHICH THE TOTAL PAYMENT EXCEEDS \$500,000.

1 (d) Subsection (c) of this section does not apply when:

2 (1) **THE TOTAL PAYMENT DOES NOT EXCEED \$250,000 AND** a
3 certification under penalties of perjury that the transferor is a resident of the State or
4 is a resident entity is provided by each transferor in:

5 (i) the recitals or the acknowledgment of the deed or other
6 instrument of writing transferring the property to the transferee; or

7 (ii) an affidavit signed by the transferor or by an agent of the
8 transferor that accompanies and is recorded with the deed or other instrument of
9 writing transferring the property;

10 (2) **THE TOTAL PAYMENT DOES NOT EXCEED \$500,000 AND THE**
11 **CERTIFICATION DESCRIBED IN SUBSECTION (C)(2)(II) OF THIS SECTION IS**
12 **PROVIDED;**

13 [(2)] (3) the transferor presents to the clerk of the circuit court for a
14 county or the Department of Assessments and Taxation a certificate issued by the
15 Comptroller stating that:

16 (i) no tax is due from that transferor in connection with that
17 sale or exchange of property;

18 (ii) a reduced amount of tax is due from that transferor in
19 connection with that sale or exchange of property and stating the reduced amount that
20 should be collected by the clerk of the circuit court for a county or the Department of
21 Assessments and Taxation before recordation or filing; or

22 (iii) the transferor has satisfied the transferor's tax liability
23 described in subsection (c) of this section or has provided adequate security to cover
24 such liability;

25 [(3)] (4) the property transfer is:

26 (i) a transfer pursuant to a foreclosure of a mortgage, deed of
27 trust, or other lien instrument; or

28 (ii) a transfer pursuant to a deed in lieu of foreclosure;

29 [(4)] (5) the property is transferred by the United States, the State,
30 or a unit or political subdivision of the State; **OR**

31 [(5) a certification under penalties of perjury that the property being
32 transferred is the transferor's principal residence is provided by each transferor in:

1 (i) the recitals or the acknowledgment of the deed or other
2 instrument of writing transferring the property to the transferee; or

3 (ii) an affidavit signed by the transferor or by an agent of the
4 transferor that accompanies and is recorded with the deed or other instrument of
5 writing transferring the property; or]

6 (6) the property is transferred pursuant to a deed or other instrument
7 of writing that includes a statement of consideration required by § 12-104 of the Tax –
8 Property Article indicating that the consideration payable is zero.

9 [11-105.

10 (a) (1) Except as provided in subsections (b) and (c) of this section, a
11 vendor who timely files a sales and use tax return is allowed, for the expense of
12 collecting and paying the tax, a credit equal to 0.9% of the gross amount of sales and
13 use tax that the vendor is to pay to the Comptroller.

14 (2) The credit allowed under this section does not apply to any sales
15 and use tax that a vendor is required to pay to the Comptroller for any purchase or use
16 that the vendor makes that is subject to the tax.

17 (b) (1) Subject to paragraph (2) of this subsection, the credit allowed
18 under this section is 1.2% of the first \$6,000 of the gross amount of sales and use tax
19 that the vendor is to pay with each return.

20 (2) For a vendor who files or is eligible to file a consolidated return
21 under § 11-502 of this title, the credit allowed under paragraph (1) of this subsection
22 is 1.2% of the first \$6,000 of the gross amount of sales and use tax that the vendor is or
23 would be required to pay with the consolidated return.

24 (c) From January 3, 2008 through June 30, 2011:

25 (1) the credit allowed under subsection (a) of this section may not
26 exceed \$500 for each return; and

27 (2) for a vendor who files or is eligible to file a consolidated return
28 under § 11-502 of this title, the total maximum credit that the vendor is allowed
29 under this section for all returns filed for any period is \$500.]

30 11-221.

31 (a) The sales and use tax does not apply to:

32 (1) a sale of an admission by a person whose gross receipts from the
33 sale are subject to the admissions and amusement tax;

1 (2) **A SALE OF CIGARETTES ON WHICH THE TOBACCO TAX IS PAID;**

2 (3) a sale of a communication service, other than a taxable service,
3 rendered by a person whose charge for a communication service is or would be subject
4 to the federal excise tax as described in § 4251 of the Internal Revenue Code in effect
5 on July 1, 1979;

6 [(3)] (4) a sale of a motor fuel that is subject to the motor fuel tax or
7 the motor carrier tax;

8 [(4)] (5) except for a rental, a sale of a motor vehicle, other than a
9 house or office trailer, that is subject to the motor vehicle excise tax under § 13-809 or
10 § 13-811 of the Transportation Article;

11 [(5)] (6) a lease of a motor vehicle that is leased for a period of at
12 least 1 year;

13 [(6)] (7) a rental of a motion picture, motion picture trailer, or
14 advertising poster for display on theater premises by a person whose gross receipts
15 from the activity related to the rental is subject to the admissions and amusement tax;
16 or

17 [(7)] (8) except for a rental, a sale of a vessel that is subject to the
18 excise tax under § 8-716 of the Natural Resources Article.

19 11-501.

20 (C) (1) **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN**
21 **EMPLOYER REQUIRED TO FILE AN ANNUAL STATEMENT UNDER § 10-911 OF**
22 **THIS ARTICLE SHALL COMPLETE AND FILE A SALES AND USE TAX RETURN AT**
23 **LEAST ANNUALLY.**

24 (2) **IF AN EMPLOYER IS NOT OTHERWISE REQUIRED TO FILE A**
25 **SALES AND USE TAX RETURN, THE RETURN REQUIRED UNDER PARAGRAPH (1)**
26 **OF THIS SUBSECTION SHALL BE FILED WITH THE REPORT REQUIRED UNDER §**
27 **10-911 OF THIS ARTICLE.**

28 11-502.

29 (A-1) (1) **THIS SUBSECTION APPLIES ONLY TO A VENDOR WHO, FOR THE**
30 **MOST RECENTLY COMPLETED CALENDAR YEAR:**

31 (I) **WAS REQUIRED TO PAY AT LEAST \$600,000 IN GROSS**
32 **SALES AND USE TAX; OR**

1 (II) IF THE VENDOR FILED OR WAS ELIGIBLE TO FILE A
2 CONSOLIDATED RETURN UNDER SUBSECTION (C) OF THIS SECTION, WAS
3 REQUIRED OR WOULD HAVE BEEN REQUIRED TO PAY AT LEAST \$600,000 IN
4 GROSS SALES AND USE TAX WITH THE CONSOLIDATED RETURN.

5 (2) A VENDOR SUBJECT TO THIS SUBSECTION SHALL COMPLETE,
6 UNDER OATH, AND FILE WITH THE COMPTROLLER A DECLARATION OF
7 ESTIMATED SALES AND USE TAX ON OR BEFORE THE 20TH DAY OF THE MONTH
8 IN WHICH THE VENDOR MAKES ANY RETAIL SALE OR SALE FOR USE.

9 (3) A DECLARATION OF ESTIMATED SALES AND USE TAX UNDER
10 THIS SUBSECTION SHALL STATE THE ESTIMATED TOTAL SALES AND USE TAX
11 THAT WILL BE DUE FOR THE MONTH IN WHICH THE DECLARATION IS FILED.

12 11-601.

13 (b) (1) [A] SUBJECT TO SUBSECTION (B-1) OF THIS SECTION, A
14 vendor who makes a sale subject to the sales and use tax shall pay the sales and use
15 tax that the vendor collects for that sale or that the vendor assumes or absorbs for that
16 sale with the return that covers the period in which the vendor makes that sale.

17 (2) A vendor who, under a direct payment permit, makes a purchase
18 or use subject to the sales and use tax shall pay the sales and use tax for that
19 purchase or use with the return that covers the period in which the vendor makes that
20 purchase or use.

21 (3) A vendor who makes a sale subject to the sales and use tax under a
22 prepayment authorization or through a vending machine shall pay the sales and use
23 tax on that sale with the return that covers the period in which the vendor makes that
24 sale.

25 **(B-1) A VENDOR WHO IS REQUIRED TO FILE A DECLARATION OF**
26 **ESTIMATED SALES AND USE TAX UNDER § 11-502(A-1) OF THIS TITLE:**

27 (1) SHALL PAY WITH THE DECLARATION THE ESTIMATED SALES
28 AND USE TAX SHOWN ON THE DECLARATION; AND

29 (2) SHALL PAY WITH THE SALES AND USE TAX RETURN THAT
30 COVERS THE PERIOD ANY UNPAID SALES AND USE TAX FOR THAT PERIOD THAT
31 IS SHOWN ON THE RETURN.

32 12-105.

33 (a) The tobacco tax rate for cigarettes is:

- 1 (1) [~~\$1.00~~] **\$1.16** for each package of 10 or fewer cigarettes;
- 2 (2) [~~\$2.00~~] **\$2.32** for each package of at least 11 and not more than 20
3 cigarettes;
- 4 (3) [~~10.0~~] **11.6** cents for each cigarette in a package of more than 20
5 cigarettes; and
- 6 (4) [~~10.0~~] **11.6** cents for each cigarette in a package of free sample
7 cigarettes.

8 13–104.

9 (a) (1) Subject to the approval of the Treasurer and subject to the
10 limitation under paragraph (2) of this subsection, the Comptroller or the Department
11 may provide by regulation for the payment of any unpaid tax liability in connection
12 with a tax return, report, or other document required to be filed with the Comptroller
13 or the Department in funds that are immediately available to the State on the date the
14 payment is due.

15 (2) Except as provided in paragraph (3) of this subsection, the
16 Comptroller or the Department may not require payment in funds that are
17 immediately available to the State if the unpaid tax liability in connection with a tax
18 return, report, or other document is less than [~~\$10,000~~] **\$5,000**.

19 (3) (i) The Comptroller may require a person who is an agent of the
20 payor or employer as defined in § 10–905 of this article to make payments in
21 immediately available funds on the date the payment is due by the employer or payor
22 if the total amount of the payments to be made by the agent for any pay period exceeds
23 [~~\$10,000~~] **\$5,000** in the aggregate.

24 (ii) Any amounts for which an agent has not received timely
25 payment from an employer or payor:

26 1. shall be excluded for purposes of determining whether
27 the total amount of payments to be made by an agent for a pay period exceeds
28 [~~\$10,000~~] **\$5,000** in the aggregate; and

29 2. may not be required to be paid in immediately
30 available funds under this paragraph.

31 (iii) This paragraph does not impose or affect liability for the
32 payment of any tax.

33 **13–602.1.**

1 **THE COMPTROLLER SHALL ASSESS INTEREST ON UNPAID SALES AND USE**
2 **TAX FROM THE DUE DATE TO THE DATE ON WHICH THE TAX IS PAID IF A VENDOR**
3 **WHO IS REQUIRED TO ESTIMATE AND PAY SALES AND USE TAX UNDER §**
4 **11-601(B-1) OF THIS ARTICLE:**

5 (1) **FAILS TO PAY THE ESTIMATED TAX WHEN DUE; OR**

6 (2) **ESTIMATES A TAX THAT IS LESS THAN 65% OF THE SALES AND**
7 **USE TAX REQUIRED TO BE SHOWN ON THE SALES AND USE TAX RETURN THAT**
8 **COVERS THE PERIOD.**

9 **13-702.1.**

10 **THE COMPTROLLER SHALL ASSESS A PENALTY NOT EXCEEDING 10% OF**
11 **THE AMOUNT UNDERESTIMATED, IF A VENDOR WHO IS REQUIRED TO ESTIMATE**
12 **AND PAY SALES AND USE TAX UNDER § 11-601(B-1) OF THIS ARTICLE:**

13 (1) **FAILS TO PAY THE ESTIMATED TAX WHEN DUE; OR**

14 (2) **ESTIMATES A TAX THAT IS LESS THAN 65% OF THE SALES AND**
15 **USE TAX REQUIRED TO BE SHOWN ON THE SALES AND USE TAX RETURN THAT**
16 **COVERS THE PERIOD.**

17 **13-930.**

18 (e) **“Vendor payment”:**

19 (1) **means any payment, other than a refund, made by the State to any**
20 **person; AND**

21 (2) **includes any expense reimbursement, SALARY, WAGES, OR**
22 **PENSION PAID to an employee of the State[; and**

23 (3) **does not include a person’s salary, wages, or pension].**

24 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
25 **July 1, 2009.**