

SB0523/659438/1

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL 523

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Income Tax – Repeal of the 1997 Income Tax Reduction” and substitute “State and Local Revenue Act of 2012”; strike beginning with “requiring” in line 4 down through “extent;” in line 5 and substitute “altering, for certain taxable years, the percentage of the federal earned income credit used for determining the amount that an individual may claim as a refund under the State earned income tax credit under certain circumstances; altering a certain definition for certain purposes under the sales and use tax; providing that for purposes of certain provisions of the sales and use tax law certain persons shall be presumed under certain circumstances to have an agent, canvasser, representative, salesman, independent contractor, or solicitor operating in the State for certain purposes; providing that a certain presumption may be rebutted by certain proof; altering certain tax rates for certain cigars and certain tobacco products; providing that, for purposes of the recordation tax, secured debt with respect to certain mortgages, deeds of trust, and other security interests in real property securing a guarantee of repayment of a loan for a certain amount is deemed to be incurred as debt is incurred on the guaranteed loan and, with respect to those mortgages, deeds of trust, and other security interests, the recordation tax applies in a certain manner; altering the amount of a certain fee; repealing a certain exemption to the sales and use tax for certain sales in the form of a demurrage charge; repealing a certain modification for purposes of determining Maryland taxable income for certain public utilities; repealing a certain credit against the State income tax for certain public utilities;”; strike beginning with “providing” in line 6 down through “tax” in line 7 and substitute “requiring the Comptroller to waive certain interest and penalties for a certain calendar year to a certain extent; authorizing the Comptroller to provide an alternative method of assessing and collecting a certain additional tax; requiring

(Over)

certain revenue to be remitted to the Comptroller by a certain date; defining certain terms; providing for the application and construction of certain provisions of this Act; and generally relating to altering certain taxes and fees"; in line 10, after "10-105(a)" insert ", 10-704(b), 11-701(b), and 12-105(b)"; and after line 12, insert:

"BY repealing and reenacting, without amendments,

Article – Tax – General

Section 10–704(a)

Annotated Code of Maryland

(2010 Replacement Volume and 2011 Supplement)

BY adding to

Article - Tax - General

Section 11-701.1

Annotated Code of Maryland

(2010 Replacement Volume and 2011 Supplement)

BY adding to

Article - Tax - Property

Section 12-105(f)(7)

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,

Article – State Government

Section 9–1604(b)(1)(vi)

Annotated Code of Maryland

(2009 Replacement Volume and 2011 Supplement)

BY repealing

Article - Tax - General

Section 10-306(c), 10-708, and 11-202

Annotated Code of Maryland
(2010 Replacement Volume and 2011 Supplement)”.

AMENDMENT NO. 2

On page 2, in line 1, strike “5%” and substitute “4.9%”; in line 2, strike “\$150,000” and substitute “\$25,000”; after line 2, insert:

“(v) 4.95% OF MARYLAND TAXABLE INCOME OF \$25,001 THROUGH \$75,000;

(vi) 5% OF MARYLAND TAXABLE INCOME OF \$75,001 THROUGH \$150,000;”;

in lines 3, 5, and 7, strike “(v)”, “(vi)”, and “(vii)”, respectively, and substitute “**(vii)**”, “**(viii)**”, and “**(ix)**”, respectively; in line 15, strike “5%” and substitute “4.9%”; in line 16, strike “\$200,000” and substitute “\$50,000”; after line 16, insert:

“(v) 4.95% OF MARYLAND TAXABLE INCOME OF \$50,001 THROUGH \$100,000;

(vi) 5% OF MARYLAND TAXABLE INCOME OF \$100,001 THROUGH \$200,000;”;

and in lines 17, 19, and 21, strike “(v)”, “(vi)”, and “(vii)”, respectively, and substitute “**(vii)**”, “**(viii)**”, and “**(ix)**”, respectively.

AMENDMENT NO. 3

On page 3, after line 4, insert:

“10-704.

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(a) (1) An individual may claim a credit against the State income tax for a taxable year in the amount determined under subsection (b) of this section for earned income.

(2) An individual may claim a credit against the county income tax for a taxable year in the amount determined under subsection (c) of this section for earned income.

(b) (1) Except as provided in paragraph (2) of this subsection and subject to subsection (d) of this section, the credit allowed against the State income tax under subsection (a)(1) of this section is the lesser of:

(i) 50% of the earned income credit allowable for the taxable year under § 32 of the Internal Revenue Code; or

(ii) the State income tax for the taxable year.

(2) (I) An individual may claim a refund in the amount, if any, by which [25%] THE APPLICABLE PERCENTAGE SPECIFIED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH of the earned income credit allowable for the taxable year under § 32 of the Internal Revenue Code exceeds the State income tax for the taxable year.

(II) THE APPLICABLE PERCENTAGE OF THE EARNED INCOME CREDIT ALLOWABLE UNDER § 32 OF THE INTERNAL REVENUE CODE TO BE USED FOR PURPOSES OF DETERMINING THE REFUND PROVIDED UNDER THIS PARAGRAPH IS:

1. 26% FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2011, BUT BEFORE JANUARY 1, 2013;

2. 27% FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2012, BUT BEFORE JANUARY 1, 2014;

3. 28% FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2013, BUT BEFORE JANUARY 1, 2015;

4. 29% FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2014, BUT BEFORE JANUARY 1, 2016; AND

5. 30% FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2015.”.

AMENDMENT NO. 4

On page 3, after line 4, insert:

“SECTION 2. BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Tax - General

11-701.

(b) (1) “Engage in the business of an out-of-state vendor” means to sell or deliver tangible personal property or a taxable service for use in the State.

(2) “Engage in the business of an out-of-state vendor” includes:

(i) permanently or temporarily maintaining, occupying, or using any office, sales or sample room, or distribution, storage, warehouse, or other place for the sale of tangible personal property or a taxable service directly or indirectly through an agent or subsidiary;

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(ii) having an agent, canvasser, representative, salesman, INDEPENDENT CONTRACTOR, or solicitor operating in the State for the purpose of delivering, selling, or taking orders for tangible personal property or a taxable service;
or

(iii) entering the State on a regular basis to provide service or repair for tangible personal property.

11-701.1.

(A) IN THIS SECTION, "SELLER" MEANS A PERSON MAKING SALES OF TANGIBLE PERSONAL PROPERTY OR A TAXABLE SERVICE.

(B) FOR PURPOSES OF § 11-701(B)(2)(II) OF THIS SUBTITLE, A SELLER SHALL BE PRESUMED TO HAVE AN AGENT, CANVASSER, REPRESENTATIVE, SALESMAN, INDEPENDENT CONTRACTOR, OR SOLICITOR OPERATING IN THE STATE FOR THE PURPOSE OF SELLING OR TAKING ORDERS FOR TANGIBLE PERSONAL PROPERTY OR A TAXABLE SERVICE IF:

(1) THE SELLER ENTERS INTO AN AGREEMENT WITH A RESIDENT OF THE STATE UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY REFERS POTENTIAL CUSTOMERS TO THE SELLER, WHETHER BY A LINK ON AN INTERNET WEB SITE, OR OTHERWISE; AND

(2) THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE SELLER TO CUSTOMERS IN THE STATE WHO ARE REFERRED TO THE SELLER BY ALL RESIDENTS HAVING AN AGREEMENT WITH THE SELLER AS DESCRIBED IN ITEM (1) OF THIS SUBSECTION IS GREATER THAN \$10,000 DURING THE

PRECEDING FOUR QUARTERLY PERIODS ENDING ON THE LAST DAY OF FEBRUARY, MAY, AUGUST, AND NOVEMBER.

(C) THE PRESUMPTION UNDER THIS SECTION MAY BE REBUTTED BY PROOF THAT THE RESIDENT WITH WHOM THE SELLER HAS AN AGREEMENT AS DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION DID NOT ENGAGE IN ANY SOLICITATION IN THE STATE ON BEHALF OF THE SELLER THAT WOULD SATISFY THE NEXUS REQUIREMENT OF THE UNITED STATES CONSTITUTION DURING THE FOUR QUARTERLY PERIODS IN QUESTION.

(D) THIS SECTION MAY NOT BE CONSTRUED TO NARROW THE SCOPE OF THE TERMS “AGENT”, “CANVASSER”, “REPRESENTATIVE”, “SALESMAN”, “INDEPENDENT CONTRACTOR”, AND “SOLICITOR” FOR PURPOSES OF § 11-701(B)(2)(II) OF THIS SUBTITLE OR FOR PURPOSES OF ANY OTHER PROVISION OF LAW.”.

AMENDMENT NO. 5

On page 3, after line 4, insert:

“12-105.

(b) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE tobacco tax rate for other tobacco products is [15%] 20% of the wholesale price of the tobacco products.

(2) (1) IN THIS PARAGRAPH, “PREMIUM CIGARS” HAS THE MEANING STATED IN § 16.5-101 OF THE BUSINESS REGULATION ARTICLE.

(Over)

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, THE TOBACCO TAX RATE FOR CIGARS IS 70% OF THE WHOLESALE PRICE OF THE CIGARS.

(III) THE TOBACCO TAX RATE FOR PREMIUM CIGARS IS 20% OF THE WHOLESALE PRICE OF THE PREMIUM CIGARS.”.

AMENDMENT NO. 6

On page 3, after line 4, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Tax – Property

12-105.

(f) (7) (I) IN THIS PARAGRAPH, “INDEMNITY MORTGAGE” INCLUDES ANY MORTGAGE, DEED OF TRUST, OR OTHER SECURITY INTEREST IN REAL PROPERTY THAT SECURES A GUARANTEE OF REPAYMENT OF A LOAN FOR WHICH THE GUARANTOR IS NOT PRIMARILY LIABLE.

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH:

1. SECURED DEBT WITH RESPECT TO AN INDEMNITY MORTGAGE IS DEEMED TO BE INCURRED FOR PURPOSES OF THIS SUBSECTION WHEN AND TO THE SAME EXTENT AS DEBT IS INCURRED ON THE GUARANTEED LOAN; AND

2. THE RECORDATION TAX APPLIES UNDER THIS SUBSECTION IN THE SAME MANNER AS IF THE GUARANTOR WERE PRIMARILY LIABLE FOR THE GUARANTEED LOAN.

(III) THIS PARAGRAPH DOES NOT APPLY:

1. TO THE EXTENT THAT RECORDATION TAX IS PAID ON ANOTHER INSTRUMENT OF WRITING THAT SECURES PAYMENT OF THE GUARANTEED LOAN; OR

2. TO AN INDEMNITY MORTGAGE THAT SECURES A GUARANTEE OF REPAYMENT OF A LOAN FOR LESS THAN \$1,000,000.”.

AMENDMENT NO. 7

On page 3, after line 4, insert:

“SECTION 4. BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – State Government

9–1604.

(b) (1) The Chief Administrative Law Judge may:

(vi) assess fees to cover administrative expenses as follows:

1. to file an appeal, a fee not exceeding:

A. [\$125] \$150 for an appeal of a driver’s license suspension or revocation related to a violation of the Maryland Vehicle Law; and

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- B. \$50 for all other types of appeals; and
- 2. to process a subpoena, a fee not exceeding \$5.”.

AMENDMENT NO. 8

On page 3, after line 4, insert:

“SECTION 5. AND BE IT FURTHER ENACTED, That Section(s) 10–306(c) and 10–708 of Article – Tax – General of the Annotated Code of Maryland be repealed.”.

AMENDMENT NO. 9

On page 3, before line 5, insert:

“SECTION 6. AND BE IT FURTHER ENACTED, That Section(s) 11–202 of Article – Tax – General of the Annotated Code of Maryland be repealed.”.

AMENDMENT NO. 10

On page 3, after line 9, insert:

“SECTION 8. AND BE IT FURTHER ENACTED, That, as provided in § 12–105 of the Tax – General Article, all other tobacco products used, possessed, or held in the State on or after July 1, 2012, by any person for sale or use in the State, shall be subject to the full tax on other tobacco products, as enacted under this Act. The Comptroller may provide an alternative method of assessing and collecting the additional tax. The revenue attributable to this requirement shall be remitted to the Comptroller by October 15, 2012.”.

AMENDMENT NO. 11

On page 3, in line 5, strike “2.” and substitute “7.”; in line 10, strike “3.” and substitute “9.”; in the same line, after “That” insert “Sections 1 and 5 of”; and after line 12, insert:

“SECTION 10. AND BE IT FURTHER ENACTED, That Sections 2 and 6 of this Act shall take effect July 1, 2012.

SECTION 11. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect July 1, 2012, and shall be applicable to all instruments of writing recorded on or after July 1, 2012.

SECTION 12. AND BE IT FURTHER ENACTED, That, except as otherwise provided in this Act, of this Act shall take effect June 1, 2012.”.